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PRESENTATION



Sur Journal has the pleasure to release its issue number 14th, which focuses on the rights of persons with disabilities. The purpose of this issue is to promote a wide debate on the impacts of the adoption of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, and to evaluate the consequences of this normative evolution for national and regional systems in the Global South.

The final selection of articles presents a diverse approach to disability-rights, both in terms of regional representation and thematic scope. The dossier's opening article entitled **Analysis of Article 33 of the UN Convention: The Critical Importance of National Implementation and Monitoring**, by Luis Fernando Astorga Gatjens, discusses the role played by States Parties and civil society organizations, specially organizations of persons with disabilities (OPwDs), in implementing and monitoring the compliance with the convention, in accordance with the Article 33 of the Convention on the Rights of Persons with Disabilities.

From a comparative-law perspective, Letícia de Campos Velho Martel analyzes in **Reasonable Accommodation: The New Concept from an Inclusive Constitutional Perspective** the incorporation of the Convention into the Brazilian legal-framework.

On sexuality-related rights, Marta Schaaf, in her article entitled **Negotiating Sexuality in the Convention on the Rights of Persons with Disabilities**, give us a critical account on the dynamics of power and discourse related to disabled sexuality, pointing out the remaining silence on the matter even after the adoption of the Convention.

The UN Convention on the Rights of Persons with Disabilities in Africa: Progress after 5 Years, by Tobias Pieter and Hélène Combrinck, presents a review of the Convention's potential impact on African regional human rights normative framework and on implementation of disability-related rights in selected domestic legal systems (South Africa, Ethiopia, Uganda, and Tanzania).

Based on a critical account of theories of justice, **Human Diversity and Asymmetries: A Reinterpretation of the Social Contract under the Capabilities Approach**, by Stella C. Reicher, critically examines political participation of persons with disabilities, inclusion and diversity in contemporary societies.

Peter Lucas's **The Open Door: Five Foundational Films that Seeded the Representation of Human Rights for Persons with Disabilities** presents a careful description of five landmark disability rights-related films and suggests an original approach on the role of filmmakers in

advancing poetical strategies to represent disability; merging art and political will to break the silence and promote change.

Closing the dossier, we also included an exclusive **Interview with Luis Gallegos Chiriboga, President (2002-2005) of the *Ad Hoc* Committee that Drew Up the Convention on the Rights of Persons with Disabilities**. The interview was made by Regina Atalla, President of the Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families (RIADIS).

Apart from our thematic articles, we have also included the article named **Social Movements and the Constitutional Court: Legal Recognition of the Rights of Same-Sex Couples in Colombia**, by Mauricio Albarracín Caballero, which explores how rights-mobilization by social movements have influenced the approach by the Colombian Constitutional Court to this issue.

Daniel Vázquez and Domitille Delaplace in **Public Policies from a Human Rights Perspective: A Developing Field**, expose a critical view on how to use the tools of the New Public Management in order to include human rights into public policies, bringing particularly the experience of Mexico.

The article by J. Paul Martin on **Human Rights Education in Communities Recovering from Major Social Crisis: Lessons**

for Haiti, discusses Haiti after the 2009 earthquake and elucidates the main challenges facing human rights education in a situation of post-conflict and national reconstruction.

Concepts expressed in the articles are exclusive responsibility of the authors.

We would like to thank the experts who reviewed the articles for this issue. We are especially grateful to Diana Samarasan and Regina Atalla for their involvement in the call for papers and the selection of articles related to rights of persons with disabilities for the current issue. In addition, we would like to stress our appreciation to Matheus Hernandez, who assisted in the elaboration of this issue in the first semester of 2011.

Sur Journal is glad to inform that the table of contents of this special edition on the rights of people with disabilities is also printed in braille, with the link to our website.

Exceptionally, the present issue, dated June of 2011, was printed in the second semester of 2011.

Finally, Sur Journal would like to remind our readers that the next issue will discuss implementation at the national level of the decisions of the regional and international human rights systems and civil society's monitoring role in regard to this process.

The Editors.



LUIS FERNANDO ASTORGA GATJENS

Luis Fernando Astorga Gatjens was born in Costa Rica. He is an international consultant on human rights and disabilities, a journalist, and a political and social activist. He is Executive Director for Latin America as part of the Inter-American Institute on Disability and Inclusive Development. Gatjens is the founder, former vice president, and political advisor of RIADIS. He was actively involved in the development and negotiation of the UN CRPD. He is

also the founder of the International Disability Caucus and a proponent of Project South. He has published several articles about inclusive development and the rights of persons with disabilities and has conducted training on the subject.

Email: luferag@ice.co.cr

ABSTRACT

This paper seeks to highlight the value and scope of Article 33 of the Convention on the Rights of Persons with Disabilities (United Nations, December 2006) by analyzing the three provisions it contains: 1) designation of an entity within government to which the State Party should assign the task of promoting implementation of the convention and ensuring inter-institutional coordination for effective conduct of such task; 2) identification of an independent mechanism or institution (compliant with the Paris Principles), which will monitor, on behalf of the State, implementation of the convention and will promote and protect the rights of persons with disabilities; and 3) promotion and organization of civil society monitoring of convention implementation, emphasizing the actions that organizations of persons with disabilities should take and the leading role they should play to do so.

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ANALYSIS OF ARTICLE 33 OF THE UN CONVENTION: THE CRITICAL IMPORTANCE OF NATIONAL IMPLEMENTATION AND MONITORING

Luis Fernando Astorga Gatjens

1 Introduction

Generally speaking, one might expect that upon ratification of the Convention on the Rights of Persons with Disabilities (CRPD), the states of Latin America would start planning policies, programs, and actions to implement its provisions. Unfortunately, this has not been the case. The CRPD tends to be regarded as a benchmark and remains an expression of intention and a rhetorical promise, with no robust action having been taken for effective implementation.

To implement the convention, States should start by complying with the valuable Article 33 of the United Nations Convention (UNITED NATIONS, 2006). This article provides for national implementation and monitoring by the state and civil society.

This is why some organizations of persons with disabilities (OPwDs) in Latin America involved in promoting implementation and monitoring of the CRPD have attached great importance to observance of Article 33. One could say of States and governments: “Tell me what you are doing about Article 33 on implementation and monitoring and I will tell you how committed you are to the convention and the advancement of the rights of persons with disabilities.”

The importance given to this article is reflected in the fact that, in 2009, the Office of the United Nations High Commissioner for Human Rights (UN-OHCHR)* prepared a thematic study on Article 33, after broad consultation with states, civil society organizations, and independent experts. This thematic report offers a series of recommendations on the actions and measures that countries should take for adequate implementation of the provisions of the above-mentioned article.

*Thematic study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities (UNITED NATIONS, 2009, para. 17).

It is worth noting, before proceeding to our review, that this convention was the first to extensively refer to implementation and monitoring at the domestic level. No other previous treaty within the UN human rights framework includes such a provision with the sole exception of a partial one contained in the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), under which States shall ratify such Convention and establish, designate, or maintain a “national preventive mechanism.” The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and other thematic treaties focus on international monitoring.

It is fitting to remember what the UN-OHCHR pointed out in the thematic study when stressing the importance of monitoring:

In all human rights treaties, the implementation obligation is closely linked to a monitoring component. The monitoring of human rights treaties is needed to assess whether measures to implement the treaty are adopted and applied, but also to evaluate their results and therefore provide feedback for implementation. Monitoring mechanisms foster accountability and, over the long term, strengthen the capacity of parties to fulfill their commitments and obligations.

(UNITED NATIONS, 2009).

The CRPD strengthens monitoring by extending its scope to both national and international levels.

At the international level, there is no doubt that the International Committee established under Article 34 of the CRPD plays a key role in offering guidance to States Parties regarding the type of reports they should prepare and submit, reviewing the reports submitted, and subsequently making comments and recommendations to each state. It is worth noting that the agreed upon guidelines issued by the Committee for the first report that countries must submit are very stringent and seek to prevent the preparation of cursory, general reports that tend to depict favorable instances of compliance in the relevant state. We must remain vigilant so that governments and ministries of foreign affairs adhere to such guidelines; it appears that some countries that have already submitted reports have done so on their own terms and without the rigor required.

Another international monitoring procedure exercised by the Committee includes the essential condition that the state must have ratified the optional protocol. When this condition is met, it is possible to submit communications or complaints about violations to the rights of persons with disabilities after exhausting domestic remedies and, if the communication or complaint is admitted, the Committee may undertake an investigation. This monitoring mechanism may be quite effective since it puts strong international pressure on states that, in general, do not want to be subjected to such scrutiny.

Article 33 provides for national monitoring, which is the subject of our analysis below.

2 Article 33 and implementation of the convention

Generally speaking, Article 33 of the CRPD is divided into three parts and calls for:

- An implementation and coordination mechanism within the executive branch or government.
- A monitoring mechanism from one or more State entities that comply with the Paris Principles.
- Monitoring by civil society organizations (NGOs in general and organizations of persons with disabilities in particular).

2.1 *An entity within government promoting implementation*

Paragraph 1 of Article 33 of the CRPD establishes the following (UNITED NATIONS, 2006):

States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

The first thing we should note is that this paragraph seeks to ensure implementation of the treaty and has two components: one establishes the obligation of States Parties to designate one or more entities within the government for matters related to the implementation of the CRPD and another which primarily recommends the establishment or designation of a coordination mechanism to facilitate adoption of the measures.

With regard to the designation of an entity within government to promote implementation, there are two options: that it be a single agency or more than one. This will of course depend on the characteristics of the State Party, as indicated in paragraph 1, which states that the designation will be “in accordance with [the State Party’s] system of organization.” In the case of large, federal states, it may make sense to designate several agencies but for most countries in Latin America (where the majority of states are relatively small or medium-sized), it is advisable to designate one government entity for this purpose.

The following question immediately comes to mind: “What should such an entity within government be like to perform the task with which it was entrusted effectively and efficiently?”

Let us examine some of the conditions it should meet:

- First: The designated entity should be part of the government or the executive branch, which is primarily responsible for implementing the CRPD (even if we are aware that the legislative and judiciary branches also have to comply with

certain provisions under the treaty, like agreed-upon legislation in the case of the former and effective access to the justice system in the case of the latter). It is important to designate a specific entity within the executive branch “to avoid blurring of responsibility across government...,” as pointed out by the UN-OHCHR in its thematic study (UNITED NATIONS, 2009).

- Second: The designated entity should be close to the central authority (for example, a ministry, a secretariat, or the Office of the President) that issues instructions and policies that have an effect on the rest of the ministries and government institutions. In some countries, it is argued that this agency should have political and institutional force so it can really govern implementation of the rights of persons with disabilities. The entity should not be part of the Ministry of Health (which is typically a component of the medical model that treats persons with disabilities as patients), or of the Ministry of Social Welfare (which tends to consider persons with disabilities as objects in a government welfare system), and neither should it belong to the Ministry of Labor (which addresses only the labor aspect of the needs of persons with disabilities).
- Third: The designated entity should have the necessary human resources, equipment, and budget to perform its duties. It should not render services directly to persons with disabilities but create the right conditions and ensure that the relevant institutions offer the services required in a cross-cutting, inclusive manner, taking into consideration the specific needs of persons with disabilities. In this regard, we could say that the entity designated should promote inclusive development in the field of the rights of persons with disabilities.
- Fourth: The designated entity should play a very active role in coordinating with other government agencies that implement the treaty, developing policies, programs, projects, and actions that fall within their competence. It is advisable to have such inter-institutional coordination, since the designated entity will interact –providing expertise on the matter- with other government agencies, as recommended in the second part of paragraph 1.
- Fifth: In the performance of their functions, the directors and staff of the entity tasked with promoting implementation should be guided by the social model of disability; they should be very well versed in the rights of persons with disabilities (included in the CRPD and other national or international standards effective in the relevant State Party) and in the design of inclusive public policies typical of the social model, so that they can offer better guidance and advice to the institution.
- Sixth: The designated entity should be open to coordination and consultation with organizations of persons with disabilities and it is advisable for it to have among its leaders and staff persons with disabilities who are socially and politically empowered.
- Seventh: The entity should be willing to collaborate and receive criticism and comments from the monitoring institution or mechanism established under paragraph 2 of the same Article 33.

It would be possible to set other prerequisites or conditions that the designated government entity should meet but those indicated above already provide a basic outline. Each country, based on its own history and institutions, can offer different answers regarding the type of entity it will designate for the important task of promoting implementation of the convention.

Currently, many government agencies tend to undervalue and discriminate against persons with disabilities and develop actions that amount to charity or government welfare with very little impact on the living conditions of persons with disabilities. Or, from the human rights perspective, institutions develop activities that create the conditions for violations of the rights of persons with disabilities or violate them directly. This is due to widespread ignorance of the fact that persons with disabilities bear rights and obligations and should no longer be objects of public or private charity.

In this regard, the CRPD should act as a watershed in world history and in the history of each particular country. For this to be the case, it would require clear and responsible guidance, advice, and supervision. An entity like that referred to in paragraph 1 of Article 33, and which we tried to describe based on the conditions it should meet, ought to play such a role among all institutions. It should conduct its activities within the paradigmatic framework of human rights and social development to prevent implementation of the convention through purely cosmetic changes in which government welfare (or, even worse, charity) continues to be the guiding principle of public policies for disability.

The oversight role of this entity tasked with promoting and coordinating implementation of the convention should not be confused with the monitoring function of the national human rights institution or mechanism set forth in paragraph 2 of Article 33. In this case, monitoring aims to ensure that (cross-cutting and inclusive) public policies and programs are duly implemented as provided for under the convention. This operational monitoring and control from the expert body is designated to promote—in a coordinated manner—public policies and inclusive programs.

As indicated in the UN-OHCHR thematic study (UNITED NATIONS, 2009):

National focal points on disability issues are already in place in most Governments, including as a result of the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. As such, implementation of Article 33, paragraph 1 might require a reconsideration of existing structures rather than the establishment of new entities.

In Latin America, this responsibility has usually rested with national disability councils (*Consejos Nacionales sobre Discapacidad*, referred to as CONADIS) or similar organizations.

Some Latin American countries, which are already starting to debate the designation of a public-sector entity, have proposed that this task be entrusted to national disability councils. The first thing to consider is whether the national disability council of the relevant country meets the conditions required to carry out the important mandate to promote implementation of the convention

effectively and efficiently. Most likely, the conclusion will be that it does not (in most cases) due to the limited political influence that these agencies have in the current structure of states in the region.

However, we should not dismiss the possibility of national disability councils becoming the entities designated for this task, provided that they are vested with greater political power and funding. Such a decision, however, should not come from the government or executive branch but should derive from an act of parliament clearly establishing the empowerment of these institutions.

It is worth reflecting upon how a State Party to the CRPD should designate the entity responsible “for matters relating to the implementation of the present Convention.” One possibility that immediately comes to mind is for the government to make the designation through an executive order or some other decision-making mechanism. This option poses a difficulty that warrants serious consideration: the administration that makes the decision may be replaced in the following elections by another with a very different view about how to address human rights of PwDs and which entity should be responsible for promoting implementation of the convention. This would create instability and may lead to the reversal of the decision made, affecting implementation of the CRPD. Therefore, it is advisable for the designation to result from an act of parliament, not only indicating the entity to be designated but also vesting it with the necessary political power and resources.

This is something that OPwDs and government institutions currently working on disability-related issues, in particular national disability councils, should analyze, since this is generally where initiatives related to the rights of PwDs are produced. Proposing legislation to parliament (be it unicameral or bicameral) offers greater certainty regarding the government entity to be designated and helps the issue of rights of PwDs gain ground not simply as an occasional policy of a given government but as state policy.

Another issue that warrants consideration is the fact that countries indefinitely postpone the designation. So far, this is what has occurred; there are States Parties in the region that, two or three years after ratifying the treaty, show no signs of intending to designate an entity. This is a negative and foreboding sign as it appears to indicate that there is a lack of awareness about violations of the rights of persons with disabilities or about what countries should immediately do to change this prevalent situation. States in the region in general have accumulated a huge debt to PwDs that they can only start to settle by firmly committing to implement the convention. A first essential step is designating the agency responsible for promoting such implementation.

A final issue to consider is the fact that states may start to take for granted that it falls to national disability councils to undertake such responsibility without any formal and serious designation. This would be very negative since such a situation would convey the message to PwDs and society in general that, despite the state ratification of the CRPD, things remain unchanged; after a few years of taking stock of the treaty’s implementation, the conclusion would be that it is yet another important instrument with limited or no effect at all.

2.2 Inter-institutional coordination for implementation of the convention

In the second sentence of Article 3 paragraph 1, the CRPD makes an intelligent recommendation: to establish or designate “a coordination mechanism within government to facilitate related action in different sectors and at different levels” (UNITED NATIONS, 2006). Such coordination among different agencies is necessary to implement the treaty in all sectors and at various levels of the state structure.

Implementing the convention necessarily involves the design and implementation of public policies and programs that are inclusive and which may have cross-cutting application in public institutions, with a particular focus on those that directly address the issue of persons with disabilities. These might include, for example, ministries of education, health, labor, housing, transportation, and communication or information, among others.

The entity within government designated to carry out a task as challenging as promoting implementation of the convention should serve as a “focal point” as defined in the UN-OHCHR thematic study (UNITED NATIONS, 2009). Obviously, the focal point from which inclusive public policies will emanate should have counterparts in the ministries or institutions that will develop and implement their specific public policies.

At this point, it is necessary to differentiate the political coordination needed in decision-making at the central level, which would be under the responsibility of the designated government entity, from the necessary inter-institutional operational coordination. Such coordination would involve the teams of the designated government entity and the focal points of each government body responsible for designing the programs through which the convention provisions will be implemented in the various areas of the state.

There is another issue to consider regarding the focal points of the institutions that make up the central (or federal) government. In small states, it is possible that coordination between focal points within ministries can be arranged, as long as the designated government entity also coordinates activities at the municipal level, where persons with disabilities reside. However, in “States with multiple levels of government” (as defined in the UN-OHCHR thematic study), it will probably be necessary to designate “disability focal points [...] at the local, regional and national/federal level” (UNITED NATIONS, 2009).

3 Monitoring by the State

Article 33 paragraph 2 of the CRPD contains two subparagraphs (UNITED NATIONS, 2006):

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.

The fundamental precondition for the mechanism or state entity responsible for monitoring the status of human rights of PwDs and, specifically, implementation of the convention is that it be independent.

It would be a mistake for the same entity designated to promote implementation of the convention to also be responsible for monitoring state fulfillment of the rights of PwDs, including those established under the CRPD. If that were the case, such a government entity would become both judge and party.

The entity designated under Article 33 paragraph 1 will promote and coordinate all things related to implementation of the convention. This entails two key functions (among others): providing guidance and advice for the design and development of inclusive and cross-cutting public policies in government agencies, particularly to those that address the needs of PwDs, and overseeing compliance thereof at an operational level. This oversight function is different from the one to be performed by the institution(s) in charge of independent monitoring. This different perspective is focused on how the state and its institutions are performing with regard to the rights of PwDs, specifically as provided for under the CRPD.

The responsibility to protect, promote and monitor the rights of PwDs, as established under Article 33 paragraph 2 of the convention, should rest with one or more institutions operating on an independent basis. This is to which paragraph 2 refers when it stipulates that States Parties, when designating such a mechanism, should take into account “the principles relating to the status and functioning of national institutions for protection and promotion of human rights” (UNITED NATIONS, 2006).

Such principles are the “Paris Principles,” which were adopted by the UN General Assembly on December 20, 1992 and have become the main source of guidance for human rights institutions formed in various countries after their adoption.

They were drafted and proposed by national human rights institutions themselves, working together with representatives of the States, the UN, expert bodies, inter-governmental groups and non-governmental organizations. This diverse group met in Paris in October of 1991, at a conference organized by the Danish Center for Human Rights.

The Paris Principles are broad and general in nature. They were designed this way so that they could engender compliance by a broad spectrum of national human rights institutions, regardless of their different objectives, organizational structures, and action plans. The Principles define a series of minimum legal requirements that a national human rights institution should meet to be considered as such. They focus on three areas: (1) competence of and responsibilities given to these national institutions, (2) pluralism in their composition and independence in the performance of their functions, and (3) methods of operation and relations with other social actors, such as civil society organizations.

Regarding competence and responsibilities, there are some criteria that national human rights institutions must meet. We shall mention three: (1) their mandate should be as broad as possible (comprising both protection and promotion of human rights), (2) the mandate should be clearly set forth in a constitutional or legislative text, and (3) they should have the authority to prepare reports about the general human rights situation in their country or about issues of a more specific nature.

With regard to composition and degree of independence and plurality, the Paris Principles establish the following basic conditions: (1) members of national human rights institutions shall be elected according to a procedure that ensures a plural representation of the various social sectors; (2) the institutions should have an adequate infrastructure and the economic resources needed for the conduct of their activities; (3) their actions and decisions should be fully independent from the executive branch or government; and (4) they should not be subject to any financial control that may affect the performance of their functions.

To fulfill this set of requirements expected of national human rights institutions, when referring to methods of operation, the Paris Principles establish the following powers: (1) national human rights institutions may freely consider any questions falling within their purview; (2) they should have access to any information and any documents necessary to assess the human rights situation in their country; (3) they should have the freedom to address the general public regarding their opinions and recommendations; and (4) they may maintain consultations with public and civil society organizations involved in the protection and promotion of human rights.

In our countries [Latin American states], there are different types of entities that have been entrusted with protecting, promoting and monitoring human rights, such as offices of human rights attorneys, commissions, commissioners, and ombudsmen, among others. Regardless of the type of institution in each country, it is important to determine whether they are compliant with the Paris Principles, especially concerning the independence of the institution from the executive branch.

In sub-paragraph 1 of paragraph 2, reference is made to one or more independent mechanisms. Based on what we know about the Latin American region, we believe that this framework will preferably be composed of one mechanism and not two or more. In very large countries with a federal organization like Brazil, it may be suitable to establish or designate several institutions, which should operate in a coordinated manner.

It will be very important for OPwDs to find out whether the designated or established national human rights institution strictly complies with the Paris Principles. If the conclusion is that it does not, it will be necessary to coordinate actions with other civil society organizations to advocate for reform to the existing entity in order to meet such principles or to promote the creation by law of a new entity that complies with the principles from its inception.

If it is found that the national human rights institution does meet the Paris Principles, it will be necessary to determine if the institution has taken due note of the tasks with which it is entrusted under the CRPD, that is, “to promote, protect

and monitor implementation of the [...] Convention.” It will also be important to request information about the actions the institution intends to implement to perform its duties and if any special team has been or will be assigned such responsibility. Some institutions already have a person (or team) specialized in the rights of PwDs, in which case it would be useful to inquire as to whether the institution intends to reinforce or strengthen the team to optimize the performance of its tasks.

Another important point concerns coordination and joint initiatives that may be undertaken by national human rights institutions together with OPwDs, in terms of monitoring as well as protecting and promoting the rights of PwDs. A possible joint agenda could include, among others, the following features:

- (Desirable) coordination between the government entity designated to promote implementation of the convention and the national human rights institution. Is there such coordination? How does it work?
- Awareness of and follow-up to the reports that States Parties should submit to the International Committee. In this regard, it will be extremely valuable for the national institution to be aware of comments and recommendations made by the Committee in order to assess what is being done to follow such recommendations.
- Campaigns to advance the rights of PwDs, in accordance with Article 8 of the CRPD concerning awareness-raising throughout society.
- Coordination with OPwDs to guide them on how to encourage PwDs to report violations of their rights before the national human rights institution.
- Joint training initiatives for OPwDs on the rights of PwDs and the CRPD.
- Consultations with OPwDs when the national institution prepares general reports about the status of human rights in the country and especially when it prepares reports specifically concerning the status of the rights of PwDs.

4 Monitoring by OPwDs and civil society in general

We shall now consider the monitoring to be performed by civil society, in particular, OPwDs. Article 33 paragraph 3 of the CRPD establishes that “[c]ivil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process” (UNITED NATIONS, 2006).

OPwDs are expected to play a key role in this regard. They need to be trained in human rights so that they become fully proficient in promotion, protection and advocacy. They must be very acquainted with the CRPD and its optional protocol and they should be supported so that they can implement actions that can have a political impact in different scenarios. They should take the saying “without action there is no law” and put it into practice under the slogan *Without organized and politically meaningful action on the part of OPwDs and their allies, States will do little or nothing to comply with the CRPD.*

The monitoring role they have to play forces OPwDs to be informed of what is going on, especially with regard to the entity designated to promote and coordinate implementation of the convention. If such an entity has not yet been designated, OPwDs should be actively involved in demanding that such designation be made in compliance with all the conditions required to fulfill the task effectively.

In addition, they should also be vigilant when the time comes for states to submit reports to the Committee created under the convention. The OPwDs should demand to be informed and duly consulted during preparation of such reports. Once the reports have been completed, they should review them to assess their accuracy and objectivity. If it is found that the report does not reflect the real situation of PwDs in the country, the OPwDs should set themselves to prepare shadow reports, if possible with the assistance and support of human rights NGOs.

With regard to the follow-up of states' reports, it is not enough for the organizations to read the national report or send a shadow report to Geneva. They should in fact take successive action and exert political pressure, both in the country and in Geneva, in order to ensure that the Committee makes the most appropriate comments and recommendations based on the real situation of the rights of PwDs in the country and to publicize the issue in the national mass media.

Once the International Committee has made comments and recommendations based on the submitted report and after exchanges with representatives of States Parties, the OPwDs must have thorough knowledge of the document and publicize it widely as a first step in the effort to exert political pressure so that recommendations are followed.

Civil society monitoring includes that of human rights organizations or associations working on behalf of rights protection and promotion. OPwDs will have to establish relationships with such groups to introduce them to the rights of PwDs (if it is not already included on their agendas) or help them to develop a better approach to the issue, since neglect of disability rights also extends to NGOs. Additionally, OPwDs should collaborate with NGOs that have knowledge and experience working in international human rights protection systems, with a view to forming alliances that can strengthen them and developing joint activities, such as drafting shadow reports.

There are NGOs that work in the field of disability without having PwDs among their members. It would be advisable for OPwDs to work with such NGOs in order to bring them into the ranks of those organizations working for the promotion, protection and advocacy of the rights of PwDs, and so that they add these issues to their agendas, even if their activities are mainly focused on service rendering. It is always valuable to have more and more allies in the effort to advance the rights of PwDs.

It is worth remembering at this point that disability is an issue that cuts across various social sectors of the population. Persons with disabilities may be women, workers, boys, girls, African descendants, indigenous people, etc. That is why it is necessary for OPwDs to influence the agendas and activities of women's organizations, trade unions, children's rights organizations, indigenous organizations, organizations of African descendants, etc., to encourage them to

include the issue of the rights of PwDs on their agendas. It is unlikely that they will do so on their own initiative; therefore, the guidance of OPwDs will be very much needed in this process.

With the issue already on their agendas, these civil society organizations will be able to perform the monitoring role assigned to them under Article 33 paragraph 3 of the convention.

For all of the above reasons, we may conclude that the very heart of monitoring from civil society should be OPwDs, which should be socially and politically empowered and fully aware of their role in protecting, promoting and advocating for the rights of PwDs.

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RESUMO

O presente trabalho procura enfatizar a importância e o escopo do artigo 33 da Convenção sobre os Direitos das Pessoas com Deficiência (Nações Unidas, dezembro, 2006). Neste artigo, tal importância é analisada a partir dos três componentes contidos neste dispositivo: 1) a designação da instituição pública do Estado Parte encarregada de promover a implementação da Convenção e a coordenação interinstitucional necessária para fazê-lo de maneira eficaz; 2) a identificação do mecanismo ou instituição nacional independente (nos moldes dos “Princípios de Paris”), responsável por monitorar – a partir da perspectiva do Estado – o cumprimento da Convenção, bem como proteger e promover os direitos das pessoas com deficiência; e 3) a promoção e organização do monitoramento por parte da sociedade civil, com destaque à liderança e ao trabalho a ser desenvolvido por organizações de pessoas com deficiência.

PALAVRAS-CHAVE

Convenção – Direitos – Deficiência – Aplicação – Monitoramento

RESUMEN

El presente trabajo busca resaltar el valor y alcances del artículo 33 de la Convención sobre los Derechos de las Personas con Discapacidad (Naciones Unidas, diciembre, 2006). Tal valor es analizado en los tres planos que contiene ese artículo; a saber: 1) La designación de la institución pública a la cual el Estado Parte, le debe encargar la tarea de impulsar la aplicación del tratado y la necesaria coordinación interinstitucional, para cumplir eficazmente esa tarea; 2) La identificación del mecanismo o institución nacional independiente (que cumpla “Los principios de París”), que vigilará –desde el Estado– el cumplimiento de la Convención y protegerá y promoverá los derechos de las personas con discapacidad y 3) El impulso y organización del monitoreo desde la sociedad civil, destacando el liderazgo y la labor que deben desarrollar las organizaciones de personas con discapacidad.

PALABRAS CLAVE

Convención – Derechos – Discapacidad – Aplicación – Monitoreo

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