Comments submitted by

the Global Alliance of National Human Rights Institutions (GANHRI)

to the
Committee on the Rights of Persons with Disabilities

on its Draft Guidelines on the establishment of Independent Monitoring Frameworks and their participation in the work of the Committee

July 2016
ABOUT THE GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

The Global Alliance of National Human Rights Institutions (GANHRI) is the international association of national human rights institutions from all parts of the globe. Established in 1993 as the ICC (International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights), GANHRI promotes and strengthens national human rights institutions (NHRIs) to be in accordance with the UN Paris Principles, and provides leadership in the promotion and protection of human rights in order to strengthen human rights domestically and internationally.

At an international level, GANHRI coordinates the activities of NHRIs so as to support the work of human rights bodies by bringing NHRIs’ insights to bear. GANHRI undertakes accreditation of NHRIs under the auspices of the Office of the United Nations High Commissioner for Human Rights, and holds an annual meeting and international conferences to strengthen cooperation and share good practice between NHRIs.

The current GANHRI Chairperson is Professor Dr Beate Rudolf, Director of the German Institute for Human Rights. The current GANHRI Secretary is Montserrat Solano Carboni, Defensora de los Habitantes de Costa Rica.

ABOUT THIS PAPER

In this paper GANHRI sets out its views and provides suggestions on the draft Guidelines developed by the Committee on the Rights of Persons with Disabilities (CRPD) on the establishment of independent monitoring frameworks and their participation in the work of the Committee. The paper is structured as follows:

- Introduction
- GANHRI comments
- Conclusion
- Summary of suggestions

FURTHER INFORMATION

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Introduction

1. The Global Alliance of National Human Rights Institutions (‘GANHRI’) welcomes the opportunity to provide the United Nations Committee on the Rights of Persons with Disabilities (‘the Committee’) with comments on the Committee’s Draft Guidelines on the establishment of Independent Monitoring Frameworks and their participation in the work of the Committee (‘the Guidelines’). The present comments were consulted among the GANHRI member institutions, many of whom fulfil the role of national CRPD monitoring mechanism.

2. GANHRI acknowledges the long-standing and productive cooperation among the Committee and GANHRI and NHRIs and recognises the significant and complementary role of NHRIs and the Committee in promoting and protecting the rights of persons with disabilities. As independent state bodies with a legal or constitutional mandate to promote and protect human rights, NHRIs monitor their state’s compliance with their human rights obligations, identify problems, and provide advice to Government and Parliament on implementing human rights domestically.

3. GANHRI strongly supports the adoption of the Guidelines. National human rights institutions (NHRIs) have a major role to play in the development, design and implementation of monitoring frameworks vested under Article 33.2 of the Convention on the Rights of Persons with Disabilities (‘the Convention’) as well as in contributing to the proceedings of the Committee. GANHRI considers that the Guidelines will greatly assist NHRIs with their efforts in this respect.

4. More generally, the Guidelines will also reinforce NHRI advocacy aimed at promoting and advancing human rights monitoring frameworks and implementation mechanisms in States Parties to the Convention.

GANHRI sets out its detailed comments and specific suggestions below.
GANHRI Comments

Terminology

5. GANHRI notes that whilst most of the Guidelines refer to ‘national monitoring frameworks’, chapter 2 refers to ‘independent monitoring frameworks’, and chapter 3 refers to both ‘national monitoring frameworks’ and ‘independent monitoring frameworks’.

6. GANHRI suggests that the Guidelines use consistent terminology in order to ensure conceptual and operational clarity. GANHRI considers that the terminology used should accurately reflect the language and purpose of Article 33(2) of the CRPD, which prescribes that the monitoring mechanism must be independent from the State party, rather than the framework itself. This is reflected in practice, where national frameworks established under Article 33.2 often include a component that represents the government of the State Party.

Title of the Guidelines

7. Accordingly, in order to avoid any risk of confusion or conflation as regards the respective role and constitutions of the independent monitoring mechanism and the framework that it sits within, GANHRI suggests that the Guidelines use a term such as “framework”, “monitoring framework”, or “Art 33(2) framework” in its title and throughout its text and that they specify where they address the independent component of the monitoring framework.

Content and scope of the Guidelines

8. GANHRI notes that the Guidelines include both elements providing guidance under the Convention, and elements relating to the Committee’s rules of procedure, working methods and technical details. To ensure conceptual and operational clarity, GANHRI suggests that both be kept distinct in separate papers or segments.

Introduction to the Guidelines [Paragraphs 1-7]

9. As noted in the Guidelines, the Convention is one of only two human rights treaties that expressly provide for the establishment of independent monitoring1. Article 33.2 requires that States Parties to the Convention establish or designate a monitoring framework, maintain and strengthen that framework, and establish one or more independent mechanisms under the auspices of that framework.

10. Article 33.2 also requires State Parties to take into account the United Nations Paris Principles when designating or establishing an independent mechanism. In doing so, Article 33.2 has implications for the role of NHRIIs in the development and functions of an independent mechanism, particularly in light of the

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1 The other being the OPCAT, see paragraph 2 of the Guidelines.
responsibility of NHRIs under Art 3(b) of the Paris Principles to “promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.”

11. It follows that Paris Principles accredited and compliant NHRIs ought to have a central role in the establishment and designation of national-level independent monitoring frameworks and mechanisms that meet the requirements of Art 33.2. The November 2015 survey conducted by the Committee and GANHRI (then ICC) indicates that while the majority of national monitoring frameworks include NHRIs, the participation of NHRIs is not standard.2

12. Accordingly, GANHRI welcomes the inclusion in Paragraph 5 of the Guidelines of the Committee’s acknowledgement of the important role NHRIs have in promoting and monitoring compliance with the Convention at the national level, and bridging national level actors with the international human rights system. GANHRI also welcomes the Committee’s endorsement of the role that human rights treaty bodies have in ensuring and enhancing the participation of NHRIs in their work.

13. GANHRI also welcomes the Committee’s support expressed in Paragraph 6 of the Guidelines for a common approach to be taken by treaty bodies on the effective participation of NHRIs in the work of treaty bodies. At their most recent 28th Meeting held in New York in June 2016, Treaty Body Chairpersons “acknowledged the vital role of national human rights institutions (NHRIs) in accordance with the Paris Principles in the protection and promotion of human rights and the long-standing cooperation between treaty bodies and national human rights institutions. Following their constructive engagement with the Chair of the Global Alliance for National Human Rights Institutions (GANHRI) during their 28th meeting, the Chairs decided to consider a common treaty body approach to engagement with NHRIs at their 29th meeting.”3

14. However, in order to reinforce this position, GANHRI suggests that Paragraph 6 is amended to include a statement on the importance of NHRIs being established, accredited and strengthened in compliance with the Paris Principles. In GANHRI’s view, the development of a common approach to NHRI participation in treaty body work is likely to be contingent on the capacity and capability of NHRIs to meet their obligations under the Paris Principles. The Human Rights Committee and the Committee on Enforced Disappearances have included such explicit provisions in their respective papers on cooperation with NHRIs.4

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4 See document titled “Relationship of the Human Rights Committee with National Human Rights Institutions” adopted by the Human Rights Committee at its 106th session, 15 October to 2 November 2012 (CCPR/C/106/3) and document titled “The relationship of the Committee on Enforced Disappearances with national human rights institutions” adopted at its 7th session, 15 to 28 September 2014 (CED/C/6).
Chapter 1: Scope of Article 33.2 and 33.3

15. Chapter 1 of the Guidelines are largely focused on the role of State Parties in developing and maintaining an Article 33.2 monitoring framework. NHRIs have suggested that Chapter 1 of the Guidelines⁵:

- Define the compliance of the monitoring framework with the Paris Principles, and how the Principles apply to members of the monitoring framework that are not NHRIs;
- Identify and define how the national implementation/enforcement mechanism under art. 33.1 and the national monitoring mechanism under art. 32.2 should interact;
- Provide guidance on the relationship between national, regional and local monitoring mechanisms within a State where existent, including the need for a coordinating power; and
- Include the need to provide the national monitoring framework with adequate funding and resources to perform its tasks.

16. In addition to the suggestions of NHRIs summarised in para 15, GANHRI suggests that Chapter 1 of the Guidelines should also:

- encourage States Parties to hold broad and inclusive consultations prior to designating the monitoring framework under Article 33.2;
- encourage States Parties to widely disseminate, at regional, national and international levels (including the Committee), information on the national monitoring framework designated under Article 33.2; and
- encourage the OHCHR to develop and maintain a database on monitoring frameworks and the independent monitoring mechanism worldwide.

Defining Paris Principles compliance and application to non-NHRI members

17. Paragraph 13 of the Guidelines provides that compliance with the Paris Principles (for the purposes of art. 33.2) requires States Parties to respect the “functional and substantive independence" of monitoring frameworks and mechanisms.

18. The Guidelines go on to set out a number of elements necessary for the requisite level of independence. These include:

- A defined mandate
- A wide range of responsibilities, including monitoring, investigation and advisory functions
- Independence from the executive branch of government
- Autonomy in determining which issues to consider
- External engagement capabilities, including a complaints function.

⁵ ICC, Survey of Drafting Process of the Guidelines on the Participation of NHRIs and IMMs in the Work of the CRPD, Analysis of Results and Implementation, November 2015, p 3.
19. The Guidelines also provide that the mandate and functions of an independent monitoring framework should be vested in a legislative or constitutional text.

20. GANHRI supports this approach to the extent that it mirrors the requirements of the Paris Principles and interpretative guidance provided by GANHRI's Sub Committee on Accreditation in its General Observation 2.9 titled “Assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms”. Further to this point, GANHRI notes that the Paris Principles provide that a complaints function is optional, and therefore suggests that the Guidelines should follow this approach so as to allow the monitoring frameworks and mechanisms to be developed in view of the specific legal context of the state concerned.

21. More generally, GANHRI notes that a legislative mandate enables greater levels of institutional robustness, influence and accountability and an enduring government commitment in terms of both engagement and funding. The formal designation of the NHRI as the independent monitoring mechanism may also be required to ensure that adequate budgetary appropriations are made to enable the independent monitoring mechanism to function.

22. However, development and implementation of legislation on the Article 33.2 monitoring framework may not be forthcoming or immediately achievable in some national jurisdictions. This underscores the need to ensure that NHRI, and other public institutions with an analogous legislative mandate, participate in it and have a role in the functioning of the independent mechanism.

23. In New Zealand, for example, the Independent Monitoring Mechanism on the CRPD (NZ IMM) consists of the Human Rights Commission, the Office of the Ombudsman and a non-government coalition of disabled people's organisations. The NZ IMM is not vested in statute, but instead is established under a subordinate regulatory instrument that recognises New Zealand’s Government’s obligations under Art 33.2. The NZ IMM derives its institutional strength from the statutory roles and functions of the Human Rights Commission and the Office of the Ombudsman.

24. In the absence of enabling legislation that reflects the Paris Principles, the participation of accredited NHRI in the functioning of an independent monitoring mechanism may enable the application of the Paris Principles to non-NHRI participants through association, ideally in the form of formal working agreements between NHRI and non-NHRI participants.

25. GANHRI accordingly supports Paragraph 15 of the Guidelines which encourages States Parties to appoint NHRI as part of the monitoring framework or the independent mechanism that forms part of the monitoring framework.

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6 See Annex I to this paper: ICC, General Observations of the Sub-Committee on Accreditation (updated May 2013).
8 Established under the Ombudsman Act 1982.
26. GANHRI notes, however, that there is an important distinction between NHRI participation in the functions of a monitoring framework and NHRI designation as the monitoring mechanism. There may be instances where the NHRI, for various reasons, may not feel such designation is appropriate, or others where such designation constitutes the best solution in a given context. GANHRI therefore reiterates its suggestion at Paragraph 14 above that Chapter 1 of the Guidelines include an obligation on States Parties to undertake a broad, inclusive consultation exercise in order to establish an appropriate mandate for the designation of the monitoring framework under Article 33.2.

Identifying and defining interactions between government co-ordinating mechanisms and the independent monitoring framework

27. Paragraph 19 of the Guidelines places a general obligation on States Parties to ensure regular, meaningful and timely interactions between government co-ordinating mechanisms established under Art. 33.1 and independent monitoring mechanisms established under Art. 33.2.

28. GANHRI agrees and considers that formal, periodic engagements between the respective Art 33.1 and Art 33.2 mechanisms are essential in ensuring overall compliance with Art. 33. However, in order to ensure that such an engagement process is sustainable, it should ideally be set out in legislation or regulation, or alternatively be established through a formal direction of Cabinet or equivalent delegated executive direction. Without a duly delegated or legally authorised basis, the sustainability of an engagement process between the respective Art 33.1 and 33.2 mechanisms is inherently tenuous and may be vulnerable to shifts in government policy and priorities.

29. GANHRI therefore suggests that Paragraph 19 is amended to encourage States Parties to formalise the engagement process between Art 33.1 and Art. 33.2 entities, whether through legislation, regulation or duly authorised executive agreement and directive.

30. GANHRI Notes that Paragraph 20 of the Guidelines addresses the development of advisory bodies and committees. However, the Guidelines should determine that when members are appointed to such bodies, there should be an official act that appoints the member(s) and outlines the mandate and duration of their appointment in a given body or committee.

The relationship between national, regional and local monitoring mechanisms within a State where they existent, including the need for a co-ordinating power

31. Paragraph 16 of the Guidelines obliges States Parties to ensure that a national monitoring framework can properly operate at all levels of government - federal/state, regional and local – and to ensure effective interactions between national monitoring frameworks and those that exist at the regional or local levels.

32. The Guidelines do not go so far as to expressly require States Parties to establish a co-ordinating power for this purpose.
33. As GANHRI has pointed out in previous submissions, localised institutions are not able to attain Paris Principles accreditation. Due to the mandate of NHRIs under the Paris Principles, GANHRI considers that NHRIs are well placed to facilitate/co-ordinate the engagement between national, regional and local monitoring mechanisms and link their activities into the mandate of the national independent monitoring framework vested under Art. 33.2. This would also be in keeping with the Paris Principles provisions relating to Methods of Work which require NHRIs to “Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions).”

34. GANHRI accordingly suggests that the Committee may wish to consider amending Paragraph 16 to include a statement along the lines of: “Where an independent monitoring framework does not solely consist of the Paris Principles compliant NHRI, the States Parties are encouraged to designate the NHRI with the role of facilitating and co-ordinating the interaction of the national monitoring framework with its regional and local counterparts.”

**Resourcing and funding of national monitoring frameworks**

35. GANHRI welcomes the reinforcement in the Guidelines of the duty of States Parties under Art 33.2 to strengthen and maintain national monitoring frameworks through appropriate levels of funding, resource, physical infrastructure and access to information (Paragraphs 9 and 10).

36. GANHRI further welcomes Paragraph 15 of the Guidelines which encourages States Parties to equip NHRIs with “additional and adequate budgetary and skilled human resources” in order to enable NHRI's to discharge their additional responsibilities that derive from their role within a monitoring framework. GANHRI suggests that Paragraph 15 is amended to provide that States Parties “should further equip” NHRIs with additional resources, in order to strengthen the obligation upon States Parties to do so. This would also be in keeping with General Observations 1.10 and 2.9 of GANHRI's Sub-Committee on Accreditation, titled “Adequate funding of National Human Rights Institutions” and “Assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms,” respectively.

37. GANHRI strongly supports the obligation under Paragraph 18 of the Guidelines providing for full involvement and participation of persons with disabilities in all areas of the work of the independent monitoring framework. However, GANHRI notes that Paragraph 18 omits to include a corresponding express obligation on States Parties to provide the monitoring framework and participating DPOs with adequate funding and resource support for this purpose.

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11 See also GANHRI Sub-Committee on Accreditation, General Observation 1.5 titled “Cooperation with other human rights bodies” (as of May 2013), available at http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf.

12 *Supra,* notes http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf
38. Notwithstanding the general funding obligation of States Parties expressed in Paragraph 9 of the Guidelines, GANHRI considers that, in order to meet their Art. 33.3 obligations, it is essential that States Parties have a specific duty to provide adequate levels of funding and resources for the purpose of ensuring the effective participation of people with disabilities in the independent monitoring framework.

39. GANHRI accordingly suggests that Paragraph 18 is amended to include a statement along the following lines: “States Parties shall ensure that monitoring frameworks are equipped with specific funding and resources to ensure the effective participation of persons with disabilities in its work and that this is reflected in national budgets. States Parties shall also ensure that DPOs and persons with disabilities who participate in the work of the independent monitoring mechanism are provided with adequate funding and resource support to enable effective and meaningful participation.”

Chapter 2: Participation of independent monitoring frameworks in Committee proceedings

40. Chapter 2 of the Guidelines provides a set of procedural principles with which to guide the participation of independent monitoring frameworks and mechanisms in the proceedings of the Committee.

41. In light of their experience, GANHRI members have suggested that Chapter 2 provide guidance in the following areas:

- Concerning the reporting procedure, guidance on written submissions, pre-session and session participation and the simplified reporting procedure;
- The need for Paris Principles compliant NHRIIs to participate distinctly from the State party during the interactive dialogue with the Committee;
- Provision of different models of interaction that clarify the relationship of NHRIIs to non-NHRI members of the independent framework;
- Information on participation in other Committee activities; e.g. Days of Discussion and drafting of General Comments; and
- A description of how independent monitoring mechanisms should work and interact with DPOs.

42. GANHRI considers that Chapter 2 contains much of the guidance sought by NHRIIs in these areas. Specific comments on the above areas are set out below.

Reporting procedures

43. GANHRI welcomes the detailed, specific nature of the reporting criteria set out in Paragraph 21 of the Guidelines. GANHRI supports the provision in Paragraphs 21(c)-(f) of clear requirements as to the scope and content of written submissions. Regarding word limits, GANHRI suggests that the proposed word limit may be exceeded in specific instances, if the NHRI/IMM considers it necessary in order to fulfill its role under the Convention.
44. GANHRI considers, however, that the capacity of monitoring frameworks to provide external stakeholders with data (including disaggregated data) and research on the “institutional and normative framework to ensure implementation” under Paragraph 21(e) will largely be contingent on the ability or willingness of the State party to collect and make available such data.

45. GANHRI accordingly suggests that the Committee may wish to include within Chapter 1 of the Guidelines an express obligation upon States parties to collect such data and research and to ensure that it is made available to the independent monitoring framework for analysis and assessment.

46. GANHRI further suggests that the Committee considers incorporating within the Guidelines, a provision that formalises a process whereby the Committee's designated country rapporteur and a designate of the relevant NHRI/independent monitoring mechanism, where appropriate, enter into communications at the earliest opportunity in the State Party reporting cycle. This process should be facilitated by the CRPD Secretariat in co-operation with the NHRI/independent monitoring mechanism.

47. GANHRI notes that the terminology “alternative report” relates to reports submitted by NHRI/independent monitoring mechanism under all stages of the Committee's procedures, including to the Committee's pre-sessional working group.

**NHRI participation in Committee dialogue and models of interaction (including DPOs)**

48. GANHRI notes that Paragraph 21(h) of the Guidelines provides for the possibility of monitoring frameworks having an independent role during the Committee’s dialogue with the State party. Paragraph 21(h) goes on to provide that the Chair of the Committee has the discretion to grant a request by an independent monitoring framework, and must give due consideration to requests submitted by frameworks that consist or comprise of a Paris Principles compliant NHRI.

49. GANHRI welcomes the additional weight accorded to NHRI participation by Paragraph 21(h). However, GANHRI notes that the Guidelines do not appear to provide for any right for Paris Principles compliant NHRI to have independent or separate participation rights in the Committee-State party dialogue. Nor do the Guidelines provide for any particular guidance as regards interaction between NHRI and non-NHRI monitoring entities, including DPOs, in the course of Committee-State party dialogue.

50. GANHRI encourages the Committee to amend the title of Chapter 2 and Paragraph 21 to include an explicit reference to “Paris Principles compliant National Human Rights Institutions” next to independent monitoring frameworks. GANHRI further encourages the Committee to amend Paragraph 21(h) by adding an explicit reference to NHRI next to “monitoring frameworks” (sentences 2 and 3) to ensure that Paris Principles compliant NHRI have a clear right to an independent role in sessional dialogue between the Committee and the State party, which would reflect their recognition by the UN system.13.

13 See, most recently, A/RES/70/163.
51. With a view to ensuring consistency within Paragraph 21 and its various sub articles, GANHRI suggests deletion in Paragraph 21 (d) of “encourage independent monitoring frameworks to” to the effect that the new 21 (d) would start with “Submit an alternative report...”.

52. GANHRI also encourages the Committee to provide clear guidance in Paragraph 21(h) on the interaction between a Paris Principles compliant NHRI and a non-NHRI framework during sessional dialogue, with a particular emphasis on ensuring effective participation by persons with disabilities, either directly or via DPO representation.

53. GANHRI further encourages adding a reference to NHRI where reference to “independent monitoring frameworks” is made in Paragraph 21 (f) second sentence.

Information on other Committee activities

54. GANHRI welcomes the mandate for the participation of independent monitoring frameworks in days of general discussion and preparation of General Comments provided by Paragraphs 22 and 23 of the Guidelines.

55. GANHRI also welcomes the mandate provided to independent monitoring frameworks by Paragraphs 24 and 25 of the Guidelines as regards the communications and inquiry procedures under the Optional Protocol to the Convention.

56. However, in order to ensure that independent monitoring frameworks have the necessary institutional independence and capability to effectively carry out the functions set out in Paragraphs 24 and 25, GANHRI considers that support of these functions by a Paris Principles compliant NHRI will likely be essential.

57. GANHRI accordingly suggests that the Committee may wish to consider amending Paragraphs 24 and 25 of the Guidelines to provide for a specific role for such Paris Principles compliant NHRI to support independent monitoring frameworks in fulfilling their mandate in respect of the communications and inquiry procedures under the Optional Protocol. GANHRI however, would advise against the inclusion of Paragraph 24 (e), as the translation and dissemination of the views of the Committee are, first and foremost, a duty of the state party, which should not be encouraged to shift its own duty to the monitoring framework.

58. GANHRI welcomes the inclusion of provision in Paragraphs 26 and 27 of the Guidelines for independent monitoring frameworks to seek advice from the Committee of how to enhance national capacity for the purposes of Art. 37.2. The content and extent of such activities under Article 37.2 may require to be set out in more detail in this section.

Reprisals

59. GANHRI is concerned about the potential for acts of reprisal and intimidation against those cooperating with the UN and its human rights mechanisms. GANHRI accordingly strongly supports Paragraphs 28-31 regarding reprisals and welcomes
their inclusion in the Guidelines. In particular, GANHRI welcomes Paragraph 29’s adoption of the terminology of Paragraph 11 of General Assembly resolution 68/171 and 70/163 concerning reprisals against NHRIs. GANHRI suggests that the Guidelines explicitly refer to the relevant General Assembly resolutions.

60. GANHRI further suggests that reference be made to the Guidelines against Intimidation and Reprisals (San José Guidelines) endorsed by the 27th Annual Meeting of Treaty Body Chairpersons in 2015.\textsuperscript{14}

Chapter 3: Monitoring of the Convention at a national level

61. GANHRI welcomes the Committee’s recognition of the importance of the role of independent monitoring frameworks in promoting, protecting, and monitoring the Convention at the local level.

62. In order to assist the advancement of effective national monitoring, NHRIs have suggested that Chapter 3 of the Guidelines:

- Provide guidance on assessing the Convention at the national level, including effective monitoring using appropriately disaggregated monitoring indicators;
- Identify the need for NHRIs to be assisted by UN agencies in their monitoring and reporting activities;
- Provide guidance on assessing the implementation of the Committee’s Concluding Observations; and
- Consider providing guidance on the adoption of work plans by the monitoring framework.

63. GANHRI considers that Chapter 3 of the Guidelines largely reflects the above areas identified by NHRIs, however encourages the Committee to be more specific and detailed.

Guidance on assessing and monitoring the Convention, including use of data/indicators

64. GANHRI welcomes the Committee’s recognition of the monitoring challenge brought about by limited available data and insufficient, or lack of, disaggregated data, and by a lack of uniformity in the data collection methodologies employed by different departments and policy units within a State.

65. GANHRI also notes the Committee’s observations that, to date, data collection by States on the situation and experiences of people with disabilities has generally been inadequate; and that where data is collected, outdated methodologies (such as the ‘medical approach”) are prevalent.

66. GANHRI is concerned that the ability of independent monitoring frameworks to fulfil their role to promote, protect and monitor the Convention is hindered by inadequate data collection practices. GANHRI accordingly welcomes the Committee’s emphasis on data collection in Chapter 3 and considers that the Committee’s reference to the inclusion of the 2030 Sustainable Development

\textsuperscript{14} HRI/MC/2015/6.
Goals agenda within the set of guiding principles in Paragraph 37 may help reinforce the current efforts of States Parties, as part of their SDG commitments, to produce disaggregated data on disability.

67. GANHRI also welcomes the reference in Paragraph 37(g) to the inclusion of outcomes, structural and process indicators in monitoring activities, and assessment of these indicators using the human rights approach developed by the OHCHR. However, as GANHRI has pointed out above, the ability of independent monitoring frameworks to fulfil this task will be largely contingent on the availability of data and information that is fit for this purpose. Notwithstanding the general obligations concerning data collection under Paragraph 36, GANHRI reiterates its suggestion that the Guidelines include an express obligation upon States Parties to collect, and make available, data and information that enables an independent monitoring framework to meet its monitoring obligation under Paragraph 37(g).

The need for NHRIs to be assisted by UN agencies in their monitoring and reporting activities

68. GANHRI welcomes Paragraph 39, which encourages the OHCHR, in cooperation with NHRIs, to develop and maintain a database on international, regional, and national good practices on the development of indicators and implementation benchmarks. GANHRI considers that the database will be of considerable assistance to independent monitoring frameworks and will improve the efficacy of their monitoring activities.

Guidance on assessing the implementation of Concluding Observations; and adoption of work plans

69. GANHRI notes that the Committee encourages independent monitoring frameworks to give “due consideration” in their monitoring activities to the Committee’s Concluding Observations, but does not offer specific guidance on assessing their implementation. The development by the OHCHR of a database of indicators and implementation benchmarks is likely to provide NHRIs and monitoring mechanisms with useful comparative information when assessing implementation progress of the Committee’s Concluding Observations at the national level.

70. GANHRI further notes that the Committee does not offer any specific guidance on the adoption of work plans by independent monitoring frameworks. However, GANHRI considers the guiding principles set out in Paragraph 37, and the areas of due consideration set out in Paragraph 38, are likely to provide NHRIs and monitoring mechanisms with a sufficient terms of reference against which national work plans can be developed and adopted.

71. GANHRI suggests that in Paragraph 39 specific reference be made to NHRIs as well as to GANHRI and NHRI regional networks, to the effect that the amended Paragraph would read “... in cooperation with national monitoring frameworks, NHRIs, GANHRI and NHRI regional networks to develop and maintain...”.
72. While GANHRI strongly supports the Guidelines, it would welcome the Committee’s consideration of the suggestions offered in this paper when finalising the Guidelines.

73. GANHRI looks forward to engaging with the Committee as it finalises the Guidelines and is committed to providing continued support to the Committee in its important work and engagement with NHRIs.
Summary of GANHRI’s key suggestions

In these comments, GANHRI has made a number of suggestions aimed at both enhancing the workability of the Guidelines for NHRIs and increasing the conformity of the Guidelines with the Paris Principles. GANHRI’s key suggestions can be summarised as follows:

- The Guidelines should use consistent terminology as regards the Article 33(2) monitoring framework, in order to ensure conceptual and operational clarity.
- In order to reflect the important role that NHRIs have in supporting both the establishment and functions of monitoring frameworks at the domestic level, and the work of the Committee in its periodic reviews of States Parties, the title of the Guidelines should be amended to specifically include NHRIs.
- The Guidelines should be divided into separate papers or segments respectively providing: (1) Guidance on monitoring frameworks established under art 33.2 of the Convention; and (2) the Committee’s rules of procedure, working methods and technical details.
- Inclusion of a statement on the importance of NHRIs being established, accredited, and strengthened in compliance with the Paris Principles;
- Inclusion of a provision encouraging States Parties to hold broad and inclusive consultations prior to designating the independent monitoring framework under Article 33.2;
- Inclusion of a provision encouraging States Parties to widely disseminate, at regional, national and international levels (including the Committee), information on the national monitoring framework designated under Article 33.2;
- Provision of an optional complaints function so as to allow the monitoring frameworks and mechanisms to be developed in view of the specific legal context of the state concerned;
- Inclusion of a provision encouraging States Parties to formalise the engagement process between Article 33.1 and 33.2 entities, whether through legislation, regulation or duly authorised executive agreement or directive;
- Inclusion of a provision encouraging States Parties, when they have not designated the NHRI as the independent monitoring mechanism, but made it part of the monitoring framework, to mandate it with the role of facilitating and co-ordinating the interaction of the national monitoring framework with its regional and local counterparts;
- Inclusion of an express obligation upon States parties to collect adequate data and research and to ensure that it is made available to the monitoring framework for analysis and assessment;
- Inclusion of a provision that formalises a process whereby the Committee’s designated country rapporteur and a designate of the relevant NHRI/IMM enter into communications at the earliest opportunity in the State Party reporting cycle. This process should be facilitated by the CRPD Secretariat in co-operation with the NHRI/IMM.
- Inclusion of an obligation upon States Parties to ensure that monitoring frameworks are equipped with specific funding and resources to ensure the effective participation of persons with disabilities in its work;
- Amendment of the title of Chapter 2 and Paragraph 21 to include an explicit
reference to “National Human Rights Institutions” next to independent monitoring frameworks;

- Amendment of the Guidelines to ensure that the particular status of Paris Principles compliant NHRI is properly reflected in the interactive dialogue between the Committee and the State party, consistent with the recognition of such NHRI by the UN system;

- Provision of clear guidance on the interaction between a Paris Principles compliant NHRI and a non-NHRI framework during sessional dialogue, with a particular emphasis on ensuring effective participation by persons with disabilities, either directly or via DPO representation;

- Inclusion of a specific co-ordination role for NHRI as regards the communications and inquiry procedures under the Optional Protocol and deletion of Paragraph 24(e) so as to ensure that translation and dissemination of the views of the Committee are, first and foremost, a duty of the state party.

Please note that this is not an exhaustive list of GANHRI suggestions.
ANNEX

Global Alliance of National Human Rights Institutions, Sub Committee on Accreditation, General Observations (as updated May 2013),

General Observation 2.9 (“Assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms”):

Where, pursuant to an international human rights instrument, a national human rights institution has been designated as, or as part of, a national preventive or monitoring mechanism, the Sub-Committee on Accreditation will assess whether the applicant has provided sufficient information to demonstrate that it is carrying out its functions in compliance with the Paris Principles. Depending on the specific roles and functions ascribed to the NHRI, in undertaking this assessment, the Sub-Committee will consider, as appropriate:

- whether a formal legal mandate has been provided;
- whether the mandate has been appropriately defined to encompass the promotion and protection of all relevant rights contained in the international instrument;
- whether the staff of the NHRI possess the appropriate skills and expertise;
- whether the NHRI has been provided with additional and adequate resources;
- whether there is evidence that the NHRI is effectively undertaking all relevant roles and functions as may be provided in the relevant international instrument. Depending on the instrument and the mandate of the national human rights institution, such activities might include monitoring and investigation, the provision of constructive and/or critical advice to government and in particular, systematic follow up of its recommendations and findings on alleged human rights violations.¹

The Sub-Committee may also consider, as it thinks appropriate, any guidance that has been developed by the relevant treaty body.²

JUSTIFICATION

In recent years, international human rights instruments have begun to incorporate a requirement that States Parties create, or designate an existing domestic agency (or agencies) with responsibility for monitoring and promoting the objectives of that instrument.

¹ With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example Articles 17 – 13 of Part III of that instrument and the rights protected in the parent Convention. With regard to National Monitoring Mechanisms under the Convention on the Rights of People with Disabilities, see for example principles and functions outlined in Articles 3, 4, 31, 32, 33 and 35, and the rights protected in Articles 3 – 30.

² With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example the Preliminary Guidelines for the Ongoing Development of National Preventive Mechanisms developed by the Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and contained in paragraphs 24 – 29 of its First Annual Report (February 2007 – March 2008). (Ref: CAT/C/40/2).
These international instruments often specify particular roles and functions to be carried out by the relevant domestic agency or agencies, which are variously referred to as national preventive or monitoring mechanisms.

In response, States have often chosen to designate their NHRI as, or as part of, its national preventive or monitoring mechanisms. In so doing, the State signals that the NHRI has a primary role to play in the promotion and protection of rights contained in those instruments.

In assessing whether an NHRI is carrying out these function in accordance with the Paris Principles, the SCA will consider a range of factors that impact on the capacity of a NHRI to function independently and effectively. With regard to the requirement for a specific legal mandate, this may depend on the scope of a NHRI existing mandate and the breadth of any additional roles and functions ascribed to it as a national preventive or monitoring mechanisms. Where additional powers are proposed, such as specific powers to enter, monitor, investigate and report on places of detention, and these go beyond the powers currently available to the NHRI, a more clearly defined legal mandate may be required in order to ensure the NHRI is able to undertake its role effectively and free from interference.

In undertaking its assessment, the Sub-Committee will also consider any guidelines developed by the relevant treaty body. It notes, however, that its role is to assess a NHRI against the Paris Principles, whereas the relevant treaty body undertakes its assessment of a national preventive or monitoring mechanism against the relevant international instrument upon which it is based. Guidelines developed by the relevant treaty body have, in general, been drafted for the broad range of agencies that may be designated as national preventive or monitoring mechanisms, and may not always be directly applicable to a national human rights institution.

**Excerpt from the Paris Principles**

**(A) Competence and responsibilities.**

... 

3. A national institution shall, inter alia, have the following responsibilities: 

(a) To submit to the Government, Parliament and any other competent body . . . opinions, recommendations, proposals and reports on . . . :

(ii) Any situation of violation of human rights which it decides to take up;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

…

Full document available at: