

**INTERNATIONAL DISABILITY ALLIANCE**

# **GUIDANCE DOCUMENT**

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**Effective Use of International Human  
Rights Monitoring Mechanisms to Protect  
the Rights of Persons with Disabilities**

**MAY 2010**

# Acknowledgements

Authors: Laura Theytaz-Bergman and Stefan Trömel

Editing: Ellen Walker

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International Disability Alliance Secretariat  
WCC Building  
150, route de Ferney  
PO Box 2100  
CH - 1211 Geneva 2  
<http://www.internationaldisabilityalliance.org/>

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# Abbreviations

|                       |   |
|-----------------------|---|
| <b>CAT</b>            | Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment        |
| <b>CCPR</b>           | Covenant on Civil and Political Rights  |
| <b>CESCR</b>          | Covenant on Economic, Social and Cultural Rights  |
| <b>CEDAW</b>          | Convention on the Elimination of all Forms of Discrimination against Women                      |
| <b>CERD</b>           | Convention on the Elimination of all Forms of Racial Discrimination                             |
| <b>CRC</b>            | Convention on the Rights of the Child   |
| <b>CPMW</b>           | Convention on the Protection of the Rights of All Migrant Workers and Members of their Families |
| <b>CRPD</b>           | UN Convention on the Rights of Persons with Disabilities  |
| <b>CRPD Committee</b> | Committee on the Rights of Persons with Disabilities  |
| <b>DPO</b>            | Disabled People's Organization  |
| <b>ECOSOC</b>         | Economic and Social Council   |
| <b>HRC</b>            | Human Rights Council  |
| <b>IDA</b>            | International Disability Alliance   |
| <b>NGO</b>            | Non-governmental Organization   |
| <b>NHRI</b>           | National Human Rights Institution   |
| <b>OHCHR</b>          | Office of the High Commissioner for Human Rights  |
| <b>UN</b>             | United Nations  |
| <b>UPR</b>            | Universal Periodic Review   |

For a glossary of technical terms related to the United Nations human rights mechanisms, see The United Nations Human Rights Treaty System, An introduction to the core human rights treaties and treaty bodies, Fact Sheet No. 30, United Nations, Office of the High Commissioner for Human Rights, 2005, pp.37-46, <http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>

- individual communications in the UN treaty system and the role of NGOs in this system; and,
- the examination and discussion of the reporting guidelines on four articles of the CRPD<sup>3</sup>.

This guidance document is the main outcome of the seminar. It provides details on the reporting process of the CRPD, raises awareness on the need to establish national DPO coalitions and offers assistance on producing effective reports by DPOs for submission to the Committee on the Rights of Persons with Disabilities (CRPD Committee) in order to advance the rights of persons with disabilities. It also provides advice on using the national monitoring processes and will help DPOs to understand better the links between national and international monitoring. This guidance document also includes information on the use of other human rights mechanisms including individual communications and inquiry procedures, other human rights treaty bodies, the Universal Periodic Review, and UN Special Procedures.<sup>4</sup>

This guidance document was produced on the basis of the seminar and was reviewed by IDA members and national focus groups. It is available for use by global, regional and national DPOs in training programs and other capacity-building actions.

### **3. Reporting Process of the Committee on the Rights of Persons with Disabilities**

*One of the principle functions of the Committee on the Rights of Persons with Disabilities is to review periodic reports submitted by States parties under Article 35 of the CRPD. The Committee prepares for its dialogue with the State Party by requesting additional information in the form of a list of issues. The State Party report and the responses to the list of issues form the basis of the discussion with the State Party. Following the dialogue, the Committee issues concluding observations, which highlight key issues of concern and make recommendations for follow-up actions.*

*DPOs have the opportunity to provide input on how the CRPD is being implemented at national level at various stages including during the drafting of the State Party report, the list of issues and the concluding observations. DPOs also have a role to play in the follow-up to the concluding observations, during days of general discussion and in the drafting of general comments. Involvement and participation with national monitoring*

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<sup>3</sup> Equal recognition before the law (Article 12); Living independently and being included in the community (Article 19); Health (Article 25); Work and employment (Article 27)

<sup>4</sup> These international human rights mechanisms will be explained in detail later in this guidance document.

# 1. Introduction

The International Disability Alliance (IDA) was established in 1999 as a network of global and, since 2007, regional disabled people's organizations (DPOs).<sup>1</sup> The aim of IDA is to promote the effective and full implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) worldwide, as well as compliance with the CRPD within the UN system, through the active and coordinated involvement of representative organizations of persons with disabilities at the national, regional and international levels

The goal of IDA is to uphold the CRPD as the universal standard for the human rights of all persons with disabilities. With its unique composition as a network of the foremost international and regional disability rights organizations, IDA is the most authoritative representative voice of persons with disabilities and is acknowledged as such by the United Nations system, both in New York and Geneva. Through the coordinated involvement of its members, IDA acts as the focal point for the disability rights movement at the international level and is committed to building capacity of national DPOs, with special attention to the Global South, in order to support national efforts towards the ratification, implementation and monitoring of the CRPD.

In 2007, IDA established the CRPD Forum open to any international, regional or national organizations which promote the CRPD and accept the leadership of DPOs.<sup>2</sup> The CRPD Forum aims to play a key role in the communication and alliance-building strategy of IDA by becoming a meeting place between IDA members, international disability non-governmental organizations (NGOs), mainstream human rights NGOs and other stakeholders who share a common interest in promoting the rights of persons with disabilities.

IDA provides expertise on disability rights from persons with disabilities. Its advocacy work with the UN human rights framework includes influencing key processes and decision-making mechanisms, participating in high-level events, contributing to substantive human rights documents, and working alongside States to further disability rights. IDA has also initiated a program which focuses on capacity building of national DPOs and DPO coalitions to implement and monitor the CRPD at the national level and to facilitate national DPO participation in work at the international level.

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<sup>1</sup> The IDA is comprised of nine global and four regional organizations of DPOs. A list of its members can be found at <http://www.internationaldisabilityalliance.org/about-us/members/>

<sup>2</sup> Information on joining IDA (CRPD Forum) can be found at <http://www.internationaldisabilityalliance.org/wp-content/uploads/2009/09/Participant-Information-and-declaration-FINAL.doc>



## 2. Objectives and Methodology

The objective of this guidance document is to provide practical, hands-on strategies and advice to DPOs and DPO coalitions on the international human rights mechanisms. As the Committee on the Rights of Persons with Disabilities (the CRPD Committee) embarks on the examination of initial State Party reports, national DPOs need to engage in the reporting process at both national and international levels. This guidance document focuses on the reporting process of the Convention on the Rights of Persons with Disabilities (CRPD) and the preparation of reports by DPOs in order to provide DPOs with practical information on both the process and the content of reporting.

In January 2010, IDA organized a two-day meeting in Geneva, Switzerland entitled “Capacity building of NGOs of persons with disabilities to make effective use of the UN human rights monitoring mechanisms”. The aim of the seminar was to identify key challenges related to the monitoring of the CRPD and to generate reflection on how DPOs can influence the work of the CRPD Committee, the work of other human rights treaty bodies and how to strategically use the Universal Periodic Review (UPR).

The seminar was attended by 120 participants from 35 countries from all regions and representing a wide range of disability constituencies. Experts from the Office of the High Commissioner for Human Rights (OHCHR), treaty bodies, NGOs and national human rights institutions provided information and insight on a variety of topics including:

- reporting guidelines of the CRPD Committee;
- key elements for an effective UN human rights treaty body reporting process;
- building capacity of national NGOs and facilitating their participation in the reporting process
- special challenges related to the monitoring of economic, social and cultural rights;
- national monitoring of the CRPD;
- mainstreaming the rights of persons with disabilities in the work of other human rights treaties;
- mainstreaming the rights of persons with disabilities in the Universal Periodic Review;
- effective use of Special Procedures to promote the rights of persons with disabilities;

*frameworks and other national implementation and monitoring bodies is a key component to ensuring the effective implementation of the CRPD.*

#### a. United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (CRPD)<sup>5</sup> is the first legally binding international instrument which sets out the rights of persons with disabilities. It aims 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.”<sup>6</sup> The CRPD was adopted by the UN General Assembly on 13 December 2006 and it entered into force on 3 May 2008. As of May 2010, it has been ratified by 86 States.<sup>7</sup>

#### **General Principles**

Article 3 sets out general principles which should guide the implementation of all articles of the CRPD.<sup>8</sup>

- respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- non-discrimination;
- full and effective participation and inclusion in society;
- respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- equality of opportunity;
- accessibility;
- equality between men and women;
- respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

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<sup>5</sup> The full text of the CRPD can be found at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Convention.aspx>

<sup>6</sup> CRPD, Article 1

<sup>7</sup> A list of States which have ratified the CRPD can be found at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en)

<sup>8</sup> An explanation of the meaning of these principles can be found in [Monitoring the Convention on the Rights of Persons with Disabilities. Guidance for Human Rights Monitors](#), Professional Training Series, No. 17, United Nations Office of the High Commissioner for Human Rights, 2010, pp. 18-23, [http://www.ohchr.org/Documents/Publications/Disabilities\\_training\\_17EN.pdf](http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf)

The CRPD promotes and protects the civil, political, economic, cultural and social rights of persons with disabilities. It encompasses 50 articles<sup>9</sup> which set out:

- equality and non-discrimination (Article 5);
- right to life (Article 10);
- protection in situations of risk and humanitarian emergencies (Article 11);
- equal recognition before the law (Article 12);
- access to justice (Article 13);
- right to liberty and security (Article 14);
- freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15);
- freedom from exploitation, violence and abuse (Article 16);
- respect for physical and mental integrity (Article 17);
- freedom of movement and nationality (Article 18);
- right to live independently and be included in the community (Article 19);
- right to personal mobility (Article 20);
- freedom of expression and opinion and access to information (Article 21);
- respect for privacy (Article 22);
- respect for home and the family (Article 23);
- right to education (Article 24);
- right to health (Article 25);
- right to habilitation and rehabilitation (Article 26);
- right to work and employment (Article 27);
- right to an adequate standard of living and social protection (Article 28);
- right to participate in political and public life (Article 29); and
- right to participate in cultural life, recreation, leisure and sport (Article 30).

The CRPD also includes specific obligations to ensure that the rights of women (Article 6) and children (Article 7) with disabilities are protected. It also requires States to adopt awareness-raising (Article 8) and accessibility (Article 9) measures and to collect statistical and research data (Article 31). The importance of international cooperation (Article 32) and national implementation and monitoring (Article 33) are highlighted.

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<sup>9</sup> Information on the implementation of the specific articles of the CRPD can be found in section 4b of this document.

## **General Obligations**

Article 4 of the CRPD requires State Parties to promote the full realization of human rights and fundamental freedoms for all persons with disabilities, without discrimination of any kind by:

- adopting legislative, administrative and other measures to implement the rights contained in the CRPD;
- adopting legislative, administrative and other measures to abolish discrimination against persons with disabilities;
- protecting and promoting the rights of persons with disabilities in all policies and programs;
- not engaging in any act or practice that is inconsistent with the CRPD and ensuring that the public sector acts in conformity with the CRPD;
- taking measures to eliminate discrimination on the basis of disability;
- undertaking or promoting research and development of new technology suitable for persons with disabilities;
- providing accessible information about assistance, support services and facilities to persons with disabilities;
- promoting training of professionals and staff who work with persons with disabilities; and
- involving persons with disabilities in developing and implementing legislation and policies and in all decision making processes related to persons with disabilities.

The CRPD allows for economic, cultural and social rights to be implemented progressively, but requires that States Parties take measures to the maximum extent of available resources, including within the framework of international cooperation.<sup>10</sup> Regardless of the amount of resources available, States must never discriminate on any grounds, including disability, must ensure a minimum level of economic, social and cultural rights immediately, and must make progressive steps towards the realization of

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<sup>10</sup> Article 4(2) "With regards to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law."

the economic, social and cultural rights outlined in the CRPD. Regression is not permitted.<sup>11</sup>

## b. Role of the CRPD Committee

The CRPD establishes in Article 34, a Committee on the Rights of Persons with Disabilities (CRPD Committee). It is mandated to consider reports of State Parties submitted under Article 35 of the CRPD, to receive and examine individual communications against State Parties to the Optional Protocol to the CRPD and to conduct inquiries based on reliable information which indicates grave or systematic violations by a State Party to the Optional Protocol. The Committee currently meets two times a year in Geneva, Switzerland for a period of one week each session.

The Committee is currently composed of twelve members<sup>12</sup> but will expand to eighteen in January 2011<sup>13</sup>. Committee members are required to be of “high moral standing” and “recognized competence and experience” in the field of disability rights. Although Committee members are nominated and elected by State Parties to the CRPD, they are independent experts, not representatives of their governments. The composition of the CRPD Committee should take into consideration an equitable geographical distribution, representation of different forms of civilization and the principal legal systems. The Committee should also have a gender balance and include experts with disabilities. Members serve a term of four years<sup>14</sup> and can only be re-elected once. They perform their duties on a voluntary basis and are only compensated for their daily expenses during Committee sessions. A small permanent Secretariat at the Office of the High Commissioner for Human Rights provides support and advice to the Committee.

## c. Reporting cycle

Each State Party to the CRPD is required to submit **a comprehensive (initial) report** to the CRPD Committee within two years after the CRPD enters into force<sup>15</sup> for that State.

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<sup>11</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 3, The nature of States Parties obligations, 1990, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)

<sup>12</sup> A list of current Committee members as well as information on their backgrounds can be found at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Membership.aspx>

<sup>13</sup> As per Article 34(2) of the CRPD, the membership of the Committee will increase from twelve to eighteen members once the CRPD has been ratified by at least 80 States. The election of twelve members will be held in September 2010 during the Third Conference of State Parties. For more information on the elections, see

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPD2010Elections.aspx> and

<http://www.internationaldisabilityalliance.org/advocacy-work/conference-of-state-parties/third-conferences-of-states-parties-september-2010/>

<sup>14</sup> As per article 34(7), six Committee members elected during the election in 2008 will only serve a two year mandate. If re-elected, they will only have served six years rather than eight. These six members were chosen by lot.

<sup>15</sup> Entry into force is when a treaty becomes legally binding on the State. The CRPD entered into force 3 May 2008, 30 days after the 20<sup>th</sup> ratification. For those States Parties, the initial report to the CRPD is due 3 May 2010. For those States who ratified the

The initial report is composed of a **common core document**, which provides general information common to all human rights treaty bodies, and a **treaty-specific document**, which contains information specific to the implementation of the CRPD.

Upon submission, the report is scheduled for consideration by the Committee. Reports are generally considered in the order in which they are received.<sup>16</sup> The report is submitted for translation into the official languages of the United Nations<sup>17</sup> and made available in accessible formats<sup>18</sup>. Generally it takes a minimum of one year between the time that the report is submitted and its consideration by the Committee. The CRPD Committee conducts a preliminary review of the State Party report and prepares a **list of issues** which serves to supplement and update the information provided in the initial report. The State Party is requested to respond to the list of issues in writing within a set time limit. The report and the responses to the list of issues are then considered at the next **plenary session**. The State Party is invited to participate in the plenary session in order to respond to questions posed by Committee members and to provide the Committee with additional information. At the end of the dialogue, the Committee issues **concluding observations** which point out the positive aspects, the factors and difficulties impeding the implementation of the CRPD, the principal subjects of concern and concrete suggestions and recommendations for future action.

State Parties are required to submit **periodic reports** at least every four years, or more frequently if so requested by the Committee. Periodic reports should not repeat information given in the initial report but rather should provide information on the measures adopted to follow-up on the conclusions and recommendations made by the Committee during the examination of the initial report. The periodic report should also provide information on any major developments (either positive or negative) since the consideration of the initial report.

Figure 1. The reporting cycle under the CRPD and opportunities for DPO input

Step 1. The State Party should have **consultations** with civil society, including representative organizations of persons with disabilities, to prepare its **State report**.



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CRPD after 3 April 2008, the entry into force date is 30 days after the ratification date and the initial report is due two years after that date.

<sup>16</sup> Priority may be given to the consideration of initial or significantly overdue reports.

<sup>17</sup> State Party reports must be submitted in one of the official UN languages: English, French, Spanish, Arabic, Chinese or Russian.

<sup>18</sup> The Committee has not defined accessible formats but had decided that the following methods of communication will be used: languages (including spoken and sign languages), display of text, Braille, tactile communication, large print, accessible multimedia, written, audio, plain language, human-reader and augmentative and alternative modes, means and formats of communication. Note: A reference to the Working Methods will be added once this becomes available.

Step 2. State Party submits its **State report** to the CRPD Committee (the first time, it submits its **initial report**, after that, it submits **periodic reports**).

-**Opportunity for input from UN system, NHRIs, NGOs and DPOs.**

-DPOs submit their own **parallel reports** with **priority issues** and **concrete recommendations**.



Step 3. The CRPD Committee presents State Party with **list of issues** and questions based on concerns raised by the report.

-**Opportunity for input from UN system, NHRIs, NGOs and DPOs.**

-DPOs can suggest issues for the **list of issues** and **questions the Committee should ask the State**, before the Committee adopts its list of issues.



Step 4. State Party submits **written replies to list of issues** and questions.

-DPOs can also give their **own responses**.



Step 5. **Constructive dialogue** between the CRPD Committee and the State Party delegation during a plenary session.

-**Opportunity for input from UN system, NHRIs, NGOs and DPOs.**

-DPOs can request in advance to give an **oral presentation** during the session in which the constructive dialogue with their country will take place.

-Before the dialogue, and during the same session, DPOs could try to **meet with Committee members**, especially the **country Rapporteur**, to identify priority issues and recommendations.



Step 6. The CRPD Committee issues its **concluding observations** on the report, including **recommendations**.

-Before the concluding observations are adopted, DPOs can identify for the Committee members the priority areas that need quick action, and suggest concrete recommendations on the issues that were raised during the dialogue.

- Concluding observations should be circulated widely at national level.



Step 7. Procedures to follow up on implementation of CRPD Committee's recommendations.

**-Opportunity for input from UN system, NHRIs, NGOs and DPOs.**

-DPOs should work with the national monitoring mechanism and the government on implementing recommendations and follow up.

-DPOs should do their own monitoring for the next report.

**End of the cycle. Return to Step 1 for the next periodic report.**



**Notes:**

-The cycle begins two years after entry into force of the CRPD for the State Party.

-It repeats every four years after that. This is covered in article 35 of the CRPD.

-DPOs can find out when the list of issues will be prepared, and when the constructive dialogue will take place, via the CRPD Committee website or by contacting the CRPD Committee Secretariat.

-DPOs need to keep track of how and when States Parties are preparing and submitting State reports.

End figure 1.

The active participation of civil society, including DPOs, in influencing the reporting process is an important way in which to monitor, promote and follow-up the work of the CRPD Committee. DPOs may be involved at a number of different stages of the reporting process such as during the preparation of the State Party report, the preparation of reports submitted by national monitoring frameworks, and through the preparation of a parallel report by national DPO coalitions. Information may be submitted at various stages of the process such as prior to the adoption of the list of issues, the dialogue with State Parties and the adoption of the concluding observations.

#### d. Influencing the preparation of State Party Reports

The process of preparing a report is an opportunity to take stock of the status of human rights protection in a State. States should conduct a comprehensive review of the measures taken to harmonize national law and policy with the provisions of the CRPD. The preparation of a report allows a State to monitor the progress made in promoting the enjoyment of the rights set forth in the CRPD and to identify problems and shortcomings in its approach to the implementation of the CRPD. The reporting process may also assist a State to plan and develop appropriate policies to achieve its goals.

The State Party is required to submit an initial report two years after entry into force of the CRPD, which covers the period between entry into force and the submission of the State Party report. The State Party report is composed of two documents; the common core document and a treaty-specific document.



The **common core document**<sup>19</sup> is a 60-80 page report that contains information of a general and factual nature on the implementation of all the human rights treaties which a State has ratified. It is transmitted in the same format to all human rights treaty bodies to which the State is a party and should be updated by the State on a regular basis in order to ensure that the information is current. The common core document is therefore not disability-specific.

The common core document includes general factual and statistical information such as demographic, social and cultural characteristics and information on the constitutional, political and legal structure. It should also contain information on the general framework for the protection and promotion of human rights such as the ratification of international human rights instruments, reservations, the general legal framework at national level, and how treaty body reports are prepared. The common core document should also contain information on the implementation of substantive human rights provisions common to all or several human rights treaties such as non-discrimination and equality.

The **treaty-specific document** is a maximum of 60 page report and should contain specific information on the implementation in law and in practice of the articles of the CRPD. The report should provide detailed information on substantive measures taken and progress achieved and an article-by-article analysis of the CRPD in accordance with the reporting guidelines. In October 2009, the CRPD Committee adopted treaty specific guidelines for reporting.<sup>20</sup> The aim of the guidelines is to advise States on the form and content of their initial report so that they are comprehensive and presented in a uniform manner.

The CRPD requires the involvement and full participation of civil society, and in particular DPOs, in the monitoring process<sup>21</sup>. State Parties are invited to prepare their reports on the implementation of the CRPD in an open and transparent manner<sup>22</sup> giving due consideration to Article 4 (3) of the CRPD by which State Parties are required to closely consult with and actively involve DPOs in the implementation of the CRPD.<sup>23</sup> According to Article 35 (4) of the CRPD, preparation of reports should be an open and transparent process and persons with disabilities, including children with disabilities,

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<sup>19</sup> Guidelines for the common core document can be found in Compilation of Guidelines on the form and content of reports to be submitted by State Parties to the international human rights treaties, HRI/GEN/2/Rev6, <http://www2.ohchr.org/english/bodies/icm-mc/docs/9th/HRI-GE-2-Rev6.doc>

<sup>20</sup> Guidelines on treaty-specific document to be submitted by State Parties under article 35, paragraph 1, or the Convention on the Rights of Persons with Disabilities, CRPD/C/2/3, <http://www2.ohchr.org/SPdocs/CRPD/CRPD-C-2-3.doc>

<sup>21</sup> Article 33(3) reads « Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process. »

<sup>22</sup> Article 35(4)

<sup>23</sup> Article 4(3) reads « In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, State Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations. »

should be consulted and actively involved, through their representative organizations, in the preparation of the State Party report. Furthermore, the guidelines for the preparation of initial reports<sup>24</sup> encourage State Parties to involve non-governmental organizations, including DPOs, in the preparation of reports in order to enhance the quality of the State Party report and to promote the enjoyment of the rights protected by the CRPD. The Committee's working methods also underline the importance of consulting DPOs in the preparation of the State Party report in order to "reflect the reality of persons with disabilities in a country."<sup>25</sup>

Although the responsibility for reporting lies with the State Party, it is clear that DPOs have a role to play in the preparation of the State Party report and should request that a national consultation is held in order for the State Party to receive input from civil society as required by the CRPD. National consultations may be held with civil society in order to solicit their views or discuss a draft report. In some countries, the State Party may have an open consultation process whereby anyone who is interested may submit information or comment on the draft report. DPOs should engage with the State Party during the preparation of the State report in order to submit information and research, identify areas of concern, and make recommendations for future action.

It is important to note that the contributions provided by DPOs may or may not be incorporated into the State Party report. As it is the obligation of the State to prepare the report, the report should rightly reflect the point of view of the government and civil society may or may not agree with all the information provided or the way in which it is provided. It is for this reason that DPOs are advised not to sit on drafting committees or write the report for the State Party but rather to advise, inform and consult with the State Party in the preparation of its report. DPOs need to maintain their independence and perform an independent monitoring role through the submission of a parallel report once the State Party report has been submitted.

In States whose reports are overdue, DPOs should remind them of their obligation to submit a report in a timely manner and request that a national consultation be held in order to discuss the preparation of the State Party report. An overdue report should examine the period from entry into force up to the time that it is submitted to the Committee meaning that it may cover more than a two-year period. The CRPD Committee has the authority to consider the situation in a State Party even in the

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<sup>24</sup> Guidelines on treaty-specific document to be submitted by State Parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities, CRPD/C/2/3, Para. 3

<sup>25</sup> A reference to the Working Methods will be added once this becomes available.

absence of a report. If a State Party report is “significantly overdue”<sup>26</sup>, the Committee may examine the implementation of the CRPD based on “reliable information” that is available to the Committee. DPOs in countries that have ratified the CRPD but whose reports may be considered to be “significantly overdue” should make a written request to the Committee that the situation in the country be considered even in the absence of a State Party report. If the Committee agrees to do so, DPOs should submit a comprehensive report on the implementation of the CRPD in the country in order to ensure that the Committee is able to review effectively the situation.

States who have not ratified the CRPD cannot be examined by the Committee.

#### e. Influencing the reports of national monitoring frameworks

The CRPD requires that each State Party establish a framework to promote, protect and monitor the Convention.<sup>27</sup> The framework may be composed of a single independent body, such as a national human rights institution (NHRI), or may include a number of entities. At a minimum, the framework must include at least one independent mechanism and take into account the Paris Principles.<sup>28</sup> DPOs should be consulted in the establishment of the monitoring framework and both DPOs and experts who are persons with disabilities should be involved and participate in the framework.<sup>29</sup>

One of the main functions of the framework is to monitor the implementation of the CRPD. This may be done by conducting research, developing indicators and benchmarks, or collecting information on human rights violations. Reports are generally submitted to governmental bodies.

The national monitoring framework may choose to submit its own report to the CRPD Committee on the implementation of the CRPD at national level. DPOs should encourage the framework to submit a report and to hold a consultation on the implementation of the CRPD and should actively participate in any consultation process.

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<sup>26</sup> Article 36(2) “If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification...”

<sup>27</sup> Article 33(2): “State Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention...”

<sup>28</sup> Principles relating to the Status of National Institutions, GA resolution 48/134, 2003,

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

<sup>29</sup> 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, A/HRC/13/29 [http://www2.ohchr.org/english/issues/disability/docs/A.HRC.13.29\\_en.doc](http://www2.ohchr.org/english/issues/disability/docs/A.HRC.13.29_en.doc)

In some countries, the NHRI<sup>30</sup> have been designated as the monitoring framework. These institutions have been created to promote and monitor human rights. They take a variety of forms such as human rights commissions, ombudsman, institutions, public defender's offices, and advisory human rights institutes.<sup>31</sup> Although established and funded by the State, NHRIs which comply with the Paris Principles (A level) are independent entities which perform important promotion and monitoring functions. They generally have a broad mandate which is clearly set out in law, have sufficient funding and infrastructure that is not subject to governmental control and are able to operate in an autonomous manner. In some countries, NHRIs may exist which are not fully in compliance with the Paris Principles (B level) or do not comply with the Paris Principles (C level).<sup>32</sup> Although the Paris Principles encourage NHRIs to contribute to the State Party report on the implementation of international human rights treaties, they are also encouraged to express their own point of view when necessary.<sup>33</sup>

In countries where the NHRI has not been designated as the monitoring framework, it may still choose to submit its own reports to the CRPD Committee in order to provide its view as to how the CRPD is being implemented in a State Party.<sup>34</sup> DPOs should therefore encourage NHRIs to submit their own report and to hold a consultation in order to obtain information on the implementation of the CRPD at national level.

DPOs are strongly encouraged to actively participate in consultations with the national monitoring framework and NHRIs. They should, however, conduct their own monitoring exercise and submit their own report to the Committee in order to ensure that the Committee receives unfiltered information directly from DPOs. DPOs may wish, however, to coordinate their submission with that of the national monitoring framework and NHRIs in order to highlight key issues of concern for civil society and to avoid too much overlap amongst the reports.

#### f. Influencing the list of issues

Prior to meeting with the governmental delegation, the Committee will prepare a list of issues in order to clarify or complete the information provided in the State Party report or

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<sup>30</sup> For more information on National Human Rights Institutions see [www.nhri.net](http://www.nhri.net)

<sup>31</sup> 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, A/HRC/13/29 [http://www2.ohchr.org/english/issues/disability/docs/A.HRC.13.29\\_en.doc](http://www2.ohchr.org/english/issues/disability/docs/A.HRC.13.29_en.doc)

<sup>32</sup> The accreditation status of NHRI can be found at [http://www.nhri.net/2009/Chart\\_of\\_the\\_Status\\_of\\_NIs\\_January\\_2010.pdf](http://www.nhri.net/2009/Chart_of_the_Status_of_NIs_January_2010.pdf)

<sup>33</sup> Paris Principles 3d ) "To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;"

<sup>34</sup> For more information, see The Role of National Human Rights Institutions in the United Nations Treaty Body Process, German Institute for Human Rights, 2007. [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/handbook\\_the\\_role\\_of\\_national\\_human\\_rights\\_institutions\\_in\\_the\\_un\\_treaty\\_body\\_process.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/handbook_the_role_of_national_human_rights_institutions_in_the_un_treaty_body_process.pdf)

to allow the State Party to update the Committee on any recent changes since the submission of its report. The draft of the list of issues is prepared by the Country Rapporteur, a member of the Committee assigned to conduct an extensive study of the report under review. The list of issues is adopted in private<sup>35</sup>, but any written information provided to the Committee by DPOs prior to the preparation of the list of issues may influence the issues that are raised by the Committee.

DPOs may be invited to meet with the Committee during the drafting of the list of issues. A written request must be made to the Committee at least two months prior to the session in which the list of issues will be discussed. DPOs are then invited to make an oral presentation of not more than fifteen minutes. The Committee requests that the presentation focus on the articles of the Convention, have direct relevance to matters under consideration by the Committee, and incorporate the perspective of gender, age and other causes that affect the vulnerability of persons with disabilities. DPO meetings with the Committee will be public unless otherwise requested.<sup>36</sup>

The State Party is to respond to the list of issues in writing at least six weeks prior to the plenary session so that the information can be translated into the working languages of the Committee and studied in advance of the meeting. The responses are requested to be brief, precise and direct and not exceed 30 pages. DPOs may wish to offer their own responses to the list of issues or additional feedback on the issues that the Committee has highlighted in the list of issues.

#### g. Participation of civil society at the plenary session of the Committee

The State Party report is examined during a public session of the Committee. Generally each report is scheduled to be considered during one day (two, three-hour meetings) but may be extended by an extra half day (one, three-hour meeting) when necessary. DPOs and other relevant stakeholders may attend as observers.<sup>37</sup> The State is asked to send a national-level delegation to the review of the report and the participation of government officials who are involved in the actual implementation of the CRPD is recommended. The Committee suggests that the State Party delegation be headed by a person with responsibilities in the government and that the delegation include members of the legislative and judicial branches. DPOs should highlight to the relevant Ministries the importance of sending a high level knowledgeable delegation to the plenary session.

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<sup>35</sup> The rules of procedure allow the Committee to establish a pre-sessional working group, which would meet prior to the each session of the Committee in order to draft the list of issues.

<sup>36</sup> A reference to the Working Methods will be added once this becomes available.

<sup>37</sup> For security reasons, accreditation to attend the meeting must be obtained in advance. Please provide your name and organization to the Secretariat of the Committee at [crpd@ohchr.org](mailto:crpd@ohchr.org).

The Committee will conduct a “constructive dialogue” with the State Party, during which Committee members will raise questions and make comments followed by responses from the governmental delegation. The aim of the dialogue is to review with the Committee the progress made, the factors and difficulties encountered in the implementation of the CRPD, priorities in the implementation of the CRPD and objectives for future work.

DPOs may be able to meet with Committee members either formally or informally during the session in order to present additional information, to provide updates, or to suggest possible questions to be raised with the State delegation. It is also an opportunity to obtain a first-hand picture of the dialogue with the government. Although summary records of the discussion are produced by the United Nations, these are a summary of the meeting and not a verbatim record of the discussion. In addition, summary records are often not available until months after the discussion and are generally only produced in English and French.

#### h. Influencing the Concluding Observations

Following the dialogue with the State Party, the Committee will issue concluding observations which will point out the positive aspects, the factors and difficulties impeding the implementation of the CRPD, and the principle subjects of concern. The concluding observations also make suggestions and recommendations for concrete action at national level. The Committee can request in its concluding observations that State Parties submit additional information on specific concerns and can set a deadline for the submission of this information. Unanswered questions may also be identified and specific information on those topics may be requested in the next periodic report.

The Country Rapporteur is responsible for coordinating the preparation of the concluding observations. They are drafted and adopted in private and should reflect the discussion with the State Party. New issues that were not raised during the dialogue are generally not mentioned in the concluding observations. DPOs can meet informally with Committee members following the dialogue with the State Party in order to reiterate key issues of concern and point out concrete recommendations to improve the situation at national level. DPOs should also make suggestions as to which issues could be considered “priority concerns” and should be addressed within a short timeframe.

The concluding observations are made public on the last day of the Committee session and are sent to both the State Party and the General Assembly of the United Nations. They are also made available on the website of the Committee.<sup>38</sup>

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<sup>38</sup> <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

## i. Following up the Concluding Observations

The Committee is unable to enforce its concluding observations and depends on national monitoring mechanisms to ensure that its recommendations are taken into account by the State Party. DPOs should monitor the efforts being made by the State Party to implement the recommendations and report to the Committee on the progress being made or lack thereof. The Committee may appoint one of its members as Rapporteur to conduct follow-up on the priority concerns identified in the concluding observations. The Rapporteur will prepare a report for the Committee based on information received with regards to the implementation of the concluding observations. Regular monitoring by DPOs will also assist in the preparation of parallel reports on periodic State Party reports.

DPOs should use the concluding observations as a way to stimulate a discussion at national level. It is important to raise awareness at national level of the recommendations of the Committee through press conferences, round tables, seminars and workshops. Scrutiny by the national media and the public can help to ensure that the concerns raised by the Committee figure prominently on the national agenda. The concluding observations should be translated into local languages, made available in accessible formats and disseminated to those working with persons with disabilities including lawyers, judges, social workers, teachers, and health professionals.

The concluding observations should be used as a tool for DPOs to exert pressure on the government to follow up on the recommendations made by the Committee. DPOs should consider holding meetings with government officials in order to discuss the recommendations of the Committee and to lobby for changes in legislation and practice. DPOs can offer to work with the government in the elaboration of legislation, policy developments and strategies to implement the Committee's recommendations. The concluding observations can also be used by DPOs to guide their own work at national level.

## j. Days of General and Thematic Discussion and General Comments

In addition to examining State Party reports, the Committee also provides advice to States Parties on the implementation of the Convention through days of general discussion and general comments. The Committee holds an annual day of discussion in order to discuss issues of general interest with regards to the implementation of the CRPD.<sup>39</sup> The day of discussion focuses on a specific provision of the Convention or

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<sup>39</sup> In 2009, the Committee held its first day of general discussion on Article 12, "The Right to Equal Recognition before the Law", <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGD21102009.aspx>. In 2010, the day of general discussion will focus on Article 9 "Accessibility".

related issues that are chosen by the Committee and announced at least two months in advance. Working groups on particular topics may be established in advance of the meeting. Days of general discussion are public meetings that are open to representatives from States Parties, United Nations human rights mechanisms, United Nations bodies and specialized agencies, NGOs, national human rights institutions as well as associations of professionals, academics, youth associations and individual experts. Representatives of the different types of disabilities: mental, intellectual, physical, sensory and others, should be included. The Committee also welcomes the submission of written contributions or case studies on the issues under consideration. At the end of the general discussion, the Committee prepares a set of recommendations.<sup>40</sup>

General discussions may also be used by the Committee to receive input from specialized agencies, NGOs, academics, and other interested parties in the preparation of a general comment. The CRPD allows the Committee to make suggestions and general recommendations based on the examination of reports and information received from States Parties.<sup>41</sup> A Committee member is assigned to prepare a draft of a general comment and the recommendations from a day of general discussion may be used as a basis for a general comment.<sup>42</sup> General comments are discussed and adopted by the Committee. They are then distributed to States Parties and made available to the general public.<sup>43</sup>

#### k. National implementation and monitoring

As noted above, the CRPD Committee monitors at the international level the implementation of the CRPD by examining State Party reports and making suggestions and recommendations on how to better implement the Convention. Article 33 of the CRPD requires that State Parties establish a structure to implement and monitor the CRPD at national level.

#### **National Implementation and Monitoring**

- Article 33(1): “State Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due

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<sup>40</sup> A reference to the Working Methods will be added once this becomes available.

<sup>41</sup> Article 39

<sup>42</sup> The Committee has decided to draft its first general comment on Article 12.

<sup>43</sup> A reference to the Working Methods will be added once this becomes available.



consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.”

- Article 33(2): “State Parties, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, State Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.”
- Article 33(3): “Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.”

Each State Party is required to set up a focal point within government in order to coordinate a national policy on the CRPD. Focal points may be appointed at various levels within government but an overall focal point should be identified to coordinate governmental action with regards to reporting, monitoring, awareness raising and liaising with other national and international implementation and monitoring bodies.<sup>44</sup> State Parties are also requested, but not required, to set up a coordination mechanism within government to develop policy, conduct discussions and raise awareness on the rights of persons with disabilities. The focal point and coordination mechanism are governmental bodies which are to focus on the implementation of the CRPD.

The Convention also requires States to put in place a framework to promote, protect and monitor the implementation of the CRPD. The framework must include at least one independent mechanism that takes into account the Paris Principles.<sup>45</sup> The framework should conduct awareness-raising activities, examine existing and draft legislation for compliance with the CRPD, provide advice to governmental agencies on the implementation of the CRD and conduct human rights impact assessments. The framework should also examine complaints, conduct enquires and issue reports. It

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<sup>44</sup> 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, A/HRC/13/29, section IV, A [http://www2.ohchr.org/english/issues/disability/docs/A.HRC.13.29\\_en.doc](http://www2.ohchr.org/english/issues/disability/docs/A.HRC.13.29_en.doc)

<sup>45</sup> See section 3e of these guidelines for a fuller discussion of the framework and the Paris Principles.

should develop indicators in order to monitor progress and collect information on violations of the CRPD.<sup>46</sup>

Monitoring by civil society is the third pillar in national implementation and monitoring. Persons with disabilities and DPOs are to be actively involved and consulted in all decision-making processes relating to persons with disabilities including full participation in the monitoring process.

The establishment of a national monitoring process allows for a continuous implementation and monitoring process. It will also help to ensure that work is being done at national level to follow-up on the recommendations of the CRPD Committee. DPOs should be closely involved with the work of all national-level implementation and monitoring mechanisms in order to ensure that the State Party is consistently reviewing the implementation of the CRPD and moving towards its full implementation.

#### **4. Recommendations on how to prepare parallel reports to the CRPD Committee**

*DPOs are encouraged to prepare parallel reports on the implementation of the CRPD at national level in order for the Committee to effectively monitor the implementation of the CRPD in a country. DPOs are encouraged to establish or strengthen national CRPD coalitions and to produce a parallel report on the basis of consultations and input received from members of the coalition.*

*A comprehensive parallel report should cover all the articles of the CRPD, identify gaps, highlight key areas of concern and make concrete recommendations for change. A brief explanation of each article of the CRPD is provided below with a non-exhaustive list of issues that may assist DPOs in identifying gaps in the implementation of the CRPD at national level. Concrete suggestions to ensure the effectiveness of parallel reports are also provided.*

##### **a. Role of Parallel Reports**

The CRPD requires that civil society be fully involved in the monitoring process<sup>47</sup> and allows the Committee to invite “other competent bodies” to provide expert advice on the

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<sup>46</sup> 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, A/HRC/13/29, Section IV, C4 [http://www2.ohchr.org/english/issues/disability/docs/A.HRC.13.29\\_en.doc](http://www2.ohchr.org/english/issues/disability/docs/A.HRC.13.29_en.doc)

<sup>47</sup> Article 33(3) “Civil society, in particular persons with disabilities and their representative organizations shall be involved and participate fully in the monitoring process. “

implementation of the CRPD in areas falling within the scope of their mandate.<sup>48</sup> The Committee's working methods welcome the submission of reports and other documentation by international, regional, national or local DPOs in order to have a better understanding of the problems in the implementation of the CRPD at national level.<sup>49</sup> DPOs should therefore consider preparing reports on the implementation of the CRPD in their country.

In order to obtain a comprehensive picture as to the implementation of the CRPD in a country, the Committee needs reliable information from DPOs as to the actual situation at national level. Preparing a report gives DPOs a unique opportunity to bring their concerns to the international legal body responsible for monitoring the implementation of the CRPD. It empowers national DPOs by offering them a legitimate external source to which disability issues can be raised and addressed. It also encourages public scrutiny of governmental policies and can bring an open debate on the status of persons with disabilities in a country. A report prepared by DPOs can also create a window of opportunity to have a serious dialogue with senior government officials about the States efforts to comply with the CRPD and help to influence the national-level agenda.

State Parties often provide a legalistic picture as to the situation in the country and it is often up to civil society and other independent monitoring bodies to provide information on the actual implementation of this legislation. DPO reports should complement, not repeat the information provided in the State Party report. They should identify gaps, highlight priority areas and present specific, reliable and objective information in order to provide a serious and independent assessment of the progress made and difficulties encountered in the implementation of the CRPD. The report should highlight key issues of concern and provide detailed information about the practical implementation of legislation, programs and policies. It should also highlight obstacles that prevent the implementation of the CRPD at national level and make suggestions as to possible solutions. Most importantly, the report should provide concrete recommendations that are country-specific, limited in time and can be realistically implemented.<sup>50</sup>

#### b. Establishing or strengthening national CRPD coalitions to prepare parallel reports

It is highly recommended that the preparation of a parallel report be carried out within a national CRPD coalition. DPOs should take the lead in establishing a national coalition or strengthening an existing coalition using the preparation and submission of a parallel

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<sup>48</sup> Article 38(a)

<sup>49</sup> A reference to the Working Methods will be added once this becomes available.

<sup>50</sup> A Guide for NGOs Reporting to the Committee on the Rights of the Child, NGO Group for the Convention on the Rights of the Child, Third Edition, 2006, <http://www.crin.org/docs/Reporting%20Guide%202006%20English.pdf>

report to motivate organizations to work together. Working in a coalition provides an opportunity to engage with other organizations working with persons with disabilities in order to share achievements, best practices, challenges and constraints as well as learn from one another.

The national CRPD coalition should be led by a wide range of disability constituencies. The CRPD is however an extremely broad instrument and in order to ensure that all areas are covered it is important that the national CRPD coalition reach out or include other civil society organizations working on issues covered by the CRPD. Organizations which focus on specific issues such as torture or the administration of justice as well as organizations who may have valuable information on specific categories of persons with disabilities such as children's or women's organizations or organizations working with indigenous people, minorities, or refugees should be included in a broad-based coalition. Human rights and religious organizations may also have information to contribute to the report. The coalition should include organizations that are located in rural areas and not be limited to those located in the capital. It is not necessary for all organizations to meet physically and modern forms of communication can be used in order to coordinate work on the report.

The submission of a parallel report by a DPO-led coalition of civil society organizations allows for a more effective monitoring of the CRPD due to the specialist knowledge of the organizations, the variety of points of view provided and the ability to present a comprehensive picture of the situation. It also ensures that issues that are important to smaller organizations are given a voice and full consideration at the national and international levels. The preparation of a report by a coalition also tends to lend greater legitimacy to the information submitted and helps to avoid governmental criticism that an organization is politically motivated, unreliable or providing information that is not factually correct.<sup>51</sup>

For Committee members, having one comprehensive report that clearly highlights the key issues of concern and makes recommendations for national level follow-up allows members to obtain quickly a clear picture as to where the issues lie in a country and helps to ensure that these issues are brought forward in the dialogue with the State Party and in the concluding observations. Recommendations proposed by a national coalition tend to be more concrete; can be realistically implemented at national level and address local sensitivities. Committee members are under intense time pressure and if

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<sup>51</sup> A Guide for NGOs Reporting to the Committee on the Rights of the Child, NGO Group for the Convention on the Rights of the Child, Third Edition, 2006, <http://www.crin.org/docs/Reporting%20Guide%202006%20English.pdf>

presented with a pile of reports, may choose only to read a small number and may therefore have difficulty in prioritizing the issues to be raised with the State Party.

The parallel report should also be circulated widely at national level in order to raise the awareness of the general public and the media about the rights of persons with disabilities. DPOs may want to organize a public event, such as a press conference, to highlight the concerns and recommendations made in the parallel report.

### c. Content of the parallel report

There is no “one size fits all” approach to writing a parallel report, as the situation in each country varies and so will the priorities of persons with disabilities and their representative organizations. While DPOs might choose to write a parallel report which only focuses on a number of key elements, it is preferable to produce a parallel report which covers the whole spectrum of the CRPD.

When writing the parallel report, the articles in the CRPD should be read in combination with each other as they are interrelated. In particular, Articles 1-9 apply transversally to all the articles that relate to specific rights (articles 10-30). The article on general principles has to be seen as a reference in the interpretation of all articles. Other examples of the interrelated nature of the articles of the CRPD are Article 9: Accessibility and Article 12: Equal recognition before the law, as well as the articles on women with disabilities and children with disabilities.

Most of the meaning of the CRPD is undisputed, but there are a number of areas which are subject to diverse interpretation, as seen in some reservations or interpretative declarations made by States upon ratification.<sup>52</sup> As with other human rights treaties, it is expected that the CRPD Committee will produce general comments which will give further guidance on how to interpret certain provisions of the CRPD. This guidance document is based on IDA’s interpretation of the CRPD, an interpretation which stems from the active participation of IDA and its member organizations in the drafting of the CRPD.

A key document when preparing a parallel report is the Reporting Guidelines which have been adopted by the CRPD Committee.<sup>53</sup> States are supposed to follow these guidelines when preparing their reports to the CRPD Committee. Often, States will answer only some of the issues included in the Reporting Guidelines, mainly focusing on what the State has done and ignoring what has not been done. The Reporting

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<sup>52</sup> The list of reservations and declarations can be found at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en)

<sup>53</sup> See Guidelines on treaty-specific document to be submitted by State Parties under article 35, paragraph 1, or the Convention on the Rights of Persons with Disabilities, CRPD/C/2/3, <http://www2.ohchr.org/SPdocs/CRPD/CRPD-C-2-3.doc>

Guidelines are therefore a useful checklist for parallel reports as a means of identifying for the CRPD Committee the main shortcomings in the implementation of the CRPD.

The Reporting Guidelines for initial reports require States to provide information on measures taken to achieve the objectives of the Convention. This will most likely lead to an enumeration of measures taken before and after the adoption of the Convention, but will not necessarily show the gaps between the current situation and the objectives of the Convention. The approach followed by this guidance document is to raise questions/issues that will allow the identification of these gaps and therefore provide a complementary view to the Committee on the outstanding challenges.

While the Reporting Guidelines adopted by the CRPD Committee are very detailed, the questions and issues addressed in this guidance document seek to be the most relevant ones, in order to help drafters of the parallel report in the difficult job of choosing on what to focus. In any case, the issues mentioned in this guidance document should be seen as a non exhaustive list of issues, to be complemented, where relevant, with other issues identified in the reporting guidelines or resulting from the implementation of the CRPD.

Finally, this section will also suggest, where appropriate, other UN human rights mechanisms (in particular, other human rights treaty bodies and Special Procedures) whose mandate covers the specific issues addressed in this section. The rights of persons with disabilities should be considered not only by the CRPD Committee, but also by all other UN human rights mechanisms. This is especially important for national DPOs from States that have not yet ratified the CRPD, but have ratified other human rights treaties.

## **General provisions: Articles 1-5, 8 and 9**

Articles 1-9 are general articles to be taken into account throughout the Convention. These articles are closely linked to each other and are meant to be considered when examining the specific articles (10-30). They are therefore addressed jointly in this section. Articles 6 and 7 will be covered separately however, in accordance with the Reporting Guidelines developed by the Committee.

### Non-discrimination legislation

Effective implementation of the CRPD requires the adoption of comprehensive anti-discrimination legislation encompassing all areas covered by the CRPD. State Parties can do this through a comprehensive disability-specific anti-discrimination legislation, as part of a comprehensive general (not disability-specific) anti-discrimination legislation or

through anti-discrimination provisions in the relevant sectoral legislation (such as employment or education) or through a combination of these.

The following elements need to be addressed:

The CRPD outlaws all forms of discrimination, which is meant to include direct, indirect, systemic or any other forms of discrimination. Moreover, the denial of reasonable accommodation, unless it imposes a disproportionate burden, is also a form of discrimination. Protection from this form of discrimination needs to be specifically mentioned in the legislation. A broad definition of the concept of reasonable accommodation and an explanation as to how the disproportionate burden clause will be applied also needs to be included in the legislation.

Protection against discrimination on the basis of disability should not only cover persons legally certified as having a disability, but should cover all situations in which persons (with or without disability) can be discriminated based on disability. The focus therefore is not on the functional approach (degree of disability), but on the interaction between the disability and social constructs. This would cover, among others, persons who are perceived as having a disability, who have had a disability in the past, and/or who are associated with a person with a disability.

Protection from discrimination is not only related to discrimination by the State or public bodies, but there is also the obligation for States to adopt legislation that protects from discrimination based on disability by individuals, enterprises and other private organizations.

Enforcement of this legislation needs to be effective, which requires sanctions and the existence of effective remedies that can be used by persons with disabilities and representative DPOs.

Article 5 (4) allows State Parties to enact or maintain measures that accelerate the achievement of de facto equality of persons with disabilities (positive action). These measures must be fully consistent with the rights and principles enshrined in the CRPD. So, for instance, a measure that would reserve specific jobs for persons with disabilities seems not be consistent with the CRPD, as this would not allow for their professional development.

Questions to address:

- Are persons with disabilities protected from discrimination in all areas of life?
- Does protection from discrimination cover the denial of reasonable accommodation?

- Does protection from discrimination based on disability cover only persons with disabilities or does it also foresee other situations of disability-based discrimination?
- Does protection from discrimination cover discrimination by individuals, enterprises and other private organizations?
- Are there sanctions for those that are found to discriminate?
- Can NGOs act on behalf of persons with disabilities that claim to have been victims of disability-based discrimination?
- If the State has adopted positive action measures benefitting persons with disabilities, are these measures consistent with the CRPD?

#### Systematic review of the existing legislation

A systematic review of all legislation to identify areas that are inconsistent with the CRPD should be done, as mandated by Article 4. This revision should not only cover disability-specific legislation, but all relevant mainstream legislation in order to avoid having legislation that is contradictory and inconsistent. This revision can be done in a comprehensive way (covering all articles) or article by article or by areas.

Questions to address:

- Has the State undertaken a systematic review of existing disability-specific and mainstream legislation to identify inconsistencies with the CRPD?
- Has the State modified or is planning to modify all legislation that is inconsistent with the CRPD? Would these modifications result in full compliance with CRPD obligations, partial compliance, or do they represent a regression?
- If modifications result in only partial compliance, is there a credible and worthwhile plan to achieve full compliance?
- Has this process been done with the active involvement of representative DPOs?

#### Definition of disability

The CRPD does not as such provide a definition of disability or person with a disability. However, Article 1 of the CRPD makes it clear that, at a minimum, persons with a physical, sensory, intellectual or mental disability are to be covered by the CRPD. The reference to “mental” includes persons with psychosocial disabilities, but would also include persons with autism, dementia and other groups. The reference to “long-term” in Article 1 was the result of a compromise in order for some States to accept the inclusion of a list. States are, however, free to use less restrictive definitions. The focus is on the



interaction between the person and attitudinal and environmental barriers. This means that lists of medical conditions seeking to define the groups to be protected from discrimination are to be avoided.

Questions to address:

- Are all persons with a physical, sensory, intellectual or mental/psychosocial disability covered by the relevant legislation protecting the rights of persons with disabilities?
- Is the State using a “long-term” criterion when defining who is considered to be protected by the legislation and, if so, is the application of this criterion resulting in the exclusion of certain groups of persons with disabilities?
- Does the State’s definition of disability/persons with disabilities reflect the social model of disability, by referring to the interaction between the impairment and the environment, or is it based on medical conditions and degree of disability, which would relate to the medical model of disability?
- Does the State’s definition of disability/persons with disabilities contribute to the exclusion or segregation of people with disabilities or is otherwise inconsistent with the CRPD?

### CRPD Principles

CRPD Article 3 sets out principles to govern the interpretation of the treaty, including respect for individual autonomy, non-discrimination, inclusion and participation, respect for diversity, accessibility and equality between men and women.

Question to address:

- Does the State make use of the principles in Article 3 in its application of the CRPD? Are there any instances in which its implementation violates the Article 3 principles?

### Progressive implementation of rights

According to accepted human rights doctrine, civil and political rights are immediately applicable, while economic, social and cultural rights are subject to progressive implementation. This distinction is based on the understanding that economic, social and cultural rights require more resources to be implemented.

However, economic, social and cultural rights are not wholly subject to progressive implementation. As Article 4 (2) clearly states, they may contain elements of both types of rights, and therefore some elements may be immediately applicable. For example, protection from discrimination based on disability in the access of these rights is

immediately applicable and this would include the denial of reasonable accommodation as a form of discrimination.

Implementation of civil and political rights is immediate and is not subject to progressive realization.

Questions to address:

- Has there been any indication from the State that it will implement certain articles progressively? If so, does this limit the protection from discrimination based on disability?
- Is any information provided on timeframes for the progressive achievement of these rights, as well as intermediate indicators that will allow monitoring of progress? Are there timeframes and intermediate indicators recognized by law?
- Is any information on the budget allocated for the progressive implementation of these rights?

#### Higher level of protection

Article 4 (4) allows State Parties to provide a higher level of protection of the rights of persons with disabilities than the level foreseen in the CRPD. However, this could lead to the adoption or maintenance of provisions which in fact are inconsistent with the Convention. It is therefore the role of national DPOs to judge if those provisions are in fact more conducive to the realization of the rights of persons with disabilities.

Question to address:

- Does the State claim that some of the national provisions are more beneficial to persons with disabilities than the provisions foreseen in the CRPD? If so, do you consider this judgment to be correct or is it based on a wrong understanding of the CRPD or of the national provision?

#### Mainstreaming of the rights of persons with disabilities

Article 4 (1) c requires States to take into account the rights of persons with disabilities in all policies and programs.

Questions to address:

- Is there an obligation to consult with persons with disabilities through their representative organizations on all future legislation that may potentially affect persons with disabilities to ensure its consistency with the CRPD?

- If the State has a general human rights plan or strategy, are persons with disabilities considered in this strategy or plan?

#### Involvement of representative organizations of persons with disabilities

The active involvement of representative organizations of persons with disabilities in the steps taken to implement the CRPD at national level is a clear obligation foreseen in the CRPD. This involvement can take many forms, depending also on the specific initiatives undertaken by the State, but in all circumstances, the involvement has to be meaningful.

“Representative organizations of persons with disabilities” means all organizations that function in a representative manner as chosen by their constituency, and does not imply selection by government authorities of certain organizations rather than others to “represent” the disability community or any particular sector.

Questions to address:

- Has the State adequately and meaningfully involved representative organizations of persons with disabilities in all stages of the CRPD implementation process?
- Have the views of representative organizations of persons with disabilities been taken into account in the steps taken to implement the Convention?
- Have States involved organizations representing the different disability constituencies, including those that might not have a representative national organization?
- Have representative organizations of persons with disabilities been consulted in the drafting process of the State report?

#### Awareness-raising

Ensuring that all relevant stakeholders, including persons with disabilities, have adequate information on the rights resulting from the CRPD is a key prerequisite for the adequate implementation of the Convention.

Questions to address:

- Has the State undertaken information campaigns targeting persons with disabilities and informing them about their rights under the CRPD?
- Has the State provided support to representative DPOs to undertake awareness raising campaigns amongst their members and the general public?
- Has the State undertaken general information campaigns about the CRPD?

- Has the State undertaken awareness raising actions addressing specific groups in society such as the media, employers, health and education professionals?
- Have these campaigns, if any, been designed with the active involvement of representative organizations of persons with disabilities?
- Has the CRPD been translated into the relevant local languages?
- Are there accessible versions available of the Convention, including in sign language(s), Braille and plain language?

### Accessibility

Ensuring full accessibility is undoubtedly a big challenge for all States, independent of their level of economic development. It is a key issue for all persons with disabilities and needs to be approached in a comprehensive way in order to overcome all barriers to participation faced by persons with disabilities

Legislation must ensure that all new infrastructure (buildings, transportation, information and communication) and services open to the public or provided to the public meet relevant accessibility standard. The elimination of existing barriers will require time and resources, but it is important that this is done with concrete deadlines and budget allocation, ideally in the form of a national accessibility plan that is incorporated into law.

Questions to address:

- Is there legislation in place that ensures that all new infrastructure and services meet the relevant accessibility standards?
- Is there a national accessibility plan to eliminate all existing barriers within a reasonable timeframe?
- If so, does this plan have adequate budget allocation and intermediate benchmarks to allow for the monitoring of progress, and is the plan anchored in law?
- Has the State adopted relevant accessibility standards (buildings, transport, website, communication, including professional sign language interpretation services, technical devices and other communication support equipment, as well as augmentative and alternative modes, means and formats of communication)?
- Has the State promoted and developed sign language interpreter training and does it facilitate access by deaf persons to interpreter services?

- Has the State promoted the training and availability of experts in technical devices and other communication support equipment, as well as augmentative and alternative modes, means and formats of communication such as subtitling?
- Has the State referenced the standards in law, so it is mandatory to build by these standards?
- Is the State using public procurement legislation (purchase of services or products by public authorities through public tenders) to promote compliance with accessibility standards by making the standards a mandatory requirement?

### **Specific provisions: Articles 10-30**

For each article in this section, the following questions and issues should be addressed, when relevant:

- Have changes been made as a result of ratification of the CRPD? If yes, were national DPOs consulted on these changes?
- Is the legislation compliant with the CRPD? If yes, is it being applied in practice? Can it be enforced?
- Are the policies in line with the CRPD? If yes, are they applied in practice?

Special attention should be paid to the situation of women with disabilities, children with disabilities, older persons with disabilities, indigenous persons with disabilities, minorities with disabilities and other groups of persons with disabilities.

Whenever possible, relevant statistics or indicators should be presented to support statements.

#### Article 10 – Right to life

There are situations when the perceived lower quality of life of persons with disabilities or feelings of mercy and pity have resulted in medical professionals and family members applying practices which have led to the death of persons with disabilities, including newly born children.

Questions to address:

- Is the State protecting persons with disabilities from medical and other practices that might lead to the death of persons with disabilities?
- Is the State protecting persons with disabilities from discriminatory application of euthanasia and assisted suicide where these are allowed?

- Has the State undertaken measures to combat the stereotypes on the quality of life of persons with disabilities?

#### Article 11 – Situations of risk and humanitarian emergencies

Persons with disabilities are often overlooked in situations of humanitarian emergencies, both man-made (such as armed conflict) as well as natural catastrophes.

Questions to address:

- If your State is currently facing a situation resulting from a humanitarian emergency, are the rights of persons with disabilities who are faced with this situation (refugees, internally displaced persons) adequately protected both in refugee camps as well as in urban settlements?
- If your State is providing humanitarian emergency support to other States, is it done in a way that benefits persons with disabilities on an equal basis with others, including by ensuring accessibility and reasonable accommodation to all services and facilities?
- Do emergency protocols foresee measures to ensure that persons with disabilities will not be discriminated or excluded in case of a humanitarian emergency?

➔ Other possible UN avenue: The Representative of the UN Secretary-General on Internally Displaced Persons has addressed the situation of persons with disabilities in his work.

#### Article 12 – Equal recognition before the law

Undoubtedly one of the key provisions of the CRPD, Article 12 requires a change from the substituted decision making model (guardianship and incapacity) to a supported decision-making model (full legal capacity plus support to exercise it). Full implementation of this article will require legislative changes in all States, including to the Civil Code or similar legislation.

States will need to abolish incapacity and guardianship laws and any other laws that remove a person's right to make decisions for herself or himself, such as laws that allow compulsory mental health treatment to be imposed on someone who "lacks capacity" to make decisions, or the appointment of an administrator to manage financial affairs over a person's objection.

A range of supported decision-making options needs to be designed and applied which are tailored to the individual situations of persons who require support for decision

making. Especially challenging will be to find supported decision-making options for people with very severe intellectual disability, when there is almost no communication between the person and her or his environment. These situations need to be addressed with full respect of the provisions of the CRPD.

Protection from abuse in the application of the supported decision-making model will need to be established to ensure respect for the person's will and preferences and the role of the judiciary will need to be substantially revised, as a court can no longer order a person to receive support against his or her will.

Questions to address:

- Does current legislation foresee the possibility to restrict the legal capacity of persons with disabilities, such as the right to make personal decisions, because of their disability or because of functional diversity in decision-making abilities, sometimes referred to as “functional capacity,” “mental capacity” or “contractual capacity”? If so, what steps, if any, has the State undertaken to change this legislation and align it with the provisions of the CRPD?
- Does guardianship exist in any form? Do other forms of substitute decision-making or involuntary protective measures exist?
- What if any steps are being taken to abolish these measures and ensure the recognition of the legal capacity of persons with disabilities as equal to that of others, and to provide for support to exercise that capacity, subject to the will and preferences of the person?
- What safeguards or steps are taken to prevent persons with disabilities from being abused by supporters who pretend to support a person with disabilities to form and make a personal decision, but in fact report a wrong or a manipulated decision?
- Are persons with disabilities faced with restrictions to sign a contract, obtain a mortgage or other financial and legal transactions?
- Does legal capacity include the capacity to accept or to refuse medical treatment or scientific experimentation?
- Which legal measures are taken or intended to be taken to guarantee that a person who seems to accept medical treatment has really given free and informed consent?
- Are there laws that allow institutionalization or compulsory treatment based on a finding that the person is unable to consent?

- Are organizations of persons with disabilities, in particular those of persons with psychosocial disabilities and those representing persons with intellectual disabilities, involved in the revision of legislation?

### Article 13 – Access to justice

Effective access to justice is a challenge for many persons, but especially for persons with disabilities. Different types of barriers (legal, physical, communication) and the lack of flexibility by the judiciary to provide the relevant reasonable accommodations, when so required, often lead to the exclusion of persons with disabilities from effective access to the justice system.

Achieving access to justice requires abolishing rules that limit or establish as void the capacity of persons with disabilities to testify or otherwise partake in the justice system. It also requires that the justice system provide procedural and age-appropriate accommodations that will enable persons with disabilities full and equal participation, whether as complainants, defendants or witnesses.

Questions to address:

- Are there legal barriers that prevent persons with disabilities from being a judge, member of a jury, or witness or that categorize the testimony of persons with disabilities as null or limited?
- Can a deaf person who is part in a case have access to sign language interpretation as well as linguistic support, if required?
- Can a person with a hearing disability benefit from a hearing loop and other technical equipment required for communication?
- Is a person with an intellectual disability entitled to ask for court orders, judgments or other documents in plain language or at least for an easy to understand explanation of the decisions taken by the court?
- Are there provisions in place which foresee procedural accommodations to allow for the meaningful investigation and testimony by a person with intellectual disability?
- Are alternative and augmentative communication and assistance in formulating questions in a way that is understood by the person and in ensuring the person is understood used in court?
- Are accommodations foreseen for people with psychosocial disabilities that so require?
- Are court rooms accessible to persons with physical disabilities?



- Can a person with visual impairment have access to information in alternative formats?
- Does the above apply –
  - to all legal proceedings, including criminal, civil, and administrative
  - to persons with disabilities as complainants, defendants, witnesses, or third parties
  - to all stages of the proceedings, including investigative proceedings by the police?

#### Article 14 – Liberty and security of the person

This article has two objectives. The first is to outlaw any deprivation of liberty based on disability. This requires the abolition of mental health laws, that exist for the primary if not exclusive purpose of authorizing and regulating detention and compulsory treatment based on grounds such as preventive detention or the need for care and treatment linked to an apparent or diagnosed mental illness.

The second objective is to ensure that persons with disabilities who have been deprived of liberty (because they have been convicted of a crime or for other reasons that do not discriminate based on disability) have equal rights as others who are deprived of liberty, and receive relevant reasonable accommodations in order to benefit on an equal basis with others from relevant procedural guarantees as well as other measures.

Questions to address:

- Does current legislation foresee the deprivation of liberty based on disability, including psychosocial disability, either alone or in combination with other grounds, such as need for care and treatment or the likelihood of harm to self or others? If so, are steps being made to repeal or nullify this legislation?
- Do persons with disabilities who are deprived of their liberty for non-discriminatory reasons have the same rights as others deprived of their liberty?
- Do they have access to the relevant reasonable accommodations that they require to enjoy their rights on an equal basis with other persons deprived of their liberty?

→ Other possible UN avenues: The Human Rights Committee, charged with the monitoring the Covenant on Civil and Political Rights, has addressed the issue of deprivation of liberty based on disability. Also, the Working Group on Arbitrary Detention might be approached on this issue.

## Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment

This article requires that persons with disabilities are adequately covered by national strategies to prevent torture. Persons with disabilities living in institutions or confined against their will are particularly vulnerable to these types of situations.

The article outlaws any medical or scientific experimentation applied to persons with disabilities without their free and informed consent. This is important, as many States allow for this type of experimentation on persons deemed unable to give their consent. The link between this article and Article 12 is therefore obvious.

There is also an overlap between Articles 15, 16 and 17. Acts of violence and abuse by private individuals or institutions may amount to torture if the government has not exercised due diligence to prevent such violence. Abuses in the medical context, such as forced medical interventions related to a disability, and forced abortion or sterilization, may also amount to torture or ill-treatment.

Questions to address:

- Are persons with disabilities included in national strategies to prevent torture, including persons who live in institutions?
- Does legislation allow medical or scientific experimentation to be applied to persons with disabilities deemed unable to give their consent?
- Does legislation allow for any forced intervention related to a disability, such as compulsory mental health treatment? If so, is the State planning to change this legislation in order to align it with the CRPD?

→ Other possible UN avenues: In 2008, the Special Rapporteur on Torture referred to a number of situations faced by persons with disabilities that could amount to torture or cruel, inhuman or degrading treatment or punishment. The CAT Committee (Convention against Torture) and the Subcommittee on the Prevention of Torture (SPT) may also play an important role in the implementation of this article.

## Article 16 – Freedom from exploitation, violence and abuse

Persons with disabilities, in particular women and children, are more at risk of facing exploitation, violence and abuse. This requires that national violence prevention strategies, including domestic violence, pay special attention to persons with disabilities, and to the particular kinds of abuse and circumstances of abuse related to a disability (such as abuse by carers, neglect, hiding or abandonment, confinement in the home, and use of drugs or aversive methods to control behavior).

Persons with disabilities living or receiving services in institutions or other similar facilities are particularly at risk, as reflected by Article 16 (3) which foresees a special monitoring framework for these services.

Questions to address:

- Are persons with disabilities included in national strategies to combat violence, including domestic violence?
- Are general measures designed to combat violence (such as awareness-raising campaigns), to identify violence (such as police investigations) or to support victims of violence (such as shelters or social support) accessible to persons with disabilities?
- Is there a body in charge of monitoring the services and programs designed to serve persons with disabilities? How independent is it from the authority that runs the facility or program, and from the executive? Do people with disabilities, in particular those constituencies exposed to institutionalization and related abuses, play a substantial role in this body?

→ Other possible UN avenues: The UN human rights mechanisms that are relevant in this area include the Special Rapporteur to combat violence against women and the Special Representative of the Secretary General on violence against children. The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child may also address issues on violence against women and children with disabilities.

#### Article 17 – Protecting the integrity of the person

This article, which needs to be read in conjunction with other articles, in particular articles 12 and 25, protects persons with disabilities from a violation of their physical and mental integrity, outlawing therefore any form of intervention, including medical intervention, which is done against the will of the person.

Question to address:

- Does the legislation allow for medical and other interventions done against the will of the person or without fully free and informed consent? If so, is the State planning to change the legislation and outlaw these practices?
- What measures if any are in place to protect against such interventions? How effective are they?

### Article 18 – Liberty of movement and nationality

This article seeks to outlaw any discrimination based on disability in legislation and practice affecting the freedom of movement of persons with disabilities between different States, including the right to acquire a nationality. Often, this discrimination is indirect resulting from the (perceived) health status of the person or is related to discriminatory practices by staff in charge of granting nationality or asylum. The article also pays special attention to the issue of children with disabilities being registered at birth.

Questions to address:

- Does the legislation (or its practical application) relating to the entry and stay of non-nationals in the country, including requests for asylum, discriminate on the basis of disability? If so, is the State planning to align this legislation with the CRPD?
- Are measures in place to ensure that all newly born children with disabilities are given a name and a nationality?

### Article 19 – Living independently and being included in the community

Many persons with disabilities are prevented from living in the community due to the lack of adequate services, or laws and practices that permit compulsory institutionalization, that provide support services in large or small institutional settings only or that condition support services in the community on proving a degree of functional ability. In developing countries, the lack of services often results in the isolation and neglect of persons with disabilities within their family environment and community.

The right to live in the community with choices equal to those of others means persons with disabilities are provided with a choice of residence of the type that are the accepted norm for the general population in a society, with support services in place as needed that enable inclusion in the community. These living situations must respect the personal privacy and self-determination of persons with disabilities. There should be a range of options from which to choose, revolving around living in one's own home with the provision of necessary services.

Questions to address:

- Do persons with disabilities, who so require, have access to personal assistance? If so, is the personal assistance provided in a way that ensures the autonomy of persons with disabilities?

- Do persons with disabilities who wish to live on their own, establish a household and family of their own, or live in a shared flat face any barriers in doing so?
- Are persons with disabilities provided with required support services to realize their choice of how they want to live in the community?
- Are any persons with disabilities referred to live in congregate settings or currently living in them who do not wish to do so?
- Does legislation ensure that mainstream community services and facilities are accessible to persons with disabilities?
- Are there plans and concrete goals to:
  - close institutions;
  - reduce the number of people living in institutions;
  - increase the number of people supported in community settings?
- Are there community services being established for people to move out of institutions? Do such services support the choices of people with disabilities on an equal basis with others, or do they re-create institutionalization on a smaller scale?
- Are there any distinctions, exclusions or restrictions that hinder or limit the move from institutions to living in the community? Does a bias exist towards funding of institutions and institutional services over services in the community? Are there threshold criteria for entitlement to community settings and services such as the ability to conduct daily activities on one's own?

#### Article 20 – Personal mobility

General accessibility of services and facilities needs to be complemented with the right of persons with disabilities to have access to adequate assistance so that they can move around independently.

Questions to address:

- Can people with disabilities access and afford assistive technologies and devices?
- Is training available for persons with disabilities who require training in mobility skills?

## Article 21 – Freedom of expression and opinion, and access to information

Two elements are particularly relevant in this article: access to information, including the right to have information provided in various accessible formats such as Braille and plain language, and the right to express oneself in her or his preferred language, including sign language, or method of communication.

Questions to address:

- Do persons with disabilities have access to public information in alternative formats at no cost and in a timely manner?
- Can deaf persons receive information in sign language(s) and use sign language in their interaction with public officials?
- Can a person with a hearing disability have access to visual and hearing communication equipment which will allow him or her to interact with public officials?
- Do persons with intellectual disabilities have the right to get information in plain language?
- Are the websites of agencies offering services or information to the public compliant with the Web Accessibility Initiative (WAI) standards?
- Does national copyright legislation allow the access of information for persons with disabilities requiring alternative formats?
- Has/have the national sign language(s) been recognized as official languages and the use of sign languages promoted and facilitated?

→ Other possible UN avenues: The Human Rights Committee (CCPR) is currently drafting a General Comment on the issue of freedom of expression and opinion. Also, the work of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression may be relevant.

## Article 22 – Respect for privacy

Persons with disabilities have the same right as all other citizens to have their privacy protected, including with regard to all information related to their disability.

Questions to address:

- Does the general legislation protecting the privacy of all persons, adequately protect persons with disabilities?

- Is the privacy of persons with disabilities who live in large or small institutions or who rely on a high level of support services respected on an equal basis with the privacy of others in the general population?
- Does the legislation relating to the privacy of medical records adequately protect the right to privacy of persons with disabilities?

### Article 23 – Respect for home and the family

Persons with disabilities have the same rights as all others to live in their family and to start their own families. However, persons with disabilities are often discriminated against in family related matters, including marriage, adoption, and divorce.

Parents with disabilities have the right to not be separated from their children based on the parent's disability. Parents of children with disabilities will often require support to be able to raise their children and avoid situations of isolation and neglect in the family. No child should be institutionalized based on a disability. This article should be read together with Article 14.

Questions to address:

- Are there any direct or indirect (such as the need for a health certificate) limitations faced by persons with disabilities who want to marry?
- Can persons with disabilities adopt or foster children or make use of any other similar institution?
- Does the legislation or judicial practice discriminate against persons with disabilities in situations of divorce or separation?
- Do parents of children with disabilities have access to support to undertake their child-rearing responsibilities?
- Is there legislation directly or indirectly leading to the separation of the child from the family because of the disability of the child or the disability of the parents?
- Do legislation and procedures for determining custody of children discriminate based on the disability of the parent?
- In those circumstances when the best interest of the child with a disability results in the need to separate the child from her or his parents, are there measures in place to ensure that the child can live in the wider family or in a family setting in the wider community?
- Are children with disabilities protected against involuntary institutionalization based on their disability? Can parents institutionalize their children? Can judges

decide it is in the best interest of a child to be placed in a psychiatric or similar institution?

- Does legislation prevent any measure of forced sterilization of persons with disabilities, especially women and girls?

#### Article 24 – Education

All children and adults with disabilities have the right to access education on an equal basis with others. This includes all stages and types of education, ranging from pre-school to basic education to university to lifelong learning. Moreover, all persons with disabilities should have the right to access inclusive education with adequate individualized support required to be able to take part in education. Article 24 pays special attention to the situation of children who are blind, deaf and deafblind.

Questions to address:

- Are there any children with disabilities that are considered “ineducable” or forced to attend special schools due to the nature and severity of their disability?
- Does the general education law ensure that children with disabilities can access all stages of mainstream education and receive the support required within the general education system to facilitate their effective education, including reasonable accommodations, when they so require?
- Are any children required to use medication (including psychiatric medication) or undergo any medical treatment as a condition of receiving an education?
- Do students with disabilities have access to required support in university education?
- Do blind, deaf and deafblind children have access to education in Braille, sign language and other methods of communication, including augmentative and alternative modes, means and formats of communication?
- Do deaf people have access to quality education in a sign language environment, including teachers who are fluent in sign language and teaching materials which are provided in sign language?
- Does education facilitate the learning of sign language and support the linguistic and cultural identity of deaf people?
- Do States facilitate the learning of Braille, alternative script, augmentative and alternative modes and means of communication, as well as orientation skills?
- Are mainstream teachers provided with adequate support to ensure that children with disabilities can take part in education on an equal basis with other children?



- Are there any barriers that prevent persons with disabilities from becoming teachers?

→ Other possible UN avenues: The Special Rapporteur on Education has produced a report on inclusive education and covers the issue of education of children with disabilities. The CESCR Committee monitors the right to education as foreseen in the International Covenant on Economic, Social and Cultural Rights.

### Article 25 – Health

Persons with disabilities have the same right to access health services as all others. While this includes disability-related health issues, it primarily comprises access to general health services. Ensuring that medical interventions are only done with the free and informed consent of the person concerned is also an important provision of this article.

Questions to address:

- Does the general health legislation protect persons with disabilities from discrimination in access to all health services, including in the area of sexual and reproductive health?
- Does legislation ensure that persons with disabilities receive medical treatment based on their free and informed consent and that treatment is not provided without their consent?
- Does the State guarantee those health services needed for the early identification and intervention of persons with disabilities, including for children with disabilities?
- Does the State ensure that there will be no inappropriate early identification, intervention and medicalizing of children’s development, particularly in the area of mental health?
- Do persons with disabilities who have specific disability-related medical needs have access to the required healthcare services?
- Are general health services respectful of the rights of persons with disabilities, including all accessibility related issues (sign language, information in alternative formats such as Braille and plain language, accessible facilities)?
- Do persons with disabilities have access to health-related rehabilitation which is affordable or free of cost?
- Are public health campaigns designed in a way that they are accessible to persons with disabilities?

- Are doctors and other medical professionals provided with training on the rights of persons with disabilities?
- Is there any discrimination based on disability in access to health insurance?

→ Other possible UN avenues: The Special Rapporteur on the right to health recently prepared a report on the issue of informed consent which addressed issues relating to persons with disability. The CESCR Committee monitors the right to access to health and healthcare as foreseen in the International Covenant of Economic, Social and Cultural Rights.

### Article 26 – Rehabilitation

Rehabilitation and peer support cover a wide range of actions in the areas of health, employment, education and social services, which have the objective of allowing the full participation of persons with disabilities in their communities. Undergoing rehabilitation cannot be imposed as an obligation on persons with disabilities.

Questions to address:

- Can persons with disabilities access a wide range of rehabilitation services in their community, and can they access peer support?
- Is participation in such services voluntary or are there situations where participation in a specific rehabilitation program is required to access certain benefits?

### Article 27 – Work and employment

Persons with disabilities are faced with unemployment rates 2-3 times higher than those of persons without disabilities. To address this situation, a wide range of measures is required, combining protection from discrimination in all stages of employment with positive action measures.

Questions to address:

- Does the general employment law protect persons with disabilities from discrimination, including the denial of reasonable accommodation, and harassment in all stages of employment?
- Are there forms of employment targeted at people with disabilities (such as sheltered or supported employment) that are exempt from labor standards, resulting in inferior protection and exploitation? What steps are being taken to change this situation?

- Do programs exist for transitioning persons with disabilities currently in sheltered employment to work in the open labor market?
- Are mainstream vocational training and employment services accessible to persons with disabilities?
- Are support services for self employment and social economy accessible to persons with disabilities?
- Does the State provide technical guidance and financial support for the provision of reasonable accommodations?
- Are there measures in place to ensure that persons with disabilities who acquire a disability can stay in the labor market during their period of rehabilitation, if they so wish?
- Does the State take positive action to employ persons with disabilities?
- Does the State promote employment of persons with disabilities in the private sector through incentives and other measures?
- Are persons with disabilities protected from all forms of forced labor?

→ Other possible UN avenues: The CESCR Committee monitors the right to work and employment as foreseen in the International Covenant on Economic, Social and Cultural Rights.

#### Article 28 – Adequate standard of living and social protection

Many persons with disabilities live in poverty. This is a challenge in all countries, and particularly in developing countries. Though social protection schemes play a key role in ensuring an adequate standard of living for all persons living in poverty, they often exclude persons with disabilities. In particular, the lack of coverage by the State of disability-related extra expenses very often results in the poverty and social exclusion of persons with disabilities and their families.

Questions to address:

- Does the State cover disability-related extra expenses incurred by persons with disabilities and their families? Do these apply in general, or only to certain groups of persons with disabilities (such as veterans of war)?
- Are there disability benefits available and, if so, do these benefits support the individual autonomy of persons with disabilities?

- Do persons with disabilities have access on an equal basis with others to adequate food, clothing, housing and water? Are accommodations provided to guarantee access?
- Can persons with disabilities access on an equal basis with others social protection programs, poverty reduction strategies and other existing schemes?
- Do public housing programs respect the rights of persons with disabilities?
- Are persons with disabilities limited to accessing disability-specific housing and social protection programs that result in segregation and lack of options?

→ Other possible UN avenues: UN human rights mechanisms that might be relevant to the promotion of the implementation of this article include the Special Rapporteur on the right to food, the Independent expert on access to safe drinking water and sanitation, the Special Rapporteur on adequate housing and the Independent Expert on the question of human rights and extreme poverty. The CESCR Committee includes in its work issues related to social protection and adequate standard of living.

#### Article 29 – Participation in political and public life

Political participation is a key issue for all persons, including persons with disabilities. The direct presence of persons with disabilities in leading political positions is still a rare exception. The role of associations of persons with disabilities is vital to the promotion of the rights of persons with disabilities.

Questions to address:

- Does the general electoral law exclude some persons with disabilities from the right to vote or from the right to be elected?
- Does the general electoral law ensure that all electoral stations are physically accessible and that voting materials are accessible to blind persons, allowing them to cast their vote on their own?
- Does the general electoral law allow persons with disabilities, who so decide, to cast their vote supported by a person of their own choice?
- Is the State providing support for the establishment of independent associations of persons with disabilities?

→ Other possible UN avenues: The Human Rights Committee monitors the right to political participation as foreseen in the International Covenant on Civil and Political Rights.

### Article 30 – Participation in cultural life, recreation, leisure and sport

Access to culture, recreation, leisure and sport are also important areas to be taken into account for the full participation in society of persons with disabilities.

Questions to address:

- Are intellectual property laws a barrier to persons with disabilities seeking to access cultural materials?
- Does public funding provided to cultural, leisure/touristic and sporting facilities and organizations require compliance with accessibility standards?
- Do general accessibility plans include the elimination of barriers in culture, recreation, leisure and sport?
- Is the State providing support to disability-specific initiatives in the area of sports and culture?
- Is the State promoting and supporting deaf culture?

→ Other possible UN avenues: The CESCR Committee monitors the right to culture as foreseen in the International Covenant on the Economic, Social and Cultural Rights. The Committee has recently adopted a General Comment on this issue. The newly established Independent Expert in the field of cultural rights might also play an important role in the implementation of this article.

### **Women with disabilities, children with disabilities and other groups of persons with disabilities**

#### Article 6 – Women with disabilities

The rights of women with disabilities need to be taken into account throughout the reporting process, whenever there are issues which are of particular relevance to women with disabilities.

Questions to address:

- Do the laws and policies establishing the rights of persons with disabilities pay particular attention to the situation of women with disabilities?
- Do general laws promoting equality between women and men address the situation of women with disabilities?
- Are women with disabilities, and a gender perspective, adequately reflected in all consultations with representative organizations of persons with disabilities?

- Is the autonomy of women with disabilities supported by laws and policies?

→ Other possible UN avenues: The CEDAW Committee monitors the implementation of the Convention against all Forms of Discrimination against Women (CEDAW), which is of particular relevance for women and girls with disabilities.

### Article 7 – Children with disabilities

The rights of children with disabilities need to be taken into account throughout the reporting process. The best interests of the child must be the primary consideration in all actions concerning children with disabilities. They have the right to express their views on all matters affecting them and have them taken seriously, on an equal basis with other children. The evolving capacities of children must also be taken into consideration in the implementation of all rights under the CRPD.<sup>54</sup>

Questions to address:

- Do the laws and policies establishing the rights of persons with disabilities pay particular attention to the situation of children with disabilities?
- Do general laws promoting the rights of children address the situation of children with disabilities?
- Are the best interests of the child taken into account in all actions concerning children with disabilities? Are the best interests of children with disabilities applied to the implementation of all provisions of the CRPD?
- Do children with disabilities have the right to express their views on all matters concerning themselves, and are these views given serious consideration, on an equal basis with other children? Are children with disabilities provided with age- and disability-appropriate support in exercising these rights?
- Are measures taken by the State which take into account the evolving capacities of children with disabilities?

→ Other possible UN avenues: The CRC Committee monitors the implementation of the Convention on the Rights of the Child, which is of particular relevance for children with disabilities.

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<sup>54</sup> For more information on the implementation of the rights of children with disabilities, see See Me, Hear Me: A guide to using the UN Convention on the Rights of Persons with Disabilities to promote the rights of children, Save the Children, 2009. [http://www.crin.org/docs/SCUK\\_SeeMe\\_HearMe\\_ar.pdf](http://www.crin.org/docs/SCUK_SeeMe_HearMe_ar.pdf)

### Other groups of persons with disabilities

While the reporting guidelines adopted by the CRPD Committee do not include a section on other groups of persons with disabilities, the preambular paragraph p) includes a non exhaustive list of grounds which deserve special attention. These include persons with disabilities who are discriminated against on the basis of race, color, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.

In a similar way as suggested for women and children with disabilities, a twin-track approach is suggested. On one hand, specific situations related to these groups should be included in the relevant sections of the report and some brief information should also be included in this section.

Questions to address for each of these groups:

- Do the laws and policies establishing the rights of persons with disabilities pay particular attention to the situation of this group of persons with disabilities?
- Do the laws and policies dealing with this group of persons adequately take into account persons with disabilities belonging to this group?

→ Other possible UN avenues: UN human rights mechanisms relevant for specific groups of persons with disabilities include the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Independent Expert on minorities, and the Forum on Minority issues, a subsidiary body of the Human Rights Council.

### **Other general articles: articles 31-33**

#### Article 31 – Statistics and data collection

There is a general lack of relevant disability statistics. Efforts are usually focused on disability prevalence data, but these will not be enough to monitor how the human rights situation of persons with disabilities is evolving.

Questions to address:

- Does the State have any statistics which will allow for the monitoring of the human rights of persons with disabilities?
- If the State is using indicators to monitor the human rights situation in general, are there statistics disaggregated by disability?

- If not, is the State planning to have such statistics and is it involving representative organizations of persons with disabilities in this process?

#### Article 32 – International cooperation

This article stresses the role of international cooperation, and in particular development cooperation programs, to complement national efforts to achieve the objectives of the Convention.

Questions to address:

- For donor States, does the national development cooperation agency include the rights of persons with disabilities as a transversal issue in all its programs and projects and are there projects directly focusing on the rights of persons with disabilities?
- For developing countries, are persons with disabilities considered a target group that needs to benefit from international funds from bilateral and multilateral donors that reach the country?
- Are persons with disabilities a target group in the work to achieve the Millennium Development Goals and in the poverty reduction strategies?
- In all of these areas, are all sectors and constituencies of people with disabilities included equally? Do international cooperation and development aid promote regressive policies in any respect towards any sector of people with disabilities?

#### Article 33 – National implementation and monitoring

This article establishes the need for State Parties to have a system in place for the implementation and monitoring of the Convention and to involve representative organizations of persons with disabilities in this system.

Questions to address:

- Has the State established one or more focal points for the implementation of the CRPD?
- Is the (main) focal point located at a place in the Executive which allows it to have an impact on all Ministries/Departments?
- Has the State established a coordination mechanism and does it include the meaningful participation of all representative organizations of persons with disabilities?



- Has the State taken a formal decision on which body will be in charge of monitoring the implementation of the Convention?
- If so, does this body comply with the Paris Principles and how is this body involving representative organizations of persons with disabilities in its work?

→ The Office of the High Commissioner for Human Rights (OHCHR) has adopted a thematic report on this article which includes a number of important recommendations.

#### d. Other recommendations to ensure the effectiveness of the report

The parallel report should seek to give an accurate picture as to how the CRPD is being implemented at national level. The key issues should be identified through consultation with key organizations and individuals. It should follow the structure of the Committee's guidelines for States Party reports<sup>55</sup> in order to allow the Committee to better compare and contrast the information provided. The report should not simply comment on the State Party report but rather provide the Committee with the point of view of civil society and supplement the State Party report where there is a lack of information. The report should be able to be understood on its own and not only if examined in conjunction with the State Party report.

The report should focus on the treaty-specific document although, if necessary, comments on issues raised in the common core document may be addressed in the first section. The report should be comprised of four sections. The first section should address issues under the purpose (article 1), definitions (article 2), general principles (article 3) and general obligations (article 4) under the CRPD. The second section should focus on specific rights covered under articles 5 & 8-30 of the CRPD.<sup>56</sup> The third section should address the specific situation of women (article 6) and children (article 7) with disabilities and the last section should cover the specific obligations under the CRPD such as statistics and data collection (article 31), international cooperation (article 32) and national implementation and monitoring (article 33). The parallel report should aim to be comprehensive in scope but limited to highlighting the key issues and pointing out the principal concerns related to the implementation of the CPRD. The report should make clear, concrete and targeted recommendations on how to better implement the CRPD at national level. The recommendations should be short and prioritized and a timeframe for their implementation should be suggested. The report should also provide

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<sup>55</sup> Guidelines on treaty-specific document to be submitted by State Parties under article 35, paragraph 1, or the Convention on the Rights of Persons with Disabilities, CRPD/C/2/3, <http://www2.ohchr.org/SPdocs/CRPD/CRPD-C-2-3.doc>

<sup>56</sup> See section 5b of this document.

information as to how DPOs can be better involved in the national monitoring process and how they may be able to assist the State Party in the implementation of the recommendations.

### **Suggested template for a parallel report**

#### **Abstract or Executive Summary:**

- Key issues of concern and recommendations

#### **Introduction:**

- Methodology used to prepare report
- Who was involved in drafting the report
- How DPOs were involved and to what extent in the preparation of State Party Report

#### **Key Issues and Principle Concerns:**

- Purpose, definitions, general principles and general obligations (Articles 1-4)
- Specific rights covered under Articles 5 & 8-30
- Situation of women and children (Articles 6 & 7) and other groups
- Statistics and data collection, international cooperation and national implementation and monitoring (Articles 31-33)

#### **Key recommendations:**

- Limited number of time-bound recommendations
- Follow-up by DPOs at national level

#### **References**

Written information should be supported by research, statistics and data and clearly referenced. Where there is a lack of this information, this should be highlighted as a way in which to improve the effective monitoring of the implementation of the CRPD. Information in the parallel report should draw upon a wide range of sources such as<sup>57</sup>:

- legislation and regulations and government reports on their implementation;
- governmental policy documents;
- governmental statistics;
- governmental budgets;

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<sup>57</sup> A Guide to NGOs Reporting on the Optional Protocols to the Convention on the Rights of the Child, NGO Group for the Convention on the Rights of the Child, 2010.

- governmental press releases and quotes from government officials;
- records of parliamentary/legislative proceedings;
- domestic case law;
- published research (governmental, academic, civil society, national human rights institutions), books and periodicals;
- reports published by DPOs and professional associations working with persons with disabilities;
- data and research from UN agencies, international organizations and NGOs;
- media reports; and
- primary research or case studies on practice and implementation, including interviews with and testimonies of persons with disabilities, focus groups, and surveys.

The report should reflect the experience of persons with disabilities throughout the State Party. In federal States or other countries with strong decentralization, differences in legislation, administration of services, culture and environment amongst jurisdictions should be noted.<sup>58</sup>

The report should not be worded in a tone that may be considered to be overly political and subjective opinions should not be included. The aim is for a constructive dialogue rather than conflict. On the other hand, do not hesitate to point out problems and suggest concrete measures to be taken. The report may also include suggested questions that could be raised by the Committee during the dialogue with the State Party.

In terms of timing, the parallel report should ideally be submitted within six months of the State Party report. This allows for the report to be taken into consideration in the drafting of the list of issues and provides Committee members with enough time to conduct a thorough study of the parallel report prior to meeting with the State party. This generally means however that the parallel report should already be underway during the drafting of the State Party report. It is therefore essential for DPOs to be in contact with relevant Ministries at national level in order to avoid being unprepared once the State Party report has been submitted. Although the parallel report can be prepared prior to the submission of the State Party report, it is better to wait to submit the report to the

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<sup>58</sup> For more information on monitoring, see Monitoring the Convention on the Rights of Persons with Disabilities. Guidance for Human Rights Monitors, Professional Training Series, No. 17, United Nations Office of the High Commissioner for Human Rights, 2010, [http://www.ohchr.org/Documents/Publications/Disabilities\\_training\\_17EN.pdf](http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf)

CRPD Committee until after the submission of the State Party report. This allows the parallel report to reflect or comment on the State Party report where necessary. It also ensures that the Committee receives the most up to date information from DPOs as reports submitted by States Parties are almost always overdue.

### **Technical Information**

- The title page should include the name of the organization or coalition or network submitting the report, the State Party and the Convention to which the report refers. It should clearly state if the report is confidential as reports that are not marked as such may be shared with the State Party and will be made available on the website of the Committee.
- Pages of the report should be numbered and a table of contents should be included.
- The report should include information on the methodology used to prepare the report and a list of those who contributed to the preparation of the report.
- The report should contain an abstract or executive summary which highlights the key issues, points out the principal preoccupations related to the implementation of the CRPD and lists the main recommendations.
- The report should not make reference to page or paragraph numbers in the draft State Party report as these will change once the report is published by the United Nations. In addition, page and paragraph numbers differ in the various language editions.
- Reports should be submitted in one of the official working languages of the Committee.<sup>59</sup> Whenever possible, documents should be translated into English. The United Nations will not translate any documents submitted by civil society. If it is not possible to translate the entire document, then the executive summary or abstract should be submitted in English.
- Reports should be submitted in accessible formats whenever possible.
- The Committee aims to consider reports one year after submission so parallel reports should be submitted at least two months prior to consideration in

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<sup>59</sup> English, French, Spanish, Arabic, Russian and Chinese

plenary session.

- Reports should be submitted in electronic format<sup>60</sup> and 25 copies should be sent by post to the Secretariat of the Committee.<sup>61</sup>

## **5. Strategic use of the individual communication and the inquiry procedure foreseen under the Optional Protocol of the CRPD**

*The Optional Protocol<sup>62</sup> to the Convention on the Rights of Persons with Disabilities<sup>63</sup> was adopted by the UN General Assembly on 13 December 2006 and entered into force on 3 May 2008. As of May 2010, it has been ratified by 53 States.<sup>64</sup> An individual communication and an inquiry procedure are foreseen under the Optional Protocol. The individual communication procedure allows individuals or groups of individuals who believe that their rights are being violated by a State party to submit a complaint to the Committee. The inquiry procedure gives the Committee the authority to examine grave or systematic violations of rights under the CRPD. DPOs should use both of these procedures to report on violations of the rights under the CRPD.*

### **a. Individual Communication Procedure**

The Optional Protocol to the CRPD contains an individual communication procedure through which individuals or groups of individuals who believe that their rights are being violated by the State Party can submit a complaint to the Committee. It is important to note that although the Optional Protocol is a legally binding instrument, the decisions of the Committee are not legally binding. However, the Optional Protocol allows the Committee to express an expert opinion as to whether a violation of a right has occurred and to request that appropriate remedies be provided. The Committee expects that as the State Party has voluntarily agreed to the provisions of the Optional Protocol, it will take the decisions of the Committee seriously and implement them in good faith.

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<sup>60</sup> crpd@ohchr.org

<sup>61</sup> Committee on the Rights of Persons with Disabilities, c/o Office of the United Nations High Commissioner for Human Rights, Palais des Nations, 8-14, avenue de la Paix, CH-1211 Geneva 10, Switzerland

<sup>62</sup> An optional protocol is an addition to an existing treaty which contains provisions or procedures which were not included in the original treaty. The protocol is optional as it needs to be ratified separately and is not automatically binding on State Parties to the original treaty.

<sup>63</sup> Optional Protocol to the Convention on the Rights of Persons with Disabilities, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocol.aspx>

<sup>64</sup> A list of States which have ratified the Optional Protocol can be found at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq\\_no=IV-15&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-15&chapter=4&lang=en)

### **Admissibility of a Complaint**

A number of factors are required before the Committee will examine a communication. The vast numbers of communications are found to be inadmissible because they do not fulfill all the following requirements.

- The Committee can only examine communications from countries which are State Parties to the Optional Protocol. Reservations or declarations made to the CRPD by a State Party may limit the scope of its obligations under the treaty<sup>65</sup>.
- The communication must be submitted in the name of an individual and cannot be anonymous. A communication can be submitted by a third party (such as a DPO) on behalf of an individual if the individual has given written consent (“power of attorney” or an “authority to act”). If it is impossible to obtain written consent, then justification as to why consent was unavailable must be provided. A communication may also be submitted on behalf of a group of individuals, but all individuals in the group must be named and have given permission to act on their behalf.
- The claim must not abuse the right of submission or be incompatible with the provisions of the CRPD. The same matter cannot be complained about more than once by the same individual and must not contain insulting or abusive language.
- The case cannot be examined more than once by the Committee and cannot be or have been examined by another UN body, international or regional organization such as another UN treaty body, the European Court of Human Rights, the Inter-American Commission or Court of Human Rights, or the African Commission on Human and People's Rights.
- All domestic remedies have to be exhausted. The complaint must have been raised through the domestic court system and any administrative procedures before it can be examined by the Committee. The communication should include steps taken to exhaust all available judicial and administrative remedies at national level. This does not apply however, if domestic remedies are ineffective or unreasonably prolonged, but the communication must then explain why the

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<sup>65</sup> A list of reservations and declarations is available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en)

- domestic remedies have been ineffective.
- A detailed account of the facts must be submitted to prove that there is sufficient evidence that the claim is credible and not ill-founded.
  - The complaint must have occurred after the entry into force of the Optional Protocol unless the facts continued after that date.

The complaint must be submitted in writing in one of the official UN languages.<sup>66</sup> The complaint must be signed and sent by post as email complaints are not accepted.<sup>67</sup> A model complaint form is available to assist individuals in preparing a communication.<sup>68</sup> Complaints may be submitted with audio support if necessary.

While deciding on admissibility, the Committee can request that a State Party adopt interim measures if necessary to avoid irreparable harm to the victim. This however has no bearing on the admissibility of the complaint. The Committee may indicate the nature and characteristics of the interim measures that it would like the State Party to take.

Once a communication has been declared admissible, the State Party has six months to respond to the complaint. The Committee will then meet in a private meeting to examine the complaint. Neither the individual nor the State Party is allowed to participate in the proceedings. The Committee then forwards its suggestions and recommendations to the individual and the State Party. The State Party is generally requested to provide follow-up information on steps taken to remedy the situation and the text of the final decision is made public.

Figure 2. Overview of the CRPD Optional Protocol Complaint Procedure

**Step 1. The complaint is sent to the CRPD Committee.**



**Step 2. Registration of the complaint.**

<sup>66</sup> English, French, Spanish, Arabic, Chinese or Arabic

<sup>67</sup> Communications should be mailed by post to the Petitions Team, Office of the High Commissioner for Human Rights, United Nations Office, 1211 Geneva 10, Switzerland

<sup>68</sup> The Committee has not yet adopted a model complaint form for the Optional Protocol on the CRPD. Examples from other treaty bodies can be used to ensure that all necessary information needed is provided in the complaint, see [www.ohchr.org/english/bodies/docs/annex1.pdf](http://www.ohchr.org/english/bodies/docs/annex1.pdf)

Step 2, outcome a: The complaint is registered right away. Go to Step 3.

-Or-

Step 2, outcome b: More information is required. (Then, after the Committee gets more information, either go to Step 2, outcome c, or, go to Step 3.)

-Or-

Step 2, outcome c: The complaint is not registered because there is something wrong with it. (END)



**Step 3. Consideration of the admissibility of the complaint.**

Step 3, outcome a: The complaint is inadmissible. (END)

-Or-

Step 3, outcome b: The complaint is admissible. Go to Step 4.



**Step 4. The CRPD Committee considers the merits of the complaint.**

Step 4, outcome a: NO VIOLATION. (END)

-Or-

Step 4, outcome b: VIOLATION. Go to step 5.



**Step 5. Follow up.**

End Figure 2.

## **b. Inquiry Procedure**

The Committee also has the possibility to initiate an inquiry procedure should it receive “reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention.”<sup>69</sup> If the Committee feels that the information submitted warrants further investigation, it can request that one or more of its members conduct an inquiry into the situation and report to the Committee. The inquiry is a confidential procedure and the cooperation of the State Party is required at all stages of the process.

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<sup>69</sup> Optional Protocol to the Convention on the Rights of Persons with Disabilities, article 6(1)



The inquiry procedure is an option within the optional protocol provided that upon ratification the State Party declares that it does not recognize the competence of the Committee to carry out inquiries.

The request to conduct an inquiry may be initiated by DPOs or other civil society organizations. Unlike individual communications, an inquiry may be requested on behalf of others and domestic remedies do not have to be exhausted. On the other hand, the information provided has to show grave or systematic violations of rights under the CRPD. It is important to confirm that the country is a State Party to the Optional Protocol and has accepted the competence of the Committee to conduct inquiries. Reliable information should be clearly set out in writing in one of the official languages of the United Nations.<sup>70</sup> If the Committee feels that the information shows grave or systematic violations of rights under the CRDP, the information will be transmitted to the State Party with a request that it submit its own observations on the information provided. The Committee may also actively seek additional information from other sources such as DPOs, other civil society organizations, and UN agencies.

The Committee may then decide to conduct a formal inquiry. A visit to the country concerned may be requested but consent must be given for the visit to be carried out. The visit may allow Committee members to conduct interviews, inspect specific sites and consult with government officials and members of civil society, including DPOs. If permission to visit the State Party is not granted, the Committee will conduct its examination based on all available information. Written information submitted by DPOs would be a key element in this analysis.

Following the inquiry process, the Committee will transmit its findings, comments and recommendations to the State Party. The State Party has six months to respond and if necessary, the Committee can request that the State provide information on the measures taken in response to the inquiry. The Committee may also request that the State Party include details of measures taken to follow up on the inquiry in its periodic reports under the CRPD. There is however no requirement that the inquiry be made public even after its completion.

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<sup>70</sup> Confidential inquiries should be submitted in either English, French, Spanish, Russian, Chinese or Arabic to the Committee on Persons with Disabilities, c/o Office of the High Commissioner for Human Rights, Palais des Nations, 8-14 avenue de la Paix, CH-1211 Geneva 10, Switzerland.

## 6. Influencing other human rights processes: Mainstreaming the rights of persons with disabilities

*In addition to the Convention on the Rights of Persons with Disabilities, there are other international human rights mechanisms that can be used to mainstream disability issues. The other international human rights treaties also contain reporting procedures by which States Parties submit periodic reports to a Committee who examines these reports and prepares conclusions and recommendations. They also examine individual complaints, issue general comments and hold days of general discussion; all of which are opportunities for DPOs to provide input on the rights of persons with disabilities.*

*The Human Rights Council has a universal periodic review (UPR) in which it examines the human rights situation in all countries. DPOs can contribute to the review through the submission of stakeholder information, participation at sessions of the UPR and by following up on the conclusions and recommendations contained in the outcome document. The Human Rights Council has also established a series of special procedures which monitor, advise and report on specific countries (country mandates) or on human rights violations worldwide (thematic mandates). Independent experts or working groups carry out these mandates by sending communications, undertaking country visits, publishing reports, and preparing thematic studies. For each of these activities, DPOs can contribute to the work of the special procedures.*

### a. Involvement of DPOs in the reporting process to other human rights treaty bodies

The United Nations treaty body system consists of nine international human rights treaties. Each treaty is monitored by a Committee which reviews reports submitted by State Parties.

#### **International Human Rights Treaties**

- International Covenant on Civil and Political Rights<sup>71</sup> (1966)
- International Covenant on Economic, Social and Cultural Rights<sup>72</sup> (1966)
- International Convention on the Elimination of all Forms of Racial Discrimination<sup>73</sup> (1965)

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<sup>71</sup> <http://www2.ohchr.org/english/law/ccpr.htm>

<sup>72</sup> <http://www2.ohchr.org/english/law/cescr.htm>

<sup>73</sup> <http://www2.ohchr.org/english/law/cerd.htm>

- Convention on the Elimination of all Forms of Discrimination against Women<sup>74</sup> (1979)
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>75</sup> (1984)
- Convention on the Rights of the Child<sup>76</sup> (1989)
- International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families<sup>77</sup> (1990)
- Convention on the Rights of Persons with Disabilities<sup>78</sup> (2006)
- International Convention on the Protection of all Persons from Enforced Disappearance<sup>79</sup> (2006 – **not yet entered into force**)

Like the CRPD, the two international Covenants and the Convention on the Elimination of Discrimination against Women also have Optional Protocols which allow for the consideration of individual complaints<sup>80</sup>. There are also three Optional Protocols that deal with substantive rights such as the Second Optional Protocol to the International Covenant on Civil and Political Rights<sup>81</sup> which aims to abolish the death penalty or the two Optional Protocols of the Convention on the Rights of the Child which focus on the involvement of children in armed conflict<sup>82</sup>, and on the sale of children, child prostitution and child pornography<sup>83</sup>. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment<sup>84</sup> establishes national and international monitoring mechanisms and differs from the monitoring of other Optional Protocols as it has its own monitoring body, the Sub-Committee on Prevention of Torture. All of the other Optional Protocols are monitored by the body established under the main treaty.

<sup>74</sup> <http://www2.ohchr.org/english/law/cedaw.htm>

<sup>75</sup> <http://www2.ohchr.org/english/law/cat.htm>

<sup>76</sup> <http://www2.ohchr.org/english/law/crc.htm>

<sup>77</sup> <http://www2.ohchr.org/english/law/cmw.htm>

<sup>78</sup> <http://www2.ohchr.org/english/law/disabilities-convention.htm>

<sup>79</sup> <http://www2.ohchr.org/english/law/disappearance-convention.htm>

<sup>80</sup> Optional Protocol to the International Covenant on Civil and Political Rights (<http://www2.ohchr.org/english/law/ccpr-one.htm>), Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

([http://www2.ohchr.org/english/law/docs/A.RES.63.117\\_en.pdf](http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf)), Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (<http://www2.ohchr.org/english/law/cedaw-one.htm>), and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (<http://www2.ohchr.org/english/law/disabilities-op.htm>)

<sup>81</sup> <http://www2.ohchr.org/english/law/ccpr-death.htm>

<sup>82</sup> <http://www2.ohchr.org/english/law/crc-conflict.htm>

<sup>83</sup> <http://www2.ohchr.org/english/law/crc-sale.htm>

<sup>84</sup> <http://www2.ohchr.org/english/law/cat-one.htm>

All of the above mentioned treaties contain provisions that are relevant to persons with disabilities. A study conducted for the United Nations in 2002<sup>85</sup> which evaluated the use of the treaty body system in the context of persons with disabilities may provide DPOs with some information as to which articles of the other treaties are relevant to persons with disabilities.

All treaty bodies examine State Party reports and welcome the submission of information from civil society. The procedures for the submission and consideration of this information vary, however, between treaty bodies<sup>86</sup>. DPOs are encouraged to work with coalitions or networks in their country who are preparing parallel reports for other treaty bodies in order to ensure that key disability issues are being addressed. Although treaty bodies do receive the concluding observations from other treaty bodies, it is important for DPOs to make the link between the CRPD and other human rights treaties so that disability issues become mainstreamed across the human rights treaties.

### **Support from International NGOs**

A number of international coalitions of NGOs or individual international NGOs are working to promote the full implementation of the various human rights treaties. Some also support the role of national NGOs in the preparation and submission of information to various treaty bodies. Information that is specific to the requirements of each treaty body can be obtained from the sources below.

Human Rights Committee:

**Center for Civil and Political Rights**

<http://www.ccprcentre.org/en>

Committee on Economic, Social and Cultural Rights:

**International Network for Economic, Social and Cultural Rights**

<http://www.escr-net.org/>

Committee on the Elimination of Racial Discrimination:

**International Movement Against All Forms of Discrimination and Racism**

<http://www.imadr.org/un/icerd/>

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<sup>85</sup> The current use and future potential of United Nations human rights instruments in the context of disability, 2002, [http://www2.ohchr.org/english/issues/disability/docs/Studydisability\\_en.doc](http://www2.ohchr.org/english/issues/disability/docs/Studydisability_en.doc)

<sup>86</sup> For general information on the submission of information to other treaty bodies, see *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, Office of the High Commissioner for Human Rights, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook/ngohandbook4.pdf>

Committee on the Elimination of Discrimination against Women:  
**International Women's Rights Action Watch Asia Pacific**  
<http://www.iwraw-ap.org/>

Committee against Torture:  
**Coalition of International NGOs against Torture**  
<http://www.ap.t.ch/cinat/>

Sub-Committee on Prevention of Torture:  
**Association for the Prevention of Torture**  
<http://www.ap.t.ch/content/view/33/58/lang.en/>

Committee on the Rights of the Child:  
**NGO Group for the Convention on the Rights of the Child**  
[www.childrightsnet.org](http://www.childrightsnet.org)

Committee on the Protection of the Rights of All Migrant workers and Members of their Families:  
**International NGO Platform for the Migrant Workers Convention**  
<http://www.december18.net/international-ngo-platform-migrant-workers-convention-ipmwc>

Committee on the Rights of Persons with Disabilities:  
**International Disability Alliance**  
<http://www.internationaldisabilityalliance.org/>

Committee on Enforced Disappearances: (not yet established)  
**International Coalition against Enforced Disappearances**  
<http://www.icaed.org/>

DPOs may wish to consider submitting individual complaints under other international human rights treaties, especially in States which may not have ratified the Optional Protocol under the CRPD but have done so under other treaties. It is important to note however that an individual complaint cannot be submitted to more than one treaty body so it is important to pick the one that is most relevant to the individual case. Although most treaty bodies follow similar procedures, differences do exist and it is important to

follow the specific requirements of each treaty body in order to ensure the admissibility of the complaint.<sup>87</sup>

Treaty bodies (Committees) also prepare general comments which are the Committee's interpretation of the provisions of the Convention based on their experience in monitoring State Party reports. The main purpose of a general comment is to promote the implementation of the human rights treaty and to provide guidance to State Parties on the implementation of the treaty. The procedure for drafting general comments varies between treaty bodies, but some general comments are drafted through an open consultative process during days of general discussion, thematic discussions, or through the submission of written comments and suggestions.

DPOs should consider participating in relevant days of general discussion or submitting written information on draft general comments in order to ensure that a disability perspective is taken into account. The process is generally informal and varies from treaty body to treaty body. DPOs should inform the Secretariat of the relevant Committee of their expertise in the topic under consideration and request information as to how they can best contribute to the drafting of the general comment.<sup>88</sup>

### General Comments on Persons with Disabilities

In 1991, the **Committee on the Elimination of Discrimination against Women** adopted General Recommendation No. 18 on Disabled Women<sup>89</sup> which highlights the need take measures to ensure that women with disabilities have equal access to education, employment, health services and social security, and are able to participate in all areas of social and cultural life.

In 1994, the **Committee on Economic, Social and Cultural Rights** adopted General Comment No. 5 on Persons with Disabilities<sup>90</sup> which provides guidance in implementing the provisions of the International Covenant on Economic, Social and Cultural rights for the specific situation and needs of persons with disabilities.

In 2006, the **Committee on the Rights of the Child** adopted General Comment No. 9 on the Rights of Children with Disabilities<sup>91</sup> which provides guidance in implementing the rights of children with disabilities in a comprehensive manner.

<sup>87</sup> For more information on the individual complaints procedure, see <http://www2.ohchr.org/english/bodies/petitions/individual.htm>

<sup>88</sup> The NGO Group for the Convention on the Rights of the child has prepared a fact sheet on general comments for NGOs. See <http://www.crin.org/docs/Fact%20sheet%20CRC%20GC%20EN.pdf>

<sup>89</sup> See <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

<sup>90</sup> For the full text of the general comment, see

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4b0c449a9ab4ff72c12563ed0054f17d?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4b0c449a9ab4ff72c12563ed0054f17d?Opendocument)

<sup>91</sup> For the full text of the general comment, see [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.GC.9.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.GC.9.En?OpenDocument)

## b. Involvement of DPOs in the Universal Periodic Review

The Human Rights Council (HRC) is the main intergovernmental body of the United Nations responsible for human rights. It deals with human rights violations as well as promotes effective coordination and mainstreaming of human rights throughout the UN system. The General Assembly established the Universal Periodic Review<sup>92</sup> (UPR) whereby all members of the United Nations would have their human rights obligations and commitments reviewed on a periodic basis by the HRC. The UPR is a cooperative mechanism and is based on an interactive dialogue between the State under review and the HRC.<sup>93</sup> The UPR examines all States every four years and a calendar has been established for the first cycle of reviews.<sup>94</sup> The UPR is meant to complement the work of the treaty body system and differs from it in a number of important ways. The UPR is a political rather than a legal instrument and the review is conducted by States (a peer review) rather than independent experts. The UPR does however cover all States while the treaty bodies only examine those which have ratified the relevant treaty.

Figure 3. Universal Periodic Review – Four-year Cycle

### **Stage 1. Preparation of the reports to be considered in the UPR.**

Three reports are prepared for the Working Group::

1. **National report:** The State should hold broad **consultations** and submit a report. **Opportunity for DPO and other stakeholders' involvement.**
2. **Compilation of United Nations information** (prepared by OHCHR)
3. **Summary of other stakeholders' submissions** (also prepared by OHCHR). **Opportunity for DPO and other stakeholders' involvement:** DPOs and other stakeholders can submit reports of 5 pages, or 10 pages if submitted by a coalition.



### **Stage 2. Working Group on the UPR and adoption of draft Working Group report.**

- Meets in Geneva for three two-week sessions each year.
- Examines 16 States each session (48 States each year).

<sup>92</sup> See General Assembly Resolution 60/251 [http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf) and Human Rights Council Resolution 5/1 [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_5\\_1.doc](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc).

<sup>93</sup> For detailed information on the UPR, see A Practical Guide to the United Nations' Periodic Review, Human Rights Project at the Urban Justice Center, 2010, <http://www.hrpujc.org/documents/UPRtoolkit.pdf>

<sup>94</sup> <http://www.ohchr.org/EN/HRBodies/UPR/Documents/uprlist.pdf>

- **Opportunity for DPO involvement: Conduct advocacy with the State under review, if possible, and with other States two weeks before the Working Group meeting or earlier.**

- Three hour **interactive dialogue** is held with the State under Review. Civil society can not make statements during this meeting.

-The Working Group adopts draft Working Group report containing recommendations, conclusions, and information on recommendations accepted by the State under review.

-The State under review indicates at this stage (or at the latest, at the second regular Council session following the UPR session), which recommendations it supports or does not support.



### **Stage 3. Human Rights Council regular session.**

- In the second regular Council session after the UPR Working Group session in which the State was reviewed, the Council adopts the final outcome document of the review.

- The Council considers each Working Group report for one hour.

- Reviewed States, Council Member and observer States and **other stakeholders** are given the opportunity to express their views before adoption of the outcome report on that State's review.

- The Council adopts the outcome document.



### **Stage 4. Implementation of outcome document and follow up.**

- Implementation is the responsibility of the State concerned, and, as appropriate, of other relevant stakeholders. **Opportunity for DPO and other stakeholders' involvement: Make recommendations known to media and push for implementation of recommendations. DPOs can be consulted and involved in implementation of recommendations.**

- The international community is to assist in capacity-building and technical assistance.

- The Human Rights Council, after exhausting all other efforts, can address persistent non-cooperation with the UPR.

- There is follow up to the conclusions and recommendations adopted from the review.

- States can circulate information on mid-term follow up.

End of cycle. Return to Stage 1.



End Figure 3.

The UPR is based on three documents; a national report, a compilation report of information from the United Nations and a summary of other stakeholders' information. Each State is encouraged to prepare a national report through a broad, national



consultation process with all relevant stakeholders. DPOs should encourage their State to hold early consultations and provide for an open, active and ongoing dialogue with the State in the preparation of its national report. The consultation should be an opportunity for DPOs to lobby the State to include information on the rights of persons with disabilities in its report.

The Office of the High Commissioner for Human Rights (OHCHR) prepares a compilation of information contained in reports of the treaty bodies, special procedures, observations and comments by the State and any other relevant official UN documents. Information previously submitted by DPOs under those mechanisms may be highlighted in this compilation. OHCHR also prepares a summary of information provided by other stakeholders such as DPOs, other civil society organizations, and national human rights institutions.

DPOs are strongly encouraged to contribute to the UPR through the submission of stakeholder information. Although they may submit their own report under the UPR, it is often more strategic to work within a CRPD coalition or a UPR alliance in order to decide which issues should be included in the stakeholder report and the most strategic way to ensure that this information is taken into account. Only a summary of the information will be included in the stakeholder's report.

### **Content and Format of Stakeholder Information<sup>95</sup>**

- The submission should include a one-paragraph executive summary which highlights a limited number of key issues and recommendations.
- The submission itself should be constructive and focus on two or three key points. It should summarize the problem and make concrete recommendations for change.
- Stakeholders are encouraged to follow the general guidelines for the preparation of information under the UPR.<sup>96</sup>
- Information submitted by stakeholders is not confidential and cannot be submitted anonymously.<sup>97</sup>
- Stakeholder submissions must be no longer than 5 pages unless they are

<sup>95</sup> Technical guidelines for the submission of stakeholder information are available at <http://www.ohchr.org/EN/HRBodies/UPR/Documents/TechnicalGuideEN.pdf>

<sup>96</sup> Human Rights Council Decision 6/102, [http://ap.ohchr.org/documents/E/HRC/decisions/A\\_HRC\\_DEC\\_6\\_102.pdf](http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf)

<sup>97</sup> Submissions should be sent electronically to [UPRsubmissions@ohchr.org](mailto:UPRsubmissions@ohchr.org)

submitted on behalf of a coalition of stakeholders, in which case they can be up to 10 pages

- The information must be written in one of the official languages of the United Nations.<sup>98</sup> Longer submissions or submissions in languages other than official UN languages will not be taken into consideration.
- The deadline for the submission of information is approximately six months prior to the review and information submitted after the deadline will not be taken into account.<sup>99</sup>

The Working Group on the UPR, which is composed of all members of the HRC, conducts a three-hour interactive dialogue with the State under review. NGOs with consultative status with ECOSOC<sup>100</sup> may participate as observers but are not allowed to speak. There are however opportunities to meet informally with the members of the Council outside of the meeting in order to make suggestions as to concerns that could be raised or recommendations that could be made. NGOs with consultative status with ECOSOC may also organize information briefings in order to share information and best practices. It may be useful to provide members of the HRC with a list of issues and recommendations that should be raised during the interactive dialogue. DPOs should also consider meeting informally with representatives from States in their home countries or in Geneva prior to the interactive dialogue in order to inform delegations of their concerns and suggest specific recommendations.

Following the interactive dialogue, an outcome document is prepared which includes a summary of the proceedings, conclusions and recommendations. There is once again an opportunity to meet informally with members of the Working Group in order to recommend that key issues be included in the outcome document and that the recommendations address the rights of persons with disabilities. The outcome document is adopted by the Working Group within 48 hours and the State under consideration may or may not comment on the document at that time. DPOs should encourage the State to accept the recommendations that have been made by the Working Group.

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<sup>98</sup> Although reports may officially be submitted in English, French, Spanish, Chinese, Russian or Arabic, the Office of the High Commissioner for Human Rights has expressed a preference to receive reports in English, French or Spanish and reports written in the other three languages may not be taken into account due to difficulties in translation.

<sup>99</sup> Deadlines for the submission of stakeholder information can be found at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx>

<sup>100</sup> Civil society organizations must be accredited with the Economic and Social Council (ECOSOC) in order to attend meetings of the Human Rights Council. International, regional and national NGOs, non-profit public or voluntary organizations are eligible to obtain consultative status. For more information, see <http://esango.un.org/paperless/Web?page=static&content=apply>

The outcome document is then considered by the HRC at its next session. The State under review may present its views on the conclusions and recommendations of the outcome document. Other States may also comment on the outcome document and stakeholders, including NGOs with consultative status with ECOSOC, may make general comments. As only an hour is allocated for the adoption of the report by the HRC, time available for NGO statements is extremely brief and DPOs are encouraged to make joint statements with a CRPD coalition or a UPR alliance.

States are responsible for implementing the conclusions and recommendations of the outcome document. However, other stakeholders are also asked to play a role in the implementation of the conclusions and recommendations.<sup>101</sup> DPOs should try to meet with governmental officials in order to discuss the conclusions and recommendations and suggest ways in which they can assist the State in implementing the recommendations. They should also ensure that the recommendations are made available to the media and that awareness raising campaigns are held at national level. DPOs should continue to monitor the human rights situation in order to hold the government accountable for its record and to be able to submit information for the next periodic review.

### c. Use of the Special Procedures for the promotion of the rights of persons with disabilities

Special Procedures have been established by the Human Rights Council to “examine, monitor, advise and publically report on human rights situations in specific countries or on human rights violations worldwide”. Thematic mandates<sup>102</sup> are renewed every three years and country mandates<sup>103</sup> are reviewed annually. Almost all thematic mandates have made references to the rights of persons with disabilities.

Independent experts or working groups are established to carry out the mandates<sup>104</sup> by sending communications, undertaking country visits, publishing reports, and preparing thematic studies. For each of these activities, DPOs can contribute to the work of the special procedures.

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<sup>101</sup> Human Rights Council Decision 5/1, Para. 33, [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_5\\_1.doc](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc)

<sup>102</sup> A list of thematic mandates can be found at <http://www2.ohchr.org/english/bodies/chr/special/themes.htm>

<sup>103</sup> A list of country mandates can be found at <http://www2.ohchr.org/english/bodies/chr/special/countries.htm>

<sup>104</sup> A code of conduct has been adopted for mandate holders of the Human Rights Council, [http://www2.ohchr.org/english/bodies/chr/special/docs/CodeofConduct\\_EN.pdf](http://www2.ohchr.org/english/bodies/chr/special/docs/CodeofConduct_EN.pdf) as has a manual of operations of special procedures [http://www2.ohchr.org/english/bodies/chr/special/docs/Manual\\_August\\_FINAL\\_2008.doc](http://www2.ohchr.org/english/bodies/chr/special/docs/Manual_August_FINAL_2008.doc)

### **Special Rapporteur on Disability**

In 1993, the United Nations General Assembly adopted the non-legally binding Standard Rules for the Equalization of Opportunities of Persons with Disabilities<sup>105</sup> which called for the appointment of a Special Rapporteur on Disability to monitor their implementation. The current mandate of Special Rapporteur is to advocate for the rights of persons with disabilities, create awareness of the CRPD, promote international and technical cooperation on disability issues, and collaborate with all relevant stakeholders.<sup>106</sup> Unlike the Independent Experts under the human rights mechanisms, the Special Rapporteur on Disability reports to the UN Commission for Social Development rather than the Human Rights Council. Reports are submitted on an annual basis to the Commission for Social Development.

Many of the Special Procedures are allowed to receive complaints, either individual or systematic. Although the CRPD contains an individual communication procedure, this is an optional procedure and not all States may have ratified the CRPD or its Optional Protocol. In the case of Special Procedures, there is no need for a State to have ratified either the CRPD or the Optional Protocol for a complaint to be considered. The communication procedure is not a confidential procedure and the name(s) of the alleged victim(s) will be made public in the report of the mandate holder unless the victim is a child. The complaint should include the name(s) of the alleged victim(s), identification of the alleged perpetrators, the date and place of the incident, a detailed description of the alleged human rights violation and the name of the person or organization submitting the communication.<sup>107</sup> If the mandate holder feels that the information received is credible, from a reliable source and is relevant to the scope of the mandate, a letter is sent to the State requesting information on and responses to the allegations made. In cases where allegations are life threatening or of a very grave nature to the victims, the mandate holder may send an urgent appeal asking that preventive or investigatory action be taken immediately.

Special procedure mandate holders may also conduct country visits in order to obtain information on the human rights situation in a specific country. The mandate holder must be invited by a government to visit the country unless the government has issued a

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<sup>105</sup> For the full text of the document, see <http://www.un.org/disabilities/documents/gadocs/standardrules.doc>

<sup>106</sup> For more information on the Special Rapporteur on Disability, see <http://www.un.org/disabilities/default.asp?navid=9&pid=183>

<sup>107</sup> Some mandates have questionnaires to assist in the reporting of human rights violations. They are available at <http://www2.ohchr.org/english/bodies/chr/special/questionnaires.htm>. Complaints should be submitted electronically to [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org) and should note in the subject line the special procedure to which the information refers.

standing invitation<sup>108</sup> to the special procedures. Mandate holders may request to visit a country based on information or complaints received and DPOs should inform relevant mandate holders about perceived human rights violations. Once a visit is confirmed, DPOs should submit information relevant to the mandate and raise awareness at national level about the upcoming visit. Mandate holders generally meet both with government officials and representatives of civil society during country visits. Requests to meet with the mandate holder during the visit should be made in advance to the relevant desk officer at the Office of the High Commissioner for Human Rights.<sup>109</sup> The mandate holder will prepare an official report for the Human Rights Council on the visit which includes conclusions and recommendations. DPOs should disseminate the conclusions and recommendations made by the mandate holder to the media and general public and look for ways to work with the government in the follow-up and implementation of the recommendations. Information on follow-up should also be submitted to the mandate holders in order to keep them informed as to the progress being made in the implementation of the recommendations.

### **Example of Country Visit: Bangladesh**

In December 2009, the UN Independent Experts on human rights and extreme poverty and on water and sanitation undertook a joint visit to Bangladesh to examine the relationship between access to safe drinking water, sanitation and extreme poverty. During their visit, the experts had the opportunity to meet with civil society organizations, including some national organizations working with persons with disabilities. In her preliminary remarks, the Special Rapporteur on extreme poverty noted that appalling living conditions led to human rights violations of a number of groups, including persons with disabilities. The findings and recommendations from the visit will be submitted to the Human Rights Council in mid-2010.

Mandate holders may also be requested by the Human Rights Council to prepare a study on specific themes and DPOs should contribute information to these studies in order to ensure that the situation of persons with disabilities is taken into account. They should also make recommendations to mandate holders as to topics that deserve further study.

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<sup>108</sup> A standing invitation is an open invitation to visit that State. The mandate holder must still request to visit the State but in principle, all requests are granted. A list of countries who have issued standing invitations can be found at <http://www2.ohchr.org/english/bodies/chr/special/invitations.htm>.

<sup>109</sup> Contact details for thematic and country mandate holders can be found at <http://www2.ohchr.org/english/bodies/chr/special/themes.htm> and <http://www2.ohchr.org/english/bodies/chr/special/countries.htm>

### **Thematic studies on the rights of persons with disabilities**

In 2008, the Special Rapporteur on torture and other cruel and degrading treatment devoted a section of his report to the situation of persons with disabilities.<sup>110</sup> The report highlights practices of neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence against persons with disabilities which may constitute torture or cruel and degrading treatment. The Special Rapporteur called on States to adopt legislation recognizing the legal capacity of persons with disabilities, issue clear guidelines in line the CRPD on free and informed consent and to make available accessible complaints procedures.

In 2007, the Special Rapporteur on the right to education prepared a report on the right to education for persons with disabilities<sup>111</sup> with a focus on inclusive education. The report outlines the minimum legislative, policy and financial measures needed and examines the challenges, such as limited financial resources and a lack of political will, that prevent the right to education from being fulfilled. The Special Rapporteur called on States to implement inclusive education programs in order to combat discrimination and to eliminate obstacles that prevent persons with disabilities from enjoying their right to education.

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<sup>110</sup> <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/63/175&Lang=E>

<sup>111</sup> <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/4/29&Lang=E>

## **7. Frequently Asked Questions**

### **What does the Committee on the Rights of Persons with Disabilities do?**

The Committee on the Rights of Persons with Disabilities monitors the implementation of the Convention on the Rights of Persons with Disabilities. It reviews periodic reports submitted by States Parties on the implementation of the CRPD at national level, examines individual complaints and undertakes inquiries of grave and systematic violations of the Convention. It is currently composed of twelve independent experts with membership expanding to eighteen in January 2011. In 2010, the Committee will meet for two, one-week sessions in Geneva, Switzerland.

### **Why do States need to submit reports?**

The Convention requires in Article 35 that States Parties submit comprehensive reports on how the CRPD is being implemented at national level. The first report must be submitted within two years, with follow-up reports being submitted at least every four years. These reports are examined by the CRPD Committee.

### **Do States that have signed but not ratified the CRPD or has neither signed nor ratified the CRPD have to submit reports?**

The Committee has no authority to examine reports from countries that have only signed the CRPD or that have neither signed nor ratified the CRPD. Signing a treaty is an indication of the intention to ratify the treaty. Although it does not create any legal obligations, it does create an obligation not to do anything that is incompatible with the purpose and objective of the CRPD.

### **What is the impact of reservations?**

Reservations to the CRPD are made upon signature or ratification and cannot be added later. They exclude or alter the legal effect of certain provisions of the CRPD. Reservations must not however be incompatible with the object and purpose of the CRPD. They may be withdrawn at any time and the Committee may ask a State whether it has the intention to do so.

### **When is the initial report due?**

The State Party is required to submit an initial report two years after entry into force of the CRPD. Entry into force is when a treaty becomes legally binding on the State. The CRPD entered into force 3 May 2008, 30 days after the 20<sup>th</sup> ratification. For those 20 States Parties, the initial report to the CRPD was due 3 May 2010. For those States who ratified the CRPD after 3 April 2008, the entry into force date is 30 days after the ratification date. The initial report is due two years after that date.

### **What happens if a State Party does not submit its report on time?**

It is not unusual for State Party reports to be overdue. The Committee will send reminders to States Parties requesting that reports be submitted in a timely manner. If a State Party report is considered to be significantly overdue, Article 36 (2) allows the CRPD Committee to examine the situation in a State Party even in the absence of a report.

### **What time period does the State Party reports cover?**

State Party reports should cover the period between entry into force and its submission to the Committee even if this period is more than two years.

### **When will the State Party report be considered by the Committee?**

The Committee aims to consider reports within one year after it has been submitted by the State Party. Reports submitted in 2010 and 2011 may however be considered within a shorter period of time. Reports are considered in the order in which they are received. A list of reports received and a provisional schedule for consideration by the Committee will be available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Sessions.aspx>.

### **What is the List of Issues?**

The list of issues is a series of questions or queries formulated by the Committee to clarify or complete the information provided in the State Party report or to allow the State Party to update the Committee on any recent changes since the submission of its report. The list of issues is sent to the State Party prior to the consideration of the report in plenary session and the State Party is requested to respond in writing to these questions.

### **What are Concluding Observations?**

The Committee issues concluding observations after the consideration of a State Party report. The concluding observations point out the positive aspects, the factors and difficulties impeding the implementation of the CRPD, and the principle subjects of concern. The concluding observations also make suggestions and recommendations for concrete action at national level.

### **Can DPOs submit a report to the Committee?**

There is no need to have any type of consultative status with the United Nations in order to submit a report. The Committee welcomes the submission of reports and other documentation by international, regional, national or local DPOs in order to have a better understanding of the problems in the implementation of the CRPD at national level.

### **What is the deadline for the submission of information from DPOs?**

DPOs should aim to submit their report as soon as possible after the submission of the State Party report to ensure that it is taken into consideration in all preparatory documents. The report



should not be submitted any later than two months prior to the consideration of the State Party report by the Committee.

### **What time period should parallel reports cover?**

Parallel reports should cover the period between entry into force and its submission to the Committee. It is possible that the parallel report covers a longer period than the State report and should seek to provide the most up-to-date information.

### **Should DPOs submit a report to the Committee if the State has not yet reported?**

The Committee will not examine DPO information on a State Party until the State submits a report. Although the parallel report can be prepared prior to the submission of the State Party report, it is better to wait to submit the report to the CRPD Committee until after the submission of the State Party report. This allows the parallel report to reflect or comment on the State Party report where necessary. It also ensures that the Committee receives the most up-to-date information from DPOs.

### **Can individuals complain about their rights being violated?**

The Optional Protocol to the Convention on the Rights of Persons with Disabilities has an individual communication procedure which allows individuals or groups of individuals who believe that their rights are being violated by a State Party to submit a complaint to the Committee. The Optional Protocol is an addition to the CRPD and contains provisions or procedures which were not included in the original treaty. As the protocol is optional, it needs to be ratified separately and is not automatically binding on State Parties to the original treaty. The Committee can only examine complaints from States which have ratified the Optional Protocol even if they have ratified the CRPD.

### **How do I contact the Committee and its members?**

It is best to contact the Committee and its members through the Secretariat of the Committee at the Office for the High Commissioner for Human Rights. The Secretariat can be contacted via email at [crpd@ohchr.org](mailto:crpd@ohchr.org) or via post at Secretariat, Committee on the Rights of Persons with Disabilities, Office of the United Nations High Commissioner for Human Rights, Palais des Nations, CH-1211 Geneva 10, Switzerland.

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