

ARTICLE 33(2) OF THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: ANOTHER ROLE FOR NATIONAL HUMAN RIGHTS INSTITUTIONS?

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Abstract

This article concerns Article 33(2) of the UN Convention on the Rights of Persons with Disabilities (CRPD or Convention) which provides that States should designate or establish one or more independent mechanisms to promote, protect and monitor the implementation of the Convention taking into account the Paris Principles. It analyses the content of Article 33(2) with a view to determining if national human rights institutions (NHRIs) should be designated independent mechanisms. The article adopts a two-pronged approach by explaining the functions of NHRIs and by evaluating their suitability to play the role of independent mechanisms. After explaining the importance of national monitoring, the article discusses the Paris Principles and the role of NHRIs and examines whether these institutions should exercise the functions of independent mechanisms. It also deals with cooperation between these mechanisms and the other actors mentioned in Article 33. Finally, the article analyses the consequences for NHRIs of the reference to the Paris Principles in Article 33(2) of CRPD.

1. INTRODUCTION

The 2006 UN Convention on the Rights of Persons with Disabilities (CRPD or Convention) is a great step in the achievement of disability rights.¹ Not only does the Convention fill a gap in international human rights law but it also brings a human rights dimension to disability issues. Furthermore, it creates a shift of paradigm no longer regarding disabled persons as persons who need assistance because of their

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¹ CRPD was adopted on 13 March 2006 and entered into force on 3 May 2008 after its 20th ratification. On 5 January 2011, there were 147 signatories and 97 ratifications.

impairments (the so-called medical model) but considering them as right-holders who should be integrated into society (the so-called social model).² The preamble of CRPD confirms this.³

This is not the only achievement of CRPD. In addition to enouncing the rights of persons with disabilities, the Convention outlines the institutional changes which States have to undertake in order to facilitate its implementation. Article 33(2) of CRPD requires that States designate or establish one or more independent mechanisms to promote, protect and monitor the implementation of the Convention taking into account the 'Principles relating to the status and functioning of national institutions for the protection and promotion of human rights'. These Principles, commonly called the *Paris Principles*, were drafted at the First International Workshop of National Human Rights Institutions held in Paris in 1991 and endorsed by both the UN General Assembly and Commission on Human Rights in 1993.⁴ By focussing not only on international monitoring but also on national monitoring, CRPD created another shift of paradigm.

Besides analysing the content of Article 33(2), this article looks into the potential role of national human rights institutions (NHRIs). The question is whether NHRIs should play the role of independent mechanisms. The article is divided into seven sections. Section 1 is the introduction. Section 2 explains the importance of national monitoring as well as the reason why it found its way into CRPD. Section 3 introduces the *Paris Principles* and examines the role of NHRIs. Section 4 analyses the various possibilities offered by Article 33(2) and examines whether NHRIs should exercise the functions of independent mechanisms. Section 5 deals with cooperation between these mechanisms and the other actors mentioned in Article 33. Section 6 examines the questions arising from the reference to the *Paris Principles* in Article 33(2) of CRPD. Section 7 is the conclusion.

The article adopts a two-pronged approach. On the one hand, it explains the functions of NHRIs. On the other hand, it evaluates whether NHRIs are suited to play the role of independent mechanisms. This includes an examination of the consequences for them of the reference to the *Paris Principles* in Article 33(2) of CRPD.

The article aims not only to give insight into the role of independent mechanisms and evaluate the suitability of NHRIs but also to guide States parties (or future States parties) which are currently considering how they should apply Article 33(2) of CRPD. Many

² Arnardóttir, O. and Quinn, G., 'Introduction', in: Arnardóttir, O. and Quinn, G. (eds), *The UN Convention on the Rights of Persons with Disabilities. European and Scandinavian Perspectives* Martinus Nijhoff Publishers, London/Boston, 2009, pp. xv-xxiv, at p. xvii; and Kayess, R. and French P., 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities', *Human Rights Law Review*, Vol. 8, No. 1, 2008, pp. 1-34, at p. 6.

³ Preamble (e) of CRPD recognises that 'disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.

⁴ UN GA, Resolution 48/134, UN Doc. A/RES/48/134, 20 December 1993.

of them are still puzzled by their new obligations, the major exception being European Union (EU) member States, whose independent mechanisms will be used as example.

2. NATIONAL MONITORING

Human rights treaties define which rights States should respect, protect and fulfil. However, these treaties do not determine through which means they should do this. This follows from the principle of subsidiarity, which considers that States are best placed to determine how they should implement human rights. Accordingly, the International Covenant on Civil and Political Right (ICCPR) obliges a State ‘to respect and to ensure to all individuals’ and ‘to take the necessary steps (...) to give effect to the rights recognised’ in the ICCPR,⁵ whereas the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires it to ‘take steps (...) to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised’ in the ICESCR.⁶ What measures exactly States should take in order to reach this objective, however, is not provided for by these treaties.

In contrast, Article 33(2) of CRPD provides that States should designate or establish one or more independent mechanisms to promote, protect and monitor the implementation of the Convention taking into account the *Paris Principles*. The idea that States should create independent bodies is not new.⁷ Furthermore, so-called NHRIs have received wide support since the adoption of the *Paris Principles*. However, the inclusion of the obligation to create independent mechanisms in line with these Principles in human rights treaties is a recent phenomenon.⁸ With CRPD, this is the second human rights treaty in which the *Paris Principles* are mentioned, the precedent being the 2006 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) which requires that States designate or establish one or more national preventive mechanisms to visit places of detention with due consideration for the *Paris Principles*, in addition to establishing a Sub-Committee on Prevention with the same function.⁹ Previous treaties limit themselves to creating so-called treaty bodies to monitor their implementation, the Committee on the Rights of Persons with Disabilities as far as CRPD is concerned.

⁵ Article 2(1) and (2) ICCPR.

⁶ Article 2(1) ICESCR.

⁷ The idea of establishing independent bodies originated as early as 1946. During its second session, the UN Economic and Social Council (ECOSOC) invited member States ‘...to consider the desirability of establishing information groups or local human rights committees within their respective countries’. See ECOSOC, Resolution 2/9, 21 June 1946.

⁸ The proposal was made by NHRIs at the Sixth Session of the Ad Hoc Committee on Rights of Persons with Disabilities. See Quinn, G., ‘Resisting the “Temptation of Elegance”: Can the Convention on the Rights of Persons with Disabilities Socialise States to Right Behaviour?’, in: Arnardóttir and Quinn, *op.cit.* (note 2), pp. 215–256, at pp. 247–248.

⁹ OPCAT was adopted on 18 December 2002 and entered into force on 22 June 2006 after its 20th ratification. On 5 January 2011, there were 78 signatories and 57 ratifications.

In the words of Jack Donnelly, ‘the struggle for human rights will be won or lost at the national level’.¹⁰ Although the ratification of human rights treaties as such is a positive step, it is only the beginning of a process. While international bodies can be entrusted with verifying States’ compliance with human rights, it is these States that bear primary responsibility for implementing human rights. In view of this, it is necessary to define in greater detail which measures they should adopt in order to give effect to their human rights obligations. International bodies cannot achieve this on their own, although they can serve as a backup when national human rights systems prove ineffective. Treaty bodies are to a large extent under-resourced and may have difficulty to get in touch with local realities. The independent mechanisms for the promotion, protection and monitoring of the implementation of CRPD therefore fill the gap between the international and national levels. This is not foreseen in older human rights treaties, like ICCPR and ICESCR.

It is not a matter of fashion that national monitoring has found its way into CRPD.¹¹ In many States, there is no comprehensive approach to disability issues, as policies are fragmented between public departments, with a main role given to the health ministry, taking isolated measures. In addition, the human rights dimension of disability issues has for a long time been ignored in policy making. There are no or few independent bodies dealing with the *rights* of disabled persons, in contrast to what is the case with children’s rights or the rights of women. Disability rights, however, require the transformation of social structures and not just the adoption of isolated measures. In addition, policy makers should regard disabled persons as right-holders and not as mere assisted persons. This requires an overall and permanent verification of the compliance of policies relating to disabled persons with human rights.

Another explanation for the inclusion of the obligation to create independent mechanisms in CRPD is that the Convention does not aim to elaborate new human rights standards but to increase compliance with existing ones. Although in a way it clarifies and expands the rights of disabled persons,¹² it was considered by the drafters as a pure implementation convention. The focus of the discussions was therefore not on standard setting but on implementation.¹³ The creation of independent mechanisms to promote, protect and monitor the implementation of the Convention

¹⁰ Donnelly, J., ‘Post-cold War Reflections on the Study of International Human Rights’, *Ethics and International Affairs*, Vol. 8, No. 1, 1994, pp. 97–117, at p. 117.

¹¹ There was strong support among the drafters of CRPD to provide for both national and international monitoring in the Convention, although without much discussion on the reasons for this. See *Travaux préparatoires* of the Six Session of 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, *Daily summary discussion (11 August 2005)*, available at: www.un.org/esa/socdev/enable/rights/ahc6sum11aug.htm.

¹² See Mégret, F., ‘The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights’, *Human Rights Quarterly*, Vol. 30, No. 2, 2008, pp. 494–516.

¹³ The same can be said of OPCAT, which does not create new human rights standards but creates visiting mechanisms for places of detention at both the national and international levels.

was in accordance with these discussions in which NHRIs actively participated. Future human rights treaties, which – if any, as the normative framework of human rights is almost completed – will probably focus more on implementation than on standard setting too, may likewise pay more attention to national monitoring.

A last argument explaining the focus on national monitoring in CRPD is that the Convention requires changes of mentality. To implement the Convention, a State will have to internalise its underlying values and change its policies relating to disabled persons accordingly.¹⁴ This requires that independent bodies constantly remind States of the importance of these values and try to foster their acceptance. These bodies must verify that decision-making processes follow the approach of CRPD and encourage State authorities to facilitate the integration of disabled persons into society, as required by the Convention. In other words, a human rights treaty must be accompanied by efforts to promote its underlying values in order to break resistance which hampers its implementation. This applies particularly to non-discrimination treaties,¹⁵ such as CRPD.

3. PARIS PRINCIPLES AND NATIONAL HUMAN RIGHTS INSTITUTIONS

The *Paris Principles* outline the responsibilities, composition and working methods of NHRIs.¹⁶ NHRIs have been gradually recognised at the international level. The World Conference on Human Rights held in Vienna in 1993 recognised the importance of creating such institutions in line with the *Paris Principles*.¹⁷ Several treaty bodies also issued general comments regarding the role of NHRIs in the implementation of human rights.¹⁸

¹⁴ Quinn, *loc.cit.* (note 8), pp. 218–220.

¹⁵ See Sicilianos, L.-A., ‘The Prevention of Human Rights Violations. Utopia or Challenge?’, in: Sicilianos, L.-A. (ed.), *The Prevention of Human Rights Violations. Contribution on the Occasion of the Twentieth Anniversary of the Marangopoulos Foundation of Human Rights (MFHR)*, Kluwer Law International, The Hague, 2001, pp. 279–293, at p. 288.

¹⁶ The *Paris Principles* outline the different aspects of NHRIs according to the following headings: A. Competence and responsibilities; B. Composition and guarantees of independence and pluralism; C. Methods of operation; and D. Additional principles concerning the status of commissions with quasi-jurisdictional competence.

¹⁷ World Conference on Human Rights, *Vienna Declaration and Programme of Action*, UN Doc. A/Conf.157/23, 25 June 1993, Part I, para. 36.

¹⁸ See Committee on the Rights of the Child, *General Comment No. 2, The role of independent national human rights institutions in the promotion and protection of the rights of the child*, UN Doc. CRC/GC/2002/2, 15 November 2002; Committee on Economic, Social and Cultural Rights, *General Comment No. 10, The role of national human rights institutions in the protection of economic, social and cultural rights*, UN Doc. HRI/GEN/Rev.7, 10 December 1998; and Committee on the Elimination of Racial Discrimination, *General Recommendation No. 17, Establishment of national institutions to facilitate implementation of the Convention*, UN Doc. A/48/18, 25 March 1993.

In addition to setting out the functions of NHRIs, the *Paris Principles* lay emphasis on two fundamental principles: independence and pluralism.

Independence has a triple meaning in the *Paris Principles*. First, NHRIs should be functionally independent. This means that they should be free from governmental interference. To guarantee this, they should be established ‘by a constitutional or legislative text’.¹⁹ They must also be able to choose their own staff and to determine their priorities. Second, NHRIs should be personally independent. This means that their members should be able to act in a pressure-free environment and be appointed (and, if necessary, dismissed) according to a fair and clear procedure. Third, NHRIs should be financially independent. They must have sufficient resources at their disposal, which should be determined preferably by parliament.²⁰

Pluralism links NHRIs with civil society. The *Paris Principles* provide that the composition of NHRIs should ensure ‘the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights’.²¹ They also mention a series of categories who should be involved in the work of NHRIs:

- a) Non-governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- b) Trends in philosophical or religious thought;
- c) Universities and qualified experts;
- d) Parliament;
- e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).²²

The major actors concerned with human rights are NGOs. Both NHRIs and NGOs can benefit from their cooperation. On the one hand, through NHRIs NGOs can channel their demands to State authorities and thereby increase their impact. NHRIs also give NGOs the opportunity to coordinate their action by allowing them to collectively deal with human rights issues that are in the ambit of different organisations. On the other hand, NGOs can help NHRIs to get in touch with local communities and to be appraised of the day-to-day problems affecting vulnerable groups. They can also make available their sound knowledge and the deeply rooted expertise they possess in the field of human rights to these institutions.

NGOs, however, tend to be over-represented in NHRIs at the expense of other categories, such as trade unions, concerned social and professional organisations, trends in philosophical or religious thought, universities and qualified experts

¹⁹ Principle 2, A. Competence and responsibilities, *Paris Principles*.

²⁰ Principle 2, B. Composition and guarantees of independence and pluralism, *Paris Principles*.

²¹ Principle 1, B. Composition and guarantees of independence and pluralism, *Paris Principles*.

²² *Idem*.

and parliament, which are mentioned in the *Paris Principles*.²³ NGO dominance may lead to forgetting that these actors are also concerned with human rights, even if this might be incidental, and they should therefore be associated in their implementation. Furthermore, a better balance in NHRI membership would lead to a better understanding between both NGO and non-NGO forces. Representatives of governmental departments should likewise be included, albeit in an advisory capacity, as required by the *Paris Principles*.

Pluralism can be achieved in two ways: representation or cooperation. The *Paris Principles* state that NHRIs should ensure ‘the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights’ either ‘by powers which will enable effective cooperation to be established with, or through the presence of, representatives of’ the aforementioned actors.²⁴ This means that these representatives should either be members of the NHRIs or be able to effectively cooperate with these institutions.

Since Article 33(2) of CRPD refers to the *Paris Principles* explicitly, the functions of NHRIs should be examined. NHRIs have been created by States to implement human rights at the national level and are a response to the gap between human rights standards and their practical application.

NHRIs have mainly three functions: the monitoring and advising of State authorities, the promotion and providing of human rights education and the handling of complaints on alleged human rights violations (the last function being optional according to the *Paris Principles*). Regarding the first function, NHRIs examine the compliance of both legislation and practice with human rights. They evaluate not only their conformity with human rights treaties but also the broader implications of policies for human rights enjoyment. NHRIs may also conduct general inquiries and submit reports to State authorities on human rights issues that seem important or urgent. Regarding the second function, NHRIs aim to increase awareness of human rights by disseminating information on human rights. They do so both within and outside the formal education system. Some NHRIs also focus on research in order to promote a better understanding of human rights.

NHRIs aim to ensure that national human rights policies are consistent. Thanks to their broad mandate, they can help States to adopt coherent human rights policies. They can elaborate a general approach to human rights issues, including those issues straddling the competence of different public organs or different levels of powers in federal or decentralised States and, by so doing, ensure the mainstreaming of human rights. Furthermore, NHRIs can foster a national debate on specific human rights issues. A NHRI can also prove to be valuable to the general public by setting up information points and special desks to direct individuals to other competent institutions.

²³ Principle 1, B. Composition and guarantees of independence and pluralism, *Paris Principles*.

²⁴ *Idem*.

NHRIs are halfway between State and non-State actors. They can therefore serve as a platform where both of them can consult each other with regard to their human rights concerns. Involving both representatives of civil society and, in an advisory capacity, representatives of governmental departments, NHRIs can create a human rights dialogue between civil society and the public administration.

At the international level, NHRIs created the International Coordinating Committee of NHRIs (International Coordinating Committee). The International Coordinating Committee is composed of four regional groups: Africa, Europe, the Americas and Asia-Pacific.²⁵ It organises international conferences, which include thematic sessions, biannually, the last of which took place in Scotland in October 2010. The International Coordinating Committee gradually acquired an international position by increasing engagement in policy making with regard to NHRIs.²⁶ The Office of the High-Commissioner for Human Rights (OHCHR) is closely linked to the International Coordinating Committee and created a National Institutions Unit which serves as its secretariat.

With the intention of bringing about an official 'label' for NHRIs, the International Coordinating Committee established a Sub-Committee on Accreditation.²⁷ With the support of the OHCHR, the Sub-Committee on Accreditation is compiling a list of those institutions that comply, do not fully comply, or fail to comply with the *Paris Principles*. Those that comply are granted A-Status, those that do not fully comply are granted B-Status, and those that fail to comply are designated C-Status. This peer review determines how many NHRIs are recognised as such in the world.²⁸ Only those institutions with A-Status can become voting members in the international network of NHRIs; those with B-Status are granted observer status.²⁹

²⁵ The International Coordinating Committee consists of four NHRIs per regional group, that is 16 NHRIs in total.

²⁶ See Garrido, A.-M. and Kofod Olson, B., 'Coordination of the Work of NHRIs – From Liaison to Joint Achievements', in: Jorgensen, R.F. and Slavensky, K. (eds), *Implementing Human Rights. Essays in Honour of Morten Kjaerum*, Danish Institute for Human Rights, Copenhagen, 2007, pp. 190–203.

²⁷ The Sub-Committee on Accreditation is composed of one NHRI of each regional group, that is four NHRIs in total.

²⁸ A regularly updated list of accredited NHRIs is available at: www.nhri.net.

²⁹ There are currently 11 NHRIs that fully comply with the *Paris Principles* (and that are thus granted A-Status) in the EU. These are (ranked by their date of creation): the French *Commission nationale consultative des droits de l'homme*, the Danish Institute for Human Rights, the Greek National Human Rights Commission, the Polish Commissioner for Civil Rights Protection, the Portuguese *Provedor de Justiça*, the Spanish *Defensor del Pueblo*, the Irish Human Rights Commission, the Northern Ireland Human Rights Commission, the Luxembourg National Advisory Commission for Human Rights, the German Institute for Human Rights, the UK Commission for Equality and Human Rights and the Scottish Commission for Human Rights. See Fundamental Rights Agency of the EU (FRA), *National Human Rights Institutions in the EU Member States. Strengthening the Fundamental Rights Architecture in the EU I*, FRA, Vienna, 2010. These institutions are part of the European Group of NHRIs, which covers the NHRIs with A-Status of the 47 member States of the Council of Europe. See de Beco, G., 'Networks of European National Human Rights Institutions', *European Law Journal*, Vol. 14, No. 6, 2008, pp. 860–877. The Netherlands also intends to create an NHRI and the Dutch Government introduced a draft legislation relating to this to Parliament. Steps

4. ANALYSIS OF ARTICLE 33(2) OF CRPD

Article 33(2) of CRPD provides 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. 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.

Four issues relating to Article 33(2) CRPD will be examined in this section: 1) the designation or establishment of one or more independent mechanisms; 2) consideration for the *Paris Principles*; 3) the promotion, protection and monitoring of the implementation of the Convention; and 4) the framework of independent mechanisms.

4.1. DESIGNATION OR ESTABLISHMENT OF ONE OR MORE INDEPENDENT MECHANISMS

Article 33(2) of CRPD requires that States ‘maintain, strengthen, designate or establish’ ‘one or more independent mechanisms’.

States should ‘maintain, strengthen, designate or establish’ independent mechanisms. This gives them two possibilities.³⁰ First, they may *designate* existing bodies, which means that they may maintain these bodies and give them the functions to promote, protect and monitor the implementation of the Convention. This option is interesting for States that already have bodies exercising some of these functions and avoids the creation of new bodies. As required by the *Paris Principles*, there should be an official designation act and not a mere statement that one or more bodies will play the role of independent mechanisms. Second, States may *establish* independent mechanisms. They can therefore start from scratch and create new bodies that will exercise the functions provided for by Article 33(2) of CRPD. This option is made for States that have no bodies that can fulfil these functions.

States should designate or establish ‘one or more independent mechanisms’. There gives them again two possibilities. First, States may designate or establish a *single* body carrying out the functions to promote, protect and monitor the implementation of CRPD. This option can facilitate coordination between different organisations and

have been also taken by NGOs, governments and academic experts to establish NHRIs in Austria, Belgium, Italy and Switzerland.

³⁰ This interpretation is consistent with the second sentence of Article 33(2) which provides that States should take the *Paris Principles* into account ‘[w]hen designating or establishing’ the independent mechanisms.

help them to adopt a comprehensive approach to disability issues. Second, States may designate or establish *several* bodies which together play the functions provided for by Article 33(2).³¹ States may therefore share these functions between these bodies, whereas federal or decentralised States may designate or establish regional or local bodies.³²

4.2. CONSIDERATION FOR THE *PARIS PRINCIPLES*

Article 33(2) of CRPD provides that States should take into account ‘the principles relating to the status and functioning of national institutions for protection and promotion of human rights’ when designating or establishing one or more independent mechanisms. As already said, the *Paris Principles* are now mentioned for the second time in a human rights treaty, the precedent being OPCAT which requires that States give due consideration for these Principles when designating or establishing national prevention mechanisms.

By referring to the *Paris Principles*, the drafters of CRPD applied the guidelines for NHRIs to actors other than NHRIs. While these Principles focus on bodies that are concerned with all human rights, Article 33(2) of CRPD deals with bodies that are solely concerned with disability rights.³³ By using the *Paris Principles* as criteria to evaluate independent mechanisms for the promotion, protection and monitoring of the implementation of CRPD, the drafters of the Convention actually abstracted these Principles from NHRIs. This means that the *Paris Principles* will have to be read in light of the specific mandate of these mechanisms. As far as independence is concerned, no changes are normally needed. The independent mechanisms have to be independent akin to NHRIs. With regard to pluralism, however, it will be necessary to determine which actors duly represent ‘the social forces (of civilian society) involved in the promotion and protection of’ *disability rights* and to ensure their representation in or their cooperation with the independent mechanisms.

The major actor concerned with disability rights are so-called disabled peoples organisations (DPOs). These organisations are to disability rights what NGOs are to human rights in general. They are, as a rule, the closest to disabled persons and have the greatest expertise in the field of disability issues. Independent mechanisms have therefore to include them in their organisation. Like NGOs with NHRIs, DPOs should either be member of independent mechanisms or be able to effectively cooperate with these mechanisms. As is often the case with DPOs themselves, the direct participation of persons with disabilities in the independent mechanisms is also desirable.

³¹ States will designate and not establish several bodies, since they will most probably establish only a single body should they start from scratch.

³² As will be explained, Article 33(2) also requires States to establish ‘a framework’, which means there should be some form of coordination between the independent mechanisms.

³³ Likewise, OPCAT applies the *Paris Principles* to bodies that solely visit places of detention.

However, the *Paris Principles* do not only refer to NGOs, as already mentioned. They also recommend the participation of other actors.³⁴ Trade unions and concerned social and professional organisations, such as medical associations in particular, which are concerned with disability rights, should therefore be involved in the work of independent mechanisms. According to the *Paris Principles*, this applies also to representatives of philosophical or religious thought, universities and qualified experts and parliament. Governmental representatives should be included, albeit only in an advisory capacity, as required by the *Paris Principles*.

Consideration for the *Paris Principles* in the designation or establishment of independent mechanisms for the promotion, protection and monitoring of the implementation of CRPD raises further questions, three of which should be examined.

The first question is whether existing bodies designated independent mechanisms are obliged to focus on CRPD. The answer is most probably positive, because these bodies will have to fulfil the functions of these mechanisms. Designating such bodies will therefore restrict them in defining their priorities. NHRIs that are designated independent mechanism, for instance, will have to pay more attention to disability rights. This will affect their independence, unless they receive additional funding. Even were they to be granted such funding, it means that they will have to spend more energy on some rights than on others, which is somewhat contrary to the indivisibility of human rights. The reference to the *Paris Principles* has unavoidably led to an imbalance in the mandates of NHRIs.

The second question is whether all of the independent mechanisms designated or established to promote, protect and monitor the implementation of CRPD (should there be more than one independent mechanism) must comply with the *Paris Principles*, which will oblige States to adapt these mechanisms. At first sight, it seems that Article 33(2) of CRPD, by stipulating that States should ‘take into account’ the *Paris Principles*, does not require this. This would however be against the spirit of Article 33(2). There is no reason why some of the functions of independent mechanisms should be exercised by *Paris Principles*-compliant bodies and others not, as this would create a double standard. Every body which is protecting, promoting or monitoring the implementation of CRPD must be independent and pluralist and should, therefore, comply with the *Paris Principles*.³⁵

The third question is who will evaluate the compliance of independent mechanisms with the *Paris Principles* (in the hypothesis that they all should meet them). With regard to OPCAT, the Sub-Committee on Prevention is entrusted with advising and assisting States in the creation of national preventive mechanisms,³⁶ thereby checking whether these mechanisms meet the *Paris Principles*. In contrast, there is nothing about the relationship between the Committee on the Rights of Persons with Disabilities

³⁴ Principle 1, B. Composition and guarantees of independence and pluralism, *Paris Principles*.

³⁵ As will be explained later in this section, however, an exception could be made to the promotion function, which can involve other actors as well.

³⁶ Article 11(1)(b)(i) and (ii) OPCAT.

and the independent mechanisms in CRPD.³⁷ This Committee, however, will most probably suffice as the Sub-Committee on Prevention. It will be able to evaluate if the independent mechanisms comply with the *Paris Principles* when evaluating State reports. To interpret the *Paris Principles*, it may use the General Observations of the International Coordinating Committee.³⁸ Regarding those independent mechanisms that are NHRIs, the Committee on the Rights of Persons with Disabilities will also benefit from their possible accreditation by the Sub-Committee on Prevention, although this does not necessarily mean that these institutions are in the best place to promote, protect and monitor the implementation of the Convention.

4.3. PROMOTION, PROTECTION AND MONITORING OF THE IMPLEMENTATION OF CRPD

This section analyses the functions of independent mechanisms. This exercise, which in fact any State should do before designating or establishing its own independent mechanisms, aims to see which bodies are already carrying out these functions or could do so should they be appointed. This will include an examination of whether NHRIs are the best suited.

4.3.1. Promotion

Promotion is raising awareness of human rights by disseminating materials and organising events. With regard to disability rights, the purpose is to foster an acceptance of the values underlying CRPD, which is necessary for their internalisation. People should understand that disabled persons have the right to integrate into society. Human rights education is one way to achieve this. Training in disability rights should be offered to all people whose activities could affect disabled persons and public officials in particular. In this way, promotion can contribute to the mainstreaming of disability rights throughout the public administration. The question ‘What about the rights of disabled persons?’ should come in everyone’s mind before making a decision that potentially affects disabled persons.

The promotion of human rights is part of the mandate of NHRIs.³⁹ These institutions could therefore promote disability rights, as many of them already do. However, as promotion is a large domain, an NHRI might not be able to do this entirely alone. Furthermore, governments are also promoting the rights of disabled persons, as they are obliged to do according to Article 8 of the Convention. That governments

³⁷ Article 37(2), however, provides that the Committee will have to ‘give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation’.

³⁸ See International Coordinating Committee, *General Observations*, June 2009, available at: www.nhri.net (Global/ICC Accreditation).

³⁹ Principle 3 (f) and (g), A. Competence and responsibilities, *Paris Principles*.

are undertaking promotional activities is not a problem, provided the disseminated information is accurate. DPOs of course also promote disability rights. Promotion thus straddles the competences of different actors. In contrast to the protection and monitoring functions, the promotion function may be shared between them, whereas NHRIs could be entrusted with providing supervision and elaborating a general strategy. The actors exercising this function can therefore be multiple and include bodies other than independent mechanisms.

4.3.2. *Protection*

Protection is handling alleged human rights violations through quasi-judicial powers in order to complement judicial protection. In practice, the protection of human rights means offering mediation or acting in the name of victims and assisting them in litigation. It includes filing *amicus curiae* briefs to courts. The idea is to help disabled persons to claim their rights when they deem they are violated. This should cover both their civil and political and their economic, social and cultural rights. While the first purpose is to find an arrangement between the concerned parties, the competent body should be able to help disabled persons to obtain a binding decision where necessary.

Many NHRIs have quasi-judicial powers. They could therefore protect the rights of disabled persons. However, not all of them have this function, which is moreover optional according to the *Paris Principles*. When NHRIs have no quasi-judicial powers, it might be hazardous to change their mandates, as protection entails a considerable workload. In addition, States often have equality bodies or ombudsman that can do this. Should these equality bodies or ombudsman be designated independent mechanism, they should however be careful to focus on the entire Convention.

4.3.3. *Monitoring*

Monitoring is assessing the human rights situation. It implies the evaluation of the compliance of both legislation and practice with human rights. This includes conducting general inquiries and submitting reports to State authorities on human rights issues. While this is the task of several international bodies, it is also essential that national bodies do this. The purpose of monitoring is both to alert States of potential human rights violations and to help them to adopt the measures that can prevent such violations. Thus, as far as disability rights are concerned, it is necessary not only to detect breaches of CRPD but also to examine how social structures could be adapted in order to facilitate its implementation.

Human rights monitoring is the main activity of NHRIs. The *Paris Principles* give them broad powers in this regard.⁴⁰ NHRIs make recommendations and proposals

⁴⁰ See Principle 3 (a), A. Competence and Responsibilities, *Paris Principles*. Note, however, that the term 'monitoring' is not mentioned in the *Paris Principles*.

to governments to adopt new legislation or to amend existing legislation. They do so either on their demand or on their own initiative. They also evaluate the broader implications of policies for the enjoyment of human rights. In addition, NHRIs monitor human rights in practice by evaluating compliance with human rights in circumstances where these rights are often violated. Many of them do so with disability rights and, therefore, there is no obstacle in designating them independent mechanism to monitor the implementation of CRPD. NHRIs could also assist States in defining which data they should collect for this purpose, as they are required to do according to Article 31 CRPD, and analyse these data.

4.4. FRAMEWORK OF INDEPENDENT MECHANISMS

Article 33(2) of CRPD provides that States must designate or establish ‘a framework, including one or more independent mechanisms, as appropriate’. Although there is no clear definition for this framework, the idea is that the independent mechanisms, whatever their number or shape, should form a coherent whole. This was foreseen in Article 33(2), because different bodies operating in isolation would be counterproductive, especially if they share similar functions. There should therefore be some form of coordination between them.

The flexibility of Article 33(2) of CRPD allows different combinations.⁴¹ As already said, the designation or establishment of independent mechanisms for the promotion, protection and monitoring of CRPD depends on existing bodies. This is in line with the *Paris Principles*, which offer a certain leeway in determining the exact form of NHRIs. In its resolution endorsing the *Paris Principles*, the General Assembly emphasised that a State establishing an NHRI has ‘the right (...) to choose the framework that is best suited to its particular needs at the national level’.⁴² Likewise, there is no standard model for the framework of independent mechanisms. That this framework may be adapted to the national context is confirmed by the terms ‘as appropriate’ of Article 33 (2).

After having examined which existing bodies could promote, protect and monitor the implementation of CRPD, States could arrive at the following four, non-exhaustive, options.⁴³ First, a State might either have an NHRI or an equality body or ombudsman that is already exercising these functions and could simply designate it independent mechanism. Germany, for instance, designated the German Institute

⁴¹ OHCHR, *Thematic study on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities*, UN Doc. A/HRC/13/29, 22 December 2009, p. 12.

⁴² UN GA, Resolution 48/134, UN Doc. A/RES/48/134, 20 December 1993, para. 12.

⁴³ The examples mentioned subsequently can be found in the OHCHR Thematic study and are described in more detail in the written submissions to the worldwide consultation on Article 33 organised by the Office, available at: www2.ohchr.org/english/issues/disability/submissions.htm. Another source of information is the Draft Third Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities, March 2010, available at: <http://ec.europa.eu/social/main.jsp?catId=431&langId=en>.

for Human Rights (GIHR). Latvia designated its Ombudsman. Second, a State may designate both its NHRI and its equality body or ombudsman and provide a division of labour between them and organise their collaboration, as done by Northern Ireland which designated both the Northern Ireland Human Rights Commission and the Equality Commission of Northern Ireland and by France which designated both the *Commission nationale consultative des droits de l'homme* (CNCDH) and the *Haute autorité de lutte contre les discriminations et pour l'égalité* (HALDE). The advantage of this combination is that it benefits from the mutual expertise of both NHRIs and equality bodies.⁴⁴ It also allows to share the functions of independent mechanisms between them by attributing, for instance, the monitoring function to NHRIs, the protection function to equality bodies, and the promotion function to both. Third, a State could designate or establish a representative body, as done by Austria which established the Austrian Monitoring Committee and by Spain which designated the Committee of People with Disabilities Representatives (CERMI). Fourth, a State could combine the first or second option with the third option, that is designate its NHRI or its equality body or ombudsman, or do both, and establish or designate a representative body. Spain, for instance, designated the Spanish *Defensor del Pueblo* in addition to CERMI.

These options can be tailored to federal or decentralised States in which regional or local bodies could be designated or established too, as allowed by Article 33(2) of CRPD. This may result in a combination of several options. The United Kingdom, for instance, designated three NHRIs independent mechanism, namely the Equality and Human Rights Commission, the Scottish Human Rights Commission and the Northern Ireland Human Rights Commission, in addition to the Equality Commission of Northern Ireland (as far as Northern-Ireland is concerned).⁴⁵ The possibility to have more than one independent mechanism may also facilitate the involvement of regional or local DPOs. These organisations could either be represented in the independent mechanism or be individually designated independent mechanism in the framework.

This box shows the various possibilities given to States by Article 33(2) of CRPD.

	Single body	Several bodies
Establishment	Austria (Option 3)	
Designation	Germany (Option 1) Latvia (Option 1)	France (Option 2) Northern Ireland (Option 2) Spain (Option 4) United Kingdom (Option 1 + Option 2)

⁴⁴ OHCHR, *op.cit.* (note 41), pp. 20–21.

⁴⁵ Both the Equality and Human Rights Commission and the Scottish Human Rights Commission have their own jurisdiction. While the Equality and Human Rights Commission (which has a Scottish branch to be distinguished from the Scottish Human Rights Commission) is competent for reserved human rights issues, the Scottish Human Rights Commission is competent for devolved human rights issues in Scotland.

Finally, it is essential that one body leads the framework. The question is of course only relevant if there is more than one independent mechanism, since a single body will be the framework by itself. In this regard, although the terms ‘a framework, *including* one or more independent mechanisms’ of Article 33(2) of CRPD create an ambiguity, this framework may not include bodies other than independent mechanisms, since the promotion, protection and monitoring of the implementation of the Convention must be carried out by bodies that comply with *Paris Principles*, as suggested earlier in this section.⁴⁶ This means that all of these bodies must be independent and pluralistic. In case several bodies are appointed, different options exist. If an NHRI is included, it might be in the best place to lead the framework, since it can serve as a platform where both State and non-State actors can cooperate. NHRIs create broad networks and run collations. When there is no NHRI, either the equality body or ombudsman or the representative body could be entrusted with coordination or this could be attributed to a secretariat set up for this purpose.

5. COOPERATION WITH OTHER ACTORS

Independent mechanisms are not the only actors mentioned in Article 33. Article 33(1) requires that States designate one or more focal points to implement the Convention, whereas Article 33(3) provides for the participation of disabled persons in the monitoring process. Article 33 thus strengthens the capacity of three actors: policy makers, independent bodies and civil society.

This part discusses cooperation between independent mechanisms and both focal points and disabled persons.

5.1. COOPERATION WITH FOCAL POINTS

Article 33(1) provides that States should ‘designate one or more focal points within government for matters relating to the implementation’ of CRPD. At first sight, this is not revolutionary, except for the fact that it is for the first time mentioned in a human rights treaty.⁴⁷ As a rule, there will already be a focal point for disability issues

⁴⁶ Note that there is a discrepancy between the English and French version, on the one hand, and the Spanish version, on the other hand, which confirms this interpretation of Article 33(2). While the former uses the terms ‘a framework, including one or more independent mechanisms’ and ‘*un dispositif, y compris un ou plusieurs mécanismes indépendants*’ (a framework, including one or more independent mechanisms), the latter uses the terms ‘*un marco, que constará de uno o varios mecanismos independientes*’ (a framework, made up of one or more independent mechanisms). As already said, an exception, however, could be made, to a certain extent, to the promotion function which can be exercised by other actors as well.

⁴⁷ There is no mention of focal points in OPCAT. This is for obvious reasons, because visiting places of detention must by all means be done by independent bodies.

within the public administration, usually in the health department, which States can designate to implement the Convention.

Two issues, however, should be mentioned. First, as with the independent mechanisms, States may designate one or more focal points. The Convention therefore encourages States to designate focal points in departments other than health and within regional or local governments in federal or decentralised States. CRPD gives them thus a chance to mainstream disability rights throughout the public administration and the different levels of powers. Second, Article 33(1) requires that States 'give due consideration' to the establishment or designation of a coordination mechanism. This is necessary to avoid that policies relating to disabled persons take the form of isolated measures and to encourage focal points to tackle disability issues in a consistent manner. The coordination mechanism should be run by a department that can take the lead, preferably at the highest level of government.

The functions of focal points will have to be articulated with that of independent mechanisms. In theory, the division of labour seems clear. While the focal points are in charge of implementation, the independent mechanisms are entrusted with promotion, protection and monitoring of this implementation. The former are part of government, the latter should be outside of it. This double creation is well-thought of, since States are primarily responsible for the implementation of human rights, while they need to create independent bodies that provide external surveillance.

There should be a clear distance between both focal points and independent mechanisms, since the former will be overseen by the latter. This requires that both work separately. Besides having a different location, it is advisable that nobody be appointed focal point and independent mechanism simultaneously (although the latter should include representatives of governmental departments, albeit in an advisory capacity). In practice, however, the line might not always be easy to draw, because certain activities will be exercised by both, especially with regard to promotion. Cooperation is also *de facto* required, since the focal points will be the principal information providers and main recipients of the recommendations of the independent mechanisms.

One of the first duties of the focal points will be the preparation of State reports on the measures taken to give effect to the obligations under CRPD.⁴⁸ The first State report must be submitted to the Committee on the Rights of Persons with Disabilities within the two years after the entry into force of the Convention.⁴⁹ For States that have ratified it, this creates a deadline for the designation of the focal points which will have to prepare this report, but also an incentive to designate or establish the independent mechanisms, because the report will have to provide information on these mechanisms.⁵⁰ In order to facilitate their task, the OHCHR organised a worldwide

⁴⁸ Article 35(1) CRPD.

⁴⁹ The first State reports were due for May 2010, as CRPD entered into force in May 2008.

⁵⁰ See Committee on the Rights of Persons with Disabilities, *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities*, UN Doc. CRPD/C/2/3, 18 November 2009, p. 19.

consultation on Article 33, which led to the elaboration of an in-depth study on both focal points and independent mechanisms.⁵¹

State reports can illustrate the respective role of focal points and independent mechanisms (and, to a certain extent, disabled persons). The recommendations of treaty bodies are inconsistent regarding the participation of NHRIs in the preparation of State reports.⁵² The *Paris Principles* recommend that they contribute to these reports.⁵³ This, however, is not advisable, because NHRIs have a monitoring function towards their governments, just like the treaty bodies to which these reports are submitted. Independent mechanisms should therefore preferably not contribute to the State reports. They can however make comments on the State reports during the drafting phase or coordinate so-called 'shadow reports' which are the traditional task of NGOs. CERMI, for instance, does both.

Like NHRIs, independent mechanisms could be useful at another stage of the reporting process. These institutions can ensure the follow-up to the concluding observations of treaty bodies by organising meetings in which key actors concerned with human rights are invited to discuss these observations.⁵⁴ They can act as facilitators during these meetings and urge State authorities to implement the recommendations of the treaty bodies. Independent mechanisms could likewise invite focal points as well as DPOs to exchange views on the concluding observations of the Committee on the Rights of Persons with Disabilities and encourage the focal points to implement its recommendations.

5.2. COOPERATION WITH DISABLED PERSONS

Disabled persons have had an important role in the elaboration of CRPD. Under the slogan 'Nothing about us without us', they successfully convinced the drafters of the necessity to guarantee their participation in the adoption of any measure concerning them. This is why Article 33(3) of CRPD stipulates that '[c]ivil society, in particular persons with disabilities and their representative organisations, shall be involved and participate fully in the monitoring process'. It is interesting to note that their involvement is mentioned in an article concerning the national level, since this level is as a rule more accessible to them than the international one.

⁵¹ OHCHR, *op.cit.* (note 41).

⁵² See Müller, A. and Seidensticker, F., *The Role of National Human Rights Institutions in the United Nations Treaty Body Process*, German Institute for Human Rights, Berlin, 2007, pp. 40–42.

⁵³ The *Paris Principles* provide that NHRIs should contribute 'to the reports which States are required to submit to [UN] bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, (...) express an opinion on the subject, with due respect for their independence'. See Principle 3 (d), A. Competence and responsibilities, *Paris Principles*.

⁵⁴ See Seidensticker, L., *Examination of State Reporting by Human Rights Treaty Bodies. An Example of Follow-Up at the National Level by National Human Rights Institutions*, German Institute for Human Rights, Berlin, 2005.

Article 33(3) is not the only article in the Convention that refers to the participation of disabled persons. Article 4(3) provides that States should consult disabled persons in the implementation of CRPD, thereby providing them with general participatory rights. Article 33(2), through its reference to the *Paris Principles*, also requires that DPOs, in addition to other actors, be involved in the work of the independent mechanisms.

DPOs, as a result, are given three different ways of participating in the implementation of the Convention. First, they can directly interact with State authorities, that is through the focal points. States must even endeavour to reach them by virtue of Article 4(3) of CRPD. Second, DPOs should be involved in the work of the independent mechanisms. This follows from the *Paris Principles* as well as Article 33(3).⁵⁵ Third, they may participate through other means, again by virtue of Article 4(3). They can therefore withdraw from existing structures, if they deem that acting on their own will enable them to better realise their aims.

The question is how independent mechanisms should involve DPOs in their work. The *Paris Principles* give States a certain leeway in this regard. As already said, NGOs should either be member of NHRIs or be able to effectively cooperate with these institutions. This gives States two possibilities. On the one hand, DPOs could be represented in the boards of independent mechanisms, which may even include disabled persons themselves.⁵⁶ On the other hand, the independent mechanisms could establish partnerships with these organisations, something which should ideally be provided for in their statutes.

It is probably NHRIs that are in the best place to achieve the participation of disabled persons. Most of these institutions either have boards composed of NGO representatives or closely cooperate with them. Some even do both.⁵⁷ The independent mechanisms could do likewise with DPOs. The CNCDH, for instance, extended its membership to include DPOs, whereas the GIHR holds regular consultations with these organisations. In this way, NHRIs would increase their understanding of disability issues, whereas DPOs would deepen their knowledge of disability rights.

⁵⁵ There is an ambiguity when putting Article 33(3) in relationship with Article 33(2). Article 33(3) provides that disabled persons should participate 'in the monitoring process', which could be interpreted as limiting their participatory rights to the monitoring function of independent mechanisms. The reference to the *Paris Principles*, which provide that DPOs should be involved in the work of these mechanisms, in Article 33(2), however, excludes this restrictive interpretation.

⁵⁶ Quinn, G., 'The UN Convention on the Rights of Persons with Disabilities. National Institutions as Key Catalyst of Change', in: Comisión Nacional de los Derechos Humanos de México, Network of the National Institutions for the Promotion and Protection of Human Rights of the Americas and OHCHR, *National Monitoring Mechanisms of the Convention on the rights of Persons with Disabilities*, Comisión Nacional de los Derechos Humanos, Mexico, 2008, pp. 123–132, at p. 130.

⁵⁷ de Beco, G., 'National Human Rights Institutions in Europe', *Human Rights Law Review*, Vol. 7, No. 2, 2007, pp. 342–349.

Where there is no NHRI, a similar approach could be adapted. The equality body or ombudsman could involve disabled persons through either representation or cooperation.

If a representative body is designated or established, the participation of disabled persons will be inherent to the independent mechanism, as DPOs will be included from the start in their organisation. DPOs are represented in the Austrian Independent Monitoring Committee and in CERMI. The advantage of this option is that it gives these organisations full power in the independent mechanisms. However, DPOs might not always have the expertise to promote, protect and monitor the implementation of the Convention, which is why other others should also participate, as provided for in the *Paris Principles*. This is not the case with CERMI which is only composed of DPOs. In contrast, the Austrian Independent Monitoring Committee includes other people as well.

6. QUESTIONS ARISING FROM THE REFERENCE TO THE *PARIS PRINCIPLES* IN ARTICLE 33(2) OF CRPD

The reference to the *Paris Principles* in Article 33(2) of CRPD provides NHRIs with a stronger legal basis. While NHRIs have been recognised at the international level, the *Paris Principles* were not firmly anchored in international human rights law, as no binding document referred to these Principles. This is no longer true with CRPD and OPCAT which require that States create independent mechanisms to promote, protect and implement the Convention and national preventive mechanism to visit places of detention, respectively. The question is whether the reference to the *Paris Principles* in Article 33(2) of CRPD requires that NHRIs be given the role of independent mechanisms in light of the Convention. There are arguments in favour and against this option.

Several arguments plead for attributing the role of independent mechanisms to NHRIs. There are both substantial and practical arguments.

If the *Paris Principles* were mentioned in Article 33(2), it is because NHRIs were the very inspiration for its drafters. These institutions are not concerned with implementation as such, which is the responsibility of government, but with promotion, protection and monitoring, like the independent mechanisms. Furthermore, as NHRIs, these mechanisms provide DPOs, in addition to other actors, with an institutionalised channel through which they can address governments. Therefore, in the words of Gerard Quinn, ‘the default setting lies in favour of [NHRIs]’.⁵⁸

Furthermore, giving the role of independent mechanisms to an NHRI will save a State from having to create a new representative body. NHRIs also have the necessary human rights knowledge and, therefore, can integrate disability issues in the State’s

⁵⁸ Quinn, *loc.cit.* (note 56), p. 130.

human rights framework.⁵⁹ For many of them this is not new and they already focus on disability rights, with the support of the International Coordinating Committee.⁶⁰ When not yet done so, a State can create an NHRI and give it the role of independent mechanism, which allow it to ‘kill two birds with one stone’.

There are also arguments against giving NHRIs the role of independent mechanisms. Although there are both substantial and practical arguments in favour of this, doing so without evaluating the consequences for their workload could weaken them or not allow them to play this role properly. The tasks of independent mechanisms are considerable. NHRIs have limited capacity and may not be able to fully promote, protect and monitor the implementation of CRPD. Indeed, not all NHRIs exercise these functions on equal footing with regard to human rights. As they are allowed to do by the *Paris Principles*, they often give priority to certain functions. While some of them have more a monitoring and advisory role, other focus more on promotion and research. Still others principally deal with the handling of complaints. Should NHRIs be designated independent mechanisms, they might therefore not fulfil all the functions provided for by Article 33(2) equally.

This problem leads to another issue which was already raised in section 4. Should NHRIs be assigned the role of independent mechanism, they will have to focus on CRPD. They will therefore have to pay more attention to disability rights than on other rights, which will affect their independence. As already said, the reference to the *Paris Principles* in Article 33(2) of CRPD provided NHRIs with legs stronger than others.

Other bodies might be better placed to be independent mechanisms. Many organisations are acquainted with disability issues, at least more than NHRIs. It might be easier, and sometimes more efficient, to designate existing bodies that are already dealing with these issues and give them a human rights mandate or otherwise to create a representative body which would focus solely on CRPD.⁶¹ This last option is not necessarily more expensive, as it could happen that expanding the mandate of existing bodies entails more costs than creating smaller bodies with specific mandates.

Article 33(2) of CRPD applies the *Paris Principles* to bodies solely concerned with disability rights. As mentioned earlier, the drafters of the Convention actually abstracted these Principles from NHRIs. There is therefore no obstacle in attributing the role of independent mechanisms to bodies other than these institutions. Applying the *Paris Principles* to such bodies is not a problem. To the contrary, the *Paris Principles* could be an inspiration for many kinds of independent bodies, including bodies with a partial human rights mandate, such as those to be created by virtue of CRPD and OPCAT, but also bodies which have only some of the functions of NHRIs. Such bodies include, for instance, universities and their human rights centres in

⁵⁹ Müller and Seidensticker, *op.cit.* (note 52), p. 75.

⁶⁰ Quinn, *loc.cit.* (note 8), p. 252.

⁶¹ Müller and Seidensticker, *op.cit.* (note 52), p. 75.

particular.⁶² Other examples are public bodies that are mandated to vet laws before their enactment, such as the *Conseil d'Etat* in Belgium and the *Raad van State* in the Netherlands, as well as parliamentary human rights committees, such as the Joint Committee on Human Rights in the United Kingdom. The *Paris Principles* could also be the criteria for evaluating international bodies. In this regard, the EU just ratified CRPD,⁶³ which means that it will also have to designate or establish one or more independent mechanisms taking into account the *Paris Principles* (an issue which merits further attention but is outside the scope of this article). As a result, it is not NHRIs but the *Paris Principles* that have been promoted in the Convention.

By applying the *Paris Principles* to bodies other than NHRIs, CRPD has however in a way downplayed these Principles. Added to the weak terms 'take into account' of Article 33(2), States might satisfy themselves with designating or establishing bodies that are not fully independent and pluralist. Furthermore, there is a risk that States create different bodies with specific mandates instead of one with a general human rights mandate. The consequence is that they might postpone the establishment of NHRIs.

This leads to the question whether the reference to the *Paris Principles* in Article 33(2) obliges States to have an NHRI.⁶⁴ A strict interpretation of these Principles could lead to a positive answer. Since the *Paris Principles* provide that NHRIs should have 'as broad a mandate as possible',⁶⁵ the independent mechanisms should address all human rights and, therefore, cannot be but NHRIs. In addition, the *Paris Principles* enumerate a series of functions which should be fulfilled by one single body altogether, even if that body may focus on some of them. These arguments, however, ignore that Article 33(2) applies the *Paris Principles* to bodies solely concerned with disability rights. Moreover, the functions of independent mechanisms can be shared between different bodies, since States are allowed to designate or establish more than one independent mechanism.

The reference to the *Paris Principles* creates nonetheless ambiguity. While it does not oblige States to have an NHRI, a strict interpretation of CRPD could lead to the opposite conclusion. The answer, therefore, lies probably between the two. As 'the default setting lies in favour of [NHRIs]',⁶⁶ these institutions have the best pedigree for the role of independent mechanisms. This means that if there is an NHRI, it should at least become one of the independent mechanisms and have a leading role in the framework. If the NHRI does not fully comply with the *Paris Principles*, it should be strengthened with a view to this. If there is no NHRI, Article 33(2) could encourage States to establish one. So doing will save them from creating more independent

⁶² See Lindholt, L., 'Universities and National Human Rights Institutions: the Independent Human Rights Actors', in: Jørgensen and Slavensky (eds), *op.cit.* (note 26), pp. 147–160.

⁶³ According to Article 42 of CRPD, regional organisations may access the Convention.

⁶⁴ Interestingly, the initial proposal was to oblige States to create NHRIs. See Quinn, *loc.cit.* (note 8), pp. 245–246.

⁶⁵ Principle 2, B. Competence and responsibilities, *Paris Principles*.

⁶⁶ Quinn, *loc.cit.* (note 56), p. 130.

mechanisms in case future human rights treaties would also require them to designate or establish such mechanisms taking into account the *Paris Principles*.

7. CONCLUSION

Article 33(2) of CRPD provides that States should designate or establish one or more independent mechanisms to promote, protect and monitor the implementation of the Convention taking into account the *Paris Principles*. This should be applauded, because human rights treaties rely on national monitoring. Although the importance of national monitoring has been acknowledged since the inception of the UN, it took more than five decades to provide for it in human rights treaties, first with OPCAT and then with CRPD. The focus on independent bodies obliges States to consider how they will adapt their institutions as soon as and sometimes even before they ratify a human rights treaty. While this is good news, there are also obstacles. As shown in this article, Article 33(2) raises complex questions some of which have no definitive answers. The responsibility of the Committee on the Rights of Persons with Disabilities will be huge in this regard.

Article 33(2) of CRPD has increased attention to the *Paris Principles*. The reference to these Principles is well-thought of, since independent mechanisms have similar functions to that of NHRIs. It also strengthens the legal basis of these institutions. Does this mean NHRIs should play the role of independent mechanisms in light of the Convention? Although several arguments plead for doing so, these institutions might not always be the best suited. NHRIs designated independent mechanisms might not be able to fulfil all their functions equally. In addition, their independence will be affected, because they will have to spend more energy on disability rights than on other rights. There is also no obstacle in giving the role of independent mechanisms to bodies other than NHRIs, since Article 33(2) of CRPD applies these Principles to bodies solely concerned with disability rights.

The conclusion is that NHRIs should not blindly be designated independent mechanisms. In the hypothesis that there is an NHRI in a State, the best option could be either to designate the NHRI, to appoint other bodies, or to combine both. This has to be evaluated on a case-by-case basis. Often it will be the most advantageous to designate NHRIs in addition to other bodies, as is allowed by Article 33(2) of CRPD. While NHRIs are certainly able to exercise some of the functions of independent mechanisms and to lead the framework, these bodies will be needed to fulfil the other functions. A reasonable division of labour as well as partnerships will have to be established between both. NHRIs can also in certain cases play the role of independent mechanisms entirely on their own, whereas occasionally it might be better to not give them this role at all. Whatever the option chosen, however, NHRIs should be associated in the examination of the advantages and disadvantages of the different options.