



Independent National Mechanism The Key to Effective Implementation of the UN Convention on the Rights of Persons with Disabilities

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Summary

This policy brief urges for a decisive action in protecting human rights of persons with disabilities in Bosnia and Herzegovina (BiH) and argues for the Ombudsman's Office of BiH to take over the role of the national independent mechanism. Persons with disabilities in Bosnia and Herzegovina have been constantly left out of the state accountability system, denied basic human rights granted to other people without limitations. Despite the ratification of the UN Convention on the Rights of Persons with Disabilities and the adoption of a State Policy and entity strategies, people with disability in BiH face discrimination, segregation, and in many instances abuse. This policy paper therefore calls for an urgent change by creating an external and independent national monitoring body, capable of alerting BiH authorities to violations of rights of persons with disabilities and assisting with the adoption of appropriate measures that would forestall such violations. By signing, and thus accepting the obligations stemming from the UN Convention under Article 33 (2), BiH state institutions have agreed to establish (or designate) a national independent mechanism mandated to promote and protect human rights of persons with disabilities and monitor the implementation of the Convention. This institutional framework needs to be fully independent of government and meet the requirements of the Paris Principles - a UN guide for national human rights institutions. Based on the pre-sented evidence, review of documents, existing institutions, and conducted fieldwork, the author of this policy paper recommends that the Ombudsman's Office of Bosnia and Herzegovina should take over the duties of the national independent monitoring framework given its legal authority

and experience. The Ombudsman fulfils the requirements listed in the Convention and it also has extensive experience in the field of protection and promotion of rights of persons with disabilities in BiH. The policy paper further reviews some operational and technical considerations while arguing that the Ombudsman's office is currently the only option for institutionalizing an efficient and operational independent monitoring mechanism in BiH.

List of Abbreviations

Bosnia and Herzegovina	BiH
Federation of Bosnia and Herzegovina	FBiH
Republika Srpska	RS
Council of Europe	CoE
UN Convention on the Rights of Persons with Disabilities	CRPD
Optional Protocol to the CRPD	OP CRPD
UN Committee on the rights of persons with disabilities	CRPD Committee
World Health Organization	WHO
Civil Society Organization	CSO
Non-Governmental Organization	NGO
Organization of persons with disabilities	DPO
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	OPCAT
UN Office of High Commissioner for Human Rights	UN OHCHR
Mental Disability Advocacy Centre	MDAC
European Foundation Centre	EFC
National Human Rights Institution	NHRI



1. Introduction

In Bosnia and Herzegovina (BiH) exist no accurate statistics on the number of people with disabilities. According to the World Health Organization (WHO), 15 per cent of the world's population, or roughly 650 million people, have a disability. Given the recent devastating war in BiH, the national figure can be expected to be much higher. Very few women, men, and children with disabilities are fully included in Bosnian society and enjoy human rights on an equal basis with others. The great majority face discrimination, segregation, and violation of their basic human rights.¹ Many people with disabilities live in extreme poverty, without access to education and lacking any employment opportunities.²

Bosnia and Herzegovina is party to many international human rights documents. It has undertaken the responsibility to ensure that all citizens enjoy equal human rights and are entitled to the right to protection against discrimination on any grounds, including on the basis of disability.³

In 2008, Bosnia and Herzegovina adopted the Disability Policy, with the aim to ensure full enjoyment of all human rights, fundamental freedoms and dignity for all persons with disabilities, and their full inclusion in society.⁴ Strategies of the two entities of BiH - Federation of BiH (FBiH) and Republika Srpska (RS) - and their action plans followed the adoption of the Policy.⁵ The aim of both strategies was to harmonize the practice and laws in the area of protection of rights of persons with disabilities according to European and international standards.⁶ In 2010, the Council of Ministers of BiH established the Council for Persons with Disabilities at the state level, as a permanent, professional, advisory, intergovernmental, and coordinating body of the Council of Ministers of BiH, with the aim to improve the situation of the persons with disabilities in BiH.⁷

In March 2010, BiH became party to the UN Convention on the Rights of Persons with Disabilities (henceforth the CRPD or "the Convention") and the Optional Protocol to the Convention.⁸ Under the CRPD, BiH has undertaken the responsibility to take all measures and to put its effort to promote, protect and respect human rights of all persons with disabilities, without discrimination of any kind.⁹ Article 4 of the CRPD requires States to take appropriate legislative, administrative, budgetary, judicial and other actions towards the implementation of the Convention.¹⁰

In reality, none or very little progress to improve the lives of persons with disabilities has been made in BiH. According to the reports by the Ombudsman Institution of BiH for Human Rights and Council of Europe (CoE), persons with disabilities and mental health problems are the most vulnerable category of Bosnian citizens¹¹; it is not only that they do not fully enjoy human rights on an equal basis with other people, but they are also discriminated against in terms of social, economic, and civil rights because of the various categories of disability - such as disabled war

¹ Report by Thomas Hammarberg, Commissioner for Human Rights of the CoE, following his visit to Bosnia and Herzegovina on 27-30 November 2010, Council of Europe, *Rights of Persons with Disabilities*, (henceforth "CoE Report") available at: <https://wcd.coe.int/ViewDoc.jsp?id=1766837>, last access date 08/05/2012

² Ibid.

³ Constitution of Bosnia and Herzegovina, Article II, available at: http://www.servat.unibe.ch/icl/bk00000_.html, last access date 08/05/2012

⁴ Disability Policy, prepared within the project "Support to the Disability Policy Development in BiH", available at: http://ic-lotos.org.ba/index.php?option=com_docman&task=cat_view&gid=35&Itemid=37 "ŠPolitika u oblasti invalidnosti u Bosni i Hercegovini" – Official Gazette BiH, 76/08Č. The Policy was adopted by the Council of Ministries on its 46th Session, 8 May, 2008.

⁵ Available in Bosnian as "Strategija unapređenja društvenog položaja lica sa invaliditetom RS 2010-2015" [Strategy on improvement of social status of persons with disabilities in Republika Srpska]; "Strategija za izjednačavanje mogućnosti osoba sa invaliditetom F BiH" [Strategy for equalization of opportunities of persons with disabilities in Federation of Bosnia and Herzegovina] at: http://ic-lotos.org.ba/index.php?option=com_docman&task=cat_view&gid=35&Itemid=37, last access date: 08/05/2012

⁶ Ibid.

⁷ "Odluka o formiranju vijeća za osobe sa invaliditetom Bosne i Hercegovine" [Decision on Establishment of the Council for Persons with Disabilities in Bosnia and Herzegovina], The Council of Ministers of BiH, 135th Session, 19 October 2010, available at (on Bosnian): http://www.paraplegicari.org/documents/VIJECE_Odluka%20o%20formiranju%20Vijeca%200SI.pdf

⁸ Bosnia and Herzegovina ratified the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on 12 April 2010. See <http://www.un.org/disabilities/countries.asp?navid=12&pid=166>, last access date: 08/05/2012

⁹ UN Convention on the Rights of Persons with Disabilities (henceforth "CRPD"), Article 4, available at: <http://www.un.org/disabilities/convention/conventionfull.shtml>, last access date: 08/05/2012

¹⁰ Ibid.

¹¹ CoE Report, *Rights of Persons with Disabilities*, supra note 1. See also The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *Special report on the rights of persons with disabilities in B&H*; *Special Report on the Situation of Human Rights in the Institutions for Accommodation of Mentally Disabled Persons and Special report on the rights of the children with disabilities in the psycho-physical development in B&H*, available at: <http://www.ombudsmen.gov.ba/PublikacijeEn.aspx?category=Special Reports>, last access date: 08/05/2012.

¹² Nacr Strategije za socijalno uključivanje BiH [The draft of Social Inclusion Strategy of BiH], Juni 2010, pp. 107-116, available (in Bosnian) at: <http://www.mft.gov.ba/bos/images/stories/medjunarodna%20saradnja/Bos-A-Strategija%20soc.ukljucivanja%20BiH.pdf> Disabled veterans both in the FBiH and the RS are entitled to a personal disability benefit starting with 20 per cent disability, while civilian war victims and disabled civilians receive the entitlement only when the level of disability equals or exceeds 60 per cent. In addition, there are differences in the amount of benefits paid to persons with the same level of disability. Disabled veterans with 10 per cent disability of the first category in FBiH receive KM 734.00 per month, while persons with disabilities falling under the category of civilian war victims receive KM 513.80 and disabled civilians receive KM 149.1. See: "Policy Study, Executive Summary and Recommendations for Disability Policy and Strategies", p. 30. The full report is available at: www.poi.ba.

¹³ CoE Report, *Rights of Persons with Disabilities*, supra note 1.

¹⁴ Ibid.

¹⁵ The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *Special report on the rights of the children with disabilities in the psycho-physical development in BGH*, available at: <http://www.ombudsmen.gov.ba/PublikacijeEn.aspx?category=Special Reports>, last access date: 08/05/2012

¹⁶ Zakon o zaštiti osoba s duševnim poteškoćama FBiH [Law on Protection of Persons with Mental Disabilities F BiH] (Official Gazette FBiH, 37/01) Article 8; Law on Protection of Persons with Mental Disorders (Official Gazette RS, 46/04), Article 9; Law on Protection of Persons with Mental Disorders BD (Official Gazette BD, 12/06) Article 6. Family Law FBiH (Official Gazette F BiH, 35/05), Article 11; Family Law RS (Official Gazette RS, 54/07), Article 32.

¹⁷ Supra note 12.

¹⁸ Emina Cerimovic, *Društveno konstruisanje identiteta dusevno oboljelih* [Social construction of the identity of persons with mental health problems], 2011, available (on Bosnian) at: <http://pulsdemokratije.ba/sadrzaj/drustveno-konstruisanje-identiteta-dusevno-oboljelih>, last access date 10/05/2012.

¹⁹ Ibid.

veterans, civilian victims of war, and those disabled by birth or accident.¹² According to the cited Council of Europe's report, persons with disabilities who belong to the category of "disabled war veterans" are entitled to disability allowances at least six times higher than those received by persons "belonging" to another category of disability.¹³

Moreover, the level of exclusion from education, employment, and social network is so serious that the CoE estimates that the unemployment rate of persons with disabilities reaches up to 82 per cent.¹⁴ Children with disabilities lack sufficient medical care and have a lower or no access to compulsory education.¹⁵ Persons with mental disabilities are denied the right to make decisions for themselves and are placed in old-style inhuman institutions subjected to medical treatment without their free and informed consent.¹⁶ The Ombudsman points out that people with mental disabilities have become "invisible citizens" closed in their institutions and excluded from all social networks.¹⁷ Access to the public transport and some premises is impossible for some categories of persons with physical disabilities. Assessment of the level of disability is only based on a medical model, failing to incorporate the International Classification of Functioning Disability and Health of the World Health Organization.

Finally, previous research conducted on the stigmatization of persons with disabilities, revealed that persons with disabilities in BiH are still considered to be recipients of charity or objects of other's decisions but holders of rights.¹⁸ The impairment is perceived as an "individual deficit" and "the cause" why some people are unable to attend normal schools, get a job, and fully participate in social life.¹⁹ The same research has confirmed - as well as conducted interviews for this policy study - that BiH has not taken any steps to adopt measures that would change attitudes and behaviours that stigmatize and marginalize persons with disabilities.

Moreover, the research on the involvement of persons with disabilities in the development of strategies²⁰ has revealed strong discrimination against persons with disabilities on the basis of the type of disability they have. Persons with mental disabilities (or intellectual difficulties) did not participate. As a rule, people with mental disabilities are the one category that is neglected and excluded from any public debate. In the best of the cases, they are represented by the representatives of "their" organizations or parents. The excuse provided for this kind of practice is that "they are not capable of representing themselves"²¹ because of their disability, lack of education, competence, etc. The "no-education" argument is further reinforced by the fact that although the Convention has been translated into the Braille language and provided in electronic versions, it has not been translated into easy-to-read-and-understand format.²² Also, one of the survey questions was whether persons with disabilities are employed by NGOs and governmental bodies, and if they are, what kind of disability do they have. The result shows that indeed there are persons with disabilities employed, and that there is a strong commitment to further employing persons with disabilities in all sectors, but only persons with physical disabilities. Even though it has been proven that persons with intellectual disabilities can successfully perform a wide range of jobs and can be responsible workers, there is a tremendous reluctance to employ persons with this kind of disability.

²⁰ Findings from the field research conducted for the purpose of this study.

²¹ An answer provided by a representative of an Organization of Persons with Disabilities (DPO) during an in-terview in Sarajevo in 2011.

²² During an interview conducted with a representative of "SUMERO" (a Civil Society Organization working on social inclusion of people with intellectual disabilities), the author was informed that this organization is currently working on adapting the Convention to a simpler format.



Accordingly, despite becoming the party to the Convention and its Optional Protocol and despite adopting the Disability Policy, BiH has failed to fill the gap between international human rights and the realization by persons with disabilities in BiH of their rights in practice. The ratification of the CRPD as such is a positive step; however, it is only the initial step onto a very long path. Political direction and commitment on this issue is still vague and insufficient.

The UN Convention has purposefully outlined some institutional changes under Article 33, which States need to undertake in order to facilitate (and push for) the implementation of the CRPD. In order to fill the gap between the CRPD rights and the realization of those rights in practice, the Convention obliges State Parties to establish a “a national framework, including one or more independent mechanism”, mandated “to promote, protect, and to monitor” the implementation of the UN Convention.²³ Two years have passed since the ratification of the CRPD, but BiH is failing to establish an independent monitoring mechanism of its implementation. It is highly necessary that BiH establish or designate an independent mechanism in order to ensure a political direction and commitment on this issue; to assess the adoption and implementation of measures and their actual impact; to support Bosnia and Herzegovina to effectively implement the Convention at the national level, and; to empower persons with disabilities to become increasingly aware of their rights. The independent mechanism is the crucial key to bring about a positive change into the lives of persons with disabilities across the country.

However, within Bosnia and Herzegovina, the purpose of the independent mechanism remains unclear to many stakeholders. During the conducted interviews with relevant representatives of the state and entity ministries, it turned out that most interviewees did not clearly understand what the Convention meant by a “national framework, including one or more independent mechanisms”. When asked, “*In your opinion, who or what should perform the role of the independent mechanism for BiH?*”, many respondents opined that BiH did not need it “*because the Ministry of Human Rights and Refugees has such competence under the Law to monitor and report on all human rights treaties*”; at the entity levels the answer was that relevant entity ministries had already established departments within the relevant ministries in charge of monitoring and reporting on the implementation of the Convention, and because of the existing entity strategies.²⁴ Regarding the *independence* requirement, our respondents brushed it away by saying that organizations of persons with disabilities (DPOs) have the right to submit a so-called “shadow” report to the UN Committee.

Therefore, the requirements, activities and mandate of the national independent monitoring mechanism will be elaborated upon further on in the paper. More importantly, it will be explained both as an obligation of the state to establish a national independent mechanism, but also, as the best example for an effective implementation of the rights of persons with disabilities.

To support this study, a number of interlinked methodological research approaches has been used. Firstly, desk research was undertaken on the existing policies and practice in BiH, and international standards. This involved an in-depth analysis of all available legal, policy and secondary sources, including the text of the CRPD, studies on independent mechanism, experiences of the other countries, the BiH Disability Policy, strategies of the two BiH entities, laws, and media reporting. Secondly, a questionnaire (Annex) was developed for key informants, including governmental officials, academic representatives, international workers, NGO workers,

²³ Article 33 (2), CRPD, supra note 9.

²⁴ Ministry of Health and Social Protection of RS has informed the author that they are planning to establish an Office for Disability Issues, which would follow the implementation of the UN Convention and the entity's strategy. In addition, a so called Inter-Departmental Body of the RS Government is also responsible for ensuring protection of the rights of persons with disabilities.

²⁵ The questionnaire and request for an interview was sent out to 30 recipients, of which the author got only 15 responses. On the basis of that, in total, 15 interviews were conducted with representatives of following organizations/institutions: 1. Resource Center for Persons with Disabilities – LOTOS (Suvad Zahirovic), 2. Centre for Human Rights, University of Sarajevo (Lejla Somun-Krupalija and Andjelka Lalovic), 3. Paraplegic Association of RS (Milena Obradovic), 4. Union or organizations for support to the people with intellectual disability of FBiH – SUMERO (Indira Spiljak), 5. OSCE Mission to Bosnia and Herzegovina (Maja Barisic and Hajro Poskovic), 6. The Ministry for Human Rights and Refugees of BiH (Tijana Borovcanin- Maric and Saliha Djuderija), 7. Ministry of Labour and Social Policy of FBiH (Esmalalic), 8. Association of blind persons of RS (Branko Suzic), 9. Ministry of Health and Social Protection of RS, (Tatjana Gajic), 10. Association for deaf persons and persons with hard hearing in Canton Sarajevo (Jasminka Proho), 11. Association for Assistance to Persons with Mental Disabilities in Banja Luka (Gordana Ilic and Miroslav Stanovic), 12. The Ombudsman Institution for Human Rights of BiH (Nina Seremet) .

members of organizations of persons with disabilities, and representatives from the Institution of the Ombudsman.²⁵ The questionnaire was first disseminated to relevant individuals and then followed by interviews. During the interviews, the author could identify the main challenges, but also talk with the participants on how to solve the existing problems.

Unfortunately, a great number of key informants did not submit their survey responses, nor were they willing to meet for an interview. Thus, the lack of response is the main limitation of this study. Nevertheless, a great number of questionnaires (15) and interviews (15) were conducted successfully and on their basis we were also able to do a quantitative as well as a qualitative analysis.

The first part of this paper will give an overview on the identified policy problem. It will provide an overview of the CRPD and outline the framework for national implementation and monitoring, with a special focus on independent monitoring mechanisms. It will explain its activities and requirements stemming from the Convention. The second part provides comparative data on national monitoring mechanisms in EU countries and identifies the existing monitoring framework trends. The third section of this study looks into the recent policy developments in disability issues in BiH. The fourth part aims to answer the question of “What should be the independent national mechanism in BiH” by examining three possible solutions. Finally, last part of the study provides useful recommendations for establishing an independent monitoring mechanism and for monitoring its implementation in BiH.



2. Background

2.1. The United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol. An Overview.

The UN Convention on the Rights of Persons with Disabilities, and its Optional Protocol were adopted in December 2006, and entered into force on 3rd May, 2008.²⁶ Bosnia and Herzegovina became party both the Convention and the Optional Protocol in April, 2010.

The Convention represents an official international recognition of disability as a human rights issue.²⁷ It is the first human rights treaty that comprehensively details all human rights of persons with disabilities and clarifies the obligations of States to respect, protect and fulfil the specified rights. Nevertheless, the fact that other human rights treaties apply to persons with disabilities through the cross-cutting principle of equality and non-discrimination, persons with disabilities have been remained legally 'invisible' in the human rights system.²⁸ Therefore the entry into force of the UN Convention fills an important protection gap in international human rights law.²⁹ The CRPD represents a radical shift in the approach to disability, from a medical/charity model (persons with disabilities regarded as persons who need assistance because of their impairments) to a human rights/social model (considering persons with disabilities as right-holders who should be integrated in the society).³⁰ In the words of Thomas Hammarberg, "Equal rights - not just charity, is the message."³¹

Human rights empower individuals and place legal obligations on others. According to the UN Special Rapporteur for Human Rights, "rights and obligation demand accountability [...] A human rights [...] approach emphasizes obligations and requires that all duty-holders be held to account for their conduct."³² The existing literature indicates that transparency, responsiveness, and accountability on the part of the state and other actors are critical success factors in realizing the aims of human rights treaties, national strategies, and actions plans.³³ In his study on the implementation of national disability strategies in several countries, Flynn argues that "the barriers to implementation and monitoring often arise from a lack of transparency and accountability."³⁴

In addition to enouncing the rights of persons with disabilities, the achievement of the CRPD is also that it provides detailed accountability arrangements under Article 31 (*Statistic and Data Collection*), Article 32 (*International Cooperation*), Article 33 (*National Implementation and Monitoring*), Article 34 (*Committee on the Rights of Persons with Disabilities*), and Article 35 (*Reports by States Parties*). Each of the accountability arrangements requires a profound research, especially on how they will be implemented in Bosnia and Herzegovina.

Namely, the findings of this study identified several challenges to the implementation of the accountability arrangements in Bosnia and Herzegovina. Firstly, this study could not identify adequate information within BiH practices related to the collection of statistical and other data. It implies that there is no statistical data nor is there any body designed as responsible for the collection of such information. There is thus an urgent need for further research in this field. Secondly, the research has revealed that only one partnership and development programme has been established.³⁵ Therefore, it is necessary to improve international cooperation. Thirdly, Bosnia and Herzegovina was obliged to submit its initial report on how the Convention is being

²⁶ United Nations General Assembly, Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, *Thematic study by the Office of the UN High Commissioner for Human Rights on the structure and role of national mechanisms for implementation and monitoring of the Convention on the Rights of Persons with Disabilities* (henceforth "UN GA, OHCHR, *National mechanisms for implementation and monitoring*"), p. 3 para 5, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-29.pdf>, last access date: 08/05/2012.

²⁷ *Ibid*, para 6.

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ Guthier de Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities: Another role for National Human Rights Institutions*, in *Netherlands Quarterly of Human Rights*, Vol. 29/1, pp 84-106, 2011, p. 85.

³¹ Thomas Hammarberg, Council of Europe Commissioner for Human Rights, March 2011, Foreword in Mental Disability Advocacy Center, *Building the Architecture for Change: Guidelines on Article 33 of the UN Convention on the Rights of Persons with Disabilities*, (henceforth "MDAC, *Building the Architecture for Change*") March 2011, available at: <http://www.mdac.info/content/building-architecture-change-guidelines-article-33-un-convention-rights-persons-disabilities>, last access date: 08/05/2012.

³² UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) of the right to the highest attainable standard of health, E/C. 12/2000/4. (General Comments), 11 August 2000, para 67, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En) last access date: 08/05/2012.

³³ Eilinoir Flynn, *From Rhetoric to Action. Implementing the UN Convention on the Rights of Persons with Disabilities*, Cambridge 2011, p. 246.

³⁴ *Ibid*.

³⁵ Project "Support to Disability Policy Development in Bosnia and Herzegovina" was a bilateral project of BiH and Republic of Finland, supra note 4.

implemented to the UN Committee on the Rights of Persons with Disabilities by April 2012. However, the deadline has not been respected and BiH authorities have asked for an extension. Fourthly, Article 33 of the Convention outlines the institutional changes which States have to undertake in order to facilitate the implementation of the Convention, focal point or points and coordination mechanism within the government for implementation of the Convention and a framework, including one or more independent mechanisms, to promote, protect and monitor the implementation of the Convention. Research has revealed that Bosnia and Herzegovina has not clearly designed one or more focal points for all matters covered by the Convention, nor a coordination mechanism. A further consideration on which body (bodies) within Bosnia and Herzegovina could perform the task(s) of the focal point(s) and which mechanism could facilitate coordination for matters related to the implementation of the UN CRPD is necessary. Finally, for matters related to the establishment of an independent mechanism, our research has revealed that Bosnia and Herzegovina has neither designated nor established the required "independent mechanism".

Therefore, it is clear that Bosnia and Herzegovina has not adopted any of the accountability arrangements stemming from the Convention, which eventually causes an ineffective and slow implementation of the CRPD rights. This study will thus try to address one of the accountability arrangements - namely the independent mechanism - with the aim to advocate for its urgent establishment or designation. However, the research conducted for this study has uncovered a very low understanding of the UN Convention, and especially its monitoring mechanism. Therefore, the next section will provide an overview of national implementation and the CRPD's monitoring mechanism, with the aim to foster an understanding. Section five will then examine what bodies or institutions could perform the tasks of the independent national mechanism in Bosnia and Herzegovina.

2.1.1. Monitoring Mechanism

In all human rights treaties, the implementation obligation is closely linked to a monitoring component.³⁶ It is a way of assessing whether domestic legislation, policy and practice comply with a treaty.³⁷ Monitoring domestic implementation of an international human rights treaty is necessary to evaluate the results of all adopted and applied measures to implement the treaty, and to provide feedback for implementation.³⁸ Monitoring mechanisms foster accountability, and, over a long period of time, strengthen the capacity of parties to treaties to fulfil their commitments and obligations.³⁹ Under the CRPD, monitoring mechanisms of the implementation of the Convention exist both at the international and national level.⁴⁰

At the **international level**, the monitoring of the implementation of the UN CRPD is done through: a) a reporting procedure (by the State) to the UN Committee on the Rights of Persons with Disabilities (henceforth "the Committee"), b) individual communications, and; c) an inquiry procedure. The last two procedures are subject to ratification of the Optional Protocol, which has been done in BiH.

- **Reporting procedure mechanism**, which exists in all human rights treaties in various forms, requires States Parties (and the European Union) to periodically report to the Committee on measures taken to give effect to their obligations under the Convention and on the progress made in this regard.⁴¹ The Committee on the Rights of Persons

³⁶ UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, p. 4, para. 11

³⁷ MDAC, *Building the Architecture for Change*, supra note 31, p. 44.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Articles 33-35 CRPD, supra note 9.

⁴¹ UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, p. 5, paras 13-14.



with Disabilities has the mandate to consider the reports and make suggestions and recommendations to the Parties.⁴² Bosnia and Herzegovina was supposed to submit the first initial report two years after the ratification, i.e. on 14 April 2012. However, BiH has asked and was subsequently granted a deadline extension, until June 2012. The Ministry for Human Rights and Refugees of Bosnia and Herzegovina is responsible for monitoring and reporting on the implementation of all human rights treaties ratified by BiH.⁴³ It is though necessary to distinguish between the State's monitoring on the implementation and external independent monitoring. The former aims to serve the government's obligation to report under Article 35 of the CRPD, while the latter is meant to ensure that all measures (including government reporting) are independently monitored to present an external picture of the progress.

- Optional Protocol recognizes the competence of the Committee to receive and consider **individual communication** from or on behalf of individuals or groups of individuals claiming to be victims of a violation by the State Party of the provisions of the Convention.⁴⁴ According to the conducted research, there have not been any individual communications from BiH citizens, nor has there been any intent of persons with disabilities or their representative organizations to communicate claims to the Committee. The majority of the interviewed persons with disabilities were not even aware of such an option.
- In case of grave or systematic violations of rights set forth in the Convention, the Committee on the Rights of Persons with Disabilities is allowed to conduct an **inquiry procedure**.⁴⁵ Through the inquiry procedure, the Committee is mandated to investigate allegations of gross or systematic violations of the CRPD.⁴⁶

Types of monitoring

1. Treaty monitoring through state reporting
2. Monitoring through individual complaints
3. Monitoring through the inquiry procedure
4. Independent monitoring

2.1.2. Article 33 - National Implementation and National Independent Monitoring

The UN CRPD is the first human rights treaty that contains detailed provisions on the establishment and functioning of a **national monitoring** and implementation framework.⁴⁷ A partial exception represents only the Optional Protocol on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which provides for the creation of an independent body - national preventive mechanisms.⁴⁸

Article 33 sets out the following provision:

1. *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.*

⁴² Ibid.

⁴³ Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina (Official Gazette of BiH, 5/03), Article 12.

⁴⁴ Optional Protocol to the UN Convention on the Rights of Persons with Disabilities (henceforth "OP CRPD"), Article 1, available at: <http://www2.ohchr.org/english/law/disabilities-op.htm>, last access date: 08/05/2012.

⁴⁵ Ibid, Article 6.

⁴⁶ Ibid.

⁴⁷ UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, p. 5, para 15.

⁴⁸ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199, available at: <http://www2.ohchr.org/english/law/cat-one.htm> last access date: 08/04/2012.

2. *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*
3. *Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.*⁴⁹

⁴⁹ Article 33 CRPD, supra note 9.

This Provision foresees three implementation and monitoring bodies:

- Focal point(s) within government
- Coordination mechanism within government
- A framework, including one or more independent mechanisms

⁵⁰ Ibid. See also, UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, p. 5, para 16.

⁵¹ Flynn, *From Rhetoric to Action*, supra note 33, p. 40.

Accordingly, the Convention separates the function of implementation from the function of monitoring, and requires the States to set up distinct entities for these two functions.⁵⁰ This is important as it allows for monitoring to be established externally and to be independent of the government and those responsible for the Convention's implementation.⁵¹ This is particularly important in respect to the earlier practice in BiH. According to the Constitution, and the Law on Ministries, the Ministry for Human Rights and Refugees was entrusted with monitoring and reporting on the implementation of all human rights treaties adopted by BiH to international bodies. Civil society organizations (CSOs) and international organisations used to submit "shadow reports". The international bodies would then verify BiH's compliance with human rights.

⁵² United Nations General Assembly, Human Rights Council, Tenth session, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, *Thematic study by the Office of the United Nations High Commissioner for Human Rights on the enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities*, p. 19, para 62, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf>, last access date: 08/05/2012.

⁵³ See De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, p. 100.

⁵⁴ Decision on Establishment of the Council for Persons with Disabilities, supra note 7.

⁵⁵ Ibid., Article 1.

⁵⁶ Article 33(2), CRPD supra note 9.

⁵⁷ De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, pp 86-88.

⁵⁸ Ibid.

National **focal points** and **coordination mechanisms** form a structure responsible for the implementation "within governments". According to the UN Office of High Commissioner for Human Rights (UN OHCHR), "the establishment of a focal point should take place through **legal measures**".⁵² Requiring creation or designation of a coordination mechanism acknowledges that disability is an issue that cuts across numerous governmental ministries and agencies.⁵³ Bosnia and Herzegovina has not formally designed its focal point. Submitted response seems to implicitly assign that function to the Ministry of Human Rights and Refugees at the state level and other relevant ministries at the entity level. According to the Decision Establishing the Council for Persons with Disabilities⁵⁴, it could be assumed that the Council is the coordination mechanism, as the Decision talks about the Council as an "intergovernmental and coordinating body of the Council of Ministers of BiH".⁵⁵

Article 33 (2), requires States parties to establish a "national monitoring framework", including one or more independent mechanisms, that will have the responsibility "to promote, protect and monitor" the implementation of the Convention.⁵⁶ As elaborated above, this provision of the CRPD seeks to address the implementation gap between international human rights law and realization by people with disabilities of their rights in practice. Historically, the monitoring of international human rights treaties has been conducted by international bodies, which might seem remote from the reality.⁵⁷ Article 33 (2) places an obligation on States Parties to focus on domestic independent monitoring. It does not seek to replace international monitoring, but rather to complement the work of the UN Committee on the Rights of Persons with Disabilities.⁵⁸ It is closer to local realities and can push more easily (and more often) for political



direction and commitment on this issue, but also assesses the adoption and effective implementation of measures in detail and their actual impact.⁵⁹ States Parties have the choice of either establishing a new mechanism or assigning the function to existing bodies.⁶⁰ However, as the notion of *independence* is central to the work of the monitoring mechanism, any monitoring mechanisms must take into account the “Principles relating to the status and functioning of national institutions for the promotion and protection of human rights”, i.e. the so-called **Paris Principles**.⁶¹

Here it is important to stress out that the findings from interviews conducted with government officials in BiH reveal that the vast majority of them did not see why a shift of paradigm to focus on a national monitoring mechanism in addition to existing international monitoring (as explained above) would be necessary. This is firstly caused by the fact that international bodies are to a large extent under-financed and are usually very remote from local realities.⁶² Secondly, in BiH, there is no comprehensive approach to disability issues, as policies are fragmented between entity, Brcko District and cantonal ministries, with the main role given to the health or social ministries. In addition to this, the human rights dimension of disability issues have for a long time been ignored by Bosnian policy-makers. Thirdly, the CRPD is considered as a pure implementation convention; it does not aim to elaborate new human rights, but to increase compliance with the existing ones.⁶³ Fourthly, there is a need for a constant reminder of BiH decision-makers of the underlying values of the Convention, and its obligations. There is a need to change the mentality of decision-makers and to foster an acceptance of the CRPD values; to consistently and continuously alert BiH to potential violations of the CRPD rights; to help BiH adopt measures that can prevent such violations; and to constantly assess the adoption and effective implementation of measures and their actual impact. The main purpose is to spur some change. Finally, BiH has an obligation to establish or designate a distinct, independent, and external entity responsible for promotion, protection and monitoring.⁶⁴

Furthermore, as mentioned above, there should be a clear division between the focal points and independent mechanism, since the former will be overseen by the latter.⁶⁵ However, certain activities - such as promotion - might be exercised by both. Also, focal point(s) and independent mechanism need to cooperate with each other: the focal point will be the principal information provider but also the main recipient of the recommendations of the independent mechanism.⁶⁶

Finally, Article 33 (3) requires an involvement of civil society, in particular persons with disabilities and their representative organizations, in both the implementation and monitoring. Involvement applies to all parts of Article 33 and thus implies that persons with disabilities, their representative organizations and other civil society organizations may form part of national focal point set under Article 31(1) or be part of national monitoring mechanisms under Article 33(2).⁶⁷ Thus, Article 33 specifies the general principle of participation of persons with disabilities under Article 3 and the general obligation under Article 4(3) “to closely consult and actively involve persons with disabilities”.⁶⁸

⁵⁹ Ibid.

⁶⁰ Ibid, p. 92.

⁶¹ See Article 33(2), CRPD, supra note 9. Paris Principles were drafted at the First International Workshop of National Human Rights Institutions held in Paris in 1991 and endorsed by both the UN General Assembly and Commission on Human Rights in 1993. See: United Nations General Assembly A/RES/48/134, 85th plenary meeting, held on 20 December 1993, available at: <http://www2.ohchr.org/english/law/parisprinciples.htm>, last access date: 08/05/2012

⁶² De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, p. 86.

⁶³ Ibid, pp 87- 88.

⁶⁴ Article 33(2) CRPD, supra note 9.

⁶⁵ De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, p. 100

⁶⁶ Ibid.

⁶⁷ European Foundation Center (EFC), *Study on Challenges and Good Practices in the Implementation of the UN Convention on the Rights of Persons with Disabilities*, Final report, Brussels October 2010, pages 154-155, available at: http://www.study-un-cprd.eu/files/repository/20110126162849_VC20081214_FINAL_REPORT_101010.pdf, last access date: 08/05/2012.

⁶⁸ See Article 3 and Article 4 of the CRPD, supra note 9.

2.2.1. Key requirements

Article 33 (2) requires States to establish “a framework, including one or more independent mechanism(s)”. The Convention specifies when designating or establishing such a mechanism, States must take into account the Principles relating to the status and functioning of national institutions for protection and promotion of human rights.⁶⁹ The provision does not specify a unique organizational form for the mechanism and State Parties are free to determine the appropriate structure according to their political and organizational context.⁷⁰ However, there are several **key requirements** for the mechanism:

⁶⁹ Article 33(2) CRPD, supra note 9.

⁷⁰ UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, p. 9, para 38.

⁷¹ Provision of Article 33 uses the phrase “framework, including one or more independent mechanism”. However, each of the mechanism in the framework must be independent, since the promotion, protection and monitoring of the implementation of the Convention must be carried out by bodies that comply with the Paris Principles. See MDAC, *Building the Architecture for Change*, supra note 31, p. 48. See also De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, p. 99.

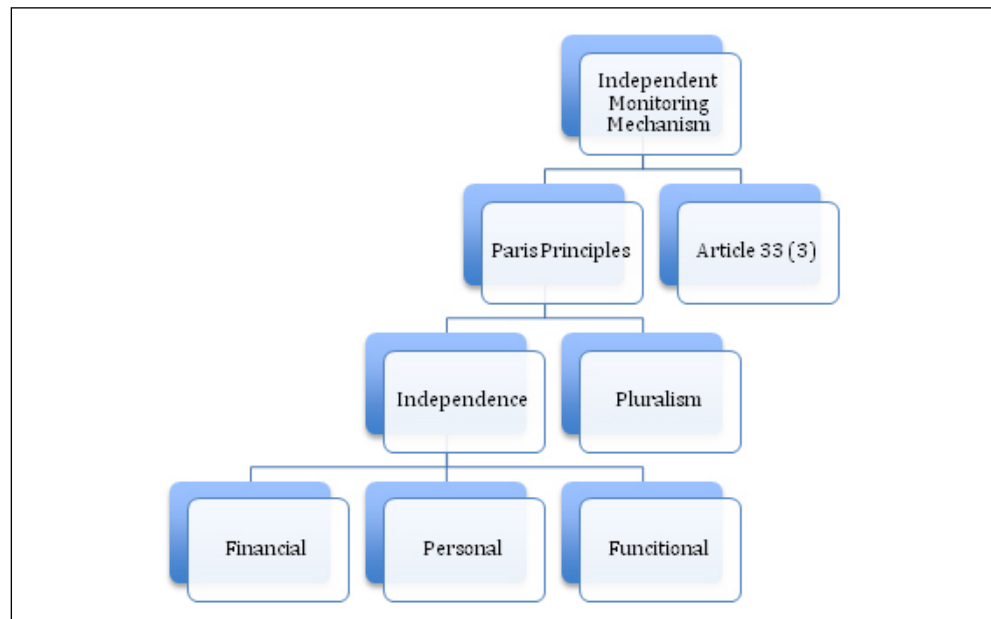
⁷² See De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, p. 89. See also UN Human Rights Office of the High Commissioner, Europe Regional Office, *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe*, p. 6, 2011, available at: http://europe.ohchr.org/Documents/Publications/Art_33_CRPD_study.pdf, last access date: 08/05/2012

⁷³ Principle 2, A. Competence and responsibilities, and Principle 2, B. Composition and guarantees of independence and pluralism, Paris Principles, supra note 61

⁷⁴ MDAC, *Building the Architecture for Change*, supra note 31, pp 48-49.

⁷⁵ An NHRI is a body established by a State Party for implementation of international human rights treaties at the national level. While the specific mandate of NHRIs differs from country to country, their activities may include providing guidance on human rights issues, advising on legislation, conducting inquiries, disseminating materials, receiving individual complaints, launching investigations and intervening in court cases. Examples of NHRIs include human rights institutes and commissions or ombudsman bodies. See <http://nhri.ohchr.org/EN/Pages/default.aspx>. See also UN OHCHR, Europe Regional Office, *Study on the Implementation of Article 33 of the CRPD in Europe*, supra note 72, p. 13.

⁷⁶ UN OHCHR, Europe Regional Office, *Study on the Implementation of Article 33 of the CRPD in Europe*, supra note 72, pp 13-14.



- **Independence** is the main feature of the independent mechanism. Bodies that are seeking to protect the CRPD rights and to monitor the implementation of the Convention, ought to be fully independent of government.⁷¹ That entails a) functional independence - independent mechanisms must be free from governmental interference, b) personal independence - members of the mechanism should be able to act in a pressure-free environment, be able to choose their own staff, to determine their priorities, and be appointed through a fair and clear procedure, and c) financial independence - the staff needs to have sufficient resources at their disposal in order to be able to exercise their functions.⁷² Accordingly, in order to guarantee the independence requirement, mechanism must be created by law, and its budget should be determined by parliament.⁷³ In case a mechanism is subject to financial control by the government, or the government has the legal authority to dissolve or replace staff members of the mechanism or to determine its priorities, the independence of the mechanism should be called into question.⁷⁴
- The Provision requires the mechanisms to comply with **the Paris Principles**. As already explained, the Paris Principles set out basic guidance for the establishment and strengthening of national human rights institutions (NHRIs).⁷⁵ In addition to providing for the responsibilities, composition, and working methods of the NHRIs, the Paris Principles require that NHRIs be independent of government, be representative of civil society, and have a broad mandate to promote and protect human rights.⁷⁶ NHRIs are



granted A-, B-, or C- status by the International Coordinating Committee of NHRIs according to their full, partial or non-compliance with the Paris Principles.⁷⁷

- The Convention does not prescribe who or what should comprise the mechanisms, as long as the mechanism complies with the Paris Principles. One of the Principles is that the composition and appointment of the members of national human rights institutions need to ensure “the **pluralist representations** of the social forces involved in the promotion and protection of human rights”.⁷⁸ In the context of Article 33 (2) pluralism links independent mechanisms with civil society, organizations of persons with disabilities, other NGOs concerned with human rights and rights of persons with disabilities, but also, social and professional organizations, universities, qualified experts, parliaments, and even representatives of governmental departments (in an advisory capacity). Persons with disabilities must be either represented in the independent mechanism or be able to effectively cooperate with the independent mechanism.⁷⁹ This is also in line with Article 33 (3), which requires the “**involvement and full participation**” of persons with disabilities in the monitoring process.⁸⁰ In particular, it implies that:
 - a. persons with disabilities must be involved in monitoring activities, for example by having persons with disabilities among the monitors; and
 - b. the voice and experiences of persons with disabilities must be central in monitoring reports in recognition of the fact that persons with disabilities are the experts on their own situation. Another solution is to appoint persons with disabilities to the board of the independent mechanism.⁸¹

It is important to remember that efforts to monitor the existing human rights situation of persons with disabilities do not contribute to our understanding of additional marginalization of persons within a particular group. Monitoring the rights of persons with disabilities must have **a cross-disability and cross-society focus**.⁸² That is, monitoring must involve women and men of all ages with the full spectrum of types of disabilities, including those with physical, mental, intellectual or sensory impairment, and from all socio-economic and ethnic backgrounds, and walks of life.⁸³ For example, it must reach and include those who are poor, homeless or institutionalized.⁸⁴ Unfortunately, research conducted on the involvement of persons with disabilities in designing the State Disability Policy and the two BiH entities’ strategies has shown that a careful consideration has not been given to ways in how to meaningfully include all persons with disabilities. In contrast, it is assumed that participation has occurred due to the involvement of representative organisations.⁸⁵ Also, the Council for Persons with Disabilities does not include persons (nor their representatives) who are deaf or have a hearing loss, nor persons with mental health problems.⁸⁶

⁸⁵ The Convention’s requirement of involvement fits well with evidence from the literature on community development, which emphasizes the effectiveness of participatory evaluation of public policy. Public participation has become the central component for public policy-making. The involvement is not an end in itself, but will: a) improve governance - democratic legitimacy, ensure transparency, strengthen accountability, trust, etc; b) add to social inclusion and social justice - combat exclusion and increase equity; c) improve capacity building and learning - awareness raising and knowledge, and; d) create quality of policy that genuinely responds to needs of persons with disabilities. See Diane Warburton et al., *Making a Difference: A Guide to Evaluating Public Participation in Central Government*, Department for Constitutional Affairs, available at: <http://www.involve.org.uk/evaluation-guide/Making%20a%20Difference%20-%20A%20guide%20to%20evaluating%20public%20participation%20in%20centralgovernment.pdf> last access date: 08/05/2012.

⁸⁶ See Rjesenje o imenovanju članova Vijeća za osobe sa invaliditetom BiH, [Decision on Appointment of Members of the Council for Persons with Disabilities]. Decision was drafted by the Minister of Ministry for Human Rights and Refugees, available at (in Bosnian): <http://ic-lotos.org.ba/ba/component/content/article/107-rjesenje-o-imenovanju-clanova-vijeca-za-osobe-sa-invaliditetom-bosne-i-hercegovine> last access date: 08/05/2011.

⁷⁷ Ibid. List of accredited NHRIs is available at: www.nhri.ohchr.org.

⁷⁸ Principle 1, B. Composition and guarantees of independence and pluralism, Paris Principle. Paris Principles also mention a series of categories who should be involved: ngo’s responsible for human rights, trade unions, social and professional organizations, universities and qualified experts, representatives of government departments (but only in an advisory capacity), etc, supra note 61.

⁷⁹ UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, pp 15-16, paras 69-73.

⁸⁰ The development of the CRPD was unique in its involvement of persons with disabilities and engagement of civil society. People with disabilities and their representative organizations played an integral part of negotiating and formulating the Convention under the slogan “Nothing about us without us!”. It resulted in the text of the Convention that emphasizes the importance of ensuring the participation of persons with disabilities in a number of key areas. Article 3, which outlines the general principles of the Convention, states that full and effective participation and inclusion means that persons with disabilities are recognized and valued as equal participants in the society. This guiding principle is cutting across all issues in the Convention. For that purpose, this researcher closely consulted persons with disabilities in what is their opinion on who/what body should undertake the duty of independent mechanism. See United Nations Human Rights Office of the High Commissioner for Human Rights (UN OHCHR), *Monitoring the Convention on the Rights of Persons with Disabilities. Guidance for Human Rights Monitors*, available at: http://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf last access date: 08/05/2012.

⁸¹ UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, pp 15-16. See also, UN OHCHR, Europe Regional Office, Study on the Implementation of Article 33 of the CRPD in Europe, supra note 72, page 6.

⁸² UN OHCHR, *Monitoring the Convention on the Rights of Persons with Disabilities*, supra note 80, p. 34.

⁸³ Ibid.

⁸⁴ Ibid.

2.1.3. Activities of independent monitoring mechanism

⁸⁷ Article 33(2), CRPD, supra note 9. See also: UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, pp 9-10, para 41.

⁸⁸ MDAC, *Building the Architecture for Change*, supra note 31, p. 42.

⁸⁹ Ibid.

⁹⁰ Ibid. See also UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, pp 14-15, paras 64-65.

⁹¹ See Article 8, CRPD, supra note 10.

⁹² De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, p. 96.

⁹³ See: MDAC, *Building the Architecture for Change*, supra note 31, at pp 43-44. See also UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, p. 15, para 66.

⁹⁴ Ibid.

⁹⁵ De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, p. 96.

⁹⁶ Ibid. See also MDAC, *Building the Architecture for Change*, supra note 31, pp 44-46 and UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, p. 15, paras 67-68

⁹⁷ Ibid.

⁹⁸ Flynn, *From Rhetoric to Action*, supra note 33, p. 47.

⁹⁹ Ibid., p. 50.

¹⁰⁰ De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, pp 96-97.

The Convention specifies that the independent mechanism must be given an adequate mandate and the institutional capacity required to effectively performs its functions “to promote, protect and monitor”.⁸⁷

Activities “to promote, protect and monitor” are complementary and, according to the Mental Disability Advocacy Center (MDAC), they are not categories that can be separated from each other.⁸⁸

- **Promotion** includes general awareness-raising activities and public educations campaigns, as well as targeted activities designed to advance effective realization of a right, set of rights or a human rights instrument for a general or specific audience.⁸⁹ Activities that can contribute to mainstreaming of disability rights in all spheres are the following: dissemination of information on the rights of persons with disabilities, organization of human rights education, training in disability rights, and the like.⁹⁰ However, the independent mechanism does not need to undertake this task by itself. Governments are, under Article 8 of the CRPD, also obliged to promote the rights of persons with disabilities.⁹¹ Organizations of persons with disabilities also promote disability rights. Promotion thus may be shared between many actors and include other bodies than the independent mechanism only.
- **Protection** is “handling human rights violation through quasi-judicial powers in order to complement judicial protection”.⁹² In practice it means handling individual complaints; conducting public inquires, providing mediation, undertaking strategic litigations; and providing support to people so that they can claim their rights before domestic courts, such as legal aid and assistance.⁹³ Moreover, additional protection and monitoring activities such as reporting in an advisory capacity - on human rights and disability matters - to the government also need to be included.⁹⁴
- **Monitoring** is a process of assessing the human rights situation.⁹⁵ It implies examination of the compliance of both legislation and practice with the CRPD rights.⁹⁶ Monitoring includes activities of gathering information on implementation, evaluating the compliance of legislation, policy and practice with the CRPD, communicating with the main participants, conducting formal investigations on issues of grave or systematic violations of the CRPD rights, and submitting reports to the state authorities.⁹⁷ The monitoring is a way to hold governments accountable and fulfil their obligations. However, it is necessary to bear in mind that monitoring the implementation of the Convention has broader aims as it also tries to show governments how to learn from experience.⁹⁸ The purpose of monitoring is also to encourage progress rather than to impose harsh sanctions and punish participants.⁹⁹ Monitoring also requires cooperation: monitoring the implementation of the CRPD is impossible when the main stakeholders do not communicate; governments need to disclose relevant information and the monitoring mechanism should use this information to asses what possible outcomes might follow and, more importantly, how the situation can be improved.¹⁰⁰



3. Experience of Other Countries

To date, 108 states have ratified the Convention and 63 the Optional Protocol, while 153 and 90 states were signatories to the two documents respectively.¹⁰¹ Unlike other international instruments, the Convention is the first human rights treaty that is open to confirmation or accession by regional organizations (such as the European Union).¹⁰² It is also the first human rights treaty to be ratified by the European Community (later the European Union).¹⁰³

For the purpose of this report, comparative data on national monitoring mechanism from Austria, Denmark, Germany, Hungary, Latvia, Lithuania, Slovenia, and the United Kingdom have been collected and will be elaborated upon further. The rationale behind selecting these particular countries was to have a sample of both new EU members from Eastern Europe as well as established democratic systems in order to point towards differences and similarities in the adopted independent monitoring mechanisms.

¹⁰¹ Situation as of 8 May 2012. Convention and Optional Protocol Signatures and Ratifications, available at: <http://www.un.org/disabilities/countries.asp?id=166>.

¹⁰² See Article 44 of the UN CRPD, supra note 9.

¹⁰³ Convention and Optional Protocol Signatures and Ratifications, supra note 8.

Table 1:
Independent Monitoring
Mechanism in the European Union (EU)¹⁰⁴

¹⁰⁴ Data in the table were collected from the UN OHCHR, Europe Regional Office, Study on the Implementation of Article 33 of the CRPD in Europe, supra note 72.

State	Main relevant features	Independent mechanism(s)	Composition	Mandate
A U S T R I A	Parliamentary democracy Federal state	Independent Monitoring Committee	Representatives of DPOs; one representative of human rights NGOs; one member of a development cooperation organization; and one representative of an academic institution. Pro bono positions (save the Chairperson, paid since September 2010) in their individual capacities.	Awareness-raising; Advises public authorities on the rights of persons with disabilities; Provides recommendation on new legislative and administrative rules based on both individual complaints and general observations; Handles complaints; and Supports persons with disabilities whose rights have been violated. ¹⁰⁵ It pledges to submit a parallel report on the implementation of the Convention to the UN Committee.
D E N M A R K	Constitutional monarchy with a parliamentary system Unitary state	Danish Institute for Human Rights (an NHRI)	Representatives of CSOs, academics, and representatives of ministries without voting rights. The budget is regulated by the Danish Finance Act and has a permanent legal basis. Three to four people are working on the Convention.	Awareness-raising; Provides advice on the rights of persons with disabilities; Organizes round-tables with DPOs. No handling of complaints. It pledges to submit a parallel report on the implementation of the CRPD to the UN Committee.

¹⁰⁵ See official web site: www.monitoring-gausschuss.at last access date 15/05/2012

G E R M A N Y	Parliamentary democracy Federal state	German Institute for Human Rights (an NHRI)	Representatives of CSOs, academics, a representative of the German Disability Council and, representatives of ministries without voting rights. The Institute created a separate department, named the CRPD Monitoring Body.	Awareness-raising; Reviews legislative and administrative rules; Writes amicus curiae briefs and maps the situation of POWs. No handling of complaints. It pledges to submit a parallel report on the implementation of CRPD to the UN Committee.
H U N G A R Y	Parliamentary democracy Unitary state	National Council of Disability	Representatives of ministries and DPOs, both with voting rights.	Advises the government on disability issues; Comments on draft legislation.
L A T V I A	Parliamentary democracy Unitary state	Latvian Ombudsman	Office of the Ombudsman	Awareness-raising; Represents victims before the administrative courts; Submits reports to the government and parliament; Handles complaints.
L I T H U A N I A	Parliamentary democracy Unitary state	Two Independent Mechanism: Council of Disability Affairs and Equal Opportunities Ombudsman	Council of Disability Affairs: representatives of ministries; representatives of DPOs.	Council of Disability Affairs: Examines the social integration of persons with disabilities. Equal Opportunity Ombudsman: Awareness-raising; Handles complaints; Submits proposals and makes recommendations to the government and parliament.
S L O V E N I A	Parliamentary democracy Unitary state	Council for Persons with Disabilities of Slovenia	Representatives of ministries; representatives of institutions dealing with disability issues; representatives of DPOs.	Drafts laws related to persons with disabilities; Prepares national disability strategies; Advises the government on disabilities issues.



U N I T E D K I N G D O M	Constitutional monarchy with a parliamentary system	Four Independent Mechanisms: 1. Equality and Human Rights Commission, 2. Scottish Human Rights Commission, 3. Northern Ireland Human Rights Commission and 4. Equality Commission for Northern Ireland (NHRIs)		Awareness-raising; Answers general enquiries; All Commissions, except the Scottish Human Rights Commissions; Handling complaints.
	Devolved state consisting of four units with special rights			

4.1. Monitoring Framework Trends

As demonstrated in Table 1, the EU member states have all adopted different solutions for implementing Article 33 (2). As indicated by the term “as appropriate”¹⁰⁶, all states have the choice to designate or establish the independent mechanism taking into account local realities.¹⁰⁷ In this regard, three options can be identified: a) NHRIs and/or national equality bodies, 2) ombudsman offices, and 3) other bodies.

Denmark, Germany, and the United Kingdom designated their **National Human Rights Institutions** as their independent mechanisms to promote, protect and monitor the implementation of the Convention.¹⁰⁸ This can be considered as the safest option for the mechanisms to comply with the Paris Principles.¹⁰⁹ Their accreditation guarantees their independence and pluralism, as well as a broad mandate and extensive powers.¹¹⁰ The best example in practice is the German Institute for Human Rights (GIHR) that was designed as an independent mechanism following a consultation process with DPOs.¹¹¹ It is also considered in full compliance with the *Paris Principles*.¹¹² The decision for its establishment was made by the federal government and subsequently confirmed by a parliamentary decision.¹¹³ The GIHR has an annual budget determined by the parliament and also receives additional public funds of 430,000 Euro per year in order to perform its monitoring tasks.¹¹⁴ It regularly invites non-governmental organizations to consultations and discussion.¹¹⁵ In addition, Germany created a separate department within the GIHR that is exclusively entrusted with the monitoring role - the CRPD Monitoring Body (Monitoring-Stelle in German).¹¹⁶

In order to complete the mandate of its NHRIs, the United Kingdom designated a **national equality body for Northern Ireland** in addition to the existing three NHRIs.¹¹⁷ Some EU

¹⁰⁶ Article 33(2) CRPD, supra note 9.

¹⁰⁷ See UN OHCHR, Europe Regional Office, *Study on the Implementation of Article 33 of the CRPD in Europe*, supra note 72, p. 52.

¹⁰⁸ Ibid. The Danish Parliamentary Ombudsman is also involved in the protection of the rights of persons with disabilities and the Danish Disability Council is also monitoring the rights of persons with disabilities and advises government on disability issues. It consists of 17 members. The Danish Institute for Human Rights (DIHR), the Danish Disability Council, and the Danish Parliamentary Ombudsman can jointly create a framework for Denmark.

¹⁰⁹ UN OHCHR, Europe Regional Office, *Study on the Implementation of Article 33 of the CRPD in Europe*, supra note 72, p. 48.

¹¹⁰ Ibid.

¹¹¹ Ibid, p. 25. See also Flynn supra note 33, p. 270. See the official websites <http://www.bmas.de>; <http://www.deutscher-behindertenrat.de>; <http://www.institut-fuer-menschenrechte.de>.

¹¹² Ibid. It was given the A- status by the Sub-Committee on Accreditation of the International Coordinating Committee.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid. See also Flynn, *From Rhetoric to Action*, supra note 33, p. 271.

¹¹⁶ Ibid.

¹¹⁷ UK designed the independent monitoring mechanism to: Equality and Human Rights Commission, Scottish Human Rights Commission, Northern Ireland Human Rights Commission, and Equality Commission for Northern Ireland form the framework.

member states (Latvia, Lithuania and Denmark) designated their **Ombudsman** offices to fulfil the role of the independent mechanism. Other EU member states designated or established **separate institutions**. Austria created the Independent Monitoring Committee, Slovenia the Council for Persons with Disabilities, and Hungary designated the National Council of Disability. For example, Austrian Independent Monitoring Committee has unlimited access to all state authorities, unlimited right to inspect files and the possibility to request statements from administrative bodies.¹¹⁸ The Austrian body is also considered the paragon of the independent mechanism by the European Foundation Centre¹¹⁹ It has two public annual meetings, to which experts can be invited.¹²⁰ A representative of the Federal Ministry of Labour, Social Affairs and Consumer Protection participates in an advisory capacity and representatives of the other ministries concerned may also participate in the same capacity.¹²¹ The budget is 23,000 Euro per annum.¹²² Slovenian and Hungarian Councils consist of representatives of DPOs and representatives of ministries that both have voting rights. Due to their composition, it is questionable whether these bodies fulfil the requirement of independence and the Paris Principles set out in the CRPD.¹²³

¹¹⁸ See: <http://www.bmsk.gv.at>; <http://www.oear.or.at>; <http://www.monitoring-gausschuss.at>

¹¹⁹ EFC, *Study on Challenges and Good Practices in the Implementation of the CRPD*, supra note 67, pp 155-157.

¹²⁰ UN OHCHR, Europe Regional Office, *Study on the Implementation of Article 33 of the CRPD in Europe*, supra note 72, pp 17-18.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Flynn, *From Rhetoric to Action*, supra note 33, p. 272.



4. Developments in BiH

The previous sections of this study detailed the role, functions, and design of the independent mechanism. This section aims to provide information on current policy development in BiH in the disability area, and to tackle the crucial question of this research, i.e. deciding which body should perform the role of the independent mechanism under the CRPD in Bosnia and Herzegovina.

Even before the ratification of the Convention, the government and the non-governmental sector dealing with issues on disabilities developed a disability policy of BiH as part of the project "Support to the Disability Development in Bosnia and Herzegovina".¹²⁴ The Council of Ministers, i.e. the Bosnian government, adopted the Disability Policy in 2008.¹²⁵

The main objective of this Policy was to enable all persons with disabilities to attain the highest quality of life, respect and dignity, independence, productivity and equal participation in society, and to have at their disposal and as accessible as possible everything they need for comfortable lives in the environment they live in.¹²⁶ A further objective of this Policy was to initiate adoption of laws and programmes that will enable successful implementation of the Policy's main objectives.¹²⁷

The strategies of the two BiH entities (the FBiH and RS) and their action plans followed the adoption of the Disability Policy. The aim of both strategies is to harmonize the practice and legal protection of persons with disabilities with European and international standards on treating people with disabilities. Strategies define its objectives, measures, activities, deadlines, and main stakeholders in some 12 different areas of interest for persons with disabilities.¹²⁸

In 2010, the Council of Ministers of BiH established the Council for Persons with Disabilities at the state level, as a permanent, professional, advisory, intergovernmental, and coordinating body with the Council of Ministers.

On 11 April 2010 the CRPD entered into force in BiH,¹²⁹ whereby BiH agreed to establish or designate an independent mechanism for matters related to the promotion, protection and monitoring of the CRPD. Although a variety of monitoring mechanisms exist both at the state and entity level, an independent mechanism has not been designed yet. As explained above, BiH currently has several governmental departments that could monitor the rights of persons with disabilities; however, none of the departments is the independent mechanism as such.

Therefore, the next section discusses the variety of existing possibilities for the establishment or designation of an independent mechanism in BiH. It examines whether there already exist independent bodies in BiH that could be designated to perform the functions of the independent mechanism foreseen in the CRPD or whether it is necessary to establish an entirely new body.

Article 33 (2) requires States to "designate or establish" an independent mechanism.¹³⁰ Therefore, the Convention allows for an already existing institution or body that would meet the stipulations of the CRPD to take over the responsibilities of the independent mechanism.¹³¹ In such cases, a state is allowed to designate existing bodies and authorize them to promote, protect and monitor the implementation of the Convention. This needs to be done

¹²⁴ See Disability Policy, *supra* note 4.

¹²⁵ The Disability Policy was adopted by the Council of Ministers on 46th Session held on 8 May 2008.

¹²⁶ Disability Policy, *supra* note 4, p. 3.

¹²⁷ *Ibid.*

¹²⁸ See Strategy on improvement of social status of persons with disabilities in Republika Srpska; Strategy for equalization of opportunities of persons with disabilities in Federation of Bosnia and Herzegovina, *supra* note 5.

¹²⁹ BiH had ratified the Convention on 12 March 2010, without any reservations and declarations. On the thirtieth day after the deposit of its instrument of ratification, the Convention entered into force.

¹³⁰ Article 33(2), CRPD, *supra* note 9.

¹³¹ UN Office of the High Commissioner for Human Rights (UN OHCHR), *From Exclusion to Equality: Realizing the rights of persons with disabilities*. No. 14 - 2007, p. 104 available at: http://www.unescap.org/esid/psis/meetings/EGM_CRP_2009/Handbook.pdf See also: De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, *supra* note 30, p. 92.

¹³² Ibid.

¹³³ UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, pp 12, para 52.

¹³⁴ Ibid.

¹³⁵ Ibid.

- as required by the Paris Principles - by an official designation legal act.¹³² A mere statement is insufficient.¹³³ Therefore, if BiH decides to designate the functions of the independent mechanism to an existing body, it needs to do so through legal measures. In addition, a formal legal act is an important opportunity to strengthening the capacities of the designated body, which can contribute to the effective implementation of its functions¹³⁴ as any existing body will need additional human and financial resources to perform the functions of the mechanism effectively.¹³⁵ On the other hand, the Convention also recognizes the possibility of a state to establish a new body that will exercise the functions of an independent mechanism. When deciding whether to establish a new institution or rely on an existing one, following questions should be considered:

Does the existing institution comply with the Paris Principles?

Does the institution have a mandate that covers the CRPD?

Does the institution have an expertise on the CRPD and/or human rights and disability in general?

*Does the existing institution have sufficient human resources and time to promote, protect and monitor the Convention along with its other duties?*¹³⁶

¹³⁶ UN OHCHR, *From Exclusion to Equality*, supra note 131, p. 105.

In the case of BiH, the possibility of establishing a new body involves several other questions, the most important being the question of funding. Using an already existing institution/body is more cost effective - it can be estimated that the main "additional cost" used for this purpose would be salaries for additional staff members needed in the mechanism, office equipment for new staff, cost for office supplies, per diems for core staff, experts, and interpreters, experts' and interpreters' honoraria, travel costs, costs for report publishing, cost for production of all disability related material in accessible format, and other expenses. In the case of creation of a new body not based upon existing structures, the cost would be significantly increased since a new institution would require not only more professional and administrative staff, but also new equipment, premises, vehicles, office appliances and supplies (computers, photocopy machines, printers, phones, faxes, etc), office maintenance costs, etc. It also needs to be taken into account that if an entirely new body was established, the new staff would require both introductory and on-the-job training in human rights and rights of persons with disabilities.

Furthermore, the Convention mentions "one or more independent mechanisms"; that is, the new body does not have to be restricted to one institution only, but several institutions can create the framework. As shown in Table 1, some of the reviewed EU member states have assigned the function to a single body, some to multiple bodies, like for instance the UK and Denmark. It is necessary to account for local realities (constitutional structure, political and geographical considerations) of each country when deciding whether one or multiple bodies are to be entrusted with the monitoring functions. That the framework may be adapted to the national context is inherent in the use of "as appropriate" in Article 33(2).¹³⁷ The underlying assumption here is that any independent mechanism, regardless of the quantity and structure of the institutional actors, should form a coherent unity. In other words, different bodies operating in isolation would be counterproductive.¹³⁸ Whatever its form, it must be able to perform the tasks stemming from the Convention. It must also respect the principle that civil society, especially persons with disabilities and their representative organizations, can fully participate in the monitoring process. In all cases, it should be remembered that the ultimate responsibility for the implementation lies within the state.¹³⁹

¹³⁷ Article 33(2), CRPD, supra note 9. See also De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, p. 97.

¹³⁸ Ibid.

¹³⁹ UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, p.14, para 59.



4.1. Where to look for the independent mechanism in BiH?

As there already are bodies concerned with rights of persons with disabilities in BiH, we should first analyze their capacities and structures. These are 1) the Council for Persons with Disabilities, 2) the Ombudsman Institution for Human Rights, and 2) specialized organizations of persons with disabilities. This study will present the composition, mandate, and principles of those entities in order to examine whether one of those entities could be assigned the role of the independent mechanism of BiH.

4.1.1. The Council for Persons with Disabilities

Some of our respondents assumed that the competences of the Council for Persons with Disabilities also included the function of the independent mechanism to monitor and report on the implementation of the Convention. Therefore, it is first necessary to explain what kind of a body it is; who are its members; what is its mandate; its funding sources (if any); and, subsequently demonstrate why the Council does not meet the criteria to take over the role of the independent mechanism. However, there are some very important tasks the Council can undertake that will be explained further.

The Council for Persons with Disabilities was established in 2010 with the aim to act as a permanent, professional, advisory, intergovernmental, and coordinating body of the Council of Ministers of BiH.¹⁴⁰ It consists of twenty members: one half represented by members of organizations of persons with disabilities and the other half are by members of the state and entity ministries.¹⁴¹ All twenty members have voting rights on an equal basis. Additional one representative from the Ministry for Human Rights and Refugees and one representative from the Ministry of Civil Affairs are appointed for administrative and technical tasks.¹⁴² On 22 February 2012, the Council adopted its Rules of Procedure and agreed on the coordination, the type of its duties, and the decision-making process.¹⁴³

¹⁴⁰ *Decision on Establishment of the Council for Persons with Disabilities in Bosnia and Herzegovina*, supra note 7.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Poslovnik o radu Vjeca za osobe sa invaliditeom BiH *Rules of Procedure of the Council for Persons with Disabilities*, adopted by the Council for Persons with Disabilities on the session held on 21/02/2012

With regard to the Council's mandate, the Council has the following tasks:

- *to promote human rights of persons with disabilities;*
- *to initiate and be involved in the development and adoption of strategies, action plans, legislative and administrative documents in the area of disability policy, and to perform monitoring of the realization;*
- *to cooperate with international governmental and non-governmental organizations;*
- *to initiate support projects for all associations of persons with disabilities and implementation of all the other activities that promote and improve the status of persons with disabilities in accordance with the CRPD and the Optional Protocol;*
- *to coordinate activities in different sectors and institutions in BiH;*
- *to prepare reports, analyses, recommendations and opinions about concrete measures and possible solutions which aim to protect the rights of persons with disabilities and which are undertaken by official sectors, institutions and departments in BiH;*
- *to participate in drafting the State Report, according to Article 35 of the Convention;*
- *to provide recommendations, suggestions and opinions on legislative and administrative acts as well as projects in the field of rights of persons with disabilities, which shall be adopted by the Parliament of BiH;*

¹⁴⁴ Decision on Establishment of the Council for Persons with Disabilities in Bosnia and Herzegovina, supra note 8, Article 2.

- *to cooperate with other intergovernmental bodies in the Council of Ministers, which also implement actions on the protection of rights of persons with disabilities.*¹⁴⁴

Given its mandate, the Council is a powerful body that seems to act as a promoter and monitor of the rights of persons with disabilities. For example, its competence to advise public officials on the rights of persons with disabilities and to submit new legislative and administrative rules (after being directly involved in their drafting) are activities in accordance with the promotion component of the mechanism. Furthermore, its mandate to monitor the implementation of strategies, action plans, legislative and administrative documents in the area of disability, and to participate in the drafting of the State Report to the UN Committee fits into the *monitoring* component of the mechanism. However, there are still some strong concerns as to why it is doubtful that the Council can perform the tasks and undertake the responsibility of the independent mechanism as such.

Firstly, it does not fulfil the requirements of *independence* set out in the CRPD and the Paris Principles. Against the Paris Principles, representatives of ministries have voting rights within the Council; consequently, the Council is not sufficiently independent of the government. As explained in Section 4.1., Slovenia and Hungary have similar-looking councils, where the independence criterion is even disputed by the Office of the High Commissioner for Human Rights (OHCHR).¹⁴⁵

¹⁴⁵ UN OHCHR, Europe Regional Office, *Study on the Implementation of Article 33 of the CRPD in Europe*, supra note 72, p. 49. See also: Flynn, *From Rhetoric to Action*, supra note 33, p. 272.

More importantly, regardless of the existing “equal voting rights” in the Council in BiH, it is highly questionable which actor has the biggest voice within the Council.¹⁴⁶ The Rules of Procedure were drafted by the Ministry of Human Rights and Refugees without the involvement of any other member.¹⁴⁷ If members of the Council - i.e. persons with disabilities - are not involved in drafting the Rules of Procedure, there is a risk that government officials will outweigh persons with disabilities in every new activity undertaken by the Council.

¹⁴⁶ Decision on Establishment of the Council for Persons with Disabilities in Bosnia and Herzegovina, supra note 7, Article 2

¹⁴⁷ Data based on the interviews with a representative from the Ministry for Human Rights and Refugees and some of the members of the Council.

Moreover, the Council’s mandate is to participate in the submission of the first initial report to the UN Committee on the implementation of the Convention. However, it is unclear from the current research whether persons with disabilities who are members of the Council can participate in writing the report. Interviews conducted with persons with disabilities who are at the same time members of the Council have shown that they have not been asked to provide their own inputs. Two external consultants were hired by the Ministry of Human Rights and Refugees to draft the report after the Ministry had missed the April deadline. The two consultants have asked relevant ministries at the state and entity level to provide their inputs, which the Council should comment upon before including it in their final report, as one of the consultants stated. However, it is still unclear at the moment what are the specific roles of each actor involved in drafting the report.

There are also no indicators that the material necessary for full participation is accessible, or that meetings, discussions and public debates between government officials, consultants, and persons with disabilities have been organized in order to share the existing concerns and include them in the report. This raises questions about how many activities set out in the decision establishing the Council are eventually going to be carried out by the Council. For example, it would be interesting to see how the Council will be able to coordinate activities in different sectors and institutions in BiH.



This brings us to another question - the issue of funding. According to the Decision on Establishment, the work of the Council shall be financed from the budget of BiH Institutions, planned under the budget of the Ministry for Human Rights and Refugees.¹⁴⁸ This implies that the Council does not have a separate budget. Therefore, it is questionable how it will be able to perform any of its functions independently. In addition, members of the Council are not paid for the work in the Council.¹⁴⁹

¹⁴⁸ Decision on establishment of the Council, supra note 7, Article 8.

¹⁴⁹ Ibid.

Finally, its mandate differs from the national framework introduced in the Convention. The Council does not have the competence to “protect” - it cannot receive complaints nor conduct public inquires. Therefore, in addition to its composition, it does not fulfil the CRPD requirements because of its mandate.

In sum, the Council could probably assume some of the promotional and monitoring duties of the implementation of the CRPD. However, the task of promoting and monitoring will be limited due to its lack of funding resources and it will be dependent on the support provided by the Council of Ministries. In other words, due to the lack of external funding, the Council does not function as a financially independent body.

On the basis of everything said, it is apparent that the Council does not meet the criterion to be designed as the independent mechanism.

4.1.2. Organizations of Persons with Disabilities

As stressed above, representatives of the BiH ministries perceive the organizations of people with disabilities as the ultimate representatives of *independence* because they have the right to submit shadow reports to the UN Committee. Moreover, according to the main stakeholders, they find organizations of persons with disabilities involved in influencing (and even creating) disability policies and practices within the Council for Persons with Disabilities.

It is incontestable that organizations of people with disabilities have so far played the most important role in BiH in pushing forward policy-making strategies regarding the otherwise sidelined disability issues. They presented the majority of actors involved in drafting the Disability Policy and entity strategies. Eventually, these organizations successfully convinced the BiH authorities to ratify the Convention. Currently, most of their work focuses on awareness-raising and public education campaigns through disseminating information on the rights of persons with disabilities¹⁵⁰, by translating the CRPD in Braille and easy to read and understand language¹⁵¹, and by translating and publishing relevant documents about disability issues. They also founded *Uspon* and *Fontana*, two social enterprises established in order to provide professional support to persons with disabilities.¹⁵² The Association for Assistance to Persons with Mental Disabilities from Banja Luka keeps statistics on people with mental disabilities in Republika Srpska. The entity strategies have an entire section devoted to strengthening organizations of people with disabilities and their role in improving the status of persons with disabilities.¹⁵³

¹⁵⁰ See Information Centre for Persons with Disabilities “Lotos” Tuzla, <http://ic-lotos.org.ba/>

¹⁵¹ Data gathered during interviews in organizations of people with disabilities. See also Sumero, <http://www.sumero.ba/index.php?lang=en> and Association of Blind Persons Canton Sarajevo, <http://www.slijepi-sa.org.ba/>.

¹⁵² See their official websites <http://www.uspon.ba> and <http://fontana.org.ba>.

¹⁵³ Strategy on improvement of social status of persons with disabilities in Republika Srpska; Strategy for equalization of opportunities of persons with disabilities in Federation of Bosnia and Herzegovina, supra note 5.

Would it be possible for the Bosnian organizations of people with disabilities to carry out the tasks of the independent mechanism in BiH? As Section 4.1. stressed, most of the studied EU countries in one way or another include representative organizations of people with disabilities in

¹⁵⁴ UN GA, OHCHR, *National mechanisms for implementation and monitoring*, supra note 26, p. 11, para 46.

their independent monitoring mechanisms as it is one of the main requirements under Article 33 (3) of the UN CRPD. However, until now none of the reviewed EU countries would have assigned the role of independent mechanism to organizations of people with disabilities. Reasons for that vary: for example, although NGOs by definition enjoy great structural independence from the executive, the actual degree of independence fluctuates and is generally not legally guaranteed.¹⁵⁴

During interviews with specialized organizations of people with disabilities across BiH, all of the approached representatives were of the opinion that they cannot undertake the responsibility of the independent mechanism. They listed the following reasons: incoherence of these organizations (including discrimination and segregation); insufficient competence; and, as one of the representative said, "lack of a clear idea who could coordinate, organize and finance this kind of *activity*". However, by all means, their involvement in the independent monitoring mechanism remains one of the most important requirements and should not be ignored by Bosnian policy makers. They are closest to persons with disabilities and have the most extensive expertise in the field of rights of persons with disabilities in general.¹⁵⁵ They can also help the independent mechanism to communicate with local communities. On the other hand, organizations of people with disabilities can channel their demands to BiH authorities by using the independent mechanism.¹⁵⁶

¹⁵⁵ See De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, pp 88-92.

¹⁵⁶ *Ibid.*

Moreover, Article 33 (3) stipulates that, "civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process".¹⁵⁷ Therefore, organizations of people with disabilities should either be members of the independent mechanism or be able to effectively cooperate with it and influence its decision-making processes. In addition, social and professional organizations, such as medical associations and qualified experts, which are concerned with disability rights, should be involved in its work as well. Government representatives should also be included but only in an advisory capacity.

¹⁵⁷ Article 33(3), CRPD, supra note 9.

4.1.3 The Institution of Human Rights Ombudsman of Bosnia and Herzegovina

Bosnia and Herzegovina should "maintain, strengthen, designate or establish" an independent mechanism taking into account the Paris Principles. As already noted, the Paris Principles outline the responsibilities, composition, and working methods of National Human Rights Institutions (NHRIs). If the NHRIs are mentioned in Article 33(2), it is because these institutions were the very inspiration for the Convention.¹⁵⁸ NHRIs are not concerned with the implementation of human rights, but with promotion, protection and monitoring in the same way as the independent mechanism.¹⁵⁹ The Office of High Commissioner for Human Rights (OHCHR) is of the opinion that assigning NHRIs the role of the independent mechanism "can be considered as the safest option in order to have independent mechanisms comply with the Paris Principles. Their accreditation by the Subcommittee on Accreditation of the International Coordinating Committee guarantees their independence and pluralism as well as their broad mandate and powers."¹⁶⁰

¹⁵⁸ De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, p. 103

¹⁵⁹ *Ibid.*

¹⁶⁰ UN OHCHR, Europe Regional Office, *Study on the Implementation of Article 33 of the CRPD in Europe*, supra note 72, p. 48

¹⁶¹ Law on Ombudsman for Human Rights of Bosnia and Herzegovina, Article 1, available at: <http://www.ombudsmen.gov.ba/DefaultEn.aspx?URL=3> last access date: 10/05/2012.

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (Ombudsman) is the Bosnian NHRI. The Ombudsman is an independent body that aims to promote the rule of law and protect human rights and fundamental freedoms of all persons and legal entities in Bosnia and Herzegovina in accordance with the Constitution of Bosnia and Herzegovina and all international human rights instruments.¹⁶¹



The Ombudsman Institution of BiH was established by Annex 6 of the Framework Agreement for Peace in BiH in 2004. The Ombudsman is guided by the Paris Principles, and has been granted the A-status by the International Coordination Committee.¹⁶² It has a separate budget that is determined by the Parliament of BiH. The Ombudsman employs its own staff and determines its own priorities and its overall strategy. According to its strategy, its vision is to evolve into a powerful national human rights mechanism, which will be able to ensure the enjoyment of human rights for all in Bosnia and Herzegovina.¹⁶³ It has established regional offices, with the aim to make the Institution accessible to citizens as much as possible.

The work of the Ombudsman is guided by the following principles:

- *independence of all the state authorities in carrying out its function;*
- *financial independence;*
- *impartiality and self-reliance in work;*
- *efficient implementation of the international and local human rights framework;*
- *acting upon the lodged complaints and ex officio in cases involving the poor functioning or violations of human rights and liberties committed by any government body in the course of which it may undertake general investigations and recommend appropriate individual and/or general measures;*
- *conducting investigations upon all complaints made about the poor functioning of the judicial system or the poor administration of an individual case and recommending the appropriate individual or general measures;*
- *not interfering with adjudicative functions of the court, but with possibility to initiate court proceedings or intervene in pending proceedings, whenever it is found that such action is necessary for the performance of its duties;*
- *obligation of the government authorities to provide the Ombudsman with appropriate assistance in its investigations and inspections.*¹⁶⁴

Its main duty is to handle complaints by individual or legal persons about human rights violations committed by any body in BiH. The Ombudsman can act *ex officio* as well. In case it recognizes some violations of rights, it can issue recommendations to competent organs to undertake measures to restore them. Moreover, it can provide assistance to citizens in how to use the most adequate legal remedies or which institution to address. However, it cannot provide assistance to persons in domestic courts.¹⁶⁵

The Institution of Ombudsman has seven departments; one of which is the Department for Protection of Persons with Disabilities.¹⁶⁶ According to its strategy, it is guided by the principle of "split responsibilities", i.e. the involvement of internal or external partners.¹⁶⁷ The Ombudsman is maintaining continuous consultations with the NGO sector and state authorities and maintains an open dialogue with citizens.¹⁶⁸

It has an extensive expertise in the protection of rights of persons with disabilities in BiH. The Department for Protection of Persons with Disabilities has already received and registered multiple complaints for violations of rights and freedoms and has acted also *ex officio* in cases related to violations of rights of persons with disabilities.¹⁶⁹ Moreover, the Department monitors the harmonization of laws and other policies in BiH related to the protection of rights and interest of persons with disabilities. It reports about its monitoring activities to the public and submits recommendations to BiH authorities.

¹⁶² See Chart of the Status of National Institutions. Accredited by the International Coordinating Committee of National Institutions for Promotion and Protection of Human Rights, available at: [http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NHRI%20\(DIC%202011\).pdf](http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NHRI%20(DIC%202011).pdf)

¹⁶³ Work Strategy of Human Rights Ombudsman of Bosnia and Herzegovina for period 2010-2014, available at: http://www.ombudsmen.gov.ba/docs/Strategija_2010-2014en.pdf last access date: 07/05/2012

¹⁶⁴ Law on Human Rights Ombudsman Institution, supra note 161, Articles 2, 4 and 25; Pravila postupka Ombudsmena za ljudska prava [Rules of Procedure governing the functioning of the Human Rights Ombudsman of BiH], Articles 3, 4, available (on Bosnian): <http://www.ombudsmen.gov.ba/Default.aspx?jezik=Bos&URL=3>

¹⁶⁵ See: <http://www.ombudsmen.gov.ba/DefaultEn.aspx?URL=4>

¹⁶⁶ Work Strategy of Human Rights Ombudsman of Bosnia and Herzegovina, supra note 163, p. 5.

¹⁶⁷ *Ibid.*, p. 7.

¹⁶⁸ *Ibid.*

¹⁶⁹ See the official webpage: <http://www.ombudsmen.gov.ba/DefaultEn.aspx?URL=8>

¹⁷⁰ BiH Law on prohibition of discrimination, Article 10 available at: <http://www.unhcr.org/refworld/pdfid/4d302a9f2.pdf>, last access date: 14/05/2012

The Ombudsman Institution is the key institution mandated to prevent discrimination in BiH.¹⁷⁰ Furthermore, there are indicators that the Ombudsman Institution of BiH could be designated as the National Preventive Mechanism (NPM) as required by the Optional Protocol of the Convention against Torture (OPCAT). Therefore, it would be quite simple for the Ombudsman to expand its mandate and include people placed in institutional care.

Currently, there are three identified external and internal weaknesses for the Ombudsman to take over the independent mechanism in BiH. The first one is its lack of human resources and time to promote, protect, and monitor the Convention because of the amount of its existing duties. Therefore, it would be necessary to strengthen its capacities and expand its human resources by at least two additional staff members. Although this requires additional funds, this option is more cost effective than creating a new institution, as explained in the beginning of this chapter. The second weakness is the Ombudsman's low engagement in the promotion of international human rights. For that reason, it would be necessary to strengthen the Ombudsman's role in awareness rising activities in BiH. The recommendation part of this study will provide suggestions on which activities the Ombudsman Institution should take in order to promote human rights of persons with disabilities. Finally, the Ombudsman Institution does not have the means of coercion in order to have its recommendations implemented, which leads to low realization of its recommendations. In 2011, the Department on the Protection of the Persons with Disabilities issued a total of ten recommendations, of which only six were realized.¹⁷¹ For that reason, it is necessary to strengthen the interests of the authorities to cooperate with the Ombudsman Institution in order to eliminate the causes that led to the violation of human rights.

¹⁷¹ Human Rights Ombudsman of BiH, *Annual Report on Results of the Activities by the Human Rights Ombudsman of BiH for 2011*, p. 71, available: <http://www.ombudsmen.gov.ba/PublikacijeEn.aspx?category=Annual Reports> last access date: 14/05/2012



5. Conclusion and Recommendations

Based on the previous analysis, the author recommends that the duties of the national monitoring framework should be taken over by an independent authority that would fulfil the requirements stemming from the Convention on the Rights of Persons with Disabilities and at the same time by a body with sufficient experience in the field of prevention of violations and protection of human rights of persons with disabilities in BiH. In addition, this body has to carry out its mandate of promotion, protection and monitoring in cooperation with civil society, especially with persons with disabilities and their representative organizations. Using an already existing institution would facilitate this process and be more cost effective. In light of these findings, the author suggests designating the tasks of the national monitoring mechanism in BiH to the Ombudsman Institution of Bosnia and Herzegovina and providing it with additional funds and staff.

To ensure timely implementation of the obligations stemming from the CRPD:

The Ministry for Human Rights and Refugees, in cooperation with the Ombudsman Institution, relevant ministries in BiH and NGO's, particularly organizations of persons with disabilities in BiH, shall find an appropriate legal solution on designation of the Ombudsman Institution for Human Rights of Bosnia and Herzegovina as the national independent monitoring mechanism outlining its functions, independence, and all other relevant competences.

The Council of Ministries of BiH, in cooperation with the BiH Council of Persons with Disabilities, shall consider the proposed legislative solution and make a conclusion about the same.

The Ministry of Finance, in cooperation with the Ministry for Human Rights and Refugees shall find a solution to secure funds from the Budget of BiH Institutions and international obligations of BiH so that the Ombudsman Institution - its Department for the Protection of Persons with Disabilities - could perform the functions of the independent mechanism. Furthermore, BiH authorities need to draw upon international cooperation in order to ensure the framework receives public funds to perform its monitoring tasks.

The Ombudsman Institution should change its Rules of Procedure as to define its mandate to promote, protect and monitor the CRPD. In addition, to ensure adequate human resources, the Ombudsman Institution, in the time of submitting its financial plan to the Ministry of Finance, should request funds for the employment of two additional members in the Department for the Protection of Persons with Disabilities and additional financial resources to perform its functions. In this sense, the Ombudsman Institution should develop a strategic plan on how it will perform its independent monitoring functions. Accordingly,

The **Institution of Ombudsman**, in order to fulfil its responsibility *to promote*, should:

1. Organize awareness-raising and public education campaigns, by:
 - a. developing a plan on promotion of the CRPD rights in consultation with persons with disabilities;
 - b. disseminating information on the CRPD rights;
 - c. educating persons with disabilities on the CRPD rights;

¹⁷² Recommendations have been drafted based on the recommendations developed by the Mental Disability Advocacy Center (MDAC), European Foundation Centre (EFC), and local realities. Representatives of several organizations of people with disabilities in the country have provided their inputs of what promotion aspect should be included.

- d. training and advising executive and legislative bodies on the rights of person with disabilities and recommend new legislative and administrative rules;
- e. organizing trainings on the CRPD for lawyers and judges;
- f. encouraging education systems in BiH to integrate disability into human rights education (law faculties and human rights institutions should be encouraged to include the rights of persons with disabilities in their curricula, teaching and research);
- g. collaborating with schools, universities, other educational institutions, medical, social and other relevant institutions;
- h. reviewing and disseminating the jurisprudence of the UN treaty bodies;
- i. producing and distributing material on complaint procedures under the Optional Protocol to the CRPD;
- j. organizing campaigns and other awareness-raising activities about the CRPD in the media.¹⁷²

2. Promote harmonization of the national law and practice with the CRPD.

In order to fulfil its obligation to monitor, the Ombudsman Institution should:

1. Develop strategic monitoring plan, that is:

- a. identify relevant "duty-bearers", including the ministries with responsibilities related for the realization of the rights set out in the Convention at state, entity, cantonal, and Brcko District level;
- b. identify organizations of persons with disabilities in the monitored areas in order to ensure a cross-disability and cross-society focus (e.g. only few organizations in BiH have a cross-disability membership, while most represent people with a particular type of impairment, such as visual impairment or a psychosocial disability, or particular groups of people, such as war veterans.);
- c. build knowledge and skills of persons with disabilities in organizations of people with disabilities to understand human rights principles and concepts; to empower persons with disabilities to act as monitors;
- d. provide universal access to capacity-building activities. In order to ensure that monitoring and capacity building activities are indeed accessible to all, it is necessary to:
 - produce material in all formats and languages necessary for full participation;
 - ensure adequate description of the information conveyed through visual aids (e.g. computer slide presentations) and its user- and reader-friendly presentation;
 - ensure allocation of adequate time during all meetings, training session, and similar activities, and involve all necessary interpreters/facilitators to ensure that persons who are deaf, deaf-blind, with intellectual disabilities or who use alternative communication both to understand others and to communicate their own ideas.
- e. develop evaluation indicators;
- f. facilitate consultations between civil society, DPOs and the government (in the reporting process).

2. Examine the compliance of both BiH legislation and practice with the CRPD - not just the conformity with the CRPD, but also some broader implications, by:

- a. examining existing laws, programmes and practices and make recommendations for their harmonization with the CRPD;



- b. monitoring and commenting upon the development of new laws;
 - c. undertaking formal investigations on issues of grave or systematic violations of the CRPD, on the basis of both individual complaints and general observations;
 - d. carrying out research into the lived experience of persons with disabilities, including field visits to their homes, especially institutions.
3. Conduct public inquiries, studies or reports on particular issues, which will serve as the basis for recommendations and reporting to the state authorities on the progress made and can help promote respect for rights and raise public awareness.
 4. Foster a national debate on a specific set of rights of persons with disabilities;
 5. Remind BiH of its obligation to submit a report to the UN Committee on time;
 6. Submit a parallel report to the UN Committee;
 7. Ensure a follow up to the concluding observations of the UN Committee;
 8. In case of grave and systematic breaches of the CRPD rights, alert the UN Committee to conduct inquiry.

In order for the Ombudsman to perform the functions of *protection*, it should undertake the following activities:

1. Handle complaints of alleged violations of the CRPD rights reported by persons with disabilities and make recommendations to government to comply with the CRPD.¹⁷³
2. Help persons with disabilities to introduce complaints before domestic courts, regional and international bodies, including the UN Committee
3. Lobby in the government to provide legal aid throughout the territory of BiH so that people with disabilities can bring alleged violations of the CRPD to local courts.

¹⁷³ The Ombudsman Institution already receives complaints filed by persons with disabilities.

Finally, the Ombudsman Institution must *involve* persons with disabilities and their representative organizations in its activities of promotion, protection and monitoring of the UN Convention, through:

1. Including persons with disabilities as monitors and experts;
2. Organizing open discussions with organizations of people with disabilities;
3. Allowing organizations of people with disabilities to enter formal Memoranda of Understanding with the Ombudsman;
4. Investigate any law or policy not developed in close consultations and active involvement of persons with disabilities.

Furthermore, as already noted, representatives of ministries should be involved as well, but only in an advisory capacity.

There is no consensus on whether the independent mechanism should contribute to the state report submitted to the UN Committee.¹⁷⁴ However, according to the Paris Principles, it should.¹⁷⁵ We believe that the Ombudsman Institution of BiH should not do this, though. It has a monitoring function like UN Committee on the Rights of Persons with Disabilities to which the report is submitted.¹⁷⁶ Instead, it should submit comments on the official State Report or submit a parallel shadow report. Also, after the UN Committee sends its observations, the Ombudsman Institution can ensure a follow up by organizing meetings in which key actors will discuss these observations.¹⁷⁷ The Ombudsman should urge BiH to implement the proposed recommendations.

¹⁷⁴ De Beco, *Article 33(2) of the Convention on the Rights of Persons with Disabilities*, supra note 30, p.101

¹⁷⁵ See Principle 3(d) A. Competence and responsibilities, Paris Principles, supra note 61.

¹⁷⁶ Ibid.

¹⁷⁷ Seidensticker, I., *Examination of State Reporting by Human Rights Treaty Bodies. An Example of Follow-Up at the National Level by National Human Rights Institutions*, German Institute for Human Rights, Berlin, 2005.

Finally, we hope this study will gain support by persons with disabilities, their representative organizations, other civil society organizations concerned with human rights, international organizations, which will alert (and help) the BiH government to fulfil its obligation stemming from the Convention, and designate the role of independent mechanism to the Ombudsman Institution of BiH.



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Annex

Questionnaire

A. GENERAL INFORMATION ABOUT THE RESPONDENT

- 1. Name of the institution/organization:**
- 2. First and last name of the respondent:**
- 3. Respondent's position in the organization:**
- 4. Are you a member of a team or department, which is particularly involved in rights of persons with disabilities?**

Yes No

B. Translation of the Convention and the Optional Protocol

- 1. Do you know if the Convention on the rights of persons with disabilities has been translated to the BiH official languages?**

Yes No

If your answer is affirmative, do you know if persons with disabilities (PWD) and organizations representing them and other civil society organizations have been involved in the process of translation?

Yes No

If yes, in which way?

Your answer:

- 2. Has your organization/institution participated in the process of translation?**

Yes No

- 3. Do you know if the text of the Convention has been translated into accessible formats for persons with disabilities?**

Braille:	Yes	No
Enlarged print:	Yes	No
Electronic version:	Yes	No
Sign language:	Yes	No
Easy-to-read-and-understand:	Yes	No
Other:		

- 4. Do you know if the Optional Protocol has been translated to the BiH official languages and accessible formats for PWD?**

Yes No

C. The Council for Persons with Disabilities of BiH

- 5. The Council of Ministers has adopted the Decision on forming the Council for Persons with disabilities of BiH.**



a) Based on your knowledge, has the Council adopted the Rules of Procedure of the Council?

Yes No

b) Based on your knowledge has this Council started operating?

Yes No

If yes, do you know what were the first activities undertaken by the Council?

Your answer:

6. In your opinion, does the composition of the Council ensure representation of persons with different types of disabilities?

Yes No

Persons with physical disabilities

Persons with sensory disabilities

Persons with mental health disabilities

Persons with intellectual difficulties

Persons with autism

Other:

D. Implementation of the Convention and Involvement of Persons with Disabilities

7. Based on your knowledge, has BiH developed a program for implementation of the Convention?

Yes No

If yes, has your organization/institution participated in drafting the program?

Yes No

If yes, in which way?

8. Based on your knowledge, has a review of the domestic legislature and policies been undertaken (or will be undertaken) in light of the legal obligations towards the Convention?

Yes No

9. Based on your knowledge, who will be/has been consulted in the review?

Your answer:

10. Is your organization/institution involved in the review process?

Yes No

If yes, in what way?

Your answer:

11. Has/will the national review been/be published and/or been/be subject to a parliamentary debate?

Your answer:

12. Do you know what legal, political and/or practical measures have been taken in order to ensure participation of PWDs and their representative organizations in the development and implementation of disability policies?

Your answer:

13. Generally speaking, are persons with different types of disabilities enabled to fully participate in the adoption of laws and policies regarding their rights? For example, have materials been produced in all forms and languages necessary for their full participation?

Yes	No		
Braille:		Yes	No
Enlarged print:		Yes	No
Electronic version:		Yes	No
Sign language:		Yes	No
Easy-to-read-and-understand:		Yes	No
Your comment:			

14. In your opinion, in which way are persons with disabilities, their representative organizations and other civil society organizations involved?

Providing information	<input type="checkbox"/>
Consulting	<input type="checkbox"/>
Active involvement	<input type="checkbox"/>
Empowering	<input type="checkbox"/>
Other:	<input type="checkbox"/>
Your comment:	<input type="checkbox"/>

15. Generally speaking, in your opinion, to which extent does the government involve persons with disabilities in issues regarding their rights?

Satisfactory/Sufficient	<input type="checkbox"/>
Insufficient	<input type="checkbox"/>
Other	<input type="checkbox"/>

16. Based on your knowledge, what is the number of organizations in BiH representing persons with disabilities?

Number of organizations:

17. Do you know if BiH has collected statistical data (Article 31 of the Convention) about persons with disabilities?

Yes	No
Do you know which ministry is responsible for collecting such data?	
Your answer:	

18. The Institution of Ombudsman has on a number of occasions issued Reports on violations of rights of persons with disabilities. Has your organization/institution participated in the drafting of such reports?

Yes	No
If yes, in what ways?	

E. Respondent's organization/institution
--

19. We kindly ask you to briefly present the projects that you have carried out regarding the protection of rights of persons with disabilities / involvement of persons with disabilities?



Number of projects:

Types of projects:

20. Has your organization/institution actively involved persons with disabilities, their representative organizations and other civil society organizations in the drafting and realization of activities?

Yes No

If yes, have various organizations which represent persons with different types of disabilities had the opportunity to participate?

Yes No

Persons with physical disabilities

Persons with sensory disabilities

Persons with mental health disabilities

Persons with intellectual difficulties

Persons with autism

Other:

If yes, has the Organization/Ministry provided access to persons with disabilities and their representative organizations to all documents necessary for full participation?

Yes No

If yes, were such documents available in accessible formats, so that persons with different types of disabilities could fully participate?

Braille: Yes No

Enlarged print: Yes No

Electronic version: Yes No

Sign language: Yes No

Easy-to-read-and-understand: Yes No

Your comment:

If yes, in which ways did PWDs and their representative organizations participate?

Informed

Consulted

Directly involved in the writing and drafting of reports

Other

21. Does your organization/institution employ persons with disabilities?

Yes No

If yes, which types of disabilities:

Which positions:

F. Report to the UN Committee on the Rights of Persons with Disabilities

22. The deadline for filing a preliminary report for Bosnia and Herzegovina to the UN Committee on the Rights of Persons with Disabilities on the progress and implementation of the Convention is 11 April 2012. Do you know if BiH has started drafting the report?

Yes No

If yes, in your knowledge is the civil society, especially PWDs and their representative organizations involved in the drafting of the report?

Yes No

If yes, do you know which measures were taken in order for persons with disabilities and their representative organizations, as well as other civil society organizations to be involved in writing the report?

- a) Material necessary for full participation is accessible to organizations which represent persons with different types of disabilities (Braille, enlarged print, sign language, etc.).

Yes No

- b) Meetings, discussions, and debates were organized between the government and persons with disabilities, and their representative organizations in order for them to be consulted and actively involved in writing the report.

Yes No

- c) Persons with disabilities, their representative organizations other civil society organizations were invited to provide their input.

Yes No

- d) Other:

23. Was your organization/institution involved in drafting the initial country report to the UN Committee on the Rights of Persons with Disabilities?

Yes No

If yes, please comment to what extent and in what way:

24. Based on your knowledge, is the Council for Persons with Disabilities involved in drafting the report?

Yes No

25. Based on your knowledge, is civil society, especially organizations representing persons with different types of disabilities, planning on filing a separate report to the Board?

Yes No

Your comment:

26. BiH has ratified the Optional Protocol by which it has concurred with the competence of the UN Committee to receive and consider appeals by individuals or groups of individuals, which claim to have been victims of violations of rights from the Convention.

- a) Do you know if PWDs and their representative organizations have been informed of this competence of the committee and their right to appeal?

Yes No

- b) Do you know if this right has been used?

Yes No

G. Focal points, Article 33 (1) of the UN Convention



27. Based on your knowledge, has BiH designated one or more focal points within the government for issues regarding the enforcement of the Convention?

Yes No

If your answer is affirmative, please specify which department.

Your answer:

28. Also, please specify,

- a) which consultations were organized before designating the focal points,
- b) were the focal points designated by law or differently,
- c) at what level of government were the focal points designated,
- d) which funds were designated for the focal points, the level of coordination between focal points, other branches of the government, civil society, the Council for Persons with Disabilities and other organs responsible for implementation and monitoring of the Convention.

29. Based on your knowledge, has BiH established/appointed a coordination mechanism within the government which will enable a connected activity in different sectors and at different levels?

Yes No

If yes, please specify what constitutes the coordination mechanism:

H. Independent mechanism, Article 33 (2) of the UN Convention

30. Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities, obliges BiH to set up or appoint independent mechanisms which will promote, protect the rights of persons with disabilities and monitor the implementation of the Convention. Is there a law, which sets up independent mechanisms from Article 33 (2)?

Yes No

If no, in your opinion, what body should be appointed as the independent mechanism? It is possible to appoint a number of organs.

- | | |
|--|--------------------------|
| The Institution of Ombudsmen for Human Rights of BiH | <input type="checkbox"/> |
| The public attorney's office | <input type="checkbox"/> |
| Inspection services | <input type="checkbox"/> |
| Non-governmental sector | <input type="checkbox"/> |
| Organizations of persons with disabilities | <input type="checkbox"/> |
| Organizations for human rights | <input type="checkbox"/> |
| Research institutions | <input type="checkbox"/> |
| The institution of Ombudsman and the non-governmental sector | <input type="checkbox"/> |
| Other: | <input type="checkbox"/> |

Your comment:

31. Based on your knowledge, has the government organized activities for raising awareness on the assignment and the right to participate in the process of monitoring?

Yes No

If yes, please describe which legal, political and/or practical measures should be taken to secure participation of persons with disabilities in monitoring the implementation of the Convention?

32. Generally speaking, in your opinion, what are the main obstacles that PWDs and their representative organizations are faced with regarding their involvement in the implementation of the Convention and the monitoring process?

Your answer:

33. What is your opinion about the extent to which PWDs are aware of local politics and their legal rights?

Your answer:

34. Please state your additional comments:





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A "Policy Development Fellowship Program" has been launched by the Open Society Fund BiH in early 2004 with the aim to improve BiH policy research and dialogue and to contribute to the development of a sound policy-making culture based on informative and empirically grounded policy options.

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