

Implementing the Rights of Persons with Disabilities – the Role of Independent Monitoring Frameworks

Practical Guide



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Implementing the Rights of Persons with Disabilities – the Role of Independent Monitoring Frameworks

Practical Guide

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Introduction



Independent bodies designed to monitor the implementation of human rights have in the past few decades developed into indispensable components of the domestic human rights architecture. In 1993, the United Nations General Assembly endorsed the principles relating to the status of national institutions for the promotion and protection of human rights, usually referred to as the Paris Principles.¹ The establishment of national human rights institutions and their work is anchored on the Paris Principles, which set out the international minimum standards for the establishment and operation of the mechanisms designated to carry out the effective and credible promotion, protection and monitoring of human rights at the national level. The Paris Principles gained binding legal recognition in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in the Convention on the Rights of Persons with Disabilities.

Article 33 (2) of the Convention on the Rights of Persons with Disabilities provides as follows:

States 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. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

This provision requires each State party to designate or establish an independent monitoring framework comprising one or more mechanisms, of which one must be in line with the Paris Principles, and which shall be entrusted and empowered with the competence to promote, protect and monitor implementation of the Convention at the national level.² Although the Paris Principles set the standard for the establishment and functioning of independent monitoring frameworks, the Convention does not contain an obligation that the State's national human rights institution be designated as the framework; rather, it can be one of its mechanisms.

This practical guide on independent monitoring frameworks is aimed at assisting States parties to the Convention on the Rights of Persons with Disabilities and other stakeholders, including national human rights institutions and civil society, in understanding the key criteria for the establishment and functioning of independent monitoring frameworks according to the requirements of the Convention and the jurisprudence of the Committee on the Rights of Persons with Disabilities. States invariably indicate in their periodic reports to the Committee that they have established some form of independent monitoring framework, yet the structure and operation of such frameworks vary from State to State in their legal basis, composition, mandate and resources. The Committee has consistently recommended measures that States should take to ensure their mechanisms adhere to article 33 (2) of the Convention. Indeed, the Paris Principles allow States flexibility to determine the most appropriate approach to meet their “particular needs at the national level”.³

¹ See General Assembly resolution 48/134 (A/RES/48/134).

² CRPD/C/1/Rev.1, annex, “Guidelines on independent monitoring frameworks and their participation in the work of the Committee on the Rights of Persons with Disabilities”, para. 8.

³ A/RES/48/134, para. 12.

In September 2014, the Committee on the Rights of Persons with Disabilities, together with national human rights institutions and independent monitoring frameworks, launched a participatory process to develop guidelines on areas of engagement and involvement in its work. This led to the adoption of the guidelines on independent monitoring frameworks and their participation in the work of the Committee.⁴ The guidelines indicate how monitoring activities at the national level may be reinforced through collaboration between the Committee and independent monitoring frameworks, including national human rights institutions.⁵

A complementary initiative was undertaken by the Global Alliance of National Human Rights Institutions,⁶ which conducted surveys in 2011, 2017 and 2019 to examine how national human rights institutions take part in fulfilling States parties' obligations under article 33 (2) of the Convention. In 2018, the Committee on the Rights of Persons with Disabilities and the Global Alliance of National Human Rights Institutions jointly resolved to support effective national monitoring frameworks at the national level,⁷ including by developing and maintaining a repository of good practices and by developing this guide.

The preparation of this guide was led by the Office of the United Nations High Commissioner for Human Rights (OHCHR), together with the Committee on the Rights of Persons with Disabilities and the United Nations Development Programme through a global initiative supported by the United Nations Partnership on the Rights of Persons with Disabilities.⁸ It was developed in consultation with the Global Alliance of National Human Rights Institutions and the International Disability Alliance.⁹

The guide addresses key aspects of independent monitoring frameworks through a set of 11 questions. The questions and answers include the purpose and key aspects of independent monitoring frameworks in monitoring the Convention on the Rights of Persons with Disabilities at the national level, including the requirement of independence and the structure, mandate and composition of the frameworks. The guide also responds to frequently asked questions covering the establishment and operation of the frameworks, their engagement with other human rights mechanisms, the participation of persons with disabilities and their representative organizations in monitoring the Convention and key elements of monitoring the rights of persons with disabilities under the Convention. On the basis of the jurisprudence of the Committee on the Rights of Persons with Disabilities and of the general observations on the Paris Principles developed by the Global Alliance of National Human Rights Institutions, the guide provides examples to assist stakeholders as they establish, operate and engage in independent monitoring under the Convention.

⁴ CRPD/C/1/Rev.1, annex.

⁵ Ibid., para. 1.

⁶ The Global Alliance of National Human Rights Institutions brings together and provides global accreditation to national human rights institutions. See <https://ganhri.org/>.

⁷ Joint declaration by the Committee on the Rights of Persons with Disabilities and the Global Alliance of National Human Rights Institutions adopted in 2018, available at www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDStatements.aspx.

⁸ The United Nations Partnership on the Rights of Persons with Disabilities includes the International Labour Organization, OHCHR, the Department of Economic and Social Affairs, the United Nations Development Programme, the United Nations Children's Fund, the United Nations Educational, Scientific and Cultural Organization, the United Nations Population Fund, the United Nations Entity for Gender Equality and the Empowerment of Women and the World Health Organization. See www.unprpd.org/.

⁹ See www.internationaldisabilityalliance.org.



Frequently asked questions



Question 1: What are independent monitoring frameworks?

Independent monitoring frameworks monitor the implementation of the Convention on the Rights of Persons with Disabilities at the national level. They are official State bodies, as stated in the Convention's article 33 (2), which requires each State to maintain, strengthen, designate or establish a domestic framework for promoting, protecting and monitoring implementation of the Convention.

Independent monitoring of the Convention is key to informing its implementation. Independent monitoring frameworks may support the implementation of the general obligations under article 4 by:

- Assessing the impact and effectiveness of legislative and policy measures adopted to implement the Convention
- Identifying legislation, public policies or practices constituting discrimination against persons with disabilities and making proposals to modify or abolish them
- Investigating alleged violations of the rights of persons with disabilities, including discrimination on the basis of disability by any person, organization or private enterprise
- Organizing and conducting training and capacity-building of professionals and staff working with persons with disabilities in accordance with the Convention.

The Convention provides flexibility concerning monitoring mechanisms, and States parties to the Convention have the discretion to determine the structure of their independent monitoring frameworks in line with their own legal and administrative systems. Independent monitoring frameworks may comprise one or more entities or mechanisms (the so-called single-agent or multi-agent models, respectively) bearing the responsibility of implementing article 33 (2) of the Convention.¹⁰ Where they exist, national human rights institutions most often constitute or form part of independent monitoring frameworks. Other entities that may become part of independent monitoring frameworks include legislative committees, ombudsperson offices and organizations of persons with disabilities.¹¹

Independent monitoring frameworks under article 33 (2) of the Convention should not be confused with the requirement in article 33 (1) for States to designate one or more focal points within the Government for matters relating to implementation of the Convention. Unlike independent monitoring frameworks, focal points are governmental entities that are established to oversee or undertake implementation tasks in accordance with the general obligations of States parties set out in article 4 of the Convention.¹²

¹⁰ For information on monitoring under article 33 (2), see Valentin Aichele, "Article 33: national implementation and monitoring", in *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou, eds. (Oxford, Oxford University Press, 2018), pp. 978–1011.

¹¹ 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), para. 43.

¹² *Ibid.*, paras. 22–32.

Question 2: What are the core requirements of independent monitoring frameworks?

Independent monitoring frameworks should be independent and should ensure plurality and the participation of persons with disabilities and their representative organizations.

2.1 Independence

Monitoring frameworks should include one or more independent mechanisms, both from the State and from among private entities. Independence therefore requires States and private entities to refrain from interfering with, limiting or restricting the mandate or activities of the monitoring mechanism.¹³

Independence covers functional, financial and substantive independence. Functional independence enables monitoring frameworks to make decisions and regulate their procedures without outside interference, requiring States to ensure that monitoring frameworks are independent of the executive branch.¹⁴ Substantive independence requires States parties to set out in law the mandate of independent monitoring frameworks, ensuring it is sufficiently broad to encompass the promotion, protection and monitoring of all rights enshrined in the Convention.¹⁵ A hallmark of substantive independence is empowerment and trust to undertake a wide range of responsibilities. Financial independence requires that independent monitoring frameworks have appropriate levels of funding and have the ability to determine their spending priorities and activities.¹⁶

Functional independence

Functional independence encompasses the appointment of members of the independent monitoring mechanisms and the autonomy of their members with respect to government or public authorities and private entities. The term of office should be for a determined period, and the grounds of dismissal should be defined at the outset. Members of independent monitoring frameworks should enjoy privileges and immunities that are required for their functions. The membership should not include personnel or officials mandated to undertake tasks that conflict with the functions set out in the Convention (art. 33 (2)) or those from the executive branch of government.

¹³ Ibid., para. 11.

¹⁴ Ibid., para. 13.

¹⁵ Ibid., para. 15.

¹⁶ Global Alliance of National Human Rights Institutions, general observation 1.10, "Adequate funding of NHRIs", available at https://ganhri.org/wp-content/uploads/2019/11/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf.

For example:

The Committee on the Rights of Persons with Disabilities expressed concern about the lack of independence, capacity and resources of the Council of Slovenia for Persons with Disabilities, which had been designated as the country's independent monitoring framework for the implementation of the Convention.¹⁷ According to information from the State party, the activities of the Council for Persons with Disabilities were financed from the budget of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which would affect the Council's autonomy to manage its budget.¹⁸

The Committee on the Rights of Persons with Disabilities was concerned that the National Observatory on Disability of Argentina, which was tasked with monitoring implementation of the Convention in the country, was a subsidiary body of the National Advisory Commission on the Integration of Persons with Disabilities, a government agency, which infringed upon the Observatory's independence, contrary to the Paris Principles.¹⁹ The Committee recommended that Argentina should designate an independent body as the independent monitoring framework.²⁰



¹⁷ Committee on the Rights of Persons with Disabilities, concluding observations on the initial report of Slovenia (CRPD/C/SVN/CO/1), para. 57 (b).

¹⁸ Committee on the Rights of Persons with Disabilities, replies of Slovenia to the list of issues in relation to its initial report (CRPD/C/SVN/Q/1/Add.1), paras. 121–122.

¹⁹ Committee on the Rights of Persons with Disabilities, concluding observations on the initial report of Argentina (CRPD/C/ARG/CO/1), para. 51.

²⁰ *Ibid.* para. 52.

Key aspects of functional independence include the following provisions:

- No department or agency taking direction from the executive branch of government or involved in the implementation of the Convention should have decision-making authority if it participates in the independent monitoring framework.²¹ The Committee on the Rights of Persons with Disabilities has recommended that States should not include government representatives in independent monitoring frameworks.²²
- Where monitoring frameworks consist of one or more entities or mechanisms, all entities should be independent from the executive branch.²³
- Members of these mechanisms should be appointed in a public, democratic, transparent and participatory manner²⁴ that ensures the diverse representation of persons with disabilities as well as other stakeholders involved in the promotion and protection of the rights of persons with disabilities, such as organizations of persons with disabilities.²⁵
- The procedure for appointing members of independent monitoring frameworks should be established in law with guarantees of their diversity.²⁶
- The structure of an independent monitoring framework should allow for the smooth implementation of its mandate, including adequate human, technical and financial resources.²⁷
- Independent monitoring frameworks should have the autonomy to determine issues falling under their consideration and to develop and maintain relations with other relevant bodies.²⁸
- Independent monitoring frameworks should be able to determine their working methods independently and without interference.

Substantive independence

The substantive independence of independent monitoring frameworks is ensured through their mandate to promote, protect and monitor implementation of the Convention on the Rights of Persons with Disabilities, which should be set out in law – either in the country’s Constitution or by statute, or both.²⁹ The legal basis should set out in sufficient detail the competence of the monitoring mechanisms to undertake a wide range of responsibilities in fulfilment of their mandate under the Convention and should define their powers, funding and lines of accountability and the terms of office of their members.³⁰

²¹ Any government participation may be “only in an advisory capacity”. See [A/RES/48/134](#), annex, “Composition and guarantees of independence and pluralism”, para. 1 (e).

²² Committee on the Rights of Persons with Disabilities, concluding observations on the initial report of Luxembourg ([CRPD/C/LUX/CO/1](#)), para. 59; concluding observations on the initial report of Portugal ([CRPD/C/PRT/CO/1](#)).

²³ [CRPD/C/1/Rev.1](#), annex, para. 14.

²⁴ *Ibid.*, para. 13.

²⁵ See [A/RES/48/134](#).

²⁶ *Ibid.*

²⁷ *Ibid.* and [CRPD/C/1/Rev.1](#), annex, para. 15.

²⁸ [CRPD/C/1/Rev.1](#), annex, para. 13.

²⁹ See [A/RES/48/134](#) and [CRPD/C/1/Rev.1](#), annex, para. 13.

³⁰ Global Alliance of National Human Rights Institutions, general observation 1.1, “The establishment of NHRIs”.

Establishing independent monitoring frameworks in Constitutions or in statute gives them permanence, protects them from the whims of government and provides the frameworks with unfettered room to exercise their mandate.³¹ Legislation should ensure that independent monitoring frameworks are distinguished from agencies of State, non-governmental organizations and ad hoc bodies.

Where a national human rights institution is designated as the sole independent monitoring mechanism or as part of the independent monitoring framework, its existing mandate may not cover the breadth of the additional roles under article 33 (2) of the Convention. In that instance, further legislation or regulation should clearly define the legal mandate of the national human rights institution in light of its designation as the independent monitoring mechanism:³²

When Morocco determined that its national human rights institution, the National Human Rights Council, could be designated as its independent monitoring mechanism, it adopted a new founding law to strengthen the roles, prerogatives and means of action of the national human rights institution.³³

Austria established a new body, the Independent Monitoring Committee, as the independent monitoring mechanism under federal parliamentary statute.³⁴

Financial independence

Where a State party designates an existing body as the independent monitoring mechanism, it should provide additional and adequate human and financial resources to enable the designated entity to effectively undertake the protection, promotion and monitoring functions under the Convention.

The establishing or designating legislation should set out the source and nature of the body's funding and the process for allocating its annual funding.³⁵ A needs assessment of the necessary funding should be performed in consultation with the existing mechanism, with the participation of organizations of persons with disabilities and other relevant actors.

Independent monitoring frameworks may also raise funds privately, including from donors and development partners. However, this should not constitute their core funding, nor should it become a basis to disqualify the mechanisms from receiving public funds.³⁶ Funding should be secured and it should not be used to interfere with mechanisms' decisions or processes. Their work should not be undermined by budget cuts.

³¹ Global Alliance of National Human Rights Institutions, "A practical guide to the work of the Sub-Committee on Accreditation (SCA)", December 2017, updated November 2018, p. 16.

³² Global Alliance of National Human Rights Institutions, general observation 2.8, "Assessing NHRIs as national preventive and national monitoring mechanisms".

³³ Morocco, National Human Rights Council, "About us", www.cndh.org.ma/an/about-cndh/about-us.

³⁴ Austria, Independent Monitoring Committee on the Implementation of the UN Convention on the Rights of Persons with Disabilities, www.monitoringausschuss.at/en/ueber-den-ausschuss/.

³⁵ Ibid.

³⁶ See OHCHR, *Preventing Torture: The Role of National Preventive Mechanisms* (New York and Geneva, 2018), www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf, p. 17.

2.2 Diversity and inclusion of persons with disabilities³⁷

The credibility and accessibility of independent monitoring frameworks relies on the diverse composition of their members and staff. The composition of independent monitoring frameworks should ensure the diverse representation of the social forces of civil society involved in the protection and promotion of human rights.³⁸ The requirement of diversity anticipates the representation of different segments of society, with criteria for membership set out in legislation and made publicly available.³⁹

Persons with disabilities, in all their diversity and through their representative organizations, should be enabled to participate in independent monitoring frameworks. This includes participation as members of the framework and in undertaking monitoring activities. States parties should consider providing persons with disabilities and their representative organizations with financial assistance, with a requirement that all avenues for engagement in independent monitoring at the national level be made available in accessible forms, modes, means and formats.⁴⁰ It is also a requirement to provide opportunities to determine issues for human rights monitoring, to discuss litigation strategies and to participate fully in awareness-raising and educational campaigns. Such engagement increases the credibility and legitimacy of independent monitoring among stakeholders, and among persons with disabilities themselves.

Women with disabilities should be represented in the leadership of independent monitoring frameworks.⁴¹ The participation of children with disabilities and persons with disabilities with complex support needs, as well as of persons representing all or some of the wide diversity of impairments, should also be facilitated by the independent monitoring frameworks.⁴² With the aim of including the representation of persons with diverse disabilities and genders in independent monitoring frameworks, some States parties have designated an organization or umbrella organization of persons with disabilities as an independent monitoring mechanism and as part of their monitoring frameworks. Others have included persons with disabilities as members of the designated or established independent monitoring frameworks:

The membership of the Independent Monitoring Committee of Austria, the country's independent monitoring framework, includes four representatives of organizations of persons with disabilities, with one substitute member for each organization.⁴³

The enabling law states that 5 of the 10 members of the independent monitoring framework of Portugal should be representatives of each of the following areas of disability: visual, motor, intellectual, hearing and organic.⁴⁴

³⁷ See also question 4 below.

³⁸ A/RES/48/134.

³⁹ Global Alliance of National Human Rights Institutions, general observation 1.7, "Ensuring pluralism of the NHRI".

⁴⁰ Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014) on article 9: accessibility (CRPD/C/GC/2), para. 48.

⁴¹ Committee on the Rights of Persons with Disabilities, general comment No. 3 (2016) on women and girls with disabilities (CRPD/C/GC/3), para. 64.

⁴² Committee on the Rights of Persons with Disabilities, general comment No. 4 (2016) on the right to inclusive education (CRPD/C/GC/4), para. 12.

⁴³ See Austria, Independent Monitoring Committee for the Implementation of the UN Convention on the Rights of Persons with Disabilities, www.monitoringausschuss.at/ueber-uns/.

⁴⁴ Portugal, Resolution of the Council of Ministers No. 68/2014, para. 6 (e), available at <https://dre.tretas.org/dre/3763496/resolucao-do-conselho-de-ministros-68-2014-de-21-de-novembro>.



Question 3: Why designate or establish independent monitoring frameworks?

The added value of establishing an independent monitoring framework lies in providing an objective assessment at the domestic level of the extent to which the State party has implemented the Convention on the Rights of Persons with Disabilities and in advising States parties on matters concerning the promotion and protection of human rights. This includes, for example, evaluating whether national legislation is aligned with the human rights model of disability,⁴⁵ assessing the extent to which facilities, programmes and services intended to serve persons with disabilities are achieving their objectives, monitoring progress made on implementing deinstitutionalization strategies for persons with disabilities, and providing support for living independently within the community.⁴⁶ The fact that such frameworks are mechanisms that are independent from the executive is vital to ensure the credibility of information collected on the situation of persons with disabilities nationally and to hold the State party accountable for respecting its treaty obligations.

The Government of New Zealand set up its independent monitoring framework, the Independent Monitoring Framework, in 2010, composed of the Human Rights Commission, the Office of the Ombudsman and the Convention Coalition (a coalition of organizations of persons with disabilities – now the DPO Coalition).⁴⁷ The framework has conducted monitoring and has published its findings about the state of disability rights, including during the coronavirus disease (COVID-19) pandemic. Independent mechanisms also took part in the constructive dialogue between the State party and the Committee on the Rights of Persons with Disabilities in 2022.⁴⁸

Question 4: What are the functions of independent monitoring frameworks?

The functions of independent monitoring frameworks under article 33 (2) of the Convention on the Rights of Persons with Disabilities are threefold: to promote, to protect and to monitor the rights of persons with disabilities at the national level. These functions involve interrelated and cross-cutting actions.⁴⁹

The promotion function aims to strengthen the rights of persons with disabilities by raising public awareness of those rights and by building the capacities of policymakers to generate action anchored

⁴⁵ The Convention on the Rights of Persons with Disabilities reflects the shift of understanding of disability from medical and charity models of disability, which focused on personal impairments as the cause of social exclusion and treated persons with disabilities as objects to be “protected”, to the human rights model of disability. The preamble and the definition of persons with disabilities in article 1 reflect this new understanding, according to which disability is a social construct, and it is the barriers within society, rather than personal impairments, that exclude persons with disabilities. See Marine Uldry and Theresia Degener, “Towards inclusive equality: 10 years Committee on the Rights of Persons with Disabilities”, 2018, para. 16, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=INT/CRPD/INF/20/27621&Lang=en.

⁴⁶ Committee on the Rights of Persons with Disabilities, general comment No. 5 (2017) (CRPD/C/GC/5), para. 97.

⁴⁷ Committee on the Rights of Persons with Disabilities, combined second and third periodic reports submitted by New Zealand (CRPD/C/NZL/2-3), para. 369.

⁴⁸ New Zealand, Independent Monitoring Mechanism, “Disability rights: how is New Zealand doing? An update report about the state of disability rights in New Zealand”, June 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRPD%2FCSS%2FNZL%2F49061&Lang=en.

⁴⁹ Mental Disability Advocacy Center, *Building the Architecture for Change: Guidelines on Article 33 of the UN Convention on the Rights of Persons with Disabilities* (Budapest, 2011) pp. 42–45, http://mdac.org/sites/mdac.org/files/article_33_EN.pdf.

on a culture of human rights.⁵⁰ Independent monitoring frameworks should contribute to improved understanding and respect, including through education, training, advice, public outreach and advocacy.⁵¹

Promotion actions may include:

- Providing policymakers with detailed analyses of the rights and obligations set out in the Convention on the Rights of Persons with Disabilities;
- Organizing training on the Convention for policymakers, including those working in government focal points; engaging with government departments and helping them to mainstream the rights of persons with disabilities into their policies;
- Providing information on, and reminding policymakers of, States parties' reporting obligations;
- Organizing training to provide disability-appropriate support on the Convention, especially on how to advance meaningful participation in policymaking, how to build capacity for self-advocacy and how to take action to protect the rights of persons with disabilities;
- Ensuring that education systems integrate disability into human rights education; providing training for lawyers and judges to apply the Convention in order to create legal precedents or to clarify or improve upon legislation;
- Reviewing and disseminating the jurisprudence (general comments, statements and decisions) of the United Nations treaty bodies, especially the Committee on the Rights of Persons with Disabilities;
- Translating this jurisprudence into an understandable language for policymakers and people with disabilities; and encouraging Governments to implement recommendations or enforce judgments so as to avoid new recourse to the treaty bodies;
- Producing and distributing material on the complaints procedure under the Optional Protocol to the Convention on the Rights of Persons with Disabilities and on complaints procedures under other legal instruments;
- Organizing campaigns and other awareness-raising activities about the Convention in the media.⁵²

Independent monitoring mechanisms may contribute to disability inclusion, which is characterized as the meaningful participation of persons with disabilities in all their diversity and the promotion and mainstreaming of their rights, in compliance with the Convention on the Rights of Persons with Disabilities.⁵³

⁵⁰ OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities* (New York and Geneva, 2010), www.ohchr.org/sites/default/files/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

⁵¹ A/RES/48/134, para.1; Global Alliance of National Human Rights Institutions, general observation 1.2, "Human rights mandate", available at https://ganhri.org/wp-content/uploads/2019/11/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf.

⁵² Mental Disability Advocacy Center, *Building the Architecture for Change: Guidelines on Article 33*, pp. 42–43.

⁵³ United Nations Disability Inclusion Strategy, available at www.un.org/en/content/disabilitystrategy/assets/documentation/UN_Disability_Inclusion_Strategy_english.pdf.

The aim of the protection function is to uphold the rights of persons with disabilities through the investigation and determination of complaints. This function is also aimed at providing redress to persons with disabilities when their rights have been violated. It is further intended to prevent actual human rights violations, and comprises actions such as inquiring into, investigating and reporting on violations and abuses of the rights of persons with disabilities.⁵⁴

Protection actions include:

- Ensuring there is some form of advocacy (self-advocacy, peer advocacy or lay advocacy) in community settings and, where they exist, in places of detention, such as prisons, psychiatric departments, children’s homes and social care institutions
- Addressing individual complaints on alleged violations of the Convention reported by persons with disabilities and making recommendations to Governments to comply with the Convention
- Providing mediation between policymakers and persons with disabilities on the application of the Convention
- Providing assistance to persons with disabilities in domestic courts;
- Lobbying Governments to provide legal aid so that people with disabilities can bring alleged violations of the Convention to domestic courts
- Taking legal action in the name of victims of alleged violations of the Convention in domestic courts
- Filing amicus curiae briefs or making third-party interventions to provide domestic courts with in-depth expertise on the rights and obligations set out in the Convention, and assisting courts in their proper administration of justice
- Helping persons with disabilities to bring complaints before regional and international bodies and tribunals, including the Committee on the Rights of Persons with Disabilities
- Acting upon issues or individual cases which have been brought to light by domestic, regional or international inspection mechanisms; ensuring follow-up to the decisions of the Committee on the Rights of Persons with Disabilities following individual complaints within States parties based on the Optional Protocol to the Convention.⁵⁵

The monitoring function seeks to hold States to account on their obligations by evaluating and advising them on whether domestic legislation, policy and practices comply with the Convention and effectively ensure the realization of the rights of persons with disabilities. Monitoring the implementation of the Convention encompasses assessing progress, lack of progress or retrogression in the enjoyment of rights of persons with disabilities over a certain period or with respect to persons with disabilities facing intersectional discrimination, for instance women and girls with disabilities, internally displaced persons and asylum-seeking or refugee persons with disabilities.

⁵⁴ Mental Disability Advocacy Center, *Building the Architecture for Change: Guidelines on Article 33*, p. 42.

⁵⁵ *Ibid.*, pp. 43–44.



Independent monitoring mechanisms may also advocate for the cessation of violations of rights recognized by the Convention, and they can encourage States to cooperate with international monitoring bodies.⁵⁶ The independent monitoring framework should coordinate its activities with the other monitoring mechanisms in the State, such as the national preventive mechanisms established pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Independent monitoring frameworks accomplish key tasks concerning the monitoring of the Convention, through conducting public inquiries on the situation of human rights of persons with disabilities, by conducting studies and surveys, by preparing annual reports about the situation of persons with disabilities and about the findings of their monitoring, and by engaging in the reporting procedure before the Committee on the Rights of Persons with Disabilities.⁵⁷ They may also monitor human rights violations by collecting or keeping records of complaints filed by alleged victims before

⁵⁶ Ibid., pp. 44–45.

⁵⁷ OHCHR, *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors* (New York and Geneva, 2010), www.ohchr.org/sites/default/files/Documents/Publications/Disabilities_training_17EN.pdf; and United Nations, OHCHR and the Inter-Parliamentary Union, *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities* (Geneva, United Nations, 2007), www.ohchr.org/sites/default/files/training14en.pdf.

relevant judicial or quasi-judicial complaints mechanisms or as reported by organizations of persons with disabilities or other civil society organizations.⁵⁸

Human rights indicators: a tool for carrying out the monitoring function

The monitoring function is improved when it uses indicators, as they provide an overview of key areas to follow up in relation to specific rights recognized in the Convention. Independent monitoring frameworks may use the human rights indicators on the Convention on the Rights of Persons with Disabilities, a component of the SDG-CRPD resource package developed by OHCHR.⁵⁹ These indicators are used by the Committee on the Rights of Persons with Disabilities in the context of country reviews, as they provide an overview of the measures and actions that will be examined by the Committee to assess progress on the implementation of a given right or provision.

Independent monitoring frameworks may follow up on indicators and benchmarks set by relevant authorities for monitoring purposes. They may plan monitoring work in relation to the following types of human rights indicators:⁶⁰

- (a) Structural indicators, which track the commitments of States by recording whether they are party to international and regional legal instruments, policy documents or institutional mechanisms to promote and protect the rights of persons with disabilities;
- (b) Process indicators, which track actions taken by States to fulfil those obligations and which may include training, awareness-raising and resources;
- (c) Outcome indicators, which record the impact of actions and describe the extent to which the rights of persons with disabilities are being fulfilled.⁶¹

The Committee on the Rights of Persons with Disabilities has recommended that States parties collect statistical data on the situation of persons with disabilities, including the number of prosecutions, convictions and sentences imposed on perpetrators of exploitation, violence and abuse against persons with disabilities.⁶² In addition, independent monitoring frameworks should disaggregate data on the basis of gender⁶³ and the requirements of all persons with disabilities.

Twin-track approach to monitoring the rights of persons with disabilities

Independent monitoring frameworks should use a twin-track approach to monitor the rights of persons with disabilities. This approach focuses on disability-specific initiatives, including programmes and projects, as well as on the inclusion of persons with disabilities in mainstream human rights initiatives,

⁵⁸ A/HRC/13/29, paras. 67–68.

⁵⁹ OHCHR, SDG-CRPD resource package, available at www.ohchr.org/en/disabilities/sdg-crpd-resource-package.

⁶⁰ OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (2012) (HR/PUB/12/5).

⁶¹ For more information on disability-specific indicators, see OHCHR, *Frequently asked questions on the human rights indicators on the Convention on the Rights of Persons with Disabilities (CRPD)*, available at www.ohchr.org/Documents/Issues/Disability/SDG-CRPD-Resource/crpd-indicators-frequently-asked-questions.pdf.

⁶² See, for example, CRPD/C/SVN/CO/1, para. 28.

⁶³ Committee on the Rights of Persons with Disabilities, general comment No. 3 (2016) (CRPD/C/GC/3), para. 63.

and it allows the extent to which disability is mainstreamed into all general or sectoral legislation, policies and programmes to be assessed. Monitoring may, for instance, assess the inclusiveness of the education system for all students, including students with disabilities.

Comprehensive approach to monitoring

Monitoring should cover all the rights established in the Convention on the Rights of Persons with Disabilities. Independent monitoring mechanisms should mobilize all available institutions and expertise towards a comprehensive monitoring of the situation and rights of persons with disabilities. Notably, independent monitoring frameworks should monitor measures taken to remove barriers impeding the full and effective participation and inclusion of persons with disabilities in society. This may include monitoring programmes and resources allocated to enhance the access of persons with disabilities to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, in both urban and rural areas. It further entails monitoring the enjoyment by persons with disabilities of their right to live independently and be included in the community; providing access to support in exercising legal capacity and community support, including personal assistance; and providing access to work and employment in the open labour market. It can also include initiatives to prevent the occurrence of all forms of exploitation, violence and abuse.

Independent monitoring frameworks may take a proactive role in monitoring the position of persons with disabilities in situations of risk and emergencies, including disasters related to armed conflict, climate change or a global pandemic.

Monitoring the rights of persons with disabilities in the private and public sectors

Independent monitoring should extend to acts and omissions of both public and private entities. The Committee on the Rights of Persons with Disabilities has expressed concern about the limited mandate of some independent monitoring frameworks and has encouraged States parties to uphold the competencies of monitoring mechanisms concerning private and public services and to provide monitoring mechanisms with adequate human, technical and financial resources to accomplish their functions.

The Committee was concerned that the mandate of the entities designated as the independent monitoring framework in Luxembourg had insufficient clarity and scope, and that these entities did not have jurisdiction to receive complaints on discrimination in the private sector. The Committee recommended that the State extend the protection mandate of the independent monitoring framework to both the private and public sectors.⁶⁴

⁶⁴ CRPD/C/LUX/CO/1, paras. 58–59.

Key principles of monitoring the Convention on the Rights of Persons with Disabilities

In monitoring implementation of the Convention, independent monitoring frameworks should be guided by the following principles:⁶⁵

- The “do no harm” principle. Monitors should ensure their activities do not cause harm to interviewees or witnesses.
- Systematic and regular monitoring. A one-off monitoring activity will be inadequate as an effective basis for measuring progress.
- Impartiality of monitors, who should demonstrate independence while undertaking their tasks.
- Diversity. A monitoring team should be constituted of diverse individuals including persons with disabilities. It should include members with a variety of disciplines and competencies. The team should be trained appropriately, and an assumption should not be made that all of its members understand the rights of persons with disabilities.
- A holistic approach. Independent monitoring should include analysis of information gathered from individual experiences, systems and societal attitudes. Primary sources are important.
- Verification of evidence and information. Monitoring teams should question and test the reliability and credibility of sources and contacts as well as the validity and relevance of the information they provide.
- Accessibility. Monitoring processes should include accessibility and reasonable accommodation measures to enable monitors with disabilities and respondents with disabilities to participate on an equal basis.
- Confidentiality and privacy. The collected information should be stored securely and with due respect for the privacy rights of all involved.

Checklist: monitoring activities of independent monitoring frameworks⁶⁶

- ✓ Developing or participating in the development of a strategic monitoring plan which may be theme- or group-specific and which should include time-bound programmes; the plan should identify relevant government departments and should set out how collaboration with organizations of persons with disabilities will be fostered
- ✓ Evaluating compliance of legislation and policies with the Convention and/or recommending their harmonization with the Convention
- ✓ Monitoring practice by undertaking or commissioning research into the experiences of persons with disabilities and by carrying out field visits to places where persons with disabilities live

⁶⁵ Adapted from ITHACA Project Group, *The ITHACA Toolkit for Monitoring Human Rights and General Health Care in Mental Health and Social Care Institutions* (London, King’s College London, 2010), available at www.ithacastudy.eu/toolkits/english/2.4%20Ithaca%20Toolkit%20English.pdf.

⁶⁶ Ibid.

- ✓ Conducting formal investigations and general inquiries on issues of grave or systemic violations of the Convention and recommending remedies and prevention measures
- ✓ Providing training and information to policymakers on how to prepare initial or periodic reports to the Committee on the Rights of Persons with Disabilities
- ✓ Seeking follow-up to the concluding observations of the Committee on the Rights of Persons with Disabilities

Accessibility requirements in undertaking monitoring functions

Independent monitoring frameworks should ensure that their monitoring activities and all their other functions are accessible to persons with disabilities.

Checklist of accessibility requirements for persons with disabilities⁶⁷

- ✓ Printed and digital materials (such as training manuals, reports, information about the monitoring process, consent forms and questionnaires). These materials should be produced in accessible formats and languages as necessary for the full participation of persons with disabilities (such as Braille, large print, screen readers, screen magnifiers, sign languages, Easy Read and other accessible formats).
- ✓ Information on visual aids (such as websites or web pages, computer slide presentations, photographs, diagrams, maps and videos). This information should be communicated in accessible formats (e.g. by providing text and descriptions of images, audio description or voice-over for videos).
- ✓ Verbal communication (such as face-to-face and telephone meetings, training sessions, audio recordings and monitoring interviews). Adequate time should be allocated for verbal communication, and the necessary interpreters or facilitators should be available to ensure that persons with disabilities, including those who are deaf or deaf-blind, who have intellectual disabilities or who use augmentative or alternative communication, can access what is being said and can communicate their own ideas (including through sign language interpretation, real-time transcription or communication assistants).
- ✓ Locations (such as for meetings, training sessions or interviews):
 - (a) Should be accessible for those using mobility devices (by avoiding locations with stairs without appropriate ramps, rooms accessed by narrow passages or doorways, and cramped rooms without adequate light);
 - (b) Should have accessible toilets;
 - (c) Should be easily accessible to participants by cost-effective and accessible transport;
 - (d) Should have adequate signs in multiple formats and/or should have people available to assist participants to reach the location.

⁶⁷ Derived from OHCHR, *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors*, www.ohchr.org/sites/default/files/Documents/Publications/Disabilities_training_17EN.pdf.

Question 5: How do persons with disabilities and their representative organizations participate in independent monitoring frameworks?

The Convention on the Rights of Persons with Disabilities provides for the active involvement and full participation of persons with disabilities and their representative organizations in monitoring the Convention (art. 33 (3)). This measure reinforces the general obligation of States parties to closely consult with and actively involve persons with disabilities through their representative organizations in implementing the Convention (art. 4 (3)).

The Committee on the Rights of Persons with Disabilities explained, in its general comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention (CRPD/C/GC/7), that:

States parties should ensure that independent monitoring frameworks allow for, facilitate and ensure the active involvement of organizations of persons with disabilities in such frameworks and processes, through formal mechanisms, ensuring that their voices are heard and recognized in its reports and the analysis undertaken. The inclusion of organizations of persons with disabilities in the independent monitoring framework and the work thereof can take several forms, for example, through seats on the board of or advisory bodies to the independent monitoring frameworks (para. 38).



Organizations of persons with disabilities and their umbrella organizations may be designated as monitoring mechanisms, or they can be actors in the independent monitoring framework. Independent monitoring mechanisms, including national human rights institutions, may appoint persons with disabilities as members of the mechanism either in their individual capacities or as representatives of organizations of persons with disabilities. Persons with disabilities may be appointed as commissioners or as ombudspersons, as appropriate, or they may be members of staff of independent monitoring frameworks.

States parties such as Germany, New Zealand and Spain, along with the European Union, have appointed coalitions of organizations of persons with disabilities among the mechanisms of their independent monitoring frameworks.

Persons with disabilities should participate in independent monitoring frameworks through their representative organizations and not through organizations of service providers.⁶⁸ Independent monitoring frameworks should involve the broadest diversity of persons with disabilities and of their organizations. They may draw participation from:

- Umbrella organizations of persons with disabilities (coalitions of representative organizations)
- Self-advocacy organizations (advocating for the rights of persons with different disabilities and especially those with intellectual disabilities and psychosocial disabilities)
- Women and girls with disabilities and their representative organizations, which should be included in all monitoring mechanisms.

The participation of persons with disabilities in independent monitoring frameworks should be meaningful, rather than formalistic or tokenistic. Independent monitoring frameworks may establish specific advisory roles for organizations of persons with disabilities. To underlie that, persons with disabilities and their representative organizations should be consulted on the process for recruiting members of independent monitoring frameworks. States should grant financial and other assistance to strengthen the monitoring capacities of organizations of persons with disabilities and their representatives in independent monitoring frameworks, and such organizations may also seek funding from non-governmental sources.⁶⁹

Question 6: What are some examples of independent monitoring frameworks?

States parties to the Convention on the Rights of Persons with Disabilities have taken different approaches in designating independent monitoring mechanisms and frameworks. The examples in this section represent practices from diverse legal and administrative systems. Independent monitoring frameworks can be complex and diverse in structure and in a constant state of evolution in response to feedback from international bodies, particularly the Committee on the Rights of Persons with Disabilities.

⁶⁸ OHCHR, *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors*, www.ohchr.org/sites/default/files/Documents/Publications/Disabilities_training_17EN.pdf, para. 13.

⁶⁹ *Ibid.*, para. 39; see also the report of the Special Rapporteur on the rights of persons with disabilities (A/HRC/31/62), para. 54; and general comment No. 7 of the Committee on the Rights of Persons with Disabilities, para. 39.



Independent monitoring frameworks based on national human rights institutions

Canada

The Canadian independent monitoring framework comprises one entity: the Canadian Human Rights Commission, which was so designated in 2019⁷⁰ by legislative amendment following a recommendation from the Committee on the Rights of Persons with Disabilities.⁷¹ The objectives of its International Cooperation and Monitoring Unit include monitoring progress and reporting on whether the Government of Canada is fulfilling its human rights obligations as outlined in the Convention. The Unit is also responsible for ensuring that persons with disabilities and their representative organizations are actively engaged and involved in its monitoring work.⁷²

Estonia

The Chancellor of Justice was designated by the Parliament of Estonia in 2018 as the independent monitoring mechanism to promote, protect and monitor implementation of the Convention.⁷³ The Chancellor of Justice is an independent official mandated to review the alignment of legislation with the Constitution, existing national laws and the country's treaty obligations. The Office of the Chancellor also receives and resolves complaints alleging discrimination in private law, under the Constitution and other legislation.⁷⁴

Georgia

In 2014 the Public Defender (Ombudsman) of Georgia, which works with the Consultative Council for Monitoring the Promotion, Protection and Implementation of the Convention and with a monitoring group, was designated as the country's monitoring mechanism under article 33 (2) of the Convention.⁷⁵ The Public Defender receives complaints concerning the alleged violations of human rights of persons with disabilities by State authorities, local self-government bodies, public institutions or officials. It also prepares periodic reviews to lay before the country's Parliament and issues recommendations.⁷⁶

⁷⁰ Canadian Human Rights Commission, "Departmental results report: 2019-20", p. 8, www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/drr201920_eng.pdf. Prior to the designation of the Canadian Human Rights Commission, Canada had sought to rely on its interpretive statement on article 33 (2) not to designate a specific entity as its independent monitoring framework. Canada had stated that it interpreted article 33 (2) as accommodating the situation of federal States, where the implementation of the Convention would occur at more than one level of government and through a variety of mechanisms, including existing ones.

⁷¹ Committee on the Rights of Persons with Disabilities, concluding observations on the initial report of Canada (CRPD/C/CAN/CO/1), para. 58.

⁷² Canadian Human Rights Commission, *Stand Together: The Canadian Human Rights Commission's 2019 Annual Report to Parliament* (Ottawa, 2020), p. 13, <https://2019.chrcreport.ca/>.

⁷³ Committee on the Rights of Persons with Disabilities, replies of Estonia to the list of issues in relation to its initial report (CRPD/C/EST/RQ/1), para. 157.

⁷⁴ *Ibid.*, para. 158.

⁷⁵ Public Defender of Georgia. Submission to the Committee on the Rights of Persons with Disabilities, 2017.

⁷⁶ Replies of Georgia to the list of issues in relation to its initial report (CRPD/C/GEO/RQ/1), paras. 178–179.

Germany

In 2008, the German Institute for Human Rights, the national human rights institution, was explicitly mandated to include the monitoring of the Convention on the Rights of Persons with Disabilities in accordance with article 33 (2). Subsequently, the Institute's supervisory Board of Trustees was augmented with a representative of the German Disability Council. The Institute set up a specific department for this mandate, the National CRPD Monitoring Mechanism. The Institute raises awareness of the Convention, reviews legislative and administrative rules, submits amicus curiae briefs and monitors the situation of persons with disabilities.⁷⁷

Kenya

The Kenya National Commission on Human Rights, which is the national human rights institution established by Constitution and statute,⁷⁸ was designated as the independent monitoring mechanism in 2011. The mechanism was briefly transferred to the competence of the National Gender and Equality Commission, but it was later transferred back to the National Commission on Human Rights⁷⁹ on the recommendation of the Committee on the Rights of Persons with Disabilities, which determined that the National Gender and Equality Commission was not an independent mechanism in line with the Paris Principles, given its statutory mandate to report to the executive.⁸⁰ The National Commission on Human Rights conducts monitoring visits and assesses the extent to which the Convention is implemented to address, inter alia, access to education, health, transport and the physical environment, and adequate standards of living. The secretariat of the National Commission on Human Rights has a disability focal point to coordinate disability-related work, and it ensures that representatives of organizations of persons with disabilities accompany the monitoring teams on field visits.⁸¹

Morocco

In 2018, Morocco enacted legislation recognizing the competence of the National Human Rights Council as an independent monitoring framework under article 33 (2) of the Convention. The legislation takes into account both the Paris Principles and the Belgrade Principles on the relationship between national human rights institutions and parliaments.⁸² The functions of the Council are to receive complaints on human rights violations from persons with disabilities, to conduct investigations, to undertake hearings and to provide remedies.⁸³

⁷⁷ Gauthier De Beco, *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe* (Geneva, OHCHR, 2011).

⁷⁸ See article 59 of the Constitution of Kenya of 2010, available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>; Kenya National Commission on Human Rights Act, 2011, available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2014%20of%202011>.

⁷⁹ See www.knchr.org/Our-Work/Research-and-Compliance/Disability.

⁸⁰ Committee on the Rights of Persons with Disabilities, concluding observations on the initial report of Kenya (CRPD/C/KEN/CO/1), paras. 59–60.

⁸¹ Mirriam Nithenge, "Promotion, protection and monitoring: implementing article 33 (2) of the Convention on the Rights of Persons with Disabilities in Kenya", in *East African Law Journal Special Issue on Disability Rights 2016/2017* (Nairobi, University of Nairobi, 2017), p. 56.

⁸² See "National institutions for the promotion and protection of human rights" (A/HRC/20/9), annex.

⁸³ Morocco, National Human Rights Council, "About us", www.cndh.org.ma/an/about-cndh/about-us.

Peru

In 2012, the Office of the Ombudsperson (Defensoría del Pueblo)⁸⁴ was designated as the independent monitoring framework.⁸⁵ Referred to as the Independent Mechanism to Promote, Protect and Supervise the Application of the Convention on the Rights of Persons with Disabilities, the Office has supervisory, promotion and protection functions. For instance, it may carry out unannounced supervision visits to places of detention, it can promote the incorporation of the rights of persons with disabilities in public policies, it monitors the implementation of such policies and it can undertake strategic litigation.⁸⁶ In 2019, a specific budget was set aside for its work to monitor the implementation of the Convention.

Republic of Korea

The National Human Rights Commission of Korea, the country's national human rights institution established by statute, is designated as the independent monitoring framework pursuant to article 33 (2) of the Convention.⁸⁷ Its functions include developing human rights-based policies through conducting research and issuing recommendations, investigating allegations of discrimination, promoting human rights education, including through raising public awareness, promoting and monitoring domestic implementation of international human rights treaties and cooperating with government agencies, civil society organizations, United Nations human rights bodies and other national human rights institutions. Persons with disabilities are employed as staff members and subject-matter experts at the Commission, and they are also actively involved in all the functions of the independent monitoring framework.

Rwanda

The National Commission for Human Rights is the independent monitoring framework in Rwanda,⁸⁸ with the mandate to protect, promote and monitor the Convention on the Rights of Persons with Disabilities. Although the Commission receives government funding to undertake its functions, the Committee on the Rights of Persons with Disabilities has expressed concern that the budgeted amount is insufficient to allow the Commission to perform its mandate effectively.⁸⁹

⁸⁴ International Disability Alliance, *Report on IDA's Follow-up Mission to Peru* (2017), www.internationaldisabilityalliance.org/ida-follow-up-peru-oct2015.

⁸⁵ Peru, General Law on Persons with Disabilities, Law No. 29973, 2012, art. 86, <https://dredf.org/legal-advocacy/international-disability-rights/international-laws/peru-law-no-29973-general-law-on-persons-with-disabilities/>.

⁸⁶ See www.defensoria.gob.pe/mecanismo-independiente-para-promover-y-supervisar-la-convencion-sobre-derechos-de-personas-con-discapacidad-micdpd/.

⁸⁷ Initial reports submitted by States parties under article 35 of the Convention: Republic of Korea (CRPD/C/KOR/1), para. 168.

⁸⁸ Committee on the Rights of Persons with Disabilities, initial report of Rwanda (CRPD/C/RWA/1), para. 27.

⁸⁹ Committee on the Rights of Persons with Disabilities, concluding observations on the initial report of Rwanda (CRPD/C/RWA/CO/1), para. 61.

Uganda

The independent monitoring framework of Uganda comprises the National Council for Disability, the Equal Opportunities Commission and the Uganda Human Rights Commission.⁹⁰ The Directorate of Monitoring within the Uganda Human Rights Commission is responsible for monitoring government compliance with international human rights treaties which Uganda has ratified, including the Convention on the Rights of Persons with Disabilities.⁹¹ Although the Human Rights Commission receives government funding to undertake its functions, the Committee on the Rights of Persons with Disabilities has expressed concern that the budgeted amount is insufficient to allow the Commission to perform its mandate effectively.⁹²



UN PHOTO/JOHN ISAAC

⁹⁰ Committee on the Rights of Persons with Disabilities, replies of Uganda to the list of issues in relation to its initial report (CRPD/C/UGA/Q/1/Add.1), para. 90.

⁹¹ See www.uhrc.ug/about/directorates/monitoring-inspections/.

⁹² Committee on the Rights of Persons with Disabilities, concluding observations on the initial report of Uganda (CRPD/C/UGA/CO/1), paras. 64 and 65 (b).

United Kingdom of Great Britain and Northern Ireland

The UK Independent Mechanism, designated as the independent monitoring framework for the United Kingdom in 2008, is comprised of the Equality and Human Rights Commission, the Equality Commission for Northern Ireland, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission. Its mandate includes raising awareness about the rights of persons with disabilities, individually or jointly, and undertaking general inquiries. The different bodies within the United Kingdom have the mandate to handle complaints concerning violations of the rights of persons with disabilities. The three national human rights institutions coordinate their activities on matters at the United Kingdom level, and they act as a single entity in their representations to the Committee on the Rights of Persons with Disabilities. Although the UK Independent Mechanism receives government funding, the Committee on the Rights of Persons with Disabilities notes that this is insufficient to support effective and comprehensive monitoring, including through the participation of organizations of persons with disabilities in the monitoring process.⁹³

Independent monitoring frameworks with conditions to include organizations of persons with disabilities among their independent mechanisms

Denmark

The independent monitoring framework of Denmark comprises three entities: the Danish Institute for Human Rights, the Danish Disability Council and the Danish Parliamentary Ombudsman.⁹⁴ The Danish Institute for Human Rights has a Council consisting of representatives of civil society organizations, academics and representatives of ministries (albeit the ministry representatives do not have voting rights). The functions of the Danish Institute for Human Rights include raising awareness, providing advice on the rights of persons with disabilities and organizing round tables with organizations of persons with disabilities. In addition to its general budget, the Danish Institute for Human Rights receives specific funding to promote, protect and monitor the implementation of the Convention.⁹⁵ The Danish Disability Council monitors the rights of persons with disabilities and advises the Government accordingly. It is composed of 17 members, comprising a cross section of representatives from local and national government authorities, organizations of persons with disabilities and social welfare institutions, as well as experts, academics and workers' representatives.⁹⁶ The Danish Parliamentary Ombudsman performs a protection function, including by receiving and acting on complaints and investigating cases on its own initiative.

⁹³ Committee on the Rights of Persons with Disabilities, concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland (CRPD/C/GBR/CO/1), para. 70.

⁹⁴ De Beco, *Study on the Implementation of Article 33*, p. 21; see also the websites of the Danish Institute for Human Rights (www.humanrights.dk/our-work/our-work-denmark/disability) and the Danish Disability Council (<https://dch.dk/en/node/105>).

⁹⁵ De Beco, *Study on the Implementation of Article 33*, p. 22.

⁹⁶ Ibid.

New Zealand

The New Zealand monitoring framework comprises the Human Rights Commission and the Ombudsman, both established by statute,⁹⁷ and the Disabled People's Organizations Coalition (formerly known as the New Zealand Convention Coalition).⁹⁸ The Human Rights Commission undertakes both protection and promotion work. It receives complaints and enquiries regarding human rights violations of persons with disabilities. It has a disability rights commissioner, who is mandated to identify areas where persons with disabilities are vulnerable to abuse or denial of rights and to advocate for solutions from the Government, the private sector and the community. The Commission also undertakes promotion work and is responsible for raising the profile of persons with disabilities and highlighting their experience of discrimination.⁹⁹ The Ombudsman's role¹⁰⁰ includes accepting and, where appropriate, investigating complaints about the conduct of State agencies concerning violations of the rights of persons with disabilities.¹⁰¹ The Disabled People's Organizations Coalition comprises eight organizations of persons with disabilities¹⁰² and is mandated to develop and coordinate a mechanism which supports direct involvement of persons with disabilities in the monitoring of the Convention.¹⁰³

Spain

Spain's independent monitoring framework comprises the Ombudsperson's Office (Defensor del Pueblo) and the Spanish Committee of Representatives of Persons with Disabilities. The Ombudsperson's statutory functions include receiving and acting on complaints. The Spanish Committee of Representatives of Persons with Disabilities is a non-profit umbrella organization of organizations of persons with disabilities, non-governmental organizations and specialized organizations working on disability issues.¹⁰⁴ The Committee's functions are to defend and protect the rights of persons with disabilities and their families. It seeks to promote full rights, non-discrimination, equal opportunities, inclusion in the community, social emancipation and, in general, the improvement of living conditions for persons with disabilities and their families.

⁹⁷ Human Rights Commission, New Zealand. Office of the Ombudsman, *Making Disability Rights Real: Annual Report of the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities 1 July 2011 – 30 June 2012* (December 2012), p. 6, available at www.ombudsman.parliament.nz/sites/default/files/2019-03/Disability%20Convention%20Annual%20Report%202011-2012.pdf.

⁹⁸ See www.hrc.co.nz/our-work/people-disabilities/making-disability-rights-real/#information-about-the-disability-conventions-monitoring-mechanism.

⁹⁹ See New Zealand, Human Rights Act 1993, www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html; and www.hrc.co.nz/files/2014/2357/0091/Making-disability-rights-real.html.

¹⁰⁰ New Zealand, Ombudsmen Act 1975, www.legislation.govt.nz/act/public/1975/0009/latest/whole.html.

¹⁰¹ See www.hrc.co.nz/files/2014/2357/0091/Making-disability-rights-real.html.

¹⁰² See www.odi.govt.nz/united-nations-convention-on-the-rights-of-persons-with-disabilities/nzs-monitoring-framework/monitoring-reports-and-responses/reports-from-convention-coalition/.

¹⁰³ See www.hrc.co.nz/files/2014/2357/0091/Making-disability-rights-real.html.

¹⁰⁴ The founding members of the Spanish Committee of Representatives of Persons with Disabilities were the Spanish National Coordinating Confederation of People with Physical and Organic Disabilities, the Spanish Confederation of Organizations for Persons with Intellectual Disabilities, the Spanish National Organization of the Blind, the National Confederation of Deaf Persons (CNSE); the Spanish Confederation of Families of Deaf Persons (FIAPAS); and the Spanish Confederation of Federations and Associations of Care for Persons with Cerebral Palsy and Similar Health Problems. See <https://cermi.es/>.

The European Union

The European Union acceded to the Convention on the Rights of Persons with Disabilities as a regional integration organization and in 2012, it designated five bodies as the monitoring framework for article 33 (2): the European Parliament's Committee on Petitions, the European Ombudsman, the European Commission, the European Union Agency for Fundamental Rights and the European Disability Forum.¹⁰⁵ The EU Monitoring Framework was subsequently revised on 16 January 2017 to remove the European Commission from the monitoring framework, as recommended by the Committee on the Rights of Persons with Disabilities.¹⁰⁶

At present, the independent monitoring framework is composed of four entities, and each of them has distinct roles.

- (a) The European Ombudsman is mandated to receive complaints, undertake ex officio investigations and produce reports on maladministration in the activities of European Union institutions, bodies, offices and agencies. The Ombudsman is also mandated to undertake promotional activities such as issuing annual activity reports, which contain a dedicated section on disability.¹⁰⁷
- (b) The European Union Agency for Fundamental Rights is mandated to undertake promotion work through raising awareness and addressing anti-discrimination and other cross-cutting disability issues, including through thematic reports.¹⁰⁸
- (c) The European Disability Forum is an umbrella organization of persons with disabilities. It undertakes promotion activities such as awareness-raising campaigns and media activities, the organization of hearings and events, training and networking activities and the dissemination of relevant information to European and national member organizations in order to reinforce their technical knowledge and advocacy capacity. It also monitors compliance with European Union legislation and policies under the Convention.
- (d) The European Parliament, through its Committee on Petitions, has protection roles with regard to the policymaking and legislative actions of European Union institutions. The Parliament can table oral questions to the Council of the European Union and the European Commission for debate in plenary session, and it can issue reports and resolutions.¹⁰⁹

¹⁰⁵ See <https://fra.europa.eu/en/cooperation/eu-partners/eu-crpd-framework>.

¹⁰⁶ Committee on the Rights of Persons with Disabilities, concluding observations on the initial report of the European Union (CRPD/C/EU/CO/1), paras. 76–77.

¹⁰⁷ This decision was communicated through a note from the Council of the European Union on the "Revised EU-level Framework Required by article 33.2 of the UN Convention on the Rights of Persons with Disabilities", 9 February 2017. See <https://data.consilium.europa.eu/doc/document/ST-6170-2017-INIT/en/pdf>.

¹⁰⁸ Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights. See in particular articles 3, 4.1 and 4.2. See also Council Decision (2008/203/EC) implementing Regulation (EC) No. 168/2007 as regards the adoption of a Multi-Annual Framework for the European Union Agency for Fundamental Rights for 2007-2012, article 4.1 (a) to (h), Regulation 168/2007.

¹⁰⁹ Council of the European Union, note on the "Revised EU-level Framework Required by article 33.2 of the UN Convention on the Rights of Persons with Disabilities", <https://data.consilium.europa.eu/doc/document/ST-6170-2017-INIT/en/pdf>.

Question 7: What is the relationship between independent monitoring frameworks and the Committee on the Rights of Persons with Disabilities and other international human rights bodies?

Independent monitoring frameworks and the work of the Committee on the Rights of Persons with Disabilities

Under article 33 (2) of the Convention on the Rights of Persons with Disabilities, independent monitoring frameworks monitor human rights at the domestic level, while the Committee on the Rights of Persons with Disabilities is entrusted at the international level with monitoring implementation of the Convention. Monitoring frameworks and the Committee rely on and support each other to establish the extent to which States ensure, promote and protect the rights of persons with disabilities. The Committee has developed guidelines on independent monitoring frameworks and their engagement in the Committee's mandate.¹¹⁰

The Committee monitors the implementation of the Convention through different procedures, including by examining periodic reports submitted by States parties on measures taken to give effect to their obligations under the Convention and by making recommendations in the form of concluding observations (arts. 35 and 36); by examining individual communications submitted from or on behalf of individuals or groups of individuals who claim to be victims of a violation by a State party of the provisions of the Convention; and by undertaking inquiries in cases where there is reliable evidence of grave or systematic violations of the Convention that have been alleged against a State party to the Optional Protocol to the Convention on the Rights of Persons with Disabilities.¹¹¹

The Committee relies on independent monitoring frameworks to undertake promotion and protection work in different ways, as outlined in its guidelines on independent monitoring frameworks and their participation in the work of the Committee, which are an integral part of its rules of procedure (CRPD/C/1/Rev. 1).

Independent monitoring frameworks may submit alternative reports covering, inter alia, follow-up measures undertaken by States in implementation of the Committee's concluding observations and recommendations, explanations of new developments, implementation gaps or possible remedial measures, and information about specific groups of persons with disabilities. A number of independent monitoring frameworks from different States parties have submitted alternative reports to the Committee concerning the review of initial or periodic State party reports.¹¹²

¹¹⁰ See CRPD/C/1/Rev.1, annex, para 4.

¹¹¹ See, for example, the report of the Committee on the Rights of Persons with Disabilities on its inquiry concerning Hungary under article 6 of the Optional Protocol to the Convention (CRPD/C/HUN/IR/1).

¹¹² In the period from 2018 to 2022, the Committee on the Rights of Persons with Disabilities made 47 reviews of State party reports, and 27 independent monitoring mechanisms and national human rights institutions submitted alternative reports to the Committee. These reports related to Algeria, Australia, Bulgaria, Ecuador, El Salvador, Estonia, France, Greece, Hungary, India, Indonesia, Kuwait, Mexico, Myanmar, Nepal, New Zealand, the Niger, North Macedonia, Norway, Oman, the Philippines, Poland, the Republic of Korea, the Russian Federation, Slovenia, South Africa and Spain.

Independent monitoring frameworks may provide suggestions concerning aspects to include in lists of issues to be adopted by the Committee prior to the constructive dialogues between the Committee and States parties, and they may submit independent observations on States' responses to lists of issues. Independent monitoring frameworks may participate in constructive dialogues between States and the Committee¹¹³ independently from the government delegation, and they may hold briefings in private with the Committee before reviews of State party reports take place.



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¹¹³ CRPD/C/1/Rev.1, annex, para. 23 (h).

Interaction with other human rights mechanisms

There are nine core human rights international treaties and one optional protocol, and 10 treaty bodies or committees have been established to monitor the implementation of these treaties. These bodies also monitor the rights of persons with disabilities. The independent monitoring frameworks may engage with the treaty bodies by submitting reports for the constructive dialogue with the State party or regarding individual communications.

Treaty-based monitoring of human rights is complemented by mechanisms established under the Charter of the United Nations. Of relevance for the rights of persons with disabilities are the mechanisms of the Human Rights Council, in particular the universal periodic review and the Special Rapporteur on the rights of persons with disabilities.

The aim of the universal periodic review, which was instituted in 2006 under the aegis of the Human Rights Council, is to assist all 193 Member States of the United Nations in making progress on the enjoyment of human rights at the national level, including for persons with disabilities. It provides an opportunity for all States to report on actions taken to this effect and to exchange good practices in addressing challenges to the enjoyment of human rights.¹¹⁴ Each State undergoes a peer-review process led by States that are members of the Human Rights Council, approximately every four years. The review is based on information from three sources: information provided by the State under review, information contained in the reports of independent human rights experts and groups (special procedures, human rights treaty bodies and other entities of the United Nations) and information from other stakeholders, including national human rights institutions and non-governmental organizations. Independent monitoring frameworks can submit information for inclusion in the “other stakeholders” report.

Question 8: What is the difference between national mechanisms for reporting and follow-up and independent monitoring frameworks?

The difference resides in their independence and their respective mandates. National mechanisms for reporting and follow-up are public bodies or entities, which, unlike independent monitoring frameworks, are located within the government structure as ad hoc bodies, at the ministerial or inter-ministerial level, or as separate institutions. In line with their overarching mandate to follow up and coordinate the implementation of domestic laws and regulations to align with international obligations, the national mechanisms for reporting and follow-up typically coordinate and facilitate the preparation of reports for submission to treaty bodies, the universal periodic review and special procedures.

¹¹⁴ See General Assembly resolution 60/251 (A/RES/60/251).

In cooperation with government ministries, parliaments and the judiciary, the national mechanisms often coordinate the collection, analysis and reporting of data, as well as tracking national follow-up and implementation of their recommendations and of the country's treaty obligations. In this regard, they may also serve as the focal points established or designated under article 33 (1) of the Convention on the Rights of Persons with Disabilities to oversee its implementation. An effective mechanism will encourage the active participation of civil society, national human rights institutions, national preventive mechanisms and independent monitoring frameworks in its work.¹¹⁵

Whereas it is necessary to distinguish the governance structure and mandate of the national mechanism for reporting and follow-up from that of the independent monitoring frameworks, it is important to note that both mechanisms participate in the preparation of State periodic reports on the Convention and on the implementation of recommendations issued by the Committee on the Rights of Persons with Disabilities as a result of reviews of State party reports.

Activities in which independent monitoring frameworks participate:

- (a) Encouraging the timely preparation of initial or periodic reports for submission to the Committee on the Rights of Persons with Disabilities;
- (b) Disseminating information to stakeholders on upcoming country reviews in a timely manner;
- (c) Encouraging national mechanisms for reporting and follow-up to ensure participatory and transparent consultation processes during the preparation of State reports (which is one of the activities carried out by the independent monitoring frameworks);
- (d) Identifying and communicating opportunities to participate in the official drafting process to civil society organizations, including organizations of persons with disabilities, or setting out their options for preparing and submitting alternative reports;
- (e) Promoting and supporting civil society organizations and organizations of persons with disabilities in drafting their alternative reports;
- (f) Encouraging national mechanisms for reporting and follow-up to disseminate concluding observations to stakeholders (which is one of the activities carried out by the independent monitoring frameworks);
- (g) Facilitating the implementation of concluding observations including through advocating, monitoring and reporting on legislative amendments and policy change;
- (h) Organizing follow-up consultations.

¹¹⁵ For more information on national mechanisms for reporting and follow-up, see United Nations, "National mechanisms for reporting and follow-up: a practical guide to effective State engagement with international human rights mechanisms" (New York and Geneva, 2016).

Question 9: What is the relationship between independent monitoring frameworks and national preventive mechanisms?

Both national preventive mechanisms and independent monitoring frameworks are established pursuant to a treaty – the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹¹⁶ and the Convention on the Rights of Persons with Disabilities, respectively. The Optional Protocol requires States parties to maintain, designate or establish one or several independent national preventive mechanisms for the prevention of torture at the domestic level (arts. 3 and 17). Hence, both bodies should be established at the domestic level, although

their pronouncements, findings and recommendations may be the basis of international advocacy and action. The structure of both entities is modelled on national human rights institutions, and both are required to comply with the Paris Principles.

Like the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires States parties to have due consideration of the Paris Principles while setting up the national preventive mechanisms (art. 18 (4)). In practice, many national human rights institutions are designated, in full or in part, both as national preventive mechanisms and as independent monitoring mechanisms. Also like the Convention, the Optional Protocol requires States parties to grant national preventive mechanisms functional and operational independence including with respect to decision making, recruitment of personnel and disbursement of their budget (art. 18).



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¹¹⁶ For more information on national preventive mechanisms, see OHCHR, *Preventing Torture*, www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf.

The mandate and powers of national preventive mechanisms make them ideal entities for inclusion in independent monitoring frameworks. National preventive mechanisms may, as part of independent monitoring frameworks, visit places of detention or psychiatric institutions. They may examine the situation of persons with disabilities who are deprived of liberty, they may recommend measures to ensure respect for their dignity and rights, and they publish reports on such visits, as well as making submissions on established or proposed legislation (Optional Protocol, art. 19).

Complementarity between National Preventive Mechanisms and Independent Monitoring Frameworks

The Office of the Inspector General of Places of Deprivation of Liberty, the national preventive mechanism in France pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, monitors places where persons with disabilities are deprived of liberty, including psychiatric facilities and specialized units. The Office of the Inspector General issued recommendations at the national level concerning legislation that still provided for institutionalization without consent. Its findings were cited by the national monitoring mechanism pursuant to the Convention on the Rights of Persons with Disabilities, the Defender of Rights, in its opinion of 2018 concerning the involuntary placement or treatment of persons with psychosocial disabilities.¹¹⁷

Both mechanisms took part in the review of the initial report of France before the Committee on the Rights of Persons with Disabilities by providing written submissions and taking part in briefings on the situation of persons with disabilities at the national level.¹¹⁸

Question 10: How do independent monitoring frameworks operate in federal States and at the subnational level?

The Convention on the Rights of Persons with Disabilities extends to all parts of federal States without any limitations or exceptions (art. 4 (5)). This means that the designation or establishment of independent monitoring frameworks should cover all parts of federal States equally. An independent monitoring framework in a federal State may either be a unified federal body or a system with multiple bodies whose designation or establishment is undertaken by the federal Government or devolved governments in accordance with their respective jurisdictions. In either case, ultimate responsibility for the Convention's implementation lies with the federal Government.¹¹⁹

¹¹⁷ Defender of Rights, Opinion No. 2018-29 of 5 December 2018, "Summary of the interim report on the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)".

¹¹⁸ For information about the review of the initial periodic report of France and written contributions received by the Committee, see tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2504&Lang=en.

¹¹⁹ See CRPD/CSP/2014/1, agenda item 5, "Matters related to the implementation of the Convention", and CRPD/CSP/2014/3, para. 33.

The Committee on the Rights of Persons with Disabilities guides States parties with federal or devolved administrations to ensure that their national monitoring frameworks can properly discharge their functions at the federal, state/provincial, regional and local levels, and that they interact and coordinate their activities with those of monitoring frameworks operating at other levels of governance.¹²⁰ The Committee has stressed the importance of effective coordination and resourcing of the monitoring frameworks in federal States and has confirmed the obligation of federal States to ensure that the laws of federated states, provinces or other devolved governments adhere to the Convention.

Question 11: Where can States parties to the Convention obtain technical assistance to establish or ensure the effective functioning of independent monitoring frameworks?

The establishment and operation of independent monitoring frameworks may raise challenges. States can seek technical guidance on independent monitoring frameworks from the Committee on the Rights of Persons with Disabilities in accordance with article 37 of the Convention.¹²¹ The Committee encourages States to address requests for technical support to its secretariat.¹²² The OHCHR treaty body capacity-building programme and its regional and country field presences can provide support such as training for independent monitoring frameworks, national human rights institutions and other stakeholders on engagement with the Committee, the provisions of the Convention or other issues of interest.¹²³

National human rights institutions may also seek technical support from the Global Alliance of National Human Rights Institutions,¹²⁴ which enables national human rights institutions to exchange experiences and good practices on monitoring human rights at the national level, including the rights of persons with disabilities.

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¹²⁰ CRPD/C/1/Rev.1, annex, para. 18.

¹²¹ Under article 37 ("Cooperation between States Parties and the Committee"), "Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate. ... In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation."

¹²² See, for example, CRPD/C/OMN/CO/1, para. 61.

¹²³ See <https://bangkok.ohchr.org/treaty-body-capacity-building-programme/>.

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