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**Ad Hoc Committee on a Comprehensive and
Integral International Convention on the
Protection and Promotion of the Rights and
Dignity of Persons with Disabilities
Seventh session**

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**Expert paper on existing monitoring mechanisms, possible
relevant improvements and possible innovations in monitoring
mechanisms for a comprehensive and integral international
convention on the protection and promotion of the rights and
dignity of persons with disabilities**

**Background conference document prepared by the Office of the
United Nations High Commissioner for Human Rights**

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1. Introduction

1. By its resolution 2005/65, adopted at its sixty-first session, the Commission on Human Rights requested “the Office of the High Commissioner to prepare an expert paper, focusing on the lessons learned from existing monitoring mechanisms, possible relevant improvements and possible innovations in monitoring mechanisms for a comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities, and to make the paper available to the Ad Hoc Committee at its seventh session” (paragraph 7). This paper is submitted to the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities in accordance with that request.

2. The paper builds on the background conference document prepared by the Office of the High Commissioner for Human Rights for the fifth session of the Ad Hoc Committee (A/AC.265/2005/CRP/2), which provides factual information on the state of the human rights treaty body system. Relevant information is also available in the report on the working methods of the human rights treaty bodies relating to the State party reporting process submitted by the Secretariat to the Fourth Inter-Committee meeting of human rights treaty bodies (HRI/MC/2005/4).

3. The paper considers the objectives of monitoring, and the principles that should underlie any monitoring mechanism. It then reviews the international monitoring mechanisms currently operating in the field of human rights, several of which have been proposed for a comprehensive and integral convention on the protection and promotion of the rights and dignity of persons with disabilities (hereinafter, the ‘disability convention’). The paper highlights lessons learned from those mechanisms, and innovations that have been introduced as a result, and provides information on relevant improvements and possible innovations to those mechanisms and the recent proposals of the High Commissioner for Human Rights on strengthening international human rights monitoring. It also refers to the experience of monitoring mechanisms in other areas, which may be of relevance for the consideration of Ad Hoc Committee, drawing attention to assessments that have been made of their effectiveness. As part of its preparations for the paper, the Office of the High Commissioner for Human Rights convened a small expert group meeting on possible monitoring mechanisms for the new disability convention which met on 24 and 25 November 2006. The summary of the chairperson of the meeting is available on the website of the Office of the High Commissioner for Human Rights (www.ohchr.org/english/issues/disability/egm.htm).

2. Objectives of monitoring

4. The overarching objectives of monitoring are to ensure effective implementation of the provisions of a treaty and that those intended to benefit from those provisions enjoy their protection. Current monitoring mechanisms aim to achieve these objectives through a number ways which seek to achieve mutually reinforcing purposes.¹

5. The first step toward the realization of human rights in a country is proper diagnosis and understanding of the existing situation. The use of specific national or local benchmarks or goals against which performance in a given area can be assessed periodically, and quantitative as well as qualitative information is useful in tracking progress over time, particularly in regard to those treaties which allow for the “progressive realization” of human

¹ In articulating the fundamental purposes of reporting under the treaty which it monitors, the Committee on Economic, Social and Cultural Rights (CESCR) enhanced considerably understanding about the purposes of general treaty monitoring and its role in the implementation of human rights. The first, second and third points presented here are adapted from General Comment No. 1 (*Reporting by States parties*) of the Committee.

rights. Therefore, the first purpose of monitoring must be to ensure that such diagnosis takes place, upon ratification and thereafter continuously, so that States parties become fully aware of the extent to which the various rights are, or are not, being enjoyed by all individuals.

6. The principal value of proper diagnosis is to provide the basis for the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities that reflect the provisions of the standards being monitored. Therefore, the second purpose of monitoring is to equip States parties to undertake such principled policy-making and effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the treaty. During this process, States parties will develop a better understanding of the problems and shortcomings encountered in their efforts to realize human rights. The process of identification and recognition of the relevant difficulties then provides a framework within which more appropriate and targeted policies can be devised and international cooperation sought.

7. The third purpose of monitoring is to create opportunities for the establishment of new partnerships between States and rights-holders. It creates occasions where Governments can publicly demonstrate that evidence-based, principled policy-making has in fact been undertaken, explain the reasoning behind their policies, and demonstrate their progress over time. Opening up to public scrutiny the situation of the relevant rights and the country's record in regard to those rights contributes, in turn, contribute to the formulation of more effective laws and measures by enabling any group that may potentially be affected by them to be identified and facilitating agreement on the goals and objectives of those measures. Moreover, the involvement of various sectors of society may extend beyond the formulation or scrutiny of policies to include contributions toward their implementation.

8. The fourth purpose of monitoring is to create opportunities for capacity building and awareness-raising. Monitoring activities should result in the provision of guidance about the rights of persons with disabilities that could help all relevant duty-bearers (policy-makers, judges and lawyers, employers, teachers, social workers, parents, etc) understand the content of the norms and human rights implications of their respective roles. Monitoring should build a body of jurisprudence and recommendations and provide a framework for the collection and sharing of proven good practices from across the world. For developing countries in particular, monitoring could have an added value in that the identification that is possible during the monitoring process of areas where technical assistance is needed could be used to actually help mobilize such assistance.

9. Finally, the fifth purpose of monitoring is to protect victims of human rights violations. When the established channels for remedy fail, monitoring should allow a last recourse for victims. The existing quasi-judicial individual and collective complaints procedures of the international monitoring bodies have led to remedies being provided to hundreds of victims, even when their decisions are non-binding in nature, in the form of compensation, protection from imminent harm, stays of execution or deportation, and other measures. Similarly, national monitoring mechanisms have provided remedies for victims.

10. The challenge is therefore for any new mechanisms to monitor the rights of persons with disabilities to be constructed in a way that would enable it be an effective, constructive agent for change, where international monitoring can stimulate or reinforce action at the national level. **As an overarching principle, such a monitoring mechanism must provide full participation for persons with disabilities, both in terms of access and participation in the monitoring process, including with respect to meeting venues, documentation and interpretation.**

3. The current international treaty monitoring system

11. Proposals for monitoring implementation of the disability convention include international and national mechanisms. Proposed international mechanisms build on those currently applicable to the international human rights framework. These entail the establishment of a committee of experts with the competence to (a) consider periodic reports submitted by States parties to the Convention; (b) receive and consider individual and collective

complaints; (c) receive and consider complaints submitted by one State party against another State party; and (d) conduct inquiries on the basis of information indicating widespread or systematic human rights violations. Other international mechanisms proposed include: (a) a regular Conference of States parties and (b) a global advocate or a United Nations Ombudsman. Proposals on national mechanisms call for Governments to designate or establish, where none already exists, (a) an independent national mechanism with the capacity to monitor disability rights, and (b) a Government focal point.

12. Currently the implementation of seven human rights treaties are monitored by seven treaty bodies, which – with the exception of the Committee on Economic, Social and Cultural Rights² – are created by the treaty they monitor. An eighth treaty body, a Sub-Committee on the Prevention of Torture, will be established after the entry into force of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). 13. A draft International Convention for the Protection of all Persons from Enforced Disappearances, adopted by the fifth session of the intersessional open-ended working group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance, creates a Committee on Enforced Disappearances (E/CN.4/2005/WG.22/WP.1/Rev. 4, article 26).

Table 2. Present international human rights treaty monitoring system

Treaty body (acronym, functional since)	Monitoring:	Examination of state party reports	Individual complaints	Inter-State complaints	Inquiries
Committee on the Elimination of Racial Discrimination (CERD, 1969)	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	X	X	X	
Human Rights Committee (HRC, 1976)	International Covenant on Civil and Political Rights (ICCPR)	X	X	X	
Committee on Economic, Social and Cultural Rights (CESCR, 1987)	International Covenant on Economic, Social and Cultural Rights (ICESCR)	X			
Committee on the Elimination of Discrimination against Women (CEDAW, 1982)	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X		X
Committee against Torture (CAT, 1987)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	X	X	X
Committee on the Rights of the Child	Convention on the Rights of the Child (CRC)	X			

² The treaty-mandated monitor of the International Covenant on Economic, Social and Cultural Rights is the Economic and Social Council of the United Nations. From 1978 until 1987, this function was performed by a Sessional Working Group of Governmental Experts on the Implementation of the Covenant. The Working Group was reconstituted according to the model of the independent treaty bodies and renamed the Committee on Economic, Social and Cultural Rights, by resolution 1985/17 of the Council. It has been operating since 1987.

(CRC, 1990)					
Committee on Migrant Workers (CMW, 2004)	International Convention on the Rights of All Migrant Workers and Members of Their Families (CMW)	X	X	X	

13. All treaty bodies are competent to review reports on implementation of their respective treaty, which States parties are obliged to submit periodically. Five (except CESCR and CRC) have competence to receive and consider complaints from individuals alleging violations of the rights contained in their respective treaties, with respect to those States parties that have accepted this procedure. A proposal to invest the Committee on Economic, Social and Cultural Rights with complaints competence is currently under consideration by an open-ended working group of the Commission on Human Rights. Two of the treaty bodies (CAT and CEDAW) have authority to conduct inquiries on their own motion into reliable allegations of serious, systematic or widespread violations, with respect to those States parties that have accepted this procedure. Four of the treaty bodies also have competence to consider a complaint by a State party that another States party which has accepted this procedure has not carried out its obligations under the treaty, a procedure which has never been invoked. The OPCAT creates a new monitoring procedure through a system of visits to places of detention to be undertaken by the treaty body and national institutions, while the draft convention on disappearance provides for a system whereby the committee may take action directed at locating and protecting disappeared persons (article 30).

14. In the thirty-five years since the first treaty body began its work, the various procedures and outputs of the treaty bodies have developed and strengthened, and individual treaty bodies and the system as a whole have significantly contributed to the promotion and protection of human rights. Treaty bodies have clarified the meaning of treaty norms, and the steps States parties should take to ensure their full compliance and enjoyment by all. The monitoring process has also played a key role in stimulating advocacy at all levels, the creation of constituencies, particularly at the national level, to promote the implementation of human rights, and has provided direct input into the development of laws, policies and programmes. The reporting process, in particular, has provided a framework for national dialogue on human rights among the various stakeholders, and an opportunity for national and international public scrutiny of implementation. The concluding observations of the Committees on reports have provided guidance to individual States parties on the steps required for full compliance with their obligations. Treaty body jurisprudence, developed through consideration of individual complaints and reports, including through the formulation of general comments and recommendations, is increasingly referred to by domestic courts and legislatures. In addition, despite the fact that the decisions or views of treaty bodies in respect of petitions are not binding on States parties, individual complaints procedures have provided relief to victims, including compensation, and protection from imminent harm. The system has also continued to evolve, as treaty bodies have sought to encourage full implementation of their respective treaties, as well as to address challenges confronting their work.

(i) The composition of human rights treaty bodies

15. Although other supervisory mechanisms could be considered for the disability convention, in the United Nations human rights treaty body system, implementation of the seven human right treaties is monitored by human rights treaty bodies.

16. Human rights treaty bodies are committees of independent experts, ranging from 10 to 23 members, who convene two or three three-week sessions annually at the United Nations Offices in New York or Geneva. Additional meetings prior or after sessions are convened by some treaty bodies for particular purposes, and as the treaty bodies have developed their functions, members may also be required to be available for inquiries or follow-up or other activities in States parties. The experience of the existing committee system has shown that

large membership can allow for the introduction of innovative working methods directed at strengthened monitoring. The 18 member Committee on the Rights of the Child and the 23 member Committee on the Elimination of Discrimination against Women have decided to meet in two chambers in order to maximize their working capacity.

17. Members of committees are part-time, unremunerated experts, nominated by States parties from among their nationals and elected by States parties as a whole for fixed renewable terms. Committee members serve in their personal capacity. Broad qualifications for membership are established in the human rights treaties, with members generally being required to be of recognized competence in the field covered by the treaty, of high moral standing and impartial. More detailed qualifications are set out in the OPCAT with respect to the Sub-Committee on Prevention, including 'proven professional experience in the field of administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty (article 5.2).' In all cases, election of members must give due consideration to equitable geographical distribution, while additional considerations to be taken into account include representation of the 'principal legal systems,' the different forms of social and legal systems,' the different forms of civilization and legal systems of States parties' and the 'usefulness of legal experience.' The OPCAT also requires consideration to be given to balanced gender representation (article 5.4), as does the draft convention on disappearance.

18. The experience of the current system suggests that membership of treaty bodies has been uneven in terms of representation, expertise and independence. Competing demands have also meant that some treaty body members have been unable to devote the time required to the work of their committees, to the extent that sometimes they have been unable to attend sessions. The lack of limitation on the number of terms members may serve has also resulted in several members serving for long-unbroken periods.

19. Relevant improvements to be considered in relation to a committee to monitor a treaty on disabilities should include whether a detailed formulation of experience and qualifications required for membership, which should include knowledge and/or experience of disability issues, and a requirement that members do not hold any position incompatible with the impartiality required of committee members should be contained in the treaty. In light of the expertise required to monitor implementation of this treaty consideration could also be given to whether the monitoring body should be elected by States parties, or whether it should be an expert body appointed by the Secretary-General or the High Commissioner, or a body comprised of some members elected by States parties and others nominated by the Secretary-General or the High Commissioner. In any elections, in addition to requiring consideration to be given to equitable geographical distribution and representation of the principal legal systems, consideration should be given in elections to representation of persons with different kinds of disabilities and balanced gender representation. To ensure that membership of the body remains dynamic, the convention should incorporate article 26.4 of the draft convention on disappearance which provides that members shall be eligible for re-election once. Consideration may also be given to the introduction of a process to ensure that candidates meet the experience and qualifications for membership, as well as a requirement that candidates be put forward only after a transparent, consultative national selection process involving concerned groups.

20. Candidates for membership in the current system must be nationals of the nominating State. Expertise relevant for the monitoring body of a treaty on disabilities may be achieved more readily if States were also entitled to nominate nationals of another State party. Notably, the OPCAT provides that although nominees must be the national of a State party to the Convention, States parties are entitled to nominate a candidate who is the national of another State party where that State party has provided its consent (article 6.2).

21. Capacity for monitoring might also be strengthened and an holistic, integrated approach to implementation of the full range of human rights obligations promoted, particularly at the national level, if there is close collaboration with other treaty bodies, **which might be achieved if members of other treaty bodies were included in the committee on disability.** Article 17.2 of the Convention against Torture provides that States

parties shall bear in mind the usefulness of nominating persons of the Human Rights Committee who were willing to serve on the Committee against Torture to that Committee. Inclusion of a member of the Committee on the Elimination of Discrimination, for example, could ensure the reflection of gender perspectives, while the inclusion of members from other committees would also allow the committee on disability to develop its working methods in the light of the experience of other bodies.

(ii) **Reporting**

22. The reporting process is the central feature of the human rights monitoring system, with all treaties requiring States parties to submit an initial report on the implementation of the treaty for the State concerned, including any factors and difficulties in this context, within a fixed period after the entry into force of the treaty for the State concerned. The reporting process creates an occasion at regular intervals for a State party to conduct a comprehensive review of the measures it has taken to harmonize national law and policy with the treaties to which it is a party, to assess progress in implementation, and any obstacles in that regard, as well as to establish appropriate goals and targeted policies directed at full implementation. Reporting also creates a recurring occasion for a national dialogue to take place on specific issues, and if taken advantage of, it can create or build momentum in favour of such policies. The reporting procedure before the individual committees provides a forum for the relevant committee, the individual State and States parties as a whole to exchange information on the measures that might be taken to promote enjoyment of the rights in the relevant treaty and the obstacles to full implementation (Committee on Economic, Social and Cultural Rights, General Comment 1).

23. Treaty bodies have consistently encouraged States to ensure that the preparation of reports is a dynamic and transparent national process, involving all stakeholders. As a result, reports are increasingly prepared through Government mechanisms, such as inter-ministerial working groups, in consultation and with inputs from civil society, thereby providing a forum for broad national dialogue on implementation and further measures required. Nonetheless, some reports are prepared without domestic consultation or national debate, to the extent that in a few cases national NGOs and other parts of civil society are unable to obtain the reports from their Governments, but must do so through the United Nations. Exclusion of national stakeholders from the preparation of the report not only compromises the objectives of monitoring as a framework for transparent national assessment of implementation, but also confines the report to Government perspectives only. **Consideration might be given to an explicit requirement for consultation with national stakeholders as part of the reporting process in the treaty on disability.**

24. Treaty bodies have also developed their own procedures to ensure that report consideration is an open and participatory process. Thus, in contrast with the paper-based procedures adopted by other review bodies, all treaty bodies have adopted the practice introduced by the Committee on the Elimination of Racial Discrimination in 1972 of consideration of reports of States parties in a constructive dialogue conducted with State representatives in public sessions. They have also adopted procedures to ensure that their consideration of reports is based on broad-based and up-to-date information on implementation in individual States parties. To this end, most have adopted modalities for interaction with specialized agencies and other United Nations bodies, which is specifically envisaged in the provisions of some of the treaties. The Convention on the Rights of the Child and the Convention on the Rights of All Migrant Workers and Members of Their Families (CMW) mention specific UN bodies in relation to the work of their treaty bodies – the United Nations Children’s Fund (UNICEF) in article 45 of the former, and the International Labour Organization (ILO) in article 74 of the latter. The working relationship between UNICEF and CRC is extremely close, extending beyond provision of information to the Committee, to provision of assistance to States parties in implementing their treaty obligations, including reporting, as well as significant support to the Committee, in respect of drafting of general comments, involvement in days of discussion and facilitating field visits. The relationship between the CMW and ILO, which met for the first time in March 2004, is also close, suggesting that **specific mention of relevant UN bodies in the disability convention might encourage strong links between its monitoring mechanism and those bodies.**

25. The existing treaties do not specifically provide for interaction between the treaty bodies and country-specific and thematic rapporteurs of the Commission on Human Rights in the context of reporting or other committee functions. Except in the case of the close collaboration between the Special Rapporteur on torture and the Committee against Torture (CAT), the relationship between these mechanisms has been uneven. A specific provision in the draft convention on disappearance provides that its committee shall cooperate with special procedures of the United Nations (article 28), and it is **suggested that a specific provision governing interaction between any disability treaty body and relevant special rapporteur, for example, the Special Rapporteur of the Commission on Social Development on disability, should be considered. Similarly, and particularly in light of the current emphasis of harmonization of treaty body procedures, a specific provision encouraging any treaty body on disability to cooperate with the other treaty bodies should be considered.** Notably, the draft convention on disappearance establishes a fairly high level of cooperation required between its Committee and other treaty bodies providing in article 28.2 that as the Committee discharges its mandate, it shall **consult** other treaty bodies instituted by relevant human rights instruments, in particular the Human Rights Committee, with a view to ensuring the consistency of their respective observations and recommendations. Article 28 also directs the Committee on Enforced Disappearances to cooperate with regional organizations, and relevant State institutions, agencies or offices.

26. Article 45 (a) of the Convention on the Rights of the Child and article 74.4 of the International Convention on the Rights of All Migrant Workers and Members of Their Families are the only human rights treaty provisions that expressly envisages a role for NGOs in the treaty body process. Article 45 (a) entitles CRC to seek expert advice on implementation of the Convention from specialized agencies, UNICEF and ‘other competent bodies’, which is understood to include NGOs, while article 74.4 of CMW entitles the specialized agencies and organs of the United Nations, intergovernmental organizations and ‘other concerned bodies’ to submit written information to the Committee.

27. Since its first session in 1991, the Committee on the Rights of the Child, in cooperation with the NGO Group for the CRC has systematically encouraged NGOs to submit reports, documentation and other information to provide it with a comprehensive picture of the implementation of the Convention in individual States parties at all stages of report consideration. Written information is received from international, regional, national and local organizations, and may be submitted by individual NGOs or national coalitions. Formal oral briefings are also provided by NGOs in accordance with the Committee’s working methods. The other treaty bodies have also developed modalities for interaction with NGOs, which in some cases have been reflected in rules of procedure or written guidelines, **but the experience of the Committee on the Rights of the Child, suggests that the inclusion of an express provision in any new treaty to ensure optimum NGO participation.**

28. With the exception of the OPCAT, which designates a specific role to national preventive mechanisms in the national monitoring mechanism it elaborates, human rights treaties do not expressly envisage a role for national human rights institutions (NHRIs) in the reporting or other monitoring processes. The Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child have adopted general comments on the role of national human rights institutions in their work, which suggest that they be associated with the preparation of reports and the reporting process. The committees’ approaches to the participation of NHRIs are evolving, and currently vary, but it is clear that **the value of NHRI participation in the monitoring process is accepted, and as such should be part of the monitoring process for the disability convention.**

29. In order to provide guidance to States parties on steps required to enhance implementation of treaty obligations, all treaty bodies have adopted the practice introduced by the Committee on Economic, Social and Cultural Rights of adopting what are variously called ‘concluding observations’, ‘conclusions and recommendations’ and ‘concluding comments’, following the consideration of the reports of States parties which highlight positive aspects in implementation, principal subjects of concern and suggestions and recommendations. The draft convention on disappearance provides that each report shall be considered by its committee which shall “issue such comments, observations or recommendations as it may deem appropriate” (article 29.3). These are to

be communicated to the State party, which may respond on its own initiative or at the request of the Committee. **Similar references could be included in the convention on disability.**

30. All treaty bodies request States parties to provide information on implementation of the recommendations contained in the previous concluding observations in their subsequent reports or during constructive dialogue. Several have introduced formal 'follow-up' procedures, which are not specifically envisaged in the treaties, in order to monitor implementation of specific concluding observations more closely. The Human Rights Committee identifies a number of specific recommendations in its concluding observations which require immediate attention and requests the State party to provide additional information on their implementation, usually within one year. A similar procedure is applied by the Committee on the Elimination of Racial Discrimination and the Committee against Torture, and these Committees and the Human Rights Committee have appointed one of their members as rapporteur or coordinator on follow-up. States parties have generally complied with requests for follow-up reports, and **given the potential of the procedure to enhance monitoring, a specific provision on follow-up should be incorporated in any new monitoring mechanism.**

31. The reporting process is able to contribute to an increased level of implementation and enjoyment of human rights and fundamental freedoms in States parties when Governments meet their reporting obligations and international and national civil society actors make effective use of the process. The background conference document presented by OHCHR to the Ad Hoc Committee in January 2005 provided information on the challenges confronting reporting, which have resulted from increased formal acceptance of human rights treaties by States parties, and the 'periodicity,' established in the various treaties for the submission of reports, which have made late or non-reporting by States parties the norm. As of December 2005, OHCHR's treaty bodies database indicated that only six of the 194 States that are a party to one or more of the seven treaties are up-to-date with their reports, with the remaining 188 States owing 1493 reports to the treaty bodies (see table 3).

Table 3. Reporting under the existing international instruments

Treaty	Number of States parties	Number of overdue reports	% States parties up to date on reporting (out of all States parties)
CAT	141	191	26%
CCPR	154	197	26%
CEDAW	180	216	34%
CERD	170	487	34%
CESCR	151	160	40%
CMW	34	24	29%
CRC	192	111	58%
CRCOPAC	104	50	52%
CRCOPSC	101	57	44%
OVERALL	Total: 1227	Total: 1493	Average: 39%

32. The experience of regional systems where States have reporting obligations is broadly similar. Thus in the African system, where Member States of the African Union are required to submit a two-yearly report on efforts to comply with the 1986 African Charter, as of December 2005, 11 of the 53 States had submitted all reports due. Thirty-six States had reports which were more than four years overdue, and 18 States had never submitted a report.³ In the European system the experience has been more positive. Under the European Social Charter (and the 1996 revised Charter) where contracting parties are obliged to submit reports annually, with reports submitted on two sets of provisions every two years, there very few cases of non or late submission. All initial reports

³ Secretariat of the African Commission on Human and Peoples' Rights, *Statistics on States Initial/Periodic Reports*, updated as of December 2005.

required under the Framework Convention on National Minorities have been submitted, although some with considerable delays, while in the second reporting cycle, only 18 of the 35 contracting parties have submitted their reports.

33. All United Nations human rights treaty bodies have issued guidelines on reporting to assist States parties in the preparation of reports (HRI/GEN/2), which are designed to ensure that reports are presented in a uniform manner so that they and States parties can obtain a complete picture of the situation of implementation of the relevant treaty in each State party. Treaty bodies have also taken a flexible approach to the rigid intervals in which periodic reports are required (periodicity) that are established by all treaties except the International Covenant on Economic, Social and Cultural Rights (article 17) and the International Covenant on Civil and Political Rights (article 40). Thus the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women allow States parties to submit any number of reports in a single document, the Committee on the Rights of the Child accepts a combination of two reports in particular cases, as does the Committee against Torture. The discretion given to the Committee on Economic and Social Rights and the Human Rights Committee to determine when periodic reports should be submitted has provided these treaty bodies the flexibility to set the date a State party should submit its next report taking into account such factors such as level of compliance, quality of constructive dialogue between the relevant committee and the State party and the adequacy of its response to concluding observations (see for example rules 66 and 70A of the Human Rights Committee's rules of procedure). **In light of this, consideration should be given to providing any body established to monitor the disability convention with the discretion to determine when reports should be submitted.**

34. In response to tardy reporting, all committees have adopted the practice, first introduced by the Committee on the Elimination of Racial Discrimination in 1991 under its 'review procedure' of proceeding with the examination of the state of implementation of the relevant treaty by the State party even though no report has been received. In general terms, the relevant treaty body notifies the non-reporting State of its intention to examine implementation of the relevant treaty by the State party in the absence of a report during a public meeting on a specified date to which the State party is invited to send a delegation. The State party may respond by submitting a report, at which time the procedure is suspended, and the normal process of consideration begins. The State party may also indicate that a report will be provided, and pending receipt of the report, the committee concerned may decide to suspend the process. Where the treaty body decides to proceed with consideration, it reviews the situation on the basis of the information available to it, including any dialogue with the State party delegation, information submitted by United Nations entities and NGOs. Some treaty bodies formulate a list of issues and questions for the State party, which are provided to it in advance of the consideration, and which it may choose to answer in writing. The procedure may take place in the absence of a delegation usually results in the adoption of provisional concluding observations, which become final and are published if the State party does not respond or indicate that it will submit a report in the near future.

35. Treaty bodies view the procedure whereby implementation is reviewed in the absence of a State party report to be an exceptional measure, and to date it has been implemented only where reports are very overdue. As many States parties produce reports when notified that a committee intends to consider a country in the absence of a report, the procedure acts as an important incentive for reporting. **Accordingly, consideration should be given to inclusion of an explicit provision authorizing the committee to review implementation in the absence of a report in the treaty on disabilities.**

36. The review procedure constitutes a modest attempt to encourage timely reporting by States parties, but is unlikely to address the severe and chronic problem of delayed reporting in the current system, which would inevitably affect reporting under the disability convention. In response to the ideas of the Secretary-General outlined in his 2002 report *Strengthening of the United Nations: an agenda for further change* (A/57/387) which proposed that States parties should be entitled to submit a single report on implementation of the full range of their human rights obligations, draft harmonized guidelines on reporting under all human rights treaties are currently being finalized. The draft guidelines include guidelines on a common core document, containing information relevant to all treaty bodies, which would be updated regularly and submitted to each committee, in

tandem with treaty specific reports (HRI/MC/2005/3; A/60/278). In line with these efforts to streamline and coordinate the human rights reporting process, a treaty body on disability would receive and consider the common core document, and a treaty specific report.

37. Further innovations aimed at ensuring regular reporting could also be considered. All human rights committees prepare lists of issues and questions for States parties whose reports are to be considered, although the modalities governing the lists of issues and questions vary from committee to committee. The lists provide a guide for States parties on the line of questioning they may expect when their report is formally considered and also provide them with an opportunity to supplement the information in their reports, either in oral or written form (HRI/MC/2005/4, paragraphs 36 to 49). Lists of issues have been welcomed by States parties, who increasingly submit written responses. The practice of formulating lists of issues and questions should also be adopted in the context of the treaty on disability, and **the inclusion of a specific provision entitling the monitoring mechanism to formulate such lists and requiring States to respond could be considered**

38. **Further, written responses to a list of issues and questions could be viewed as a State party's report on implementation of the treaty. Initial reports could be prepared on the basis of a comprehensive list of issues and questions prepared in the light of information from United Nations sources, non-governmental organizations and national human rights institutions. Subsequent periodic reports would be prepared on the basis of more targeted and focused lists of issues and questions. Alternatively, States parties could be required to prepare a comprehensive baseline report on the basis of reporting guidelines formulated by the committee, with subsequent periodic reports being prepared in response to focused lists of issues and questions. The approach taken in the context of the European Social Charter could also be followed, with reports being required on implementation of only some rights in the treaty during one reporting round, and other rights in another reporting round.**

39. The current human rights reporting system is based on reporting by States only. Beyond the human rights sphere, the reporting function has formally included other actors and this has impacted on its effectiveness. In some cases, Government reporting is combined with reporting by a third party. The inter-governmental Trade Policy Review Body (TPRB) of the World Trade Organization (WTO), which regularly reviews trade policies and practices of WTO Member States, reviews trade policies of Member States through a report prepared by the Government under review, along with a report prepared by the Secretariat on its own authority. The Trade Policy Review Mechanism was conceived as a policy exercise aimed at contributing to the smoother functioning of the multilateral trading system, not as a basis for the enforcement of specific WTO obligations, for dispute settlement, or the imposition of new policy commitments on Members.⁴

40. Member States are free to include any information that they consider relevant to the review, but they are generally encouraged to be concise, highlighting recent and future policy directions and their impact on trade. In contrast, reports by the Secretariat are comprehensive. An important part of the preparation process is on-site fact-finding missions to Member State capitals. Consultations with civil society organizations normally take place during Secretariat missions, but such organizations do not have a formal, independent role in the review process. In contrast to the review of States under the human rights reporting system which take place upon the receipt of Government reports, the periodic reporting obligations on the 148 WTO Member States are initiated by the TPRB, which notifies Members when they are scheduled for a review, and Members and the Secretariat are required to submit their reports five weeks before. While there have been some instances of rescheduling of reviews, the schedule is generally adhered to. Strict adherence to the reporting cycles is impeded primarily by resource constraints facing the Secretariat for the labour-intensive preparation of its reports, but no Member has as yet declined to report since trade reviews began in 1989 and there is no backlog of reports.

⁴ Article III of the Marrakesh Agreement. See also *Second appraisal of the operation of the trade policy review mechanism*, official document before the Sixth Ministerial Conference, WT/MIN(05)/1, 21 September 2005, para. 4.

41. In a recent self-appraisal of the Trade Policy Review Mechanism, the TPRB expressed satisfaction that the Mechanism had functioned effectively and that its objectives were being achieved. It also expressed satisfaction at the structure, contents and quality of both Government and Secretariat reports. In addition to the mandated function of the reviews, they were also found to perform increasingly as a tool of technical assistance, enhancing understanding of WTO agreements, enabling better compliance and integration in the multilateral trading system, and increasingly covering explicitly specific areas where further technical assistance may be required.⁵

42. Preparation of reports and initiation of reviews of a State party could also be devolved on an independent third party such, as an international expert committee or the mechanism's Secretariat. The third party could prepare the report based on all relevant available information, as well as any information that the concerned Government and civil society may wish to have taken into consideration. The drafting institution, however, could retain sole responsibility for the contents of the report. The main benefits of such a system and a hybrid system, such as the TPRB mechanism, would be that the pace of report preparation by a State party would no longer determine when a country is reviewed, and the capacity of States to met their reporting obligations would be strengthened.

(iii) **Communications procedures**

43. Within the United Nations human rights system, communications procedures exist in respect of five of the seven human rights treaties, although in the case of CMW the procedure is not yet in force.⁶ The communications procedures are optional, and States are required to make a separate declaration of acceptance. All such procedures contain a number of formal admissibility criteria which must be fulfilled before the expert body can receive and consider the communication, identify those who have standing or the right to submit a communication under the procedure, and outline the process treaty bodies pursue in considering the merits of the communication. They also indicate the outcome of the process, which, in all cases, is the adoption of non-binding 'views'.

44. Innovations have been introduced into the communications procedures by the various treaty bodies, and particularly the Human Rights Committee, which has had received the large majority of communications, which are relevant in discussions on the treaty on disability. A number of these improvements are reflected in the text of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1999, which recognizes the competence of the Committee on the Elimination of Discrimination against Women to receive and consider individual communications.

45. Treaty bodies have adopted **the practice of considering the issue of the admissibility of a communication and its merits either separately or simultaneously in light of the circumstances of the case.** In order to ensure timely consideration of communications, the Human Rights Committee has recently included rule 93(3) in its rules of procedure providing that a unanimous decision of its working group on communications declaring a communication inadmissible may be transmitted to the Committee plenary, which may confirm and adopt it without further discussion.

⁵ Report of the Trade Policy Review Body for 2005, WT/TPR/173, 8 November 2005, pp. 3-4.

⁶ A review of the innovations introduced in these procedures is contained in the analytical paper of the Chairperson/rapporteur of the Open-ended working group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights, E/CN.4/2006/WG.23/2. See also the comparative summaries of existing communications and inquiry procedures and practices under the international human rights instruments and under the United Nations system, E/CN.4/2005/WG.23/2 and E/CN.6/1997/4.

46. Treaty bodies have also adopted the practice in urgent situations of requesting a State to take interim measures to avoid irreparable damage to the victim of the alleged violation after the receipt of the communication and before adopting its views on the communication. This practice is expressly included in the text of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women which entitles the Committee to request a State party to take 'such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation' (article 5), as well as in the text of the draft convention on disappearance (article 31.4). **Interim measures, which do not imply a determination on the admissibility or merits of the communication, have been used by the committees in exceptional cases, such as imminent deportation or death penalty, and might be considered in the context of the treaty on disability.**

47. Treaty bodies have also adopted procedures to follow-up the implementation of their non-binding views on specific communications. For example, in its views on individual cases, the Human Rights Committee identifies a time limit for the receipt of information on the action taken by the State party with respect to those views. It has also appointed a special rapporteur on follow-up of views. The Committee on the Elimination of Racial Discrimination has also recently amended its rules of procedure to allow for the designation of one or more special rapporteurs on follow-up of opinions (rule 95). An explicit provision relating to the provision of follow-up information is included in article 7.5 of the OPCEDAW, and its rules of procedure also provide for a rapporteur or working group on follow-up. **Follow-up procedures have proven to be positive, and explicit provisions allowing for follow-up should be considered for inclusion in the treaty on disability.**

48. Possible relevant improvements and innovations relevant to monitoring the disability convention relate to who could have standing to submit a communication. The majority of United Nations communications procedures give standing only to individuals claiming to be victims. The International Convention on the Elimination of All Forms of Racial Discrimination, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the rules of procedure of the Human Rights Committee also provide that groups of individual victims may submit communications. Alleged victims are entitled to designate a representative, for example a lawyer or family member, to bring a communication. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women provides that communications may be submitted by or on behalf of individuals or groups of individuals claiming to be victims of a violation. However, where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent (article 2). Rule 68 of the rules of procedure of the Committee on the Elimination of Discrimination against Women provide that communications may be submitted on behalf of an alleged victim without her consent where the author can justify such action in writing. There is no provision for collective complaints in the United Nations system, although such complaints are possible in the context of the ILO and in relation to the second Additional Protocol to the European Social Charter. **Given the particular challenges that might confront individuals with disabilities accessing any communications procedure, the approach taken by the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women is recommended, and there should be consideration of possibilities for broadened representation of complainants, as well as the possibility of collective complaints, including those submitted by NGOs and NHRIs.**

(iv) **Inquiries**

49. The human rights inquiry procedures provide the committees with this competence to address widespread and systemic violations. The procedure allows the treaty body to address a broad range of issues, and to recommend measures to combat the structural causes of violations. As the procedure does not depend on the submission of a report, and is initiated by the committee concerned, it can address issues in a timely manner, and avoids the practical or other constraints that individuals might face in submitting communications.

50. To date, nine inquiries have been conducted by the Committee against Torture and the Committee on the Elimination of Discrimination against Women, with each leading to broad recommendations. **Possible relevant improvements and innovations to the existing procedures could include a threshold for inquiries on the lines of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women** which allows for inquiries in the case of alleged 'grave' or 'systematic' violations (article 8), in contrast to the Convention against Torture which provides for inquiries where there are allegations that torture is being 'systematically practised' (article 20). A specific follow-up mechanism could also be considered, as in the case of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (article 9). **The treaty could also clearly indicate that the Committee could initiate an inquiry if it became aware of violations reaching the threshold, rather than as a result of formal submissions of such information by a third party, as is implied in the current treaties.**

(v) **Inter-state procedures**

51. The ICCPR, ICERD, CAT and CMW include an optional procedure enabling a State party to a human rights treaty body to present communications on alleged violations of the provisions of the treaty by another State party. The ICCPR and ICERD also include a procedure for the resolution of disputes between States. To date, these procedures have not been used, and such a procedure was not included in the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, but are foreseen in article 33 in the draft convention on disappearance. Inter-state procedures have been used in the European Human Rights system. Notably, in her analytical paper on elements for an optional protocol to the International Covenant on Economic, Social and Cultural Rights, the chairperson-rapporteur of the Open-ended working group on an optional protocol to that covenant suggests that the working group may wish to consider "the extent to which an inter-State procedure might be a means by which a treaty body could provide its good offices in order to seek a friendly solution between States having made an appropriate declaration to accept such an instrument, in relation to concerns over international cooperation and assistance".⁷

(vi) **Other functions**

(a) **General comments/recommendations**

52. Human rights treaty bodies have exercised functions, predominantly related to the treaty reporting process, which are not explicitly envisaged in their various treaties. Thus all have adopted the practice of elaborating what are variously called general comments and general recommendations, based on provisions in their treaties allowing them to make suggestions and general recommendations based on their examination of reports, or, in the case of the Committee on Economic, Social and Cultural Rights, on the basis of an invitation of the Economic and Social Council. General comments have evolved in length and complexity and now constitute detailed and comprehensive commentaries on specific provisions or themes in the treaties. **As general comment/recommendations provide valuable guidance on implementation to States parties, and are frequently referred to by United Nations entities, NGOs, and other parts of civil society an explicit provision clearly providing this competence would be a useful component of the disability treaty.**

(b) **Thematic discussions**

53. Some treaty bodies have adopted the practice of convening what are variously called 'thematic discussions,' 'thematic debates' or 'days of general discussion', where themes or issues related to their treaties are discussed

⁷ E/CN.4/2006/WG.23/2, para. 34.

by a broad range of stakeholders. These events highlight the obligations in the treaty and constitute a strong advocacy tool for implementation. In the case of the Committee on the Rights of the Child, days of general discussion can work in conjunction with article 45 (c) of the Convention on the Rights of the Child, a provision unique to this treaty allowing the Committee to recommend that the General Assembly request the Secretary-General to undertake action on specific issues relating to the rights of the child. To date, the Secretary-General has initiated comprehensive studies on the impact of armed conflict on children and violence against children as a result of this process. **An explicit provision allowing the treaty on disability to convene thematic discussions, as well as a provision similar to article 45 (c) of the Convention on the Rights of the Child could be considered for the disability treaty.**

(c) Country visits

54. Except in the context of the CAT and CEDAW inquiry procedures, the existing international human rights treaties do not explicitly provide for country visit as a part of monitoring. Country visits by treaty body members are thus generally not funded by the UN regular budget. However, treaty body members increasingly visit States parties at the invitation of Governments, UN entities, non-governmental organizations or UN agencies and other parts of civil society, as well in the context of United Nations conferences and other events. Several treaty bodies, supported by the Secretariat, have also implemented activities specifically geared to follow up the implementation of concluding observations. **Country visits, which feature as part of the regional human rights systems, have the potential to enhance implementation, create visibility for the treaty concerned and serve as an advocacy tool, and competence for the committee on disability to conduct such visits might be considered as an element to be included in the treaty.**

(d) Early warning/urgent action

55. Several treaty bodies have developed procedures to address particularly urgent situations, predominantly through the reporting procedure. The Committee on the Elimination of Discrimination against Women has developed a procedure whereby it requests 'exceptional reports' in cases where there is reliable and adequate information indicating grave or systematic violations of women's human rights, while the Human Rights Committee has sometimes requested States parties facing serious difficulties in the implementation of rights contained in the Covenant to prepare ad hoc reports on specific issues. Since 1993, CERD has developed early warning and urgent action measures, which may be invoked by the Committee or interested parties (A/48/18, annex III). Within the procedures, the Committee may request written submissions from States parties and invite a delegation to discuss the matter in a meeting. After consideration of the matter, the Committee adopts a formal decision on the matter. Article 34 of the draft convention on disappearance provides that if the Committee receives information which appears to it to contain well founded indications that enforced disappearances is being practised on widespread or systematic basis in a State party, it may, after seeking from the State party all relevant information, urgently bring the matter to the attention of the General Assembly through the Secretary-General. **Consideration may be given to the inclusion of a specific provision on urgent situations in the disability convention.**

4. Reform of the human rights treaty system

56. Ways to enhance the human rights treaty system so that it can effectively meet its objective of ensuring human rights protection at the national level through encouraging implementation of the substantive obligations in the treaties have been discussed almost since the establishment of the first Committee, the Committee on the Elimination of Racial Discrimination. The Secretary-General called for the treaty bodies to craft a more coordinated approach to their activities and standardize their various reporting requirements revitalized these discussions (A/57/387, paragraph 54). In his report *In larger freedom* (A/59/2005), the Secretary-General

reemphasized the need to streamline and strengthen the treaty body system and called for implementation of harmonized guidelines on reporting to all treaty bodies, so that the treaty bodies can function as a unified system. In her Plan of Action, the High Commissioner for Human Rights reiterated this call, emphasizing that the objective of the system must be to ensure the greatest level of protection for all rights-holders and proposed the creation of a unified standing treaty body in order to provide a strengthened and more effective monitoring system to enhance the impact of the human rights treaty system, particularly at the national level (A/59/2005/Add.3). Paragraph 147 of her Plan indicates that she “will develop proposals for a unified standing treaty body and invite States parties to the seven human rights treaties to an intergovernmental meeting in 2006 to consider options”.

57. The High Commissioner has begun a process of discussion with treaty bodies and other stakeholders on her proposal, with the focus of the discussions has been on how reform can promote unified interpretation of treaty articles; provide for intensified scrutiny of implementation of obligations at the national level; increase the visibility of the treaties and the treaty bodies; enhance access to the treaty bodies; and finally, maximize both the efficiency and quality of the monitoring process, in particular against the background of non-submission of reports, backlog in their consideration, and the limited use of other monitoring mechanisms, including the communications procedures.

58. As the drafting of the disability convention takes place in this wider context of reform, inclusion of a mechanism for accelerated amendment of the treaty such as provided in the draft convention on disappearances should be considered Article 27 of the draft treaty provides:

A Conference of States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to decide (...) whether it is appropriate to transfer to another body – without excluding any possibility – the monitoring of this Convention, in accordance with the functions defined in articles 28 to 36.

59. Inclusion of a provision which would allow the treaty on disability to be monitored by a reformed human rights monitoring system if this were established prior to the entry into force of that treaty should also be considered

5. Other proposals for international monitoring

60. Proposals for mechanisms to monitor the disability convention also include an International Disabilities Ombudsman or a UN Global Advocate for Disability Rights and regular Conferences of the States parties.

(i) International Disabilities Ombudsman/Global Advocate for Disability Rights

61. There is currently no equivalent to the proposed International Disabilities Ombudsman in the United Nations system. However, there are a number of United Nations ‘global advocates’ variously created through resolutions of the UN General Assembly; directly appointed by the Secretary-General on a particular theme or issue, in response to a major occurrence such as a natural disaster, or on the occasion of a major event such as a global conference. Selection is made on the basis of recognized expertise or achievements in a given field or the prominent global stature of an individual. The majority serve on an unremunerated, part-time basis, assisted by a small number of UN Secretariat staff, although some have been full-time UN positions, supported by a small staff. The functions of global advocates vary, but all have a substantial advocacy component.

62. Most human rights-related appointments operate similarly to UN Special procedures of the Commission on Human Rights, in that they raise awareness about their theme, provide policy advice, and act on individual complaints. Thematic rapporteurs are able to assess implementation in all States, irrespective of ratification of

specific instruments. Unlike treaty bodies, they are not bound by a session schedule or the requirement of obtaining consensus from the group, they can act rapidly, transmit urgent appeals to States for immediate protection measures when they deem necessary, and undertake urgent fact-finding country visits. Rapporteurs are also not constrained by the requirement of exhaustion of domestic remedies.

63. As in the case of existing special rapporteurs, the creation of an International Disabilities Ombudsman would not preclude the creation of treaty body; and it should be noted that several special rapporteurs established by the UN Commission on Human Rights on themes that are closely related to those dealt with by the treaty bodies (Table 5).

Committee	Special Rapporteur/Independent Expert/Working Group of the Commission on Human Rights on
CERD	Contemporary forms of racism, racial discrimination, xenophobia and related intolerance Indigenous persons Minority issues
HRC	WG Arbitrary Detention Working Group on Enforced or Involuntary Disappearances Extrajudicial, summary or arbitrary executions The right to freedom of opinion and expression Freedom of religion or belief The independence of judges and lawyers
CESCR	The right to education The right to adequate housing The right to the highest attainable standard of physical and mental health The right to food The question of extreme poverty The effects of economic reform policies and foreign debt
CEDAW	Violence against women, its causes and consequences trafficking in persons, especially in women and children
CAT	Torture
CRC	sale of children, child prostitution and child pornography, trafficking in persons, especially in women and children
CMW	Migrant workers

64. As noted earlier, the interaction between these mechanisms and the treaty bodies has been uneven, and a provision on the lines of article 28.1 of the draft convention on disappearance or providing more detailed guidance on the cooperation between these mechanisms should be considered for inclusion.

(ii) **Conferences of States parties**

65. The proposal for more active use of Conferences of States parties was inspired by the use of such conferences under other international treaties. The anti-personnel landmines treaties, notably the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (“Ottawa Convention”) and the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects allow States Parties to meet at regular meetings to review *any* matter relating to the operation of the treaties. They can consider written submissions by States parties, negotiate further norms in the form of amendments or additional protocols, and set quantitative goals and targets. In the case of the Ottawa Convention, they have been used as a forum to discuss issues, such as critical legal definitions, as well as develop further norms and quantitative goals and targets. Thus, the Meetings of States parties to this Convention have been used as a global policy making mechanism. The Meetings are not in practice used to review reports submitted by individual countries on the types, quantities and locations of their stockpiles and programmes for decommissioning them, which are required to be submitted annually to the UN Secretary-General under article 7 of the Convention.

66. Regular meetings of States parties are convened in respect of the human rights treaties. While they are not prohibited from addressing other issues pertaining to the operation of the treaty and have on occasion done so, particularly on technical or financial matters or to review the status of ratification, the meetings of States parties have primarily been convened to elect treaty body members. Conferences of States parties are convened to consider proposed amendments to the treaties. **Accordingly, the inclusion of a provision explicitly outlining the possibility for Conferences of States parties to be organized on any matter relating to the implementation of the treaty, including across States parties as a whole, as well as international cooperation and assistance should be considered.** In the context of reporting, however, it may also be noted that in the case of the only human rights treaty in which the function of examining State party reports was entrusted to an inter-governmental body, namely the International Covenant on Economic, Social and Cultural Rights, with the corresponding body being the Economic and Social Council of the United Nations, the function was eventually entrusted to an expert Committee.

(iii) **A peer review mechanism**

67. A peer review mechanism involving systematic examination and assessment of the performance of a State by other States, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices and comply with established standards and principles may also be a valuable monitoring tool.

68. The OECD’s Peer Review Mechanism established was established in 1961. Draft surveys prepared by the OECD Secretariat are reviewed by the concerned subsidiary body of the OECD, represented by the delegates to the OECD and often also by national experts from participating examiner countries in the matter being reviewed. In the case of the *Economic Surveys*, the review is conducted by the entire OECD membership of 30 States. The specific modalities for each Peer Review vary, but normally, a team of examiners is constituted, generally on a system of rotation among member States, although the particular knowledge of a field or country may be a factor in selection. The examiners are responsible for reviewing the documentation, undertaking extensive consultations with representatives of the country under review, together with the Secretariat, and sometimes participate in country visits. The examiners serve in their official capacities, but are expected to be free from national interests that might impair their objectivity and thus undermine the credibility of the Peer Review Mechanism.

69. The country under an OECD review is an active partner in the process, and responds to requests for information and host on-site visits, and sometimes contributes to the financing of such visits. The Secretariat of the OECD prepares a detailed questionnaire through which Member States have an opportunity to assess

themselves, although they are not obliged to do so. As part of a survey, members of the Secretariat visit the country being reviewed to meet with officials and experts.

70. The draft report is normally considered by the responsible OECD subsidiary body. The draft Secretariat surveys are normally revised during the course of examination with the country examined and the final text is agreed upon by all concerned parties and adopted by the body, including the reviewed State, usually by consensus but not always.⁸

71. Peer Reviews in the OECD are generally considered to be successful exercises, as there is considerable investment in verification, including intensive research and on-site visits by the Secretariat, with the output being of high quality. It is also suggested that the non-binding nature of the final outcome allows for collaboration, mutual learning, and consideration of the political and historical context of a given issue. Peer Review often serves as a valuable capacity building opportunity to the national policy makers and technical experts who often are responsible for implementing the recommendations, and it is common for Member States to request a Peer Review on a specific sector, and on occasion a non-Member State has also requested one.

72. Peer reviews have been adopted by the WTO, IMF, APEC, and in 2004 the New Partnership for African Development (NEPAD) was established to monitor compliance with the 2002 Declaration on Democracy, Political, Economic and Corporate Governance. A self-assessment is prepared by the country under review based on a detailed questionnaire covering four basic areas: democratization and political governance, socio-economic development, macro-economic policies, and corporate governance. The self-assessment is examined by a panel of seven eminent persons, one of whom will lead a review team of partner institutions and independent consultants on a country mission. The report of the panel will be considered by the APR Forum, consisting of the Heads of State and Government of the countries participating in the review. In the event that the country under review shows good will to address the shortcomings identified, it will be incumbent upon participating Governments to provide what assistance they can, as well as to urge donor governments and agencies also to come to the assistance of the country reviewed. However, if the necessary political will is not forthcoming, the participating States should first try to engage it in a constructive dialogue, offering assistance as appropriate. If that should prove unavailing, they may as a last resort collectively proceed with "appropriate measures".⁹ Of the four countries selected for the first round of reviews, only two assessments have been completed, neither of which have yet been made public. As the methodologies of the APRM process are evolving it is too early to reach conclusions about its effectiveness of the APRM.

6. National monitoring

73. Several proposals call for the inclusion of provisions in the disability convention obliging States parties to confer a monitoring role on an independent national mechanism, suggesting that such a role be conferred on existing institutions where they have capacity to fulfil this role, or to a new institution, for example a National Disabilities Commission.

74. With the exception of the Optional Protocol to the Convention against Torture, which has not yet entered into force, existing international treaty monitoring mechanisms do not confer a monitoring role on national institutions. The Optional Protocol to the Convention against Torture reflects the current emphasis on the importance of national and local action for implementation, highlighted by the Secretary-General *In larger freedom*, where he indicated that the "emplacement or enhancement of a national protection system in each

⁸ Fabricio Pagani, *Peer review: a tool for co-operation and change*, OECD Policy Brief, OECD Observer, 2003.

⁹ Chris Stals, *The African Peer Review Mechanism as an integral part of the New Partnership for Africa's Development*, African Human Rights Journal, volume 4, Number 1 (2004), p. 137.

country, reflecting national human rights norms, should be principal objective of the Organization” (A/57/387, paragraph 50).

75. The Optional Protocol to the Convention against Torture establishes an international body of experts, the Sub-Committee on Prevention, which is mandated to conduct regular visits to States parties. Within one year of entry into force, the Protocol requires the State party to have in place an independent national preventive mechanism, which may include a human rights commission, ombudsman, parliamentary commission or NGO. The national preventive mechanism will conduct regular visits to any place of detention, may conduct interviews and will make recommendations on improvement of treatment and conditions for detainees. The international and national monitoring mechanisms will cooperate together, and with national authorities.

76. Article 18 of the Optional Protocol provides that States parties are required to ensure that the national preventive mechanism has the required capabilities and professional knowledge for their task, as well as to strive for gender balance and adequate representation of minority and ethnic groups in the country. When establishing national preventive mechanisms they are also required to give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principle, General Assembly resolution 48/143 of 1993).

77. In their submissions to the Ad Hoc Committee, national institutions pointed to the rise in the number of national human rights institutions that have been established recently.¹⁰The International Coordinating Committee of National Human Rights Institutions counts 100 member institutions worldwide. Many already monitoring the rights of persons with disabilities, with a study commissioned by the Office of the High Commissioner for Human Rights in 2001, indicating that out of 13 national institutions that responded to a questionnaire, nearly all claimed to place high priority on disability rights and most dealt with complaints from individuals with disabilities. All but one had replied that they had a specifically designated focal point or unit to deal with disability rights, and several have commissions on disability mandated by legislation.¹¹ **Inclusion of specific provisions which build on article 17 of the Optional Protocol to the Convention against Torture in the convention on disability should be considered, with express mention being included of a requirement to strive for the representation of persons with disabilities in the mechanism. In order to underline that effective monitoring depends on the independence of the national mechanism consideration should also be given to express reference to the Paris Principles.**

¹⁰ Proposal by National Institutions, submission by the Asia-Pacific Forum of National Human Rights Institutions (2004), submission of the European Grouping of National Institutions (2005).

¹¹ Quinn and Degener, pp. 170-171, questions 4,7,8.