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Disability Council International

Shadow reporting to the UN Committee on the Rights of Persons with Disabilities

A Practical Guide for NGOs

Introduction

Disability Council International has prepared this practical guide for NGOs on shadow reporting in two parts: Part A addresses generally the elements of the monitoring mechanism established under the Convention, with the central role of UN Committee on the Rights of Persons with Disabilities and its functions; the requirement for states parties to submit regular reports to the CRPD Committee and the reporting cycle; and finally the role and valid contributions of NGOs in the reporting and monitoring process. Part B clarifies the specific requirements of the CRPD Committee for the contents of states parties' reports and what the national NGOs and national human rights institutions need to look at while preparing their shadow reports to the CRPD Committee.

Part A. The monitoring mechanism of the Convention on the Rights of Persons with Disabilities and the role of NGOs

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1. The UN Convention on the Rights of Persons with Disabilities and the monitoring role of the CRPD Committee

a) The UN Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (the CRPD Convention) was adopted by the UN General Assembly on 13 December 2006. It entered into force on 3 May 2008.¹ This Convention, unlike other human rights treaties, does not establish new rights as such, rather it extends the reach of existing human rights norms to cover the situation of persons with disabilities in the most effective way.

Essentially in this Convention, the so called “medical model” of disability is replaced by the so called “social” and “human rights” models of disability. To start with, the definition of “disability” in the Convention represents “disability” as a function of the interaction between persons with impairments and the evolving environment. Under the Convention, it is not a question of curing the impairments of persons with disabilities; it is a question of “curing” the impairments (barriers) in society. It is recognized in the Convention that the existing barriers in society more than the impairments of persons with disabilities are the ones that “disable” persons with disabilities. Therefore it is by removing these barriers in society, that the human rights of persons with disabilities can be realized. This fundamental idea of disability as an issue of accessibility and inclusiveness of societies for persons with impairments comes across the whole Convention and permeates each of its provisions.

In this way the Convention holds societies responsible for ensuring the realization of the rights of persons with disabilities and builds upon the principles of non-discrimination, accessibility and reasonable accommodation as the main pillars through which the full realization of the rights of persons with disabilities can be achieved.

¹ See text of the Convention available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Convention.aspx> An Optional Protocol adopted together with the Convention also entered into force on 3 May 2008. See text of the Optional Protocol available at : <http://www2.ohchr.org/english/law/disabilities-op.htm>

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b) The CRPD Committee as an international monitoring body: purpose, methods of work and membership

Under article 34 of the Convention, a Committee of experts is entrusted with monitoring functions.

This monitoring work involves 3 main areas: *periodic review* of states parties' reports; but also (under the optional protocol) the conduct of direct *enquiries* in states parties, when there is reason to believe that serious human rights violations may be occurring in the state party; and review of *individual communications*.

In addition, and consistent with the established practice of other UN human rights treaty bodies, the CRPD Committee is also entitled to organized *days of general discussion* and adopt *general comments* on provisions of the Convention to facilitate its implementation by states parties.

Committee Membership: Members of the CRPD are supposed to be persons of high moral standing and recognized competence and experience in the field of human rights of persons with disabilities. They are independent from any government or authority and are elected in their personal capacity by the Conference of States Parties (CSP). Elections are held on the basis of the principles of equitable geographic distribution, respect for the different forms of civilization and the diverse legal systems of the world.

c) Reporting to the CRPD

The examination of reports submitted by states parties (followed by the adoption of the respective recommendations) is the most important function of the CRPD. Under article 35 of the Convention a state party is required to submit an initial report within the first two years from the time of entry into force of the Convention for that state party², and then

² An updated status report on submissions of reports by states parties is available on the DisabCouncil website: www.disabilitycouncilinternational.org

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periodically, at least every four years, and further, whenever requested to do so by the Committee.

To facilitate the submission of regular reports, the CRPD has adopted *reporting guidelines*.

The CRPD reporting guidelines refer that a report-writing process is an opportunity for a state to review its legislation, practices and policy and to expose itself to the open scrutiny of both its own citizens and the international community as a whole. It is also the opportunity to review developments in the process of achieving the full implementation of the Convention and to benefit from an outside view (the committee) on how and what is still required doing for its full implementation.

d) The CRPD reporting cycle

There are a number of steps in the reporting process. Once the report is submitted, the Committee may or may not prepare the so called list of issues (questions). If the Committee chooses doing so, the state party is given time to respond in writing to this list of issues. Then the state party is invited for the constructive dialogue with the Committee. At the end of the constructive dialogue with the state party the Committee adopts its concluding observations containing specific recommendations on how to improve the human rights situation in the state party concerned. The state party will be invited to submit follow-up information on the implementation of the recommendations contained in the concluding observations. After four years the cycle repeats.

2. The role of national NGOs in the CRPD reporting process

NGOs are traditionally, independent watchdogs whose main objective is “blowing the whistle” when/if states are not fully implementing their obligations under international human rights treaties.

For this reason, national NGOs and other civil society actors in general have an important role to play in the monitoring work of the CRPD Committee. Representing the interests of

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those whose rights are protected by the Convention (i.e. persons with disabilities), national NGOs are invited to participate in the public and open scrutiny of the laws, practices and policies of the state party concerned with regard to the implementation of the Convention. In this way they help first of all the state party itself to implement the obligations it has freely undertaken under the Convention.

Role in the national process of implementation of the Convention

National NGOs are expected to perform a number of functions. First of all, NGOs should be consulted by states parties in the design and planning of policies and programs intended for persons with disabilities. Then NGOs are also called to play a role in the process of monitoring the implementation of those laws, policies, and programs by the state party concerned.

National NGOs can also act proactively by highlighting loopholes in legislation, policy and programmes designed to protect and promote the rights of persons with disabilities as established under the Convention. NGOs should further propose solutions to overcome those loopholes.

Role in the CRPD reporting process

Within the reporting process, states parties should consult with national NGOs in the preparation of reports to the Committee. This ensures that reports are an accurate representation of the situation with human rights in the country.

However, a report remains that of the state party in question. For this reason, NGOs are entitled to submit their independent shadow reports to the CRPD, to highlight the positive as well as the negative aspects in the implementation of the Convention at the national level. Sometimes states parties' reports may or may not reflect the situation in the country in the same way as the NGOs see it. States parties' reports may be inaccurate, due either to oversight or soft self-criticism.

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In this regard an independent public scrutiny has the obvious potential to ensure that state parties' reports are an accurate representation of the status of implementation of the Convention at national level. On the other side, a shadow report prepared by national NGOs also represents an additional source of information based upon which the CRPD can assess the real situation in the state party. This enables the Committee to adopt recommendations that reflect the degree of non-implementation of the Convention.

Four instances for national NGOs engagement with the reporting cycle

i) Firstly, national NGOs should submit their own independent shadow information, once the report from the state party has been submitted to the CRPD;

ii) Secondly, national NGOs have an opportunity to submit their own draft list of questions that the Committee may consider when adopting its list of issues. It is also an opportunity to sum up for the Committee, the issues that represent major areas of concern for those national NGOs;

iii) Thirdly, before the dialogue takes place and considering the time that it may take between the submission of the state party's report and its consideration by the CRPD, national NGOs may consider updating the Committee on new issues that require an urgent action from the Committee, and which should be brought to the attention of the state party during the dialogue and later on reflected in the concluding observations;

iv) Lastly, once the concluding observations have been adopted, national NGOs are better placed to follow up on those recommendations, to exert pressure on the state party to implement them and, accordingly, update the Committee on ongoing progress in this regard.

Part B. Contents of the national NGOs shadow reports: what to include in it

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In order to facilitate the work of the Committee, an NGO shadow report addressed to the CRPD should include two major parts, one containing updated basic relevant information about the country itself (1); and the second more properly describing the situation of persons with disabilities in the state party (2).

1. Relevant state party information

The shadow report prepared by a national NGO should start with a section providing updated basic information on the state party (government type, constitution, population, ethnicity, religion, information on the executive and legislative branches, elections and suffrage, GDP per capita, unemployment rate, literacy, life expectancy, infant and maternal mortality rate, etc). This is important because the Common Core Document of the state party which is supposed to hold this information may or may not be updated at the time of the Committee's review and sometimes this information may be just missing.

2. Protection and promotion of the rights of persons with disabilities in the State party

The second and main part of the NGO shadow report should contain a critical analysis of the state party report (how well the country has implemented the main provisions of the Convention that define disability as a social and human rights issue, and not as a medical issue. In order to facilitate the Committee's review, this part should preferably include three subsections: on most relevant issues; on respect for overall reporting requirements of the CRPD; and an article by article shadow review of the state party report.

a) Most relevant issues

It is preferably to provide at the beginning of the shadow report a summary of the most relevant issues (gross oversight or simplification of the real situation, adverse or harmful interpretation of key provisions of the Convention, or non implementation at all etc), that the NGO thinks to deserve the particular attention of the Committee when reviewing the report of the state party concerned.

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In this subsection national NGOs should pay particular attention to the following elements: the definition of “persons with disabilities” (article 1); the principle of equality and non-discrimination (article 5); the definition of the concept of “legal capacity” under national legislation (article 12); prevalence of the practice of institutionalization of persons with disabilities (article 14); absence of social services enabling life in the community (article 19); the implementation of the right to education including access to the general system of education (article 24); the right of everyone to work including in public offices and services such as the army (article 27); the implementation of the right of persons with disabilities to participate in public life (including the right to vote and to be elected) (article 29).

b) Provision of generic information as required in the reporting guidelines of the CRPD Committee

In this section the national NGO should describe how the state party report has complied with the more generic reporting guidelines of the Committee, in particular the following:

i) *The CRPD reporting guidelines require state parties to involve the civil society (NGOs and DPOs) in the preparation of its report.* The national NGO should indicate whether or not it was involved in this process.

ii) *The state party should report on policies and strategies adopted and the resources available for the implementation of each of the Convention rights.* The NGO should indicate whether or not the state party report is exhaustive in providing this information, and if not supplement that information.

iii) *The state party should inform about steps undertaken to adopt a comprehensive disability anti-discrimination legislation to put into effect the provisions of the Convention.* The NGO should indicate whether or not the state party report is exhaustive in providing this information, and if not supplement that information.

iv) *The report of the state party should include statistics, benchmarks, and trends on the realization of each of the Convention rights, disaggregated by sex, age, type of disability (physical, sensory, intellectual and mental), ethnic origin, urban/rural population and other*

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relevant categories. The NGO should indicate whether or not the state party report is exhaustive in providing this information, and if not supplement that information.

v) *The state party report should indicate the mechanisms in place to monitor progress towards the full realization of the Convention rights.* The NGO should indicate whether or not the state party report is exhaustive in providing this information, and if not supplement that information.

vi) *The state party report should include information about any judicial and other appropriate remedies in place enabling victims to obtain redress in the case of violation of their Convention rights.* The NGO should indicate whether or not the state party report is exhaustive in providing this information, and if not supplement that information.

c) Article by article shadow review

The last subsection should provide an article by article review of the state party report, and the extent to which in the view of the national NGO it reflects the needs of implementation of the Convention. The CRPD reporting guidelines contain the most extended overview of the requirements for report-writing by states parties. It is the responsibility of the state party to provide such information as requested in the reporting guidelines of the Committee. The NGOs should concentrate on finding answers in the state party report to the relevant elements indicated below for each of the articles and correct or supplement the information provided by the state party as needed:

Article 1 to 4 of the Convention

The NGO should review how the state party defines and incorporates in the national legislation the following concepts, in light of the Convention:

- a) *The definition of "disability" and "long term" impairment under national law;*
- b) *The definition of "reasonable accommodation", and "disproportionate and undue burden" and how these relate to the general principle of accessibility;*
- c) *The implementation of the fundamental principles of the Convention in particular the principle of promotion of the full realization of the rights of persons with disabilities (PWD);*
- d) *Indicating whether national legislation defines any rights that the state party will implement progressively.*

Article 5 Equality and non-discrimination

The NGO should provide alternative information in particular on the following issues:

- a) *The real possibility of using existing laws to protect rights in the relevant state party;*

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- b) Measures adopted by the state party to guarantee the equal and effective protection of the rights of PWD, including reasonable accommodation;*
- c) Policies, programs and measures related to affirmative action adopted by the state party to ensure a de facto equality of PWD with other members of society.*

Article 6 Women with disabilities

The NGO should provide alternative information in particular on the following issues:

- a) Whether the state party recognises the inequality of the situation of women with disabilities;*
- b) Whether there is concerted action of the state to ensure a parity of rights between women and girls, and men and boys with disabilities (in schools, employments and etc) and between these and other members of society.*

Article 7. Children with disabilities

The NGO should provide alternative information in particular on the following issues:

- a) Whether national laws and practice clearly identify the principles guiding decisions on children issues;*
- b) Whether children are recognised a right to express freely their views including through appropriate assistance.*

Article 8. Awareness-raising

The NGO should provide alternative information in particular on the following issues:

- a) Steps undertaken in education institutions and the media to portray a positive image of PWD (towards changing attitudinal behaviour, and bias with regard to PWD);*
- b) Steps undertaken to disseminate information about the Convention among PWD and in the society at large.*

Article 9 – Accessibility

The NGO should provide alternative information in particular on the following issues:

- a) Measures (legislative or otherwise) intended to facilitate access to the involving environment (physical (built-in and transport), and social (facilities and services provided to the general public), information and communications);*
- b) Accessibility standards, control, and sanctions for non-compliance.*

Article 10 – Right to Life

The NGO should provide alternative information in particular on the following issues:

- a) Steps undertaken to ensure the right to life of PWD;*
- b) Prohibition of arbitrary deprivation of life of PWD (or how is this implemented with regard to PWD).*

Article 11 - Situations of risk and humanitarian emergencies

The NGO should provide alternative information in particular on the following issue:

- Steps undertaken to include PWD in national emergency protocols and programs.*

Article 12 - Equal recognition before the law

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- a) Existing legislation with regard to the issue of legal capacity of persons with disabilities; if restrictive, what measures are being undertaken to conform the present practice with the requirements of article 12;
- b) Support available to PWD to exercise their legal capacity and manage their financial affairs;
- c) Existence of safeguards against abuse of supported decision-making models;
- d) Steps undertaken to ensure the full enjoyment by PWD of their legal capacity in particular to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and their right not to be arbitrarily deprived of their property.

Article 13 - Access to justice

The NGO should provide alternative information in particular on the following issues:

- a) Steps undertaken to ensure an effective access to justice at all stages of the legal process;
- b) Steps undertaken to ensure an effective training of personnel in the national justice and prison system;
- c) Steps undertaken to ensure age-related accommodations.

Article 14 - Liberty and Security of the Person

The NGO should provide alternative information in particular on the following issues:

- a) Steps undertaken to ensure that PWD are not deprived of liberty on the sole basis of their disability;
- b) Steps undertaken to prohibit the institutionalization of PWD;
- c) Steps undertaken to ensure reasonable accommodation, and similar procedural guarantees for PWD in prisons for criminal acts;
- d) Steps undertaken in order to raise awareness about the situation and rights of PWD.

Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

The NGO should provide alternative information in particular on the following issues:

- a) The availability of measures intended to prevent PWD from being subjected to medical or scientific experimentation without their free and informed consent;
- b) The availability of measures intended to make PWD part of national strategies and mechanisms to prevent torture.

Article 16 - Freedom from exploitation, violence and abuse

The NGO should provide alternative information in particular on the following issues:

- a) Steps undertaken to protect PWD from all forms of exploitation, violence and abuse;
- b) Steps undertaken to ensure that all PWD who are victims of violence have access to effective recovery and rehabilitation programmes; and acts of violence and abuse against PWD are identified, investigated and, where appropriate, prosecuted.

Article 17 - Protecting the integrity of the person

The NGO should provide alternative information in particular on the following issues:

- a) Protection of PWD from medical (or other) treatment given without their free and informed consent;
- b) Protection of PWD in general from forced sterilization, and girls and women with disabilities, in particular, from forced abortions;
- c) The existence of independent review organizations monitoring medical treatment of PWD.

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Article 18 - Liberty of movement and nationality

The NGO should provide alternative information in particular on the following issues:

- a) *Steps undertaken to ensure the realization of the PWD right to acquire a nationality and not to be deprived of it;*
- b) *Steps undertaken to ensure the realization of the PWD right to enter or leave his/her country of origin.*

Article 19 - Living independently and being included in the community

The NGO should provide alternative information in particular on the following issues:

- a) *The existence of independent living schemes, including the provision of personal assistants and in-house support services allowing PWD to live in their community;*
- b) *The degree of accessibility of community services and public facilities for PWD.*

Article 20 - Personal mobility

The NGO should provide alternative information in particular on the following issues:

- a) *Steps undertaken to facilitate personal mobility of PWD, including the availability of street signs;*
- b) *Steps undertaken to give training in mobility skills to PWD and specialised staff.*

Article 21 - Freedom of expression and opinion, and access to information

The NGO should provide alternative information in particular on the following issues:

- a) *Steps undertaken to ensure that information available for the general public is accessible to PWD too;*
- b) *Steps undertaken to ensure that PWD can use their preferred means of communication in all forms of official interaction and have access to information, including by using sign language, Braille, and other accessibility means;*
- c) *Steps undertaken (legislative and otherwise) for the official recognition of the equal status of sign language(s) in the state party.*

Article 22 - Respect for privacy

The NGO should provide alternative information in particular on the following issues:

- a) *Measures to protect the privacy of personal, health and rehabilitation related information of PWD;*
- b) *Measures undertaken to prevent concealment of PWD on the pretext of protection of privacy.*

Article 23 - Respect for home and the family

The NGO should provide alternative information in particular on the following issues:

- a) *Measures undertaken to ensure that PWD may exercise the right to marry and to found a family on the basis of full and free consent;*
- b) *Measures undertaken to ensure that no child is separated from her/his parents on grounds of the disability of either the child or one or both of the parents.*

Article 24 - Education

The NGO should provide alternative information in particular on the following issue:

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- a) *Measures undertaken to ensure that every child with disabilities has access to early-stage education, and mandatory primary, secondary and higher education.*

Article 25 - Health

The NGO should provide alternative information in particular on the following issues:

- a) *Measures undertaken to protect PWD against discrimination in the provision of health services and to ensure that PWD have the same access to quality health services;*
- b) *Measures undertaken to ensure that PWD have access to disability-related health rehabilitation in their community, freely and without financial cost.*

Article 26 - Habilitation and rehabilitation

The NGO should provide alternative information in particular on the following issues:

- a) *Availability of general habilitation and rehabilitation programmes for PWD in the areas of health, employment, education and social services, including in rural areas;*
- b) *Measures undertaken to ensure that habilitation and rehabilitation services and programmes are provided to PWD on a voluntary basis.*

Article 27 - Work and employment

The NGO should provide alternative information in particular on the following issues:

- a) *Measures (including affirmative action) undertaken to ensure the protection of PWD against discrimination in employment;*
- b) *Availability of technical and financial assistance for the provision of reasonable accommodations to PWD;*
- c) *Measures undertaken to assure the retention and retraining of workers who suffer a workplace injury resulting in a disability preventing them from performing their previous tasks.*

Article 28 - Adequate standard of living and social protection

The NGO should provide alternative information in particular on the following issues:

- a) *Measures undertaken to ensure availability and the access of PWD to clean water, adequate food, clothing and housing;*
- b) *Measures undertaken to ensure access of PWD, (in particular women and girls and older persons with disability), to social protection programmes and poverty reduction programmes.*

Article 29 - Participation in political and public life

The NGO should provide alternative information in particular on the following issues:

Legislative and other measures to guarantee to PWD, in particular persons with mental or intellectual disability, full political rights.

Article 30 - Participation in cultural life, recreation, leisure and sport

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- a) *Measures undertaken to recognize and promote the right of PWD to participate, on an equal basis with others, in the cultural life of the state party, including opportunities to develop and make use of their creative, artistic and intellectual potential;*
- b) *Measures undertaken to ensure that cultural, leisure, tourism and sport facilities are accessible to PWD;*
- c) *Measures undertaken to ensure that intellectual property laws do not become a barrier for PWD in accessing cultural materials, including participation in relevant international efforts.*

Article 31 - Statistics and data collection

The NGO should provide alternative information in particular on the following issues:

- a) *Measures undertaken to collect disaggregated appropriate information, including statistical and research data, to enable the state party to formulate and implement policies to give effect to the Convention;*
- b) *Measures undertaken for the dissemination of these statistics and to ensure their accessibility for PWD.*

Article 32 - International cooperation

The NGO should provide alternative information in particular on the following issues:

- a) *Measures undertaken to guarantee that international cooperation is inclusive and accessible for persons with disabilities;*
- b) *Actions taken toward facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices.*

Article 33 - National implementation and monitoring

The NGO should provide alternative information in particular on the following issues:

- a) *Whether the state party has designated one or more focal points within the Government for matters relating to the implementation of the Convention and in order to facilitate related action in different sectors and at different levels;*
- b) *Whether the state party has established a framework, including one or more independent mechanisms, as appropriate, and what measures were undertaken to promote, protect and monitor implementation of the Convention taking into account the principles relating to the status and function of national institutions for the protection and promotion of human rights;*
- c) *Whether the budget allocations for the purpose of national implementation and monitoring of the Convention sufficiently meet the relevant needs.*