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**Committee on the Rights of Persons with Disabilities****General comment on article 4.3 and 33.3 of the convention on the participation with persons with disabilities in the implementation and monitoring of the Convention \*****Draft prepared by the Committee****I. Introduction**

1. The close consultation and active involvement of persons with disabilities, through disabled persons organizations (DPOs)/ organizations of persons with disabilities (OPDs), in the negotiations, development and drafting of the Convention on the Rights of Persons with Disabilities, had a positive impact on its quality and relevance for persons with disabilities and also showed the power possessed by persons with disabilities. The active involvement of DPOs/OPDs and their allies resulted in an advanced and innovative human rights treaty, which is ground-breaking in changing the disability paradigm. Effective and meaningful participation of persons with disabilities, through DPOs/OPDs, is thus at the heart of the Convention.

2. Since the very beginning of the debates in 2002, 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 decided to adopt working methods that would allow the full participation by relevant non-governmental organizations (NGOs) in its deliberations, including through support and funds.<sup>1</sup> The Ad Hoc Committee subsequently included 12 representatives of DPOs/OPDs (from world representative DPOs/OPDs and United Nations regional groups), designated by representative organizations of persons with disabilities and their allies, in the Working Group in charge of drafting the text.<sup>2</sup> Member States were also encouraged to involve persons with disabilities, through their DPOs/OPDs, in the preparatory processes contributing to the work of the Ad Hoc Committee, and to include persons with disabilities in their official delegations.<sup>3</sup> The inclusion of DPOs/OPDs into the deliberations of the Ad Hoc Committee demonstrated the ability of DPOs/OPDs to unite as one corpus and to take responsibility of taking part in the dialogue.

3. Participation is a core human rights principle, allowing individuals to play a significant role in the development of every democratic society, as well as their communities.

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\* Adopted by the Committee at its nineteen session (14 February – 9 March 2018).

<sup>1</sup> See Commission on Human Rights resolution 2002/61; [www.un.org/esa/socdev/enable/rights/adhoca57357e.htm](http://www.un.org/esa/socdev/enable/rights/adhoca57357e.htm); [www.un.org/esa/socdev/enable/rights/ahc4reporte.htm](http://www.un.org/esa/socdev/enable/rights/ahc4reporte.htm).

<sup>2</sup> See [www.un.org/esa/socdev/enable/rights/a\\_58\\_118\\_e.htm](http://www.un.org/esa/socdev/enable/rights/a_58_118_e.htm).

<sup>3</sup> See A/AC.265/2004/3; General Assembly resolution 57/229, paras. 12 and 13; See Report of the Special Rapporteur on the rights of persons with disabilities, The right of persons with disabilities to participate in decision-making, para. 13-16, 12 January 2016, A/HRC/31/62.

The active and informed participation of everyone, including but not limited to women, children, older persons, ethnic groups, indigenous peoples and persons with disabilities, in decisions that affect their lives and rights, is consistent with and required of a human rights-based approach,<sup>4</sup> and ensures good governance and social accountability.<sup>5</sup>

4. The principle of participation is well established in article 21 of the Universal Declaration of Human Rights. It is also reaffirmed in article 25 of the International Covenant on Civil and Political Rights. Participation as a principle and a human right is also recognized in other international and regional human rights instruments, including under article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 7 of the Convention on the Elimination of All Forms of Discrimination against Women, articles 12 and 23 (1) of the Convention on the Rights of the Child, and throughout the Convention on the Rights of Persons with Disabilities as a cross-cutting issue, with “close consultation and active involvement” and “participation in monitoring” as part of a wider concept of participation in public life (articles 4.3 and 33.3).<sup>6</sup>

5. Persons with disabilities, whether as groups, organizations or as individuals, have experienced and continue to experience exclusion. With a few exceptions in some States parties, persons with disabilities were usually not consulted or considered when decisions were made on their behalf, or about matters relating to or affecting their lives. Only in the last few decades, with the emergence of movements of persons with disabilities demanding a recognition of their human rights and their central role in determining those rights has recognition of consultation with persons with disabilities began to change. The motto “Nothing about us without us” resonates with the philosophy and history of the disability rights movement, which relies on the principle of meaningful participation. Since then, it has been used by DPOs/OPDs as part of global and national movements to achieve the full participation and equalization of opportunities for, by, and with persons with disabilities, through their DPOs/OPDs.

6. Although the core international human rights instruments prior to the Convention, already obliged States parties to consider persons with disabilities on an equal basis with others, those legal obligations were not often used to advance the rights of persons with disabilities. Persons with disabilities continued facing significant attitudinal, physical and communication barriers to participate in public life, with their views disregarded in favour of those of representatives of “organizations for persons with disabilities” and other groups of “experts on disabilities”.

7. The participatory processes and the involvement of persons with disabilities, through DPOs/OPDs, in the negotiations and drafting of the Convention, proved to be an excellent example of best practice of the principle of full and effective participation. As a result, in international human rights law, persons with disabilities were not considered as “objects” to be cared for anymore but rather as “subjects” respected and enjoying human rights and fundamental freedoms.<sup>7</sup>

8. Under article 4 of the Convention, States parties have the obligation to undertake general obligations to ensure and promote the full realization of all human rights and fundamental freedoms by all persons with disabilities. This includes, under article 4.3, an obligation to consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations, in the development and implementation of legislation and policies to implement the Convention, as well as in decision-making processes affecting their lives and full participation and inclusion in society. At the national level, article 33. 3 stipulates that States parties must also ensure that DPOs/OPDs are involved and participate fully in monitoring the implementation of the Convention.

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<sup>4</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, para. 64.

<sup>5</sup> See A/HRC/31/62, para.13.

<sup>6</sup> *Ibid.*, para. 14.

<sup>7</sup> *Ibid.*, para. 16-17.

9. Based on its well-established jurisprudence regarding articles 4.3 and 33.3, the Committee on the Rights of Persons with Disabilities will elaborate on certain aspects of their implementation in this general comment. The Committee notes advancements over the past decade to implement provisions under articles 4.3 and 33.3 including that States parties have adopted a number of measures, such as granting financial or other assistance to DPOs/OPDs and including persons with disabilities in independent monitoring frameworks established pursuant to article 33.2 of the Convention. States parties have also established appropriate procedures for including persons with disabilities, through their DPOs/OPDs, in the monitoring process. Moreover, in accordance with articles 4.3 and 35.4, some States parties consulted with DPOs/OPDs in the preparation of their reports to the Committee.

10. However, the Committee continues to observe an important gap between the goals and the spirit of both articles and the scope of their implementation due to, among others, the absence of consultation with and involvement of persons with disabilities through their representative organizations in the development and implementation of policies and programmes.

11. Some of the remaining implementation gaps are:

(a) The lack of understanding of the concept of participation itself and the absence of best practices for proper implementation;

(b) Laws that prevent persons with disabilities on the basis of certain types of impairment, from being closely consulted and actively engaged in decision-making processes and the monitoring of the Convention;

(c) The lack of consultation and active involvement of persons with disabilities, including children and women with disabilities in the planning, execution, and monitoring of public decision-making processes;

(d) The lack of support and participation of persons with disabilities from disadvantaged groups, in particular those who experience discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status;

(e) The lack of democratic space and transparent frameworks for the development, action and participation of organisations of persons with disabilities and other civil society organisations;

(f) The insufficient or non-existent enforcement mechanisms [with meaningful penalties and remedies for non-compliance] to closely consult with and actively involve DPOs/OPDs in law and policy-making, as well as in the implementation of laws, policies and regulations to implement the Convention;

(g) The denial of equal access to participation of women and girls with disabilities in public decision-making;

(h) The lack of or insufficient [non-conditional] public funding to organisations of persons with disabilities;

(i) The lack of well-funded and supported international and national DPOs/OPDs and the absence of comprehensive organizations collaborating with DPOs/OPDs to build capacity for developing their advocacy strategies;

(j) The lack of or low political will and/or initiative by State authorities to closely consult and actively involve DPOs/OPDs in the monitoring of the Convention;

(k) The lack of appointment of one or more focal points within States parties for matters relating to the implementation of the Convention, and concerning the establishment of a strong and efficient independent framework for the monitoring of its provisions at the national level;

(l) The insufficient accessibility, accommodation, disability and age-appropriate support to persons with disabilities to have access to all facilities, procedures and information related to public decision-making, consultation and monitoring processes.

12. States parties should acknowledge the positive impact on decision-making processes of the involvement and participation of persons with disabilities, through their representative DPOs/OPDs, notably because of their lived experience and best knowledge of rights to be implemented. States parties should also consider the general principles of the Convention in all measures taken for its implementation and monitoring, as well as in relation to the implementation of the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development and should ensure that both the processes and outcomes comply with articles 4.3 and 33.3 of the Convention.

## II. Normative content of articles 4.3 and 33.3

### 1. Definition of ‘representative organisations’

13. The involvement and participation of persons with disabilities through “representative organisations” or in other words disabled persons organisations (DPOs)/organizations of persons with disabilities (OPDs), is inherent to both articles 4.3 and 33.3. For proper implementation, it is important for States parties and relevant stakeholders to know the definition and the types of organisations of persons with disabilities that often exist.

14. In this general comment the following definitions apply:

**(a) Disabled persons organizations (DPOs)/ Organizations of persons with disabilities (OPDs):** those that are governed, led and directed by persons with disabilities, are comprised by a majority of persons with disabilities themselves, and thus are representative of persons with disabilities. Furthermore, a clear majority of their membership is recruited among persons with disabilities.<sup>8</sup> Disabled persons organizations or organizations of persons with disabilities may have some characteristic aspects:

(i) Persons with disabilities themselves can be representatives and employees of DPOs/OPDs, entrusted by and specifically appointed by DPOs/OPDs. The large majority of DPOs/OPDs are not affiliated to political parties and are independent from non-governmental membership-based organizations. They are established with the aim of collectively acting, expressing, promoting, pursuing and/or defending the rights of persons with disabilities and should be generally recognized.

(ii) They may represent one or more different constituency (ies) among persons with disabilities, and reflect a broad range of persons with disabilities, which reflects the diversity of people’s backgrounds, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,<sup>9</sup> and should meaningfully participate in an inclusive and accessible manner in direct decision-making processes that affect the lives of persons with disabilities at all levels and within all sectors of States parties;<sup>10</sup>

(iii) They can operate as individual organizations, coalitions, cross-disability or umbrella organizations of persons with disabilities, including among others women, children, indigenous and sports organisations of persons with disabilities, seeking to provide a collaborative and coordinated voice of persons with disabilities in their interaction with, among others, public authorities and private companies.

**(b) Umbrella organization of persons with disabilities** is a DPO/OPD that gathers, coordinates and represents the activities of a number of member organisations, preferably all of which are of persons with different impairments, which promote the accessibility for and inclusion of all persons with disabilities within a State party. As such,

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<sup>8</sup> CRPD Committee, Guidelines on the Participation of Disabled Persons Organizations (DPOs) and Civil Society Organizations (CSOs) in the work of the Committee, Annex II, para. 1.3, CRPD/C/11/2.

<sup>9</sup> See ICESCR, General comment No. 20: Non-discrimination in economic, social and cultural rights, 2009, para. 18 – 35, E/C.12/GC/20

<sup>10</sup> See CRPD/C/ITA/CO/1, para. 8.

an umbrella DPO/OPD can and should ensure the participation of persons with all types of disabilities in the consultation, decision-making and monitoring processes.

(c) **Cross disability organizations.** Distinction should be made between umbrella organisations and cross-disability organisations. Cross-disability organizations are those organizations representing persons with different kinds of disabilities, while umbrella DPOs/OPDs represent a number of organizations which each represent one or more related disabilities. There is usually only one or perhaps two umbrella DPOs/OPDs in a given State party.

(d) **Organizations of self-advocates** are composed of and represent persons with intellectual disabilities, autistic persons or persons with psychosocial disabilities. Their establishment, with appropriate, sometimes extensive, support to express their opinions, is indispensable to guarantee their participation in decision-making, monitoring and implementation processes. Such support includes any necessary form of reasonable accommodation. While organizations of parents and relatives of persons requiring support have often played a role in providing such support, it is important to ensure that persons with disabilities are and remain in full control.

(e) **Organizations of parents of children with disabilities** are key to facilitating, promoting and securing the interests, autonomy and active participation of their children with disabilities and should be included in the consultation, decision-making and monitoring processes.

(f) **Organizations of women with disabilities**, ensuring the participation of women with disabilities, must also be considered a requisite in consultations addressing specific issues impacting exclusively or disproportionately on women with disabilities, as well as issues related to women in general, such as gender equality policies.

15. The Committee highlights the importance of distinguishing between organizations “of” persons with disabilities, which are composed of and controlled/led by persons with disabilities, and organizations “for” persons with disabilities, which are any organization established to provide service to and for persons with disabilities. Often, such service providers also take up an advocacy role on behalf of persons with disabilities. However, such practice may not be in line with the Convention because it can result in conflict of interests where these organizations end up advocating for their own gain rather than supporting DPOs/OPDs and their members. States parties should give priority to the views of DPOs/OPDs, composed of and led by persons with disabilities themselves, to ensure that their will and preferences are given priority.<sup>11</sup>

16. Distinction should also be made between DPOs/OPDs and civil society organizations (CSO). While DPOs/OPDs are part of civil society too, the term CSO in general refers to organisations that can but very often do not meet the definition as DPO/OPD within the Convention. CSOs are very closely related to NGOs and other bodies, including research organisations/institutes, organizations of service providers, families and other stakeholders outside of public and/or State entities who, among others, can have a role to play in monitoring the Convention. In general, neither CSOs nor NGOs should be considered to be DPOs/OPDs.

## **B. Scope of Article 4.3**

17. In paragraph m of the Preamble to the Convention, States parties recognize the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by all persons with disabilities of all human rights and their full participation, will result in their increased sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty.

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<sup>11</sup> A/HRC/31/62, op. cit. para. 36; Report of the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities, Catalina Devandas-Aguilar, Rights of persons with disabilities, 9 August 2016, para. 64, A/71/314.

18. The Convention explicitly requires States parties to consult closely with and actively involve persons with disabilities, through DPOs/OPDs, including those representing children and women with disabilities, in the “*development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes*” concerning issues relating to them. This means that legal and regulatory frameworks and procedures, across all levels and branches of government, should explicitly require that public authorities consult closely with and actively involve persons with disabilities, including those representing women and children with disabilities as well as persons with intellectual disabilities, in the development and implementation of such processes.

19. Prior consultations and engagement with DPOs/OPDs at all stages of public decision-making, including before the adoption of legislation, policies and programmes that affect them, is a prerequisite. The legal obligation of States parties to ensure consultation of and with DPOs/OPDs is not limited to access to public decision-making spaces, but is automatically extended into the areas of partnership, delegated power and citizen control.<sup>12</sup> It is further an obligation which also includes global and/or regional DPOs/ODPs.

20. The phrase “concerning issues relating to persons with disabilities”, as referred to in article 4.3, must be broadly interpreted to cover the full range of legislative, administrative and other measures that may directly or indirectly affect persons with disabilities; take into account the protection and promotion of the human rights of persons with disabilities; and refraining from engaging in any act or practice, be it deliberate or otherwise that is inconsistent with the Convention. This is a way for States parties to mainstream disability through inclusive policies, ensuring that persons with disabilities are considered on an equal basis with others. It also ensures that the knowledge of and life experience of persons with disabilities are considered when deciding upon new legislative, administrative and other measures. This includes any decision-making processes, whether disability-specific or mainstream, such as general laws, disability specific laws and the public budget, which might have an impact on their lives.<sup>13</sup>

21. To “*closely consult with and actively involve*” persons with disabilities through their representative organizations means that their consultation and involvement in the development and implementation of legislation and policies to implement the Convention, and in other decision-making processes, is a full-fledged strong obligation under international human rights law. This includes the right of organizations of persons with disabilities, to be consulted timely, with guarantees of accessibility, including to all relevant information, and reasonable accommodation when required, such as the provision of sign language interpreters and Easy Read text and language, Braille and tactile communication. Their respective views must be given due consideration and weight and they must be duly informed of the outcome of the process, including an explicit explanation, in the findings, considerations or reasoning of decisions, on how their views were considered and why.

22. The importance of “*including children with disabilities*” in the development and implementation of legislation and policies to implement the Convention, and in other decision-making processes, through organizations of children with disabilities or organizations of parents of children with disabilities is also implied in article 4.3. These organizations are key to facilitating, promoting and securing the individual autonomy and active participation of children with disabilities. Through their DPOs/ODPs, children with disabilities should be able to express their views freely on all matters affecting them, their views should be given due weight in accordance with their age and maturity, on an equal basis with other children, and children with disabilities should be provided with disability and age-appropriate assistance to realize that right. The will and preferences of the child must always be respected, and their evolving capacities always be taken into account. The recognition of the right to individual autonomy is of paramount importance for all persons with disabilities, including children, to be respected as rights holders.

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<sup>12</sup> See A/HRC/31/62, op. cit., para. 63; Report of the Special Rapporteur on the rights of persons with disabilities, Access to rights-based support for persons with disabilities, para. 63, 20 December 2016, A/HRC/34/58.

<sup>13</sup> See A/HRC/31/62, para. 64.

23. “*Full and effective participation*” in a democratic society refers to engaging with all citizens, including persons with disabilities, to provide for a sense of belonging to and being part of society and its entities. This includes being encouraged and receiving appropriate support, including peer support, to participate in society, freedom from stigma and feeling safe and respected when expressing oneself in public. It is an obligation of immediate application, to be applied not only to decision-making, monitoring and implementation processes but also to be guaranteed the right to due process of law, the right to participate in political life and the right to be heard. If participation is to be effective and meaningful, it needs to be understood as a process, not as an individual one-time event.<sup>14</sup>

24. Full and effective participation expressly connotes and stands for the highest diverse perspectives and the best quality outcomes and decisions. It includes the necessity and importance of representation and inclusion of persons with disabilities in different decision-making bodies, both at local, regional, national and international level as well as in the National Human Rights Institutions (NHRIs), ad-hoc committees, councils, regional or municipality organisations, as well as to be nominated or elected to any such democratic and representative forums. Persons with disabilities are best positioned to identify their own requirements and the most suitable policies to reach them. Their participation through DPOs/OPDs will thus result in greater efficiency and a more equitable use of resources, leading to improved outcomes for persons with disabilities and their communities.

25. Full and effective participation can also be a transformative tool for social change, promote agency and empowerment of citizens. The involvement of DPOs/OPDs in all forms of decision-making empowers them in their ability to advocate and negotiate, enabling them to more solidly express their views, realize their aspirations and strengthen their voices. Additionally, participation is a critical component of good governance and democracy, with CSOs as an important anchor to encourage States parties’ transparency and accountability and to fight inequality and exclusion.<sup>15</sup> The participation and involvement of DPOs/OPDs promotes effective governance, holds authorities accountable and makes them responsive to the requirements of persons with disabilities, and improves public management and human rights protection.<sup>16</sup>

### **C. Article 33.3: The involvement of civil society**

26. During the negotiations of the Convention, article 33.3 of the Convention on the involvement of civil society in the monitoring process in particular, the motto ‘nothing about us without us’ was emphasised. [Recalling the important distinction made between DPOs/OPDs and CSOs in paragraph 16, this provision should be read in combination with the broader obligation of article 4.3, which applies to the entire Convention]. It then requires States parties to ensure that persons with disabilities are, through DPOs/OPDs, closely consulted and actively involved in the design and implementation of the focal points, coordination mechanism and independent monitoring mechanisms. Under article 33.1, persons with disabilities must be able to transmit their concerns to the focal points and coordination mechanisms and, under article 33.2, be represented in and/or be able to cooperate with the independent monitoring framework. [The Committee stresses that article 33.3 requires that persons with disabilities be allowed to participate separate from the participation of DPOs, if they so choose.]

27. It is important to establish, maintain and promote a close interaction and relationship with independent monitoring frameworks and NHRIs at all stages. National Human Rights Institutions play a key role in the monitoring of the Convention to promote compliance at the national level as well as in bridging national level actors, including state institutions and civil society, and particularly, DPOs/OPDs, with the international system for the protection and promotion of human rights. [The Paris Principles require that DPOs/OPDs should either be

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<sup>14</sup> See Committee on the rights of the Child, General Comment no.12 (2009), The right of the child to be heard, para. 133, 20 July 2009, CRC/C/GC/12.

<sup>15</sup> See <http://pdwa.escwa.org.lb/uploads/nv4584952.pdf>

<sup>16</sup> See A/HRC/31/62, op. cit., para.1-3.

represented in the independent mechanisms or be able to cooperate closely with these mechanisms, and preferably be appointed to their board, if such one exists.<sup>17]</sup>

28. Article 33.3 implies that States parties should support and fund the strengthening of capacity within civil society to ensure that DPOs/OPDs can effectively participate in the process of implementation and monitoring. DPOs/OPDs must be given adequate resources to make use of this access, including support through funding, and ensuring that, among others, accessibility requirements for various disabilities are taken into account. Both the Convention and related implementation strategies must be made available in forms that allow civil society participants, including persons with all kind of impairments, to access information, understand and evaluate the issues involved and provide meaningful inputs. To implement article 33.3, in addition to article 4.3, DPOs/OPDs should have easy access to the focal points and coordination mechanism.

### **III. Obligations of States parties**

29. Participation constitutes a full-fledge right whose compliance must be ensured. The civil and political rights' obligations of States parties are immediately applicable. States parties have a general obligation to respect, protect and fulfil the right of persons with disabilities to be closely consulted and actively involved, through their DPOs/OPDs, in decision making, monitoring and implementation processes under article 4.3. Effective remedies must be available to enforce compliance with this right to participation.

30. States parties have an obligation to respect the right of persons with disabilities, through their DPOs/OPDs to be closely and meaningful consulted and actively involved in decision-making processes by ensuring transparency of consultation and early involvement. States parties should not withhold information, or condition or prevent DPOs/OPDs from freely expressing their views in the consultation and involvement in decision-making, implementation and monitoring processes.

31. States parties should ensure accessibility for persons with disabilities to all facilities and procedures related to public decision-making and consultation. To effectively participate in law-making and policy-making, States parties should take appropriate measures ensuring that persons with disabilities have access, on an equal basis with others, to the physical environment, including buildings, transportation, education, information and communications, including new information technologies and systems, and other facilities and services open or provided to the public, in both urban and rural settings.

32. Particularly organisations of persons with sensory and intellectual impairments should be provided with meeting assistants, information in accessible formats (such as Easy Read), sign language interpretation, guide interpreters for deafblind persons, and/or captioning during public debates.<sup>18</sup> States parties should also support representatives of DPOs/OPDs for expenditures related to transport and other expenses related to their participation in the decision-making processes.

33. [In addition, in line with the basic principle of good governance and international law, States parties must consult and engage with DPOs/OPDs in good faith. Acting truthfully and fairly with each other, should be a foundational stone of all State party actions during processes of dialogue and consultation with DPOs/OPDs.] [The process of dialogue and consultation between organizations of persons with disabilities and States parties should be based on transparency, mutual respect, meaningful dialogue and a sincere desire to reach a collective agreement on procedures that are appropriate to the circumstances of the diversity of the disability movement and must allow for reasonable and realistic timelines.<sup>19]</sup> States parties should take into consideration that representatives of DPOs/OPDs often participate in the collaboration with States parties as volunteers. To respect persons with disabilities' right

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<sup>17</sup> See Committee on the Rights of Persons with Disabilities, Guidelines on Independent Monitoring Frameworks and their participation in the work of the Committee;

<sup>18</sup> See A/HRC/31/62, para. 75-77.

<sup>19</sup> See CRPD/C/HUN/CO/1, para. 14.



to be closely consulted and actively involved, through their DPOs/OPDs, States parties should undertake periodic evaluations of the functioning of the different participation and consultation mechanisms, with the active involvement of DPOs/OPDs.<sup>20</sup>

34. Persons with disabilities, through their DPOs/OPDs, can only effectively participate whether their views are given due weight guaranteeing that they are not only heard as a mere formality or as part of a mere tokenistic approach to consultation.<sup>21</sup> [Furthermore, their views should be considered as no less important than other actors, under article 4.3 (see para. ...)]. States parties decision-making actors should "take into account the results of such consultations and reflect them in the decisions adopted,"<sup>22</sup> by duly informing them of the outcome of the process and explicitly explaining, in the findings, considerations or reasoning of decisions, how their views were considered and why.<sup>23</sup>

35. States parties should also, in close and effective consultation and with the active involvement of DPOs/OPDs, establish proper and transparent mechanisms and procedures, at the different branches and levels of government, to explicitly consider the views of DPOs/OPDs when motivating a public decision. As a legal duty, States parties should "give priority" to views of DPOs/OPDs<sup>24</sup> and refrain from adopting measures that would openly contradict the result of close consultations. During reviews of initial States parties' reports, the Committee has observed the lack of any or informal consultations with other stakeholders. Consultations thus should be conducted in an open and transparent manner with DPOs/OPDs.

36. The State party duty to protect includes the prohibition of discriminatory and other practices by third parties that result in the exclusion of persons with disabilities representing DPOs/OPDs from the development and implementation of legislation and policies to implement the Convention and to other decision-making processes. States parties should ensure that they closely consult and actively involve DPOs/OPDs who represent the vast diversity in society, including but not limited to women, children, refugees and asylum-seekers, stateless persons, [the LGBTIQ community], persons with psychosocial and/or intellectual disabilities, autistic persons, persons with albinism, persons with hearing and visual impairments, persons with HIV/AIDS, persons with neurological and genetic conditions, Roma and Sinti and other ethnic minority groups, indigenous and rural communities and persons requiring high level of support, through their DPOs/OPDs, and that other actors do not obstruct the exercise of this right.

37. States parties are also required to take measures to prevent family members and third parties from directly or indirectly interfering with DPOs/OPDs enjoyment of the right to be closely consulted and actively involved in the development and implementation of legislation and policies to implement the Convention, and in other related decision-making processes. The duty to protect requires States parties to put in place and implement laws and policies to prevent persons with disabilities from being undermined by others such as family members, service providers or public employees,<sup>25</sup> in their right to be consulted and involved.

38. The obligation to fulfil requires that States parties ensure mandatory close and full and effective consultation and active involvement through the adoption of legal and regulatory frameworks and procedures to ensure the full and equal involvement of persons with disabilities, through their DPOs/OPDs, in the process of decision-making and drafting of legislations and policies "concerning issues relating to persons with disabilities" (para. 20), including disability-related legislation, policies, strategies and action plans. Such consultation procedures must comply with prior broad dissemination of information. The State party must also provide appropriate non-conditional support, funding and reasonable accommodation, such as the provision of sign language interpreters, Braille and Easy Read, to ensure the participation of representatives of all persons with disabilities, including but not

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<sup>20</sup> See, A/HRC/31/62, op. cit., para. 78-80.

<sup>21</sup> See CRC/C/GC/12, para. 132.

<sup>22</sup> See CRPD/C/COL/CO/1, para. 11(a).

<sup>23</sup> See CRC/C/GC/12, op. cit., para. 45.

<sup>24</sup> See A/HRC/31/62, op. cit. para. 34 and 38.

<sup>25</sup> See Committee on the Rights of Persons with Disabilities, General comment on article 19: Living independently and being included in the community, para. 50, 29 August 2017, CRPD/C/18/1.

limited to women, children, refugees and asylum-seekers, [LGBTIQ persons], persons with psychosocial and intellectual disabilities, persons with hearing and visual impairments, persons with HIV/AIDS, indigenous persons, persons living in rural areas, and persons in need of high level of support, in consultation processes.<sup>26</sup> These procedures must be institutionalised and regulated, with proper timeframes, early engagement and intervention of DPOs/OPDs and timely dissemination of all the relevant information, including among others budgetary information.

39. When conducting preparatory studies and analysis for policy formulation, States parties should include consultation and engagement with DPOs/OPDs, as well as incorporate relevant data on persons with disabilities and on potential barriers in the environment and means to remove them, factors that could influence policy outcomes. The identification of how persons with disabilities, through their DPOs/OPDs, will be included in proposals for policy design should clearly be stated, and subsequent public fora or processes for reviewing policy proposals should be fully accessible for them to participate.<sup>27</sup>

40. Implementation and evaluation should be conducted in a participatory manner and States parties should ensure the participation of DPOs/OPDs in monitoring processes, through national independent monitoring mechanisms including clear procedures, proper timeframes and previous dissemination of relevant information. All monitoring and evaluation systems should examine the level of engagement of DPOs/OPDs in all policies and programmes, and ensure that the views of persons with disabilities themselves are given priority. To fulfil their primary responsibility for service provision, States parties should explore partnerships with DPOs/OPDs to gain inputs from users of services themselves.<sup>28</sup>

41. Regarding the national independent monitoring mechanisms, States parties should, through all means, support the establishment of a single representative umbrella group for as many as possible, to ensure its involvement and participation in the monitoring process, as required by article 33.3, read in conjunction with article 4.3. A monitoring framework is most likely to be accepted when the involvement of a wide variety of DPOs/OPDs, representing persons with all kinds of disabilities, is ensured through a formal mechanism.<sup>29</sup> This allows for the unique ability and mandate to ensure that the representative voices of persons with disabilities are heard, in a way that is challenging for other CSOs to replicate.

42. To promote participation and empower persons with disabilities, through their DPOs/OPDs, to be able to fulfil their roles under articles 4.3 and 33.3, as well as for autonomous participation in consultations, States parties should support them through non-conditional and sufficient funding and technical capacity-building. Promotion of advocacy by and empowerment of persons with disabilities are key components and call for the development of technical, administrative and communication skills, as well as the facilitation of access to information and tools concerning their rights, legislation and policymaking. Education systems often fail to adequately include persons with disabilities, compromising their opportunities and undermining their capacities to become successfully involved in public decision-making. This in turn affects the institutional capacities of their DPOs/OPDs. The capacity of persons with disabilities to devote time and effort to civil society often remains limited due to a lack of sufficient income and employment opportunities.

43. States parties should strengthen the capacity of DPOs/OPDs to participate in all phases of policymaking, by providing capacity-building and training on a human rights approach to disability. States parties should support DPOs/OPDs in the development of competencies, knowledge and skills required to advocate for their full and effective participation in society, and in developing stronger democratic governance principles, such as respect for human rights, the rule of law, transparency, accountability, pluralism and participation. In addition, DPOs/OPDs should be able to strengthen their accountability, and

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<sup>26</sup> See CRPD/C/ARM/CO/1.

<sup>27</sup> Report of the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities, Catalina Devandas-Aguilar, Rights of persons with disabilities, 9 August 2016, para. 65-66, A/71/314.

<sup>28</sup> Ibid.

<sup>29</sup> See for example, CRPD/C/ESP/CO/1, para. 6; CRPD/C/NZL/CO/1, para. 4.

States parties should accordingly provide guidance on how to access funding and diversify their sources of support.<sup>30</sup>

44. [The access to the least restrictive [non-conditional] funding and resources is an integral and vital pre-condition [part of the right to freedom of association<sup>31</sup> and] for the effective participation of persons with disabilities, and essential for DPOs/OPDs to ensure the capacity-building of persons with disabilities for DPOs/OPDs to grow internally]. States parties should ensure that any organization is able to seek and secure funds and resources from domestic and international donors, including private individuals, private companies, all public and private foundations, CSOs, state and international organizations.<sup>32</sup> Funds should not only be intended for service providers, but rather be aimed at existing and potential DPOs/OPDs focusing primarily on advocacy.

45. States parties shall ensure organizations of persons with disabilities' access to domestic funds to support their activities, to avoid situations where they have to rely only on external sources, and subsequently limit and prevent DPOs/OPDs from establishing a viable organizational structure.<sup>33</sup> National DPOs/OPDs with support from public and private financial resources supplemented by membership fees are better able to secure the participation of persons with disabilities in all forms of decision-making, political and administrative; provide support to persons with disabilities; and create and run individual and group-oriented social activities of different kinds.

46. Article 33.3 read in conjunction with article 4.3 requires States parties to provide DPOs/OPDs, including organizations of women with disabilities and of children with disabilities, with appropriate [non-conditional] sufficient funding and resources to enable full and effective participation in the monitoring framework, as well as in the process of drafting, development and implementation of laws and policies concerning all persons with disabilities, including persons exposed to discrimination, such as persons with psychosocial and/or intellectual disabilities, children, women, older persons, indigenous persons, migrant, refugee and asylum-seekers with disabilities.<sup>34</sup> States parties could guarantee such appropriate and sufficient funding, through the establishment of a responsible legally recognised formal mechanism.

47. An increase of the non-conditional public resources available for DPOs/OPDs, including those representing children and women with disabilities, should be implemented to enable them to fulfil their role under the Convention. In addition to economic support for the establishment and strengthening of DPOs/OPDs, States parties should ensure their access to domestic funding and promote and facilitate access to foreign funding as a part of international cooperation, including through access to tax exemptions, inheritance taxes, development aid and the national lottery.<sup>35</sup>

48. [States parties should establish formal mechanisms and effective remedies for challenging public bodies' decisions adopted without complying to their duty to closely consult and actively involve DPOs/OPDs "concerning issues relating to persons with disabilities" (see para. ....), particularly in all disability-relevant law and policy-making, on an equal basis with others. States parties should establish complaint mechanisms and remedies for persons with disabilities, including the effect of nullification of decisions in cases where they have been adopted in breach of article 4.3 of the Convention by not ensuring close and timely consultation and active involvement of DPOs/OPDs complying with the duties, requirements and features put forward in this general comment].

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<sup>30</sup> See A/HRC/31/62, para. 47-50.

<sup>31</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, para. 67.

<sup>32</sup> See A/HRC/20/27, para. 68.

<sup>33</sup> See A/HRC/31/62, para. 51-54.

<sup>34</sup> Committee on the Rights of Persons with Disabilities, Guidelines on Independent Monitoring Frameworks and their participation in the work of the Committee

<sup>35</sup> See A/59/401, para. 82; A/HRC/31/62, para. 51-54.

49. States parties should develop strong monitoring and enforcement mechanisms with [dissuasive/effective] penalties and remedies for non-compliance of the implementation of laws, policies and regulations that seek to implement the Convention. Compliance should be monitored by independent mechanisms, with the authority to initiate investigations and impose sanctions to both public and private entities who fail to implement them, but at the same time by DPOs/OPDs themselves, being able to trigger a procedure when they feel that public or private entities have failed to comply with adopted policies and programmes, and/or to involve and consult them in the process.<sup>36</sup>

#### **IV. Relationship with other provisions of the Convention**

50. As part of the States parties' general obligations, article 4.3 of the Convention applies to the entire Convention and is of particular importance for implementing other articles. In its concluding observations, the Committee has reminded States parties of their duty to closely and timely consult with and actively involve persons with disabilities, through their DPOs/OPDs, including those representing women and children with disabilities, in the development and implementation of legislation and policies to implement the Convention, and in other decision-making processes concerning issues relating to persons with disabilities.

51. Article 3 of the Convention identifies a set of overarching principles, which guide the interpretation and implementation of the entire Convention. It includes the "full and effective participation and inclusion in society" as one of its general principles, which means that participation of persons with disabilities, through their DPOs/OPDs, cuts across the entire text and applies to the whole Convention.<sup>37</sup>

52. Paragraphs 1, 2, and 5 of article 4, are of the utmost importance in implementing article 4.3, as they include the fundamental obligations of States parties, extending to all parts of federal states without any limitations or exceptions, related to setting the necessary structures and frameworks and taking measures to comply with the Convention.

53. Policies to promote non-discrimination and equality of persons with disabilities stipulated in article 5 should be adopted and monitored in compliance with articles 4.3 and 33.3. The close consultation and active involvement DPOs/OPDs, who represent the vast diversity in society, including but not limited to children, young people, [the LGBTI community], ethnic minorities, and indigenous peoples, rural communities, and stateless, asylum-seeking, refugee persons with disabilities in the adoption and monitoring of specific measures, such as legal frameworks and guidance material to promote de facto equality, including affirmative action measures, is key for their success.

54. Any existing consultation procedures should not exclude persons with disabilities nor be discriminatorily based on disability. The establishment of DPOs/OPDs of young persons with disabilities, who often have a different view on certain matters, is thus recommended. While procedures and related materials should be inclusive of and accessible to persons with disabilities, through their DPOs/OPDs, and including early intervention time frames and technical assistance, reasonable accommodation, such as for example sign language interpreters and Easy Read, should always be provided in all dialogue and consultation processes.

55. Article 6 promotes the empowerment and participation of women and girls with disabilities, including through the creation of DPOs/OPDs of women and girls with disabilities, for enabling participation and involvement under article 4.3. Participation of women through their representative organizations should be considered a pre-requisite in the design, implementation and monitoring of all programmes that have an impact on their lives, and in addressing specific issues impacting exclusively or disproportionately on women with disabilities, as well as women's rights and gender equality policies in general, especially in

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<sup>36</sup> See A/71/314, para. 68-69.

<sup>37</sup> Monitoring the Convention on the Rights of Persons with Disabilities, Guidance for human rights monitors Professional training series No. 17, HR/P/PT/17, accessible at [http://www.ohchr.org/Documents/Publications/Disabilities\\_training\\_17EN.pdf](http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf).

relation to sexual and reproductive health and rights, and gender-based violence, including sexual violence. Women with disabilities must also be included in all branches and bodies of the national monitoring and implementation system. The general rule should be that all consultation bodies, mechanisms and procedures must be disability-specific, inclusive and consider a gender perspective.

56. Articles 4.3 and 33.3 are fundamental for the implementation of the rights of children with disabilities as stated in article 7 of the Convention. Consultation with and the active involvement of children, through their DPOs/OPDs, as well as the provision of disability and age-appropriate assistance and procedures, and non-conditional support, in all aspects of planning, implementation, monitoring and evaluation of inclusive education policies, should be ensured. Children with disabilities and, when appropriate, their families, must be recognized as partners and not merely recipients of education.<sup>38</sup> The participation of their DPOs/OPDs should be considered a requisite in consultations addressing specific issues that concerns them, and their views given due weight in accordance with their age and maturity.

57. Article 4.3 is of particular importance for raising awareness (art. 8). In its concluding observations, the Committee recommends States parties to implement, with the participation of DPOs/OPDs systematic awareness-raising programmes, including media campaigns, aimed at portraying positive images of persons with disabilities, particularly persons with albinism, persons with psychosocial and/or intellectual disabilities and deaf-blind persons, as human rights holders. Awareness-raising campaigns and training programmes aimed at all public-sector officials must be in conformity with the principles of the Convention and based on the human rights model of disability in order to overcome entrenched gender and disability stereotypes in society. States parties should actively combat discrimination and negative stereotypes in the media, such as those present in public campaigns like the ‘Teletón’ (Telethon), and rather promote public campaigns that portray persons with disabilities as rights holders.

58. For DPOs/OPDs to be able to properly participate in consultations and monitoring processes of the Convention, it is indispensable to have optimal accessibility (art. 9) to the procedures, mechanisms, information and communication, facilities and buildings, including reasonable accommodation. Internationally accepted accessibility standards must be developed, adopted and implemented in close consultation with DPOs/OPDs and in accordance with article 4, paragraph 3, of the Convention. Additionally, the processes of national and international monitoring of the implementation, in line with article 33.3 of the Convention, should promote and ensure the effective participation of DPOs/OPDs, including living up to international standards regarding accessibility.<sup>39</sup>

59. In situations of risk and humanitarian emergencies (art. 11), it is important for States parties and humanitarian actors to ensure the active participation, coordination and meaningful consultation with DPOs/OPDs, including those representing women, men, and children with disabilities of all ages and at all levels. This requires the active involvement of DPOs/OPDs in the development, implementation and monitoring of emergency-related legislation and policies and setting priorities for aid distribution, in line with art. 4.3. This necessitates non-conditional public funding for the independent, full and effective participation of civil society.<sup>40</sup> Within the setting of different refugee camps, especially in zones of armed conflict, DPOs/OPDs of refugees with disabilities should be established.

60. Equal recognition before the law (art. 12) ensures that all persons with disabilities have the right to exercise their full legal capacity and have equal rights to choose and control decisions affecting them and be directly and effectively consulted and involved in the development and implementation of legislation and policies to implement the Convention.

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<sup>38</sup> Committee on the Rights of Persons with Disabilities, General comment No. 4 (2016) on the right to inclusive education, para. 7, 25 November 2016, CRPD/C/GC/4.

<sup>39</sup> Committee on the Rights of Persons with Disabilities, General comment No. 2 (2014) on Article 9: Accessibility, 22 May 2014 CRPD/C/GC/2.

<sup>40</sup> Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies, Report of the Office of the United Nations High Commissioner for Human Rights, 30 November 2015, A/HRC/31/30.

However, the current lack of compliance with article 12 must under no circumstance preclude the inclusive implementation of articles 4.3 and 33.3. Recalling and living up to the Committee's general comment No. 1 (2014), legal capacity is the key to accessing full and effective participation in society, and participation in decision-making processes should be guaranteed to all persons with disabilities, including persons with intellectual and/or psychosocial disabilities as well as children with disabilities, through their DPOs/OPDs, and if necessary through supported decision-making regimes that respect the person's autonomy, will and preferences.

61. The Committee has noted with concern that in many States parties, persons with disabilities are deprived of their right to liberty and security (art. 14) and has recommended that States parties immediately repeal laws permitting deprivation of liberty based on impairment, forced treatment and the use of restraints and seclusion. All new legislation and policies adopted in this regard must prohibit such practices and provide for reasonable accommodation in, among others, prisons, to persons with disabilities. In developing and implementing new legislation and policies, DPOs/OPDs must be consulted and involved, especially those representing children, women and persons with intellectual and/or psychosocial disabilities.

62. Recalling its general comment No. 5, consultations with and active involvement of persons with disabilities, through their representative organizations, is critical for the adoption of all plans and strategies as well as for the follow-up and monitoring when implementing the right to independent living and being included in the community (art. 19). Active involvement and consultation at all levels in the decision-making process, should include the full range of persons with disabilities, including organizations representing women, older persons, children, and persons with psychosocial and/or intellectual disabilities.<sup>41</sup>

63. For DPOs/OPDs to be involved and be able to fully participate and freely express their opinions in the monitoring process, they need to have access to the required information (art. 21). In the development and implementation of legislation and policies to implement the Convention and in other decision-making processes concerning issues relating to persons with disabilities, DPOs/OPDs need to receive the information in accessible formats and technologies appropriate to all forms of disabilities, including those providing access for persons with intellectual and/or psychosocial disabilities, in a timely manner and without additional cost. This also includes the use of sign languages, Easy Read, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions. Sufficiently prior to consultations, all relevant information, including specific budgetary, statistical and other relevant information necessary for an informed opinion, must be made available.

64. To ensure the right to education (art. 24), States parties must consult with and actively involve persons with disabilities, including children with disabilities, through DPOs/OPDs, in all aspects of planning, implementation, monitoring and evaluation of inclusive education policies and legislation. Persons with disabilities and, when appropriate, their families, should be recognized as partners and not merely recipients of education and be ensured their right to be heard and to have their opinion be given due consideration within the education system.<sup>42</sup>

65. The adoption of all policies regarding the right of persons with disabilities to work and employment (art. 27), should be taken in consultation with and involvement of DPOs/OPDs. Policies should seek to guarantee access to employment; promote work in open, inclusive, accessible and competitive employment markets and environments; ensure equal opportunities and gender equality, and provide for reasonable accommodation and support for persons with disabilities, including women and indigenous persons with disabilities. This includes establishing coordinated strategies and the effective implementation of binding

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<sup>41</sup> CRPD Committee, General comment on article 19: Living independently and being included in the community, para. 71, 29 August 2017, CRPD/C/18/1.

<sup>42</sup> See CRPD/C/GC/4, op. cit, para. 7.

affirmative action measures to promote the employment of persons with disabilities in both public and private sectors.

66. The right to an adequate standard of living and social protection (art. 28) is directly interrelated with article 4.3 of the Convention, especially with regard to persons with disabilities and their families living in poverty, who are unemployed or who do not have a fixed income, those in rural and remote areas, those belonging to indigenous communities, women and older persons. When taking, developing and reviewing measures, strategies, programs, policies and legislation in relation to the implementation of article 28, as well as in the monitoring process thereof, States parties should partner up with DPOs/OPDs representing all kinds of disabilities to ensure the mainstream of disability and that the requirements and views of all persons with disabilities are duly taken into consideration.

67. The right of persons with disabilities to participate in political and public life (art.29) is of extreme importance to ensure equality of opportunity for persons with disabilities to be fully and effectively participating and included within society. This is closely interrelated with their right, through DPOs/OPDs, to be consulted and involved in the decision-making and monitoring process and assert their individual autonomy, including the freedom to make one's own choices, and their right to be recognized as persons before the law. States parties are required to establish an enabling environment in which persons with disabilities can effectively and fully participate without discrimination and on an equal basis with others,<sup>43</sup> including through the provision of accessible information.

68. States parties must collect appropriate information, including statistical, budgetary and research data (art. 31) to formulate and implement proper policies to give effect to the Convention. Persons with all kinds of disabilities should be consulted and involved, through their DPOs/OPDs, in the process of data and information collection and the interpretation thereof.

69. States parties should establish a unified data-collection system to collect quality, sufficient, timely and reliable data, disaggregated by sex, age, ethnicity, rural/urban population and impairment type, socioeconomic status, regarding all persons with disabilities and their access to the rights under the Convention. The system should be established to enable the formulation and implementation of policies to give effect to the Convention, through close collaboration with DPOs/OPDs, and guided by the Washington Group on Disability Statistics.

70. When deciding upon and implementing international cooperation (art. 32), a close partnership, cooperation and involvement of persons with disabilities, through DPOs/OPDs, is crucial to adopt development policies that are in line with the Convention. This means including its principles and values in all international cooperation policies, programmes, and initiatives, and mainstreaming the rights and views of persons with disabilities in implementing and national monitoring in the 2030 Agenda for Sustainable Development, as well as the Sendai Framework for Disaster Risk Reduction 2015–2030. DPOs/OPDs should be consulted and involved at every level of development, implementation and monitoring of international cooperation plans, programmes and projects.

71. The Convention expressly provides for the designation of one or more focal points (art. 33.1) within the government for matters relating to the implementation of the Convention and the establishment of a framework (art. 33.2) for the monitoring of its provisions at the national level. Collaboration and access of DPOs/OPDs must be guaranteed to all focal points and on all levels. The appointment of focal points/coordination mechanism, as well as the independent monitoring mechanism, must be decided in compliance with article 4.3 and article 33.3, and States parties shall also take into account the Paris Principles which frame and guide the work of NHRIs.<sup>44</sup>

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<sup>43</sup> Human rights Council, Thematic study by the Office of the United Nations High Commissioner for Human Rights on participation in political and public life by persons with disabilities, para. 15-17, 21 December 2011, A/HRC/19/36.

<sup>44</sup> Committee on the Rights of Persons with Disabilities, Guidelines on Independent Monitoring Frameworks and their participation in the work of the Committee, para. I.2.

72. NHRIs play a key role in bridging national level actors, including State institutions and civil society, and particularly, persons with disabilities, through their DPOs/OPDs, with the international system for the protection and promotion of human rights. The establishment, maintenance and close interaction and relationship with Independent Monitoring Frameworks and NHRIs is important at all stages, and some States parties even directly appoint NHRIs as their independent monitoring mechanism. The Paris Principles require that DPOs/OPDs should be represented in the independent mechanisms or be able to cooperate closely with these mechanisms, and preferably be appointed by their board, for example. As such, independent monitoring frameworks and NHRIs can strengthen the capacities of DPOs/OPDs with regard to the Convention and other related national and international mechanisms.<sup>45</sup>

73. The structure of focal point(s) or coordination mechanisms, which might include seats for CSO representatives, or even DPO/OPD representatives, never undermines and precludes the larger scope of the obligations under article 4.3 as set out in this general comment. States parties must continue to closely consult with and actively involve persons with disabilities, including children with disabilities, through DPOs/OPDs, in all the processes and phases. Systems of representation of CSOs and DPOs/OPDs within bodies created under article 33.1 must not weaken and hinder the right of DPOs/OPDs to express dissenting views to those of the public body.

74. Article 34.3 is crucial for the respect of relevant criteria for the Committee's membership. It requires States parties "to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention", when nominating candidates. Therefore, States parties should closely consult and actively involve organisations of persons with disabilities prior to nominating candidates for the Committee. To this aim, national legislative or regulatory frameworks and procedures should be adopted for transparent and participatory procedures that involve organisations of persons with disabilities and take into account the results of consultations reflecting them in the nomination decided.

## **V. Implementation at the national level**

75. The Committee notes that States parties may face challenges when implementing the right of DPOs/OPDs, including those representing women or children, to be consulted and involved in the development, implementation and monitoring of legislation and policies to implement the Convention. In the light of the normative content and obligations outlined above, States parties should among others take the following steps to ensure the full implementation of articles 4.3 and 33.3 of the Convention:

(a) Repeal all laws that prevent any person with disabilities, regardless of type of impairment, to be closely consulted with and actively involved, through their DPOs/OPDs, including the right not to be confined, including through forced institutionalisation and isolation within the family, on the basis of any kind of disability;

(b) Create an enabling environment for the establishment and functioning of DPOs/OPDs, by adopting a policy framework favourable to their establishment and sustained operation. This includes guaranteeing their independence and autonomy from the State party, the establishment, implementation of and access to adequate funding mechanisms, including public funding and international cooperation; and the provision of support, including technical assistance, for empowerment and capacity-building;

(c) Establish permanent consultation mechanisms with DPOs/OPDs, respecting their autonomy and taking into account the diversity of persons with disabilities, including children and women with disabilities, and the country's indigenous population, if such exists;

(d) To support the establishment of preferably one single umbrella DPO/OPD, which coordinates and represents the activities of a number of single DPOs/OPDs of persons with different disabilities, to ensure the inclusion and full participation of persons with all kinds of disabilities in the monitoring process;

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<sup>45</sup> Ibid, para. I.3 and I.4.



(e) Adopt legislation that requires that all levels of authority and decision-making closely consult with and actively involve persons with disabilities, including children, women and indigenous persons with disabilities, through their DPOs/OPDs, in the development and implementation of legislation and policies, that directly or indirectly concern them, as well as in the monitoring process thereof;

(f) Guarantee and support the participation of persons with disabilities through their representative organizations, reflecting a wide diversity of backgrounds, including birth, age, race, sex, language, gender identity, national, ethnic, indigenous or social origin, sexual orientation, religious and political affiliation, migrant status and impairment groups, or other status;

(g) Engage with DPOs/OPDs representing women and girls with disabilities and secure their direct participation in all processes of public decision-making in a safe environment, particularly relating to the development of legislative or policy measures regarding the rights of women and gender equality, violence, including sexual violence and abuse;

(h) Consult with and actively involve persons with disabilities, including children and women with disabilities, through their DPOs/OPDs, in the planning, executing, and monitoring of public decision-making processes at all levels and in particular in the matters affecting them, giving them reasonable and realistic timelines in providing their views, and providing them with adequate non-conditional funding and support;

(i) Encourage and support the creation, capacity-building, funding and effective participation of DPOs/OPDs or groups of persons with disabilities, including parents and families of persons with disabilities in their supportive role, at the local and national levels in the conception, design, reform and implementation of policies and programmes;

(j) Establish formal mechanisms and remedies to challenge decisions that do not adhere to the requirement to closely consult and actively involve DPOs/OPDs in law and policy-making;

(k) Develop and implement, with the involvement of DPOs/OPDs, strong enforcement mechanisms with meaningful penalties and remedies for non-compliance of effective implementation of laws, policies and regulations promoting the implementation of the Convention and ensure monitoring of compliance by States parties and persons with disabilities, through their DPOs/OPDs;

(l) Ensure the accessibility of all facilities, procedures and information related to public decision-making, consultation and monitoring;

(m) Provide reasonable accommodation to persons with disabilities in all facilities and procedures related to public decision-making, consultation and monitoring;

(n) Provide disability and age-appropriate assistance for the participation of persons with disabilities through their DPOs/OPDs in public decision-making, consultation and monitoring processes;

(o) Guarantee that consultations and procedures are conducted in an open and transparent manner towards all DPOs/OPDs;

(p) Ensure that DPOs/OPDs can receive and/or seek funding and other forms of resources from domestic and international sources, including private individuals, private companies, CSOs, States parties and international organizations, including access to tax exemptions, inheritance and the national lottery;

(q) Ensure that existing consultation procedures in non-disability specific areas of law, are made accessible to and inclusive of persons with disabilities, through their DPOs/OPDs;

(r) Actively involve and closely consult with persons with disabilities, through their DPOs/OPDs, in public budgeting processes, international decision-making and in international cooperation with other States parties and adopt development policies which mainstream the rights and views of persons with disabilities when implementing and monitoring the 2030 Agenda for Sustainable Development at the national level;

(s) Guarantee the participation, representation and easy access of persons with disabilities to focal points at all levels, the coordination mechanism, as well as their cooperation and representation within the independent monitoring mechanisms;

Carry out the monitoring and implementation envisaged under articles 4.3 and 33.3 in full consultation with and participation of persons with disabilities through their DPOs

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