



Training on the Inclusion of Persons with Disabilities in EU Development Cooperation

Course Notes

Module 5: Supporting National efforts in signature,
ratification and implementation of the CRPD

EuropeAid D3: Employment, Social
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Module 5: Supporting National efforts in signature, ratification and implementation of the CRPD

This module aims to explain the implementation and monitoring provisions of the CRPD (5.1), explain the roles of various stakeholders in this process: the government focal point (5.2), the coordination mechanism, (5.3), the independent monitoring framework (5.4), National Framework for Implementation (5.5.) and the role of civil society (5.6), and finally an example from monitoring reports to the Committee on the Rights of Persons with Disabilities on what is happening at national level in terms of monitoring (5.7).

5.1. Implementation and Monitoring in the CRPD

The CRPD is unique among UN human rights treaties in that it contains specific provisions relating to domestic implementation and monitoring. These provisions are found in Article 33 of the Convention, which reads as follows:

- 1. States 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 consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.*
- 2. 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.*
- 3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.*

As the text of the article makes clear, there are four parts to the implementation and monitoring framework: A government focal point, an optional coordination mechanism within government, a monitoring body or framework independent of government, and the mandatory involvement of civil society in the monitoring process.

Article 33 is designed to address the gap that often appears between the goals of a human rights treaty, and the policies and practices of states that have ratified that treaty. This gap, often called the implementation gap, is the result of many factors, including a lack of awareness of human rights standards among the general public, a lack of national level monitoring to hold government accountable for treaties they have ratified, and a lack of coordination among various branches and levels of government.¹ Furthermore, as a framework to guide the implementation process, Article 33 is, or should be, one of the first steps a state party will take when it begins the implementation process. For this reason, many DPOs and other civil society actors attach great importance to Article 33, seeing it as a bellwether of how committed a state party is to bringing about full enjoyment of the rights enshrined in the CRPD.² For these reasons, action on the monitoring and implementation framework laid out in Article 33 of the CRPD is crucial.

5.2 The Government Focal Point

Theoretically, disability concerns all government departments and ministries since people with disabilities are represented in all sectors of society. However, in practice disability issues are often concentrated in focal ministries. Most commonly disability is covered by the Ministry of Social Welfare (or its equivalent); sometimes as part of a ministry for gender (women), children and youth; or social development. Very occasionally there is a specific ministry for disabled people (such as in Malawi), which might also include older people or other marginalised groups. Ministries of Health can also take on disability issues although this is most likely to focus on rehabilitation and the provision of specialist services.

It is not unusual however to find all aspects of disability, including the provision of education, rehabilitation, livelihoods and welfare services falling under one ministry (most commonly the ministry of social welfare). This is a legacy of the perception of disability, where it is seen primarily in terms of individual-based, specialist interventions focused mostly on people's impairments. It is also largely welfarist in

¹ See *Building the Architecture for Change: Guidelines on Article 33 of the UN Convention on the Rights of Persons with Disabilities*, Mental Disability Advocacy Centre, March 2011, p 15.

² See Luis Fernando Astorga Gatjens, "Analysis of Article 33 of the UN Convention: The Critical Importance of National Implementation and Monitoring" in *International Journal on Human Rights*, vol. 8, no. 14 (2011) pp. 71-84, 71.

nature. Ministries are usually chronically underfunded and under-resourced (because data on the numbers of people with disabilities is often lacking and because the scope of work is so broad) and people with disabilities often find it hard to access the services provided.

One of the key features of the UN Convention on the Rights of Persons with Disabilities (CRPD) is how it is starting to promote cross-ministry work in countries where it has been ratified. The first part of the monitoring and implementation framework mentioned in Article 33 of the CRPD is the focal point within government. The exact language is found in the first part of Article 33.1 and is: "States 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". While the appointment of focal points to address the needs of specific vulnerable groups is not a new concept, this is the first time an international human rights treaty has required states to take this action.³ While the treaty itself is very broad and provides little guidance for state parties on where to place the focal point, the UN itself has studied the issue and put forth some recommendations, while acknowledging that different governments will have different needs, depending on their organisational structure. For states that wish to appoint multiple focal points, the UN recommends placing them within each ministry, to respond to the fact that full implementation of the Convention will require action by most ministries or departments of government. Federal states may also consider placing a focal point at each level of government. One overarching focal point also has benefits, as it ensures that there is general oversight of government action. In this case, the UN discourages the use of the Ministry of Health, as this would promote a medical model of disability. Instead, it recommends the Ministry of Justice.⁴ As a matter of internal administration, it is not necessary that a focal point be appointed by law, as long as it is given the resources it requires to meet its goals.⁵ It is also important that the

³ See *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities*, Gauthier de Beco, UNHCHR, Europe Regional Office p. 12.

⁴ See *Thematic Study By the Office of the 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*, 22 December 2009, A/HRC/13/29.

⁵ See *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities*, Gauthier de Beco, UNHCHR, Europe Regional Office p. 12.

focal point be accessible to civil society, so that the participation of DPOs and persons with disabilities can be assured.⁶

In real-world practice, most states that have taken action on Article 33.1 have chosen to appoint a single focal point within their government, with the exception of federal states, which have a single focal point at the federal level, then one for each state or district. For example, Germany has appointed the Federal Ministry for Labour and Social Affairs as its federal focal point, with each Länder designating its own sub-focal point.⁷ Other examples include Australia, highlighted by the UN as an example of good practice for appointing its Attorney General⁸, and New Zealand, which appointed its Office for Disability Issues.⁹

5.3 The Coordination Mechanism

The second part of Article 33.1 concerns itself with the coordination mechanism. The text says that state parties “shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.” The first thing to note about the coordination mechanism is that unlike the other parts of the implementation and monitoring framework, it is optional. If a state feels it does not require a coordination mechanism, it is not compelled to create one. The creation of a coordination mechanism is generally recommended, however, because such a mechanism can help the state ensure that action among ministries is properly coordinated, and no ministry takes isolated action.¹⁰ The UN itself recommends that whenever a state has appointed more than one focal point, the focal points should form a coordinating committee.¹¹

In practice, many states that have appointed coordination mechanisms often simply give coordination duties to the same body

⁶ Ibid.

⁷ Ibid p. 24.

⁸ See *Thematic Study By the Office of the 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*, 22 December 2009, A/HRC/13/29, p 7.

⁹ See <http://www.odi.govt.nz/what-we-do/un-convention/framework/>.

¹⁰ See *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities*, Gauthier de Beco, UNHCHR, Europe Regional Office p. 13.

¹¹ See *Thematic Study By the Office of the 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*, 22 December 2009, A/HRC/13/29, p 9.

that contains the focal point. This is the case in Austria, where the Ministry of Labour, Social Affairs and Consumer Protection fulfills both roles.¹² In Denmark, an Interministerial Committee of Civil Servants on Disability Matters was created, and is overseen by the focal point, which is the Ministry of Social Affairs.¹³ Hungary, on the other hand, is an example of a state that has chosen not to designate a coordination mechanism.¹⁴

5.4 The Monitoring Framework

Article 33.2 of the CRPD deals with the establishment of an independent monitoring framework. The first part of 33.2 requires that "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." This means that the implementation of the convention must be monitoring by at least one body, or a framework of several bodies, and that within this framework, at least one body must be independent of government. The second part of Article 33.2 clarifies exactly what is meant by "independent mechanism": "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." The principles referred to in Article 33.2 are the Principles Relating to the Status of National Institutions, generally known as the Paris Principles. These principles set out guidelines for the establish and functioning of National Human Rights Institutions (NHRIs), which are state bodies with a constitutional or legislative mandate to promote and protect human rights. While these bodies are established and funded by the state, they function independently of government.¹⁵ Because the Paris Principles are used as the standard of independence, many observers believe that the best independent mechanism under Article 33.2 is a NHRI, assuming that such an institution is in compliance with the Paris Principles.

¹² See *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities*, Gauthier de Beco, UNHCHR, Europe Regional Office p. 17.

¹³ See Denmark's Initial Report to the Committee of the Rights of Persons with Disabilities, at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/futuresessions.aspx>.

¹⁴ See Hungary's Initial Report to the Committee of the Rights of Persons with Disabilities, at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/futuresessions.aspx>.

¹⁵ See <http://nhri.ohchr.org/EN/AboutUs/Pages/RolesTypesNHRIs.aspx>.

Currently, there is an international body that coordinates activity between NHRIs, and accredits such institutions as being in full or partial compliance with the Paris Principles. This is the International Coordinating Committee, or ICC. NHRIs that receive an "A" accreditation from the ICC are in full compliance with the Paris Principles.¹⁶ As of May 2012, there are 69 NHRIs that have "A" accreditation.¹⁷

Generally, states have followed the opinion of those who believe that a NHRI is the best independent mechanism under Article 33.2 of the CRPD. If a state has an accredited NHRI, it will generally appoint that institution, as it's monitoring mechanism. It is worth noting that while Article 33.2 allows for a framework, the vast majority of states so far have appointed a single body to take on monitoring duties. States that have appointed only their NHRI as the monitoring mechanism under Article 33.2 include Denmark,¹⁸ Germany,¹⁹ and South Korea.²⁰ Other states have appointed both their NHRI and some other body, such as New Zealand, which created a 3-body framework including its Human Rights Commission (an "A" accredited NHRI), the Ombudsman, and the Convention Coalition, a grouping of six DPOs.²¹

Of course, some countries do not have a previously established NHRI. For these countries, it is important that whatever body they create to monitor the CRPD have the same level of independence that a NHRI would have. According to the Paris Principles, this means that the body must be established by a constitutional or legislative text, rather than, for instance, a simple executive decree. This helps ensure that the institution cannot be easily tampered with. There must also be a clear process for appointing members of the institution, to ensure that members are not simply handpicked by the executive. Finally, the institution must have adequate resources to fulfill its mandate and responsibilities.²² Austria, whose monitoring

¹⁶ See <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>

¹⁷ See *Chart of the Status of National Institutions*, available at [http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NIs%20\(30%20May%202012\).pdf](http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NIs%20(30%20May%202012).pdf).

¹⁸ See Denmark's Initial Report to the Committee of the Rights of Persons with Disabilities, at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/futuresessions.aspx>.

¹⁹ See *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities*, Gauthier de Beco, UNHCHR, Europe Regional Office p. 25.

²⁰ See South Korea's Initial Report to the Committee of the Rights of Persons with Disabilities, at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/futuresessions.aspx>.

²¹ See <http://www.odi.govt.nz/what-we-do/un-convention/framework/>.

²² See the Paris Principles, available at <http://www2.ohchr.org/english/law/parisprinciples.htm>

mechanism is the Independent Monitoring Committee, is an example of a state that lacked a NHRI, and so had to create a new body to fulfill the duties of Article 33.2.²³

5.5. National Framework for Implementation

As discussed in 5.2, Article 33.2 obliges States Parties to establish a framework to 'promote, protect and monitor implementation of the CRPD. This requires that State to think about a national framework for implementation or simply an implementation action plan. Preferably this action plan should be developed with the disability community, in accordance with Article 4.3²⁴. The national action or implementation plan could provide a useful guide to donors and other development actors in where to allocate resources. The lack of a national action plan can also provide an opportunity for discussion at bilateral level. Box 5.1 below gives an example of a national action plan on disability, which have been developed after adoption of the CRPD.

Box 5.1 Examples of National Action/Implementation Plans²⁵

Pacific Regional Strategy on Disability 2010 – 2015²⁶

The Pacific Regional Strategy on Disability was adopted by Pacific Ministers for disability in Rarotonga, Cook Islands in October 2009 to set out practical mechanisms by which the Pacific Islands Forum Secretariat will support the governments of member countries to implement the articles of the UN Convention on the Rights of Persons with Disabilities. Based on the Convention, the Strategy prioritizes areas for regional cooperation.

Nepal

National Policy and Plan of Action 2006 - 2016²⁷

This action plan addresses the background, objectives, policies, strategies, and lists the agencies responsible for implementing activities, and the period of implementation, for each of the 17 areas specified as priority areas. The plan has adopted the long-term

²³ See Austria's Initial report to the Committee on the Rights of Persons with Disabilities, available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session9.aspx>

²⁴ See Article 4.3 of the CRPD

²⁵ See Report on National and Regional Strategic Plans on Disability, <http://g3ict.org/design/js/tinymce/filemanager/userfiles/File/National%20and%20Regional%20Strategic%20Plans%20on%20Disability.pdf>

²⁶ See:

<http://www.forumsec.org.fj/resources/uploads/attachments/documents/Pacific%20Regional%20Strategy%20on%20Disability.pdf>

²⁷ See <http://rcrdnepa.files.wordpress.com/2008/05/national-policy-and-plan-of-action2006-eng.pdf>

objective of establishing an inclusive, obstacle free and rights-based society for people with disabilities, while including them in the mainstream of national development. Besides, the document stresses the need to generate people's awareness and promote the government intention of establishing national accessibility standards.

Moldova²⁸

Action Plan of the Government of the Republic of Moldova's Strategy on the Social Inclusion of Persons with Disabilities, 2010-2013

The Strategy and the Action Plan followed the Moldovan government's ratification of the CRPD. Together with the harmonization of the national legislation with the Convention on the Rights of Persons with Disabilities and other relevant international legislation, the strategy and action plan promote a reform of the mechanism of determination of disability, in the aim to adopt a system based on the WHO Classification of Functioning, Disability and Health (ICF) criteria and other relevant international standards and practices.

Latvia

UNCRPD Implementation Action Plan 2010-2012

This Action plan envisages initial steps for promoting the implementation of the UNCRPD at the national level. One of the tasks of the Action plan is to elaborate the UNCRPD implementation programme for 2013-2019, which will be a comprehensive strategy to reach the UNCRPD objectives²².

Ethiopia²⁹

National Plan of Action for Inclusion of Persons with Disabilities 2010 - 2020

The document has been designed in line with the provisions of the CRPD. Once finalized (the document has been finalized in 2011 and will be presented to the Council of Ministers for endorsement) all sectors of the economy - health, education, labour – will have a role to play in its implementation, promoting a better standard of living and the equal rights and full participation of disabled persons in society.

²⁸ See Reply of Latvia to the OHCHR request for information on the implementation of the UN Human Rights Council Resolution 13/11.

²⁹ *Moving Towards Disability Inclusion. Ethiopia*, International Labour Organization
http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_161517.pdf

5.6. Civil Society

The final part of the implementation and monitoring framework for the CRPD is found in Article 33.3, which requires that “Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.” In many ways, this article is simply a reaffirmation of the general obligation stated in Article 4.3, requiring state parties to consult closely with people with disabilities for all decision making processes, including the implementation of the present Convention. Both of these articles enshrine the principle of “Nothing about us without us.”³⁰ While state parties are clearly obligated to include persons with disabilities and DPOs in the monitoring process, the exact form this participation shall take is left unclear. It should be noted, however, that Article 33.3 calls for “participation”, which is a stronger requirement than mere consultation. It should also be noted that the article allows people with disabilities to participate separate from DPOs, if they so choose.³¹ If Article 33.3 is read in conjunction with Article 4.3, it also becomes clear that people with disabilities must not only be involved in the monitoring framework of 33.2, but also the focal point and coordination mechanism of 33.1. In addition, State parties to the Convention may have to work on capacity building, to ensure that DPOs have the ability to participate meaningfully in the process of implementation and monitoring.³² See Box 5.2 below highlighting a good example of how DFID, AUSAID and some private donors are supporting DPO’s to engage in monitoring.

Box 5.2. The Disability Rights Fund³³

The Disability Rights Fund (DRF) states its main vision to build the capacity of Disabled Persons Organisations (DPOs) to be full and equal participants in the achievements of rights for the world’s one billion people with disabilities. The DRF focuses on advocacy grants, which are streamed through two channels; a small grants scheme and a national coalition-building scheme and both of which focus on the CRPD. The small grants scheme focuses raising awareness on the Convention targeted at marginalized groups of persons with disabilities and in particular what the DRF describes as emerging

³⁰ See *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities*, Gauthier de Beco, UNHCHR, Europe Regional Office p. 16.

³¹ See *Building the Architecture for Change: Guidelines on Article 33 of the UN Convention on the Rights of Persons with Disabilities*, Mental Disability Advocacy Centre, March 2011, p 20.

³² See *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities*, Gauthier de Beco, UNHCHR, Europe Regional Office p. 16.

³³ See the Disability Rights Fund <http://www.disabilityrightsfund.org/about.html>

voices, voices that have not featured before e.g. rural DPO's, women and children with disabilities, young people with disabilities. These small grants are targeted at persons with disabilities and DPO's to build their own rights knowledge and advocacy skills. The second funding stream, the national coalition stream focuses on a collaboration of DPOs working together, or DPOs working with other human rights organisations at a national level on areas such as shadow reporting and monitoring the CRPD.

5.7. Examples of monitoring frameworks at National Level

This section outlines an example of how Argentina has organised their implementation monitoring mechanisms. As discussed earlier countries structure the framework for implementation and monitoring in different ways. The recent reports to the Committee on the Rights of Persons with Disabilities provide examples. Box 5.3 on the next page details measures taken by Argentina.

Box 5.3: Argentina³⁴

1. Implementation of the Convention:

The National Advisory Committee on the Integration of Persons with Disabilities was created by decree No. 1101/87, pursuant to the proposals set forth in the World Plan of Action concerning Disabled Persons adopted by the General Assembly in its resolution 37/52. The plan was updated by decree No. PEN 984/92 and decree No. PEN 678/03. Its mission is to coordinate, standardize, advise, promote and disseminate throughout the country any actions that contribute directly or indirectly to the integration of persons with disabilities, without any distinction based on age, sex, race, religion or socioeconomic status, ensuring equitable distribution and access to the benefits provided.

The National Advisory Commission on the Integration of Persons with Disabilities presides the Federal Disability Council established by Act No. 24657 in 1966. The Council's membership includes representation at the highest level of each province and of the Government of the Autonomous City of Buenos Aires and

³⁴ See the report submitted by Argentina to the Committee on the Rights of Persons with Disabilities, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session7.aspx>

representatives of non-governmental agencies made up of and working for persons with disabilities throughout the country.

2.Implementation and Coordination Mechanisms:

The creation of the National Disability Observatory was proposed as the implementation and coordination mechanism to facilitate related action in different sectors and at different levels (art. 33, para.1). The purpose of the National Disability Observatory is to generate, disseminate, update and systematize information on the matter gathered from different sources, both public and private, and to monitor the implementation of and compliance with the Convention in different areas.