

**Assessing the Article 33 (2-3)
framework required under the
Convention on the Rights of Persons
with Disabilities**

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Table of contents

1. Introduction.....	1
2. Assessment by the Committee on the Rights of Persons with Disabilities of the Article 33 (2-3) framework required under the Convention on the Rights of Persons with Disabilities ...	3
2.1 Outline of the section.....	3
2.2 Overview of the Convention on the Rights of Persons with Disabilities	3
2.3 Introduction to Article 33 (2-3) of the Convention on the Rights of Persons with Disabilities	4
2.4 General standards set by the Committee on the Rights of Persons with Disabilities for assessing Article 33 (2-3) frameworks	6
2.4.1 Requirements relating to the scope of the mandate and activities of Article 33 (2-3) frameworks	7
2.4.2 Role of the Paris Principles in requirements for Article 33 (2-3) compliance.....	10
2.4.3 Requirements relating to the independence of Article 33 (2-3) frameworks	10
2.4.4 Requirements relating to the powers of, and state responses to, Article 33 (2-3) frameworks	12
2.4.5 Requirements relating to the cooperation of Article 33 (2-3) frameworks with national and international actors.....	13
2.4.6 Requirements relating to the participation and involvement of persons with disabilities in the Article 33 (2-3) frameworks	17
2.5 Application of standards by the Committee on the Rights of Persons with Disabilities in assessing Article 33 (2-3) frameworks	19
2.5.1 Application of requirements connected to the scope of the mandate and activities of Article 33 (2-3) frameworks	20
2.5.2 Application of requirements connected to the independence of Article 33 (2-3) frameworks	22
2.5.3 Application of requirements connected to the resources of Article 33 (2-3) frameworks	24
2.5.4 Application of requirements connected to the appointment of members and staff of Article 33 (2-3) frameworks	25
2.5.5 Application of requirements connected to the state responses to recommendations by Article 33 (2-3) frameworks	26
2.5.6 Application of requirements connected to the participation and involvement in Article 33 (2-3) frameworks	26
2.5.7 Application to Article 33 (2-3) frameworks of requirements connected to normative sources.....	29

2.5.8 Application to Article 33 (2-3) frameworks of requirements connected to recommendations by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions	31
3. Assessment by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions of the Article 33 (2-3) frameworks required under the Convention on the Rights of Persons with Disabilities	33
3.1. Outline of the section.....	33
3.2. Overview of the Paris Principles.....	33
3.3. General standards set by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions for assessing Article 33 (2-3) frameworks.....	34
3.4 Application of standards by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions in assessing Article 33 (2-3) frameworks.....	38
4. Conclusions.....	44
5. Sources	47
International Conventions.....	47
United Nations Documents	47
Global Alliance of National Human Rights Institutions Documents	51

1. Introduction

Like earlier UN human rights conventions, the Convention on the Rights of Persons with Disabilities [hereinafter the CRPD] establishes an international mechanism to monitor its implementation: the Committee on the Rights of Persons with Disabilities [hereinafter the CRPD Committee].¹

In addition, Article 33 of the CRPD goes beyond most of its predecessors by explicitly requiring a *national* infrastructure for implementation and monitoring. Article 33 (1) requires the executive branch of government to establish national focal points and coordination mechanisms to ensure systematic implementation of the CRPD. Moreover, Article 33 (2) requires the national infrastructure for implementation and monitoring to include a framework which functions *independently* from the executive branch. States parties to the CRPD are obliged to “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”. A central requirement on both the executive and the independent dimensions of this national infrastructure, per Article 33 (3), is that “[c]ivil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully” in all of their work to implement and monitor the implementation of the CRPD.

This report focuses on the independent national framework required of States parties to the CRPD pursuant to its Article 33 (2-3). It presents the criteria stipulated and applied by the CRPD Committee to assess the compliance of such a framework with Article 33 (2-3). The report also presents the criteria stipulated and applied by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions [hereinafter the SCA] to assess the compliance of a designated CRPD Article 33 (2-3) framework with the Principles relating to the Status of National Institutions [hereinafter the Paris Principles].²

¹ Convention on the Rights of Persons with Disabilities [hereinafter the CRPD], Article 34. Adopted 13 December 2006. Entered into force 3 May 2008.

² United Nations General Assembly, Principles relating to the Status of National Institutions [hereinafter the Paris Principles], 1993, UN Doc: A/RES/48/134. The Paris Principles were adopted by the United Nations Human Rights Commission by Resolution 1992/54 of 1992, and subsequent to that by the United Nations General Assembly in its Resolution 48/134 of 1993.

The Global Alliance of National Human Rights Institutions [hereinafter GANHRI] confers membership on a National Human Rights Institution [hereinafter NHRI] and accords it A or B status based on its degree of compliance with the Paris Principles, further to an assessment performed by the SCA.³ While neither the CRPD nor the Paris Principles require an NHRI to be, or be part of, a CRPD Article 33 (2-3) framework, NHRIs are designated as such. In such cases, the assessment by the SCA of an NHRI includes an assessment of its mandate and function within the national CRPD Article 33 (2-3) framework.⁴

In sum, in order to provide a comprehensive account of the international guidance available also to States parties to the CRPD who have designated an NHRI as the, or part of the, national CRPD Article 33 (2-3) framework, this report covers the assessment criteria applied to said framework by both the CRPD Committee and the SCA.

³ See Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation General observations [hereinafter SCA General observations], 21 February 2018, p. 1; Global Alliance of National Human Rights Institutions Statute, adopted 15 March 2023; and Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation Rules of procedure [hereinafter SCA Rules of procedure], adopted 4 March 2019.

⁴ SCA General observations, p. 46-48.

2. Assessment by the Committee on the Rights of Persons with Disabilities of the Article 33 (2-3) framework required under the Convention on the Rights of Persons with Disabilities

2.1 Outline of the section

This section of the report focuses on the requirements stipulated and applied by the CRPD Committee when assessing the compliance of national Article 33 (2-3) frameworks with the CRPD. Below follows an overview of the CRPD, followed by an introduction to Article 33 (2-3). Subsequently, an analysis is provided of how the CRPD Committee has interpreted and elaborated the requirements in Article 33 (2-3) in their general guidance to States parties to the CRPD. Finally, an analysis is provided of how the CRPD Committee has applied the requirements in Article 33 (2-3) in their assessments of individual national Article 33 (2-3) frameworks.

2.2 Overview of the Convention on the Rights of Persons with Disabilities

The CRPD complements earlier human rights conventions by elaborating on the specific entitlements and State obligations human rights create in relation to persons with disabilities. It covers every aspect of life addressed in preceding human rights conventions, and spells out the legal consequences for persons with disabilities of human rights principles such as autonomy, dignity, equality, participation and respect for diversity.⁵

The CRPD specifies that which States parties must do to implement its rights, including to legislate, adopt policies, educate the public as well as professionals, ensure the active involvement of organisations of persons with disabilities, measure implementation through data, statistics and analysis, and engage in international cooperation.⁶

As mentioned above, the CRPD establishes an international mechanism for monitoring and guiding the implementation of the CRPD by States parties. The CRPD Committee evaluates reports compiled by States parties on the state of their implementation of the rights in the

⁵ CRPD, Articles 1-30.

⁶ CRPD, Articles 4, 31 and 32.

CRPD and issues Concluding observations in relation to each state⁷; issues General comments and guidelines to provide general guidance to all States parties in their implementation of the CRPD⁸; conducts inquiries into grave and systematic violations of the CRPD and adopts a report with its findings⁹; and considers complaints from individuals and groups who experience violations of the rights in the CRPD and adopts its views on such violations¹⁰. The international guidance and monitoring provided by the CRPD Committee is complemented on the domestic level by the national independent framework for promoting, protecting and monitoring the implementation of the CRPD required in Article 33 (2-3). This framework is the focus of this report and is introduced in more detail below.

2.3 Introduction to Article 33 (2-3) of the Convention on the Rights of Persons with Disabilities

Sections 2 and 3 of Article 33 on National implementation and monitoring are here reproduced in their entirety:

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.

⁷ CRPD, Article 36.

⁸ CRPD, Article 39.

⁹ Optional Protocol to the Convention on the Rights of Persons with Disabilities [hereinafter OP-CRPD]. Adopted 13 December 2006. Entered into force 3 May 2008. Articles 6-8.

¹⁰ OP-CRPD, Articles 1-5.

A number of criteria for assessing the compliance of a national framework with Article 33 (2-3) emerge directly from the text. Firstly, 33 (2) gives that the scope of its mandate and activities must be *broad* in terms of functions: promoting the implementation and enjoyment of the rights in the CRPD, monitoring the implementation and enjoyment of the rights in the CRPD, and protecting the enjoyment of the rights in the CRPD. Moreover, Article 33 (2) gives “the present Convention” in terms of substantive coverage, subsuming the entirety of the rights protected in the CRPD.

Secondly, 33 (2) explicitly leaves it to the State party to decide whether Article 33 (2-3) is to be executed in its entirety by one actor, or by multiple actors.

Thirdly, the key distinction between the actors required under 33 (1) and those required under 33 (2) is that while the former are part of the executive branch, the latter must be independent from it. The independence requirement attaches to any actors included by the State party in the 33 (2-3) framework.

Fourthly, 33 (2) stipulates an explicit requirement that the actor or actors chosen to fulfil this mandate shall reflect them having been designated or established “tak[ing] into account” the Paris Principles. This creates a bridge from the obligations of States parties under the CRPD to the requirements stipulated in the Paris Principles. It is important to note that the requirements in the Paris Principles are applicable to a 33 (2-3) framework irrespective of whether the framework consists of, or contains, an NHRI or not.

Fifthly, one aspect of the work of the 33 (1, 3) and 33 (2-3) frameworks alike is accorded enough importance to warrant a dedicated provision. 33 (3) requires that civil society, and notably persons with disabilities and their representative organisations, are “involved and participate fully in the monitoring process”. The involvement and participation of persons with disabilities is thus an intrinsic part of the requirements of the work of a 33 (2-3) framework. While the text of 33 (3), like the title of the article, refers only to monitoring, it implicates also activities of promotion and protection.

Finally, the obligations created under the CRPD attach to “States Parties”. This entails that it is the obligation of the legislative and the executive branches of States parties not only to establish or designate an Article 33 (2-3) framework, but to create the precondition for this framework to effectively carry out its mandate. In addition, in the eyes of international human rights law the 33 (2-3) framework is an, albeit independent, part of the state. From that perspective, the mechanism itself has an obligation under the CRPD to use its accorded mandate to fulfil the requirements in Article 33 (2-3).

2.4 General standards set by the Committee on the Rights of Persons with Disabilities for assessing Article 33 (2-3) frameworks

The CRPD Committee has not yet published a General comment where it interprets and elaborates on the obligations Article 33 creates for States parties. In addition, Article 33 has not so far been substantively addressed in the recommendations from the Committee following the consideration of communications or the conduct of inquiries regulated in OP-CRPD.

Instead, guidance on the Committee's position is available from a document annexed to its Rules of procedure from 2016, and named Guidelines on independent monitoring frameworks and their participation in the work of the Committee on the Rights of Persons with Disabilities [hereinafter CRPD Guidelines on independent monitoring].¹¹ Additional guidance on the CRPD Committee's interpretation of the obligations arising from Article 33 (3) is available from the Committee's General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention [hereinafter CRPD General comment 7].¹² Finally, some guidance can be found in the CRPD Committee's general reporting guidelines.¹³

In the following, these documents are analysed in terms of which criteria they establish for assessing the compliance of States parties' national frameworks with Article 33 (2-3). The account below is organised after the main themes addressed in these documents: scope of

¹¹ Committee on the Rights of Persons with Disabilities, Rules of procedure, Annex, Guidelines on independent monitoring frameworks and their participation in the work of the Committee on the Rights of Persons with Disabilities [hereinafter CRPD Guidelines on independent monitoring], 10 October 2016, UN Doc: CRPD/C/1/Rev.1.

¹² Committee on the Rights of Persons with Disabilities, General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention [hereinafter CRPD General comment 7], 9 November 2018, UN Doc: CRPD/C/GC/7.

¹³ Committee on the Rights of Persons with Disabilities, Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities, [hereinafter CRPD Reporting guidelines 2009], 18 November 2009, UN Doc: CRPD/C/2/3; and Committee on the Rights of Persons with Disabilities, Guidelines on periodic reporting to the Committee on the Rights of Persons with Disabilities, including under the simplified reporting procedure, [hereinafter CRPD Reporting guidelines 2016], 17 November 2016, UN Doc: CRPD/C/3.

mandate and activity; the role of the Paris Principles; independence; powers and state responses; cooperation with other actors; and participation and involvement.

2.4.1 Requirements relating to the scope of the mandate and activities of Article 33 (2-3) frameworks

In its Guidelines on independent monitoring, the CRPD Committee provides guidance on that which is required of States parties in order to fulfil the obligation in Article 33 (2) to independently “promote, protect and monitor” the implementation of the rights in the CRPD. The Committee emphasises that the mandate of the framework must be “appropriately and sufficiently broadly defined” to cover all three functions.¹⁴ While the Guidelines do not explicitly spell out the features which delineate these functions, they provide a list of activities falling under each function, thereby illustrating how each function can be fulfilled.

The list of activities amounting to *promoting* the rights in the CRPD is the longest and most detailed. The list includes awareness raising, education and providing training and technical advice on the CRPD and its implementation in the national context. The Committee also includes as promotion activities the regular open-ended scrutiny of existing and draft national law and policy as well as existing practice, to ensure that these are in line with the CRPD. In addition, promotion activities include the production and facilitation of research on how the CRPD influences national legislation. Promotion activities further include using the knowledge produced to issue reports and to contribute to state reports in different UN monitoring processes. Finally, promotion activities include cooperating with actors outside of the national context and encouraging the State party to ratify international human rights instruments.¹⁵

The list of activities amounting to *protecting* the rights in the CRPD is considerably slimmer. The CRPD Committee focuses on active engagement with individual or group complaints concerning actual (suspected or confirmed) breaches of the CRPD. This is exemplified by considering such complaints, referring them to the judicial system, participating in judicial proceedings or issuing reports on such complaints. The Committee

¹⁴ CRPD Guidelines on independent monitoring, para. 15.

¹⁵ CRPD Guidelines on independent monitoring, para. 13.

views the requirement of the framework's independence as amounting to that States parties ensure that the framework "may hear and consider complaints put forward by individuals or groups alleging violations of their rights under the Convention".¹⁶ The only activity included by the CRPD Committee to exemplify the scope of protection *not* engaging directly with such complaints is the conduct of broader system-level inquiries into alleged systematic breaches of the CRPD. Compared to the regular and open-ended scrutinising of activities, which falls into the category of promotion, protection activities target actual violations or indications of actual violations.¹⁷

The list of activities which amount to *monitoring* the rights in the CRPD focuses on the development, maintenance and operation of an infrastructure for assessing the effects of law, policy and practice on the enjoyment of the rights in the CRPD. Such a system must develop benchmarks and indicators based on the rights in the CRPD and maintain databases on national practices that affect the implementation of the CRPD. The Committee understands the monitoring obligation as one of systematically collecting the raw data necessary for analysing compliance with the CRPD¹⁸, disaggregated by "sex, age and type of disability"¹⁹. The CRPD Committee is explicit that monitoring activities should target both the outcomes and results of programmes and policies and the structures and processes employed to this end.²⁰ Monitoring should also apply to the effects of both disability-specific and mainstream policies and programmes.²¹ In the Guidelines on independent monitoring, the Committee assesses national monitoring as inadequate, as "data on the situation of persons with disabilities have not been systematically and regularly collected in national statistics systems".²² Here, the Committee accords the Article 33 (2-3) framework an explicit role in the "collective, coordinated and continuous efforts" needed to improve the systems for

¹⁶ CRPD Guidelines on independent monitoring, para. 15 (f).

¹⁷ CRPD Guidelines on independent monitoring, para. 13.

¹⁸ CRPD Guidelines on independent monitoring, para. 13.

¹⁹ CRPD Guidelines on independent monitoring, para. 39 (f).

²⁰ CRPD Guidelines on independent monitoring, para. 39 (g). Here the CRPD Committee refers to Office of the United Nations High Commissioner for Human Rights, Human Rights Indicators: A guide for measurement and implementation, 1 January 2012, UN Doc: HR/PUB/12/5.

²¹ CRPD Guidelines on independent monitoring, para. 39 (d).

²² CRPD Guidelines on independent monitoring, para. 37.

collection and analysis of data necessary for monitoring the implementation of the rights in the CRPD.²³

In relation to the substantive scope of each of the three functions of the Article 33 (2-3) mandate, the Committee emphasises that they must be “appropriately and sufficiently broadly defined” in order to cover “all rights enshrined in the Convention”.²⁴ All promotion, protection and monitoring of these rights by the Article 33 (2-3) framework should reflect the purpose and the principles of the CRPD as well as “a paradigm shift to the human rights model of disability, according to which persons with disabilities are considered rights-holders and their dignity and contribution to society are fully acknowledged, promoted and protected”.²⁵

The CRPD Committee requires the geographical scope of the Article 33 (2-3) framework to be broad. Promotion, protection and monitoring must cover all levels; “the federal, state, provincial, regional and local”.²⁶ States parties must also ensure that any mechanisms at these levels can interact.²⁷

Finally, it should be remembered that the examples given by the CRPD Committee on activities amounting to the respective promotion, protection and monitoring of rights are just examples. They do not exclude that States parties can employ additional activities to fulfil each function. However, explicit guidance on the nature of each function is provided by the Committee in the sense that the examples are stated as ways to fulfil *either* the obligation to promote, the obligation to protect *or* the obligation to monitor. Consequently, in its effort to show that its work covers all three functions, States parties cannot count an activity as contributing to the fulfilment of one function if the Committee has explicitly designated this activity as contributing to the fulfilment of another.

²³ CRPD Guidelines on independent monitoring, para. 38. Other actors mentioned here are “national statistical commissions, the focal points and coordination mechanisms appointed under article 33 (1) of the Convention, United Nations agencies, international cooperation entities, regional organizations [,] civil society organizations and persons with disabilities through their representative organizations”.

²⁴ CRPD Guidelines on independent monitoring, para. 15.

²⁵ CRPD Guidelines on independent monitoring, para. 4.

²⁶ CRPD Guidelines on independent monitoring, para. 18.

²⁷ CRPD Guidelines on independent monitoring, para. 18.

2.4.2 Role of the Paris Principles in requirements for Article 33 (2-3) compliance

By explicitly requiring that States parties “take into account” the Paris Principles when establishing Article 33 (2-3) mechanisms, a normative bridge is built between the CRPD and the Paris Principles. Consequently, when determining if an Article 33 (2-3) framework is compliant with the CRPD, part of the answer hinges upon whether the framework is compliant with the Paris Principles.

In line with the text of 33 (2), the CRPD Committee notes that States parties have “a margin of appreciation” in deciding whether the framework should consist of one or more mechanisms.²⁸ The CRPD Committee interprets the reference to the Paris Principles in Article 33 (2) to mean that the State party must ensure that at least one Article 33 (2-3) mechanism complies with the Paris Principles. If only one actor is designated as the Article 33 (2-3) framework, it must consequently be Paris Principles compliant.²⁹ Furthermore, the Committee encourages that a Paris Principles compliant NHRI be the mechanism in charge of facilitating and coordinating interaction between activities at the federal, state, provincial, regional and local level.³⁰

While there is no requirement that a, or part of a, Article 33 (2-3) framework is an NHRI, States parties are “encouraged” by the CRPD Committee “to appoint their Paris Principles-compliant national human rights institution as the monitoring framework or the mechanism forming part of the monitoring framework”.³¹ However, the requirement of Paris Principles compliance for at least one mechanism pertains to all Article 33 (2-3) frameworks, irrespective of whether they include an NHRI or not.

2.4.3 Requirements relating to the independence of Article 33 (2-3) frameworks

In line with the text of 33 (2), the CRPD Committee emphasises the centrality of the Article 33 (2-3) framework being independent. The CRPD Committee interprets the requirement of independence to mean that the State party must ensure that all entities that are part of the

²⁸ CRPD Guidelines on independent monitoring, para. 14.

²⁹ CRPD Guidelines on independent monitoring, para. 14.

³⁰ CRPD Guidelines on independent monitoring, para. 18.

³¹ CRPD Guidelines on independent monitoring, para. 17.

framework are independent from the executive branch,³² including being independent from the focal points appointed under Article 33 (1).³³

The Committee divides the required independence into substantive independence and functional independence. *Substantive independence* of the Article 33 (2-3) framework must be ensured through breadth of mandate. States parties must ensure that the mandate of the framework is “appropriately and sufficiently broadly defined” to encompass “the promotion, protection and monitoring of all rights enshrined in the Convention”.³⁴ States parties must further ensure that the framework be “empowered and entrusted with a wide range of responsibilities” relating to these three functions.³⁵ In addition to breadth of mandate, the requirement for substantive independence entails that States parties stipulate the mandate in “a constitutional or a legislative text”.³⁶ The framework must have a “a stable institutional basis that allows it to operate properly over time”.³⁷

Functional independence requires States parties to ensure that each entity in the framework can function independently from the executive branch.³⁸ This in turn requires that the frameworks have “sufficient funding and technical and skilled human resources”.³⁹ Financial independence requires that the frameworks are “appropriately funded [...] through allocations from the national budget”⁴⁰ and that they enjoy “autonomy in the management of their budget”.⁴¹ In addition to financial resources, sufficient technical and skilled human resources are required, encompassing, *inter alia* that “training is available to its staff on a continuous basis”.⁴²

The CRPD Committee notes that Article 33 requires States parties to strengthen frameworks that preceded the entry into force of the CRPD.⁴³ If an existing entity is appointed as a, or part of a, Article 33 (2-3) framework, it should be allocated “additional and

³² CRPD Guidelines on independent monitoring, para. 14.

³³ CRPD Guidelines on independent monitoring, para. 9.

³⁴ CRPD Guidelines on independent monitoring, para. 15.

³⁵ CRPD Guidelines on independent monitoring, para. 15.

³⁶ CRPD Guidelines on independent monitoring, para. 15.

³⁷ CRPD Guidelines on independent monitoring, para. 11.

³⁸ CRPD Guidelines on independent monitoring, para. 15.

³⁹ CRPD Guidelines on independent monitoring, para. 15 (b).

⁴⁰ CRPD Guidelines on independent monitoring, para. 11.

⁴¹ CRPD Guidelines on independent monitoring, para. 15 (c).

⁴² CRPD Guidelines on independent monitoring, para. 12.

⁴³ CRPD Guidelines on independent monitoring, para. 10.

adequate budgetary and skilled human resources to appropriately discharge its mandate under article 33 (2) of the Convention”.⁴⁴

Functional independence requires States parties to ensure that the Article 33 (2-3) framework has “autonomy in deciding and considering which issues fall within its scope”.⁴⁵ Part of this requirement for discretion includes that the framework “may hear and consider complaints put forward by individuals or groups alleging violations of their rights under the Convention”.⁴⁶ In addition, functional independence requires States parties to “maintain and develop relations and engage in consultations with other bodies”.⁴⁷

Finally, functional independence requires that Article 33 (2-3) frameworks have members appointed in a “public, democratic, transparent and participatory manner”.⁴⁸

2.4.4 Requirements relating to the powers of, and state responses to, Article 33 (2-3) frameworks

The CRPD Committee obliges States parties to ensure that the Article 33 (2-3) framework is accorded the necessary powers to “properly discharge its functions”.⁴⁹ This includes the “expeditious and full access”, in urban as well as rural or remote areas, to “information, databases, records, facilities and premises”.⁵⁰ The requirement for access also applies to the interaction of the Article 33 (2-3) framework with “any persons, entities, organizations or governmental bodies with which it requires to be in contact”.⁵¹ In order to facilitate such access, States parties must ensure that requests for access “are addressed properly and in a timely manner”.⁵²

State obligations concerning how States parties respond to the Article 33 (2-3) framework contain both negative and positive duties. The most basic requirement

⁴⁴ CRPD Guidelines on independent monitoring, para. 17.

⁴⁵ CRPD Guidelines on independent monitoring, para. 15 (d).

⁴⁶ CRPD Guidelines on independent monitoring, para. 15 (f).

⁴⁷ CRPD Guidelines on independent monitoring, para. 15 (e).

⁴⁸ CRPD Guidelines on independent monitoring, para. 15 (a).

⁴⁹ CRPD Guidelines on independent monitoring, para. 12.

⁵⁰ CRPD Guidelines on independent monitoring, para. 12.

⁵¹ CRPD Guidelines on independent monitoring, para. 12.

⁵² CRPD Guidelines on independent monitoring, para. 12.

is that States parties “refrain from directly or indirectly restricting, limiting or interfering” with the framework’s activities.⁵³ Positive obligations include States parties giving “due consideration” to the “recommendations[,] reports[,] decisions and views regarding individual cases” adopted by the framework.⁵⁴

Recommendations should receive “[a]ppropriate” and “timely” follow-up, including in the form of follow-up reports when such are “requested or due”.⁵⁵ In addition to the obligation to consider and respond to recommendations from the Article 33 (2-3) framework, States parties are “encouraged” to implement these recommendations “effectively and in a timely manner”.⁵⁶ To ensure that the recommendations and views of the framework are “duly considered in decision-making processes”, the CRPD Committee puts particular emphasis on the “regular, timely and meaningful interaction” between the Article 33 (2-3) framework and the Article 33 (1, 3) focal points and coordination mechanisms.⁵⁷ To this end, the Committee encourages States parties to formalise this interaction “through legislation, regulations or a duly authorized executive agreement and directive”.⁵⁸

2.4.5 Requirements relating to the cooperation of Article 33 (2-3) frameworks with national and international actors

The obligation of States to enable successful cooperation is a recurring theme for the CRPD Committee in relation to the Article 33 (2-3) framework. The framework can demand support for internal cooperation if it is comprised of more than one mechanism.⁵⁹ Externally, as developed above under 2.4.3 and 2.4.4, the power to cooperate with whom one wants is key to functional independence. In addition, as noted above under 2.4.4, the authority to demand

⁵³ CRPD Guidelines on independent monitoring, para. 13.

⁵⁴ CRPD Guidelines on independent monitoring, para. 16.

⁵⁵ CRPD Guidelines on independent monitoring, para. 16.

⁵⁶ CRPD Guidelines on independent monitoring, para. 16.

⁵⁷ CRPD Guidelines on independent monitoring, para. 21.

⁵⁸ CRPD Guidelines on independent monitoring, para. 21.

⁵⁹ CRPD Guidelines on independent monitoring, para. 14.

responses from the executive branch is key to the effectiveness of an Article 33 (2-3) framework.

The CRPD Committee has a strong focus on the cooperation between itself and Article 33 (2-3) frameworks, in order for international and national monitoring to be “complementary and mutually reinforcing” in the realisation of the rights in the CRPD.⁶⁰ In its Guidelines on independent monitoring, the Committee spells out in detail how it wants the Article 33 (2-3) framework to engage in the former’s monitoring procedures.⁶¹

The focus of the CRPD Committee is on the state reporting process. States parties are obligated to ensure that Article 33 (2-3) frameworks are “meaningfully involved and participate, in an independent capacity” in the compilation of the official reports to the Committee and their follow-up.⁶² The framework itself is encouraged by the Committee to raise awareness and inform civil society, including in particular organisations of persons with disabilities, in accessible formats, about the reporting obligations and procedure as well as upcoming reviews.⁶³ This includes informing about civil society opportunities to participate in the compilation of the state report and the submission of alternative reports, as well as providing support to civil society organisations in the drafting of alternative reports.⁶⁴ The Article 33 (2-3) framework is also encouraged to share relevant data, information and research with stakeholders in the reporting process.⁶⁵ In addition, the framework is encouraged to disseminate information about, and familiarise organisations of persons with disabilities with, the Committee’s procedures to follow up on its recommendations subsequent to considering a state report, as well as to support contributions by organisations of persons with disabilities to the follow-up process.⁶⁶

The Article 33 (2-3) framework is also encouraged to engage with the State party in the reporting procedure. This includes encouraging the State party to report on time⁶⁷, to consult with the framework and to generally “ensure participatory and transparent consultation” in the

⁶⁰ CRPD Guidelines on independent monitoring, para. 4.

⁶¹ In addition to the monitoring processes addressed below, the Guidelines open up for the Article 33 (2-3) framework to seek advice from the Committee on “the compatibility of draft legislation, policies and programmes with the Convention”. CRPD Guidelines on independent monitoring, paras. 28-29.

⁶² CRPD Guidelines on independent monitoring, para. 21.

⁶³ CRPD Guidelines on independent monitoring, paras. 23 (a), (c).

⁶⁴ CRPD Guidelines on independent monitoring, para. 23 (c).

⁶⁵ CRPD Guidelines on independent monitoring, para. 23 (e).

⁶⁶ CRPD Guidelines on independent monitoring, para. 23 (l).

⁶⁷ CRPD Guidelines on independent monitoring, para. (b).

reporting process, including with organisations of persons with disabilities.⁶⁸ The framework is also encouraged to provide written contributions to the State report compilation process.⁶⁹

The Article 33 (2-3) framework is further encouraged to submit to the CRPD Committee its own alternative report, contribution to the List of issues, and comment on the state's replies to the List of issues.⁷⁰ The framework is also encouraged to take part in the session where the Committee considers the state report.⁷¹

After the issuing by the CRPD Committee of its Concluding observations, the Article 33 (2-3) framework should contribute by encouraging the state to give “due consideration to the Committee's concluding observations, and to reflect, mainstream and incorporate the Committee's recommendations into national policies, programmes and activities related to the implementation of the Convention”.⁷² The framework should also encourage the state to translate and disseminate the Committee's recommendations in accessible formats to, in particular, persons with disabilities.⁷³

The Article 33 (2-3) framework is encouraged to contribute to the CRPD Committee's Days of general discussion.⁷⁴ The framework is further encouraged to contribute to the process of developing General comments, as well as to use General comments in its activities.⁷⁵ The Article 33 (2-3) framework should also encourage the state to translate and disseminate General comments in accessible formats.⁷⁶

In relation to the Communication procedure under the OP-CRPD, the Article 33 (2-3) framework is encouraged to “[p]rovide support and assistance, including legal advice, when feasible” to those looking to submit a communication.⁷⁷ The framework is also encouraged to make third-party interventions, or support others who make such interventions.⁷⁸ After the CRPD Committee has adopted its Views, the framework should encourage the state to translate and disseminate these in accessible formats, in particular among organisations of

⁶⁸ CRPD Guidelines on independent monitoring, para. (c).

⁶⁹ CRPD Guidelines on independent monitoring, para. (c).

⁷⁰ CRPD Guidelines on independent monitoring, paras. (d), (f), (g).

⁷¹ CRPD Guidelines on independent monitoring, para. (h).

⁷² CRPD Guidelines on independent monitoring, para. 23 (k).

⁷³ CRPD Guidelines on independent monitoring, para. 23 (j).

⁷⁴ CRPD Guidelines on independent monitoring, para. 24.

⁷⁵ CRPD Guidelines on independent monitoring, paras. 24, 25.

⁷⁶ CRPD Guidelines on independent monitoring, para. 25.

⁷⁷ CRPD Guidelines on independent monitoring, para. 26 (a).

⁷⁸ CRPD Guidelines on independent monitoring, para. 26 (b).

persons with disabilities.⁷⁹ The framework is also encouraged to monitor, as well as assist victims in monitoring, the implementation of the Views.⁸⁰ This includes advising the State party on relevant “legislative, administrative and other measures or reforms” to implement the Views.⁸¹ Furthermore, the framework is encouraged to, “when appropriate”, submit follow-up information to the Committee.⁸²

In relation to the Inquiry procedure under the OP-CRPD, the Article 33 (2-3) framework is encouraged to make the CRPD Committee aware of any “reliable information indicating grave or systematic violations by the State party of rights set forth in the Convention” and provide requested information in this regard.⁸³ The framework is also encouraged to cooperate with the Committee, in particular in the event of a visit to the territory of the State party.⁸⁴ The framework is also, “when appropriate”, encouraged to submit follow-up information to the Committee.⁸⁵

Finally, the CRPD Committee encourages Article 33 (2-3) frameworks to monitor States parties’ responses to allegations of reprisals against those who have contributed to, or interacted with, the Committee.⁸⁶ The framework is also encouraged to, “when feasible”, share with the Committee States parties’ good practices related to preventing and dealing with, inter alia, such reprisals.⁸⁷ The Article 33 (2-3) framework is furthermore encouraged to support alleged victims of reprisals in connecting with relevant human rights avenues as well as to monitor measures taken by States parties to follow up on recommendations from such avenues.⁸⁸ Finally, the CRPD Committee emphasises that any reprisals or intimidation against NHRIs, their staff or those cooperating, or looking to cooperate, with them “should be promptly and thoroughly investigated, and the perpetrators brought to justice”.⁸⁹

⁷⁹ CRPD Guidelines on independent monitoring, para. 26 (c).

⁸⁰ CRPD Guidelines on independent monitoring, para. 26 (d).

⁸¹ CRPD Guidelines on independent monitoring, para. 26 (d).

⁸² CRPD Guidelines on independent monitoring, para. 26 (e).

⁸³ CRPD Guidelines on independent monitoring, paras. 27 (a), (b).

⁸⁴ CRPD Guidelines on independent monitoring, para. 27 (c).

⁸⁵ CRPD Guidelines on independent monitoring, para. 27 (d).

⁸⁶ CRPD Guidelines on independent monitoring, para. 30 (a).

⁸⁷ CRPD Guidelines on independent monitoring, para. 30 (b).

⁸⁸ CRPD Guidelines on independent monitoring, paras. 30 (c), (d).

⁸⁹ CRPD Guidelines on independent monitoring, para. 33.

2.4.6 Requirements relating to the participation and involvement of persons with disabilities in the Article 33 (2-3) frameworks

The position of the CRPD Committee reflects the centrality of the active involvement and full participation of persons with disabilities, as stipulated in CRPD Article 33 (3) and its complementary provision Article 4 (3).⁹⁰ In addition to being centre stage in the CRPD Guidelines on independent monitoring, this dimension of implementation and monitoring is the exclusive focus of CRPD General comment 7. The State obligations adhesive to participation and involvement are consequently well developed by the CRPD Committee.

Article 33 (3) requires the involvement and participation of organisations of persons with disabilities, of persons with disabilities outside of organisations, and of civil society in general. The focus of the CRPD Committee is on organisations of persons with disabilities, which the Committee considers as “organizations with a majority of members being persons with disabilities (at least half of its membership) and that are governed, led and directed by persons with disabilities”.⁹¹ The Committee notes that participation of organisations of persons with disabilities in the Article 33 (2-3) framework and its work “can take several forms” and exemplifies with “seats on the board of or advisory bodies to” such frameworks.⁹²

The CRPD Committee emphasises that involvement and participation must be accessible to, and respectful of, diverse persons with disabilities and acknowledges in particular women and children with disabilities in this regard.⁹³

The Committee is explicit that the obligations of States parties to render involvement and participation accessible includes the provision of “appropriate funding and resources to enable

⁹⁰ CRPD Article 4 (3) reads “*In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.*” According to the CRPD Committee “Article 33 should be read and understood as supplementing article 4 (3).”, CRPD General comment 7, para. 34.

⁹¹ CRPD Guidelines on independent monitoring, para. 20. The CRPD Committee recognises that under certain circumstances “[o]rganizations including family members and/or relatives of persons with disabilities” should be recognized as organization in the meaning of 4 (3) and 33 (3). CRPD General comment 7, para. 12 (d).

⁹² CRPD General comment 7, para. 38.

⁹³ CRPD Guidelines on independent monitoring, para. 20. The obligation to report on measures taken in relation to these two sub-groups is further underscored in the CRPD Committee’s reporting guidelines. Measures to involve organization of persons disabilities in the work of the Article 33 (2-3) framework should include “gender perspectives” (CRPD Reporting guidelines 2009, p. 20) and be “[g]ender- and age-sensitive” (CRPD Reporting guidelines 2016, p. 25).

[...] effective and meaningful participation”.⁹⁴ Involvement and participation must cover all stages of the monitoring process. It must begin early in the process⁹⁵, and the process must have “reasonable and realistic timelines”, mindful of the often volunteer-based working conditions of organisations⁹⁶.

Regarding involvement and participation on issues “directly related” to persons with disabilities, the latter’s opinions and views should be accorded “due consideration and priority”.⁹⁷ Involvement and participation must “provide an input to the final product”⁹⁸ in terms of its results being “reflect[ed] in the decisions adopted”.⁹⁹ Public authorities, including the Article 33 (2-3) framework, have a “duty to inform” those concerned on the outcome of involvement and participation, “including an explicit explanation in an understandable format of the findings, considerations and reasoning of decisions on how their views were considered and why”.¹⁰⁰ In relation to Article 33 (2-3) frameworks, States parties are obligated to ensure that the frameworks employ “formal mechanisms” to ensure “active involvement” of organisations of persons with disabilities and that “their voices are heard and recognized” in the analysis and outputs by the framework.¹⁰¹

The required procedural relationship between the Article 33 (2-3) framework and organisations of persons with disabilities is one of “transparency, mutual respect, meaningful dialogue and a sincere aim to reach a collective agreement on procedures”.¹⁰² Notably, the CRPD Committee puts a strong emphasis on accountability in relation to involvement and participation, equalising the power relations between the Article 33 (2-3) framework and such organisations. The obligations of States parties include that such organisations be actively involved in the periodic evaluation of how involvement and participation mechanisms are working.¹⁰³ In addition, the Committee requires effective access to justice through “strong mechanisms and procedures ensuring effective sanctions for non-compliance with the

⁹⁴ CRPD Guidelines on independent monitoring, para. 20.

⁹⁵ CRPD General comment 7, para. 15.

⁹⁶ CRPD General comment 7, para. 47.

⁹⁷ CRPD General comment 7, para. 23.

⁹⁸ CRPD General comment 7, para. 15.

⁹⁹ CRPD General comment 7, para. 48.

¹⁰⁰ CRPD General comment 7, para. 23. See also para. 48.

¹⁰¹ CRPD General comment 7, para 38.

¹⁰² CRPD General comment 7, para. 47.

¹⁰³ CRPD General comment 7, para. 47

obligations under articles 4 (3) and 33 (3)".¹⁰⁴ This includes enabling organisations to initiate legal action when they find shortcomings in the implementation of involvement and participation.¹⁰⁵

The CRPD Committee emphasises that participation is "a civil and political right and an obligation of immediate application".¹⁰⁶ In addition to being a right, the Committee reminds States parties that involvement and participation of persons with disabilities is good governance, due to their "lived experiences and knowledge of the rights to be implemented".¹⁰⁷ Through providing insights that no one else has, involvement and participation provide "a transformative tool for social change".¹⁰⁸

2.5 Application of standards by the Committee on the Rights of Persons with Disabilities in assessing Article 33 (2-3) frameworks

The main monitoring mechanism through which the CRPD Committee evaluates compliance with Article 33 (2-3) is the state reporting procedure. In the consideration by the Committee of state reports, criteria derived from the state obligations under each provision of the CRPD are applied to individual states in order to evaluate their implementation of the CRPD to date, and guide future implementation. The Concluding observation published by the CRPD Committee as the outcome of the submission of reports, and subsequent dialogue between the government and the Committee, are the main tools for guiding further national implementation.

In the following, the 61 Concluding observations adopted by the CRPD Committee between 2018 and 2023 are analysed to establish how the Committee applies these provisions to individual states.¹⁰⁹ During the period under consideration, only one Concluding

¹⁰⁴ CRPD General comment 7, para. 65.

¹⁰⁵ CRPD General comment 7, para. 65.

¹⁰⁶ CRPD General comment 7, para. 28.

¹⁰⁷ CRPD General comment 7, para. 9.

¹⁰⁸ CRPD General comment 7, para. 33. See also para. 2.

¹⁰⁹ To optimise relevance, the bulk of the examples used are from Concluding observations from 2023 and 2022. To show trends over time and particularly notable examples, these are complemented with references to Concluding observations from 2018-2021. No Concluding observations were issued in 2020, due to Covid-19. The Concluding observations in Spanish are translated by the author.

observation does not explicitly address obligations relating to the Article 33 (2-3) framework.¹¹⁰

In all the remaining 60 Concluding observations, the Committee noted shortcomings and recommended improvements. The account below is organised after the main themes addressed in the Concluding observations: scope of mandate and activity; independence; resources; appointment of members and staff; state responses; participation and involvement; references to normative sources; and references to the SCA.

2.5.1 Application of requirements connected to the scope of the mandate and activities of Article 33 (2-3) frameworks

Just as in Article 33 (2), as well as in the title of the article, the shorthand used to portray the mandate of the Article 33 (2-3) framework in the Concluding observations by the CRPD Committee is “monitoring the implementation” of the CRPD.¹¹¹ Other depictions of the mandate are “follow-up and evaluation of the implementation”¹¹² of the CRPD and to “supervise the implementation”¹¹³ of the CRPD. In some Concluding observations from 2023 the CRPD Committee spells out that the required mandate includes activities of “protection and promotion”¹¹⁴, alternatively to “promote, protect and monitor”¹¹⁵. One Concluding

¹¹⁰ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Norway, 7 May 2019, UN Doc: CRPD/C/NOR/CO/1.

¹¹¹ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Angola [hereinafter Concluding Observations Angola 2023], 24 Mar 2023, UN Doc: CRPD/C/AGO/CO/1, para. 58 (b); Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Georgia-Advance Unedited Version [hereinafter Concluding observations Georgia 2023], 24 Mar 2023, UN Doc: CRPD/C/GEO/CO/1, para. 66 (b); Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Andorra-Advance Unedited Version [hereinafter Concluding observations Andorra 2023], 8 Sep 2023, UN Doc: CRPD/C/AND/CO/1, para. 68 (a); and Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of Germany-Advance Unedited Version [hereinafter Concluding observations Germany 2023], 8 Sep 2023, UN Doc: CRPD/C/DEU/CO/2-3, para. 74 (a).

¹¹² Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Mauritania-Advance Unedited Version [hereinafter Concluding observations Mauritania 2023], 8 Sep 2023, UN Doc: CRPD/C/MRT/CO/1, para. 59.

¹¹³ Concluding observations Andorra 2023, para. 67 (b).

¹¹⁴ Committee on the Rights of Persons with Disabilities, Concluding observations on the combined initial and second periodic reports of Malawi [hereinafter Concluding observations Malawi 2023], 5 October 2023, UN Doc: CRPD/C/MWI/CO/1-2, para. 68 (b); and Concluding observations Andorra 2023, para. 67 (a).

¹¹⁵ Committee on the Rights of Persons with Disabilities, Observaciones finales sobre los informes periódicos segundo y tercero combinados de Perú-Versión Avanzada No Editada [hereinafter Concluding observations Peru 2023], 24 Mar 2023, UN Doc: CRPD/C/PER/CO/2-3, para. 66 (c); and Committee on the Rights of Persons with

observation from 2023 explicitly critiques the State party for a specific limitation of the scope of its mandate, namely “the absence of an explicit mandate to encourage the ratification of regional and international human rights instruments or adherence to them and effective cooperation with regional and international human rights systems”.¹¹⁶ Another Concluding observation from 2023 expresses the requirement that the geographical scope of the Article 33 (2-3) framework cover also the regional level.¹¹⁷

In Concluding observations from 2018-2022 the CRPD Committee similarly expresses both the generic requirement that the mandate of the Article 33 (2-3) framework must be “broad”¹¹⁸ as well as specific critiques. Such critiques relate to the scope of the mandate, how the mandate is defined, the execution of the mandate and information about the execution of the mandate. In a Concluding observation from 2022, the Committee critiques the “limited scope of the planned national human rights institution”.¹¹⁹ In another Concluding observation from 2022, the Committee expresses concern that “[the Article 33 (2-3) framework’s] structure, functions and activities have not been sufficiently defined with regard to the promotion, protection and monitoring of the rights enshrined in the Convention”.¹²⁰ A Concluding observation from 2021 critiques the “lack of information about [...] the work done” by the Article 33 (2-3) framework.¹²¹ Finally, a Concluding observation from 2018 is

Disabilities, Concluding observations on the combined second and third periodic reports of Tunisia-Advance Unedited Version [hereinafter Concluding observations Tunisia 2023], 24 Mar 2023, UN Doc: CRPD/C/TUN/CO/2-3, para. 60 (b).

¹¹⁶ Committee on the Rights of Persons with Disabilities, Observaciones finales sobre los informes periódicos segundo y tercero combinados de Paraguay-Version Avanzada No Editada [hereinafter Concluding observations Paraguay 2023], 8 Sep 2023, UN Doc: CRPD/C/PRY/CO/2-3, para. 59 (a).

¹¹⁷ Concluding observations Germany 2023, para. 74 (b).

¹¹⁸ See e.g. Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Japan-Advance Unedited Version [hereinafter Concluding observations Japan 2022], 9 Sep 2022, UN Doc: CRPD/C/JPN/CO/1, para. 70; Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the Lao People’s Democratic Republic-Advance Unedited Version [hereinafter Concluding observations Lao People’s Democratic Republic 2022], 9 Sep 2022, UN Doc: CRPD/C/LAO/CO/1, para. 63 (a); and Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Switzerland-Advance Unedited Version [hereinafter Concluding observations Switzerland 2022], 25 Mar 2022, UN Doc: CRPD/C/CHE/CO/1, para. 64 (b).

¹¹⁹ Concluding observations Switzerland 2022, para. 63 (b).

¹²⁰ Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Mexico-Advance Unedited Version [hereinafter Concluding observations Mexico 2022], 25 Mar 2022, UN Doc: CRPD/C/MEX/CO/2-3, para. 70.

¹²¹ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Estonia-Advance Unedited Version [hereinafter Concluding observations Estonia 2021], 1 Apr 2021, UN Doc: CRPD/C/EST/CO/1, para. 64 (b).

specific about the execution of the protection mandate by expressing concern about “the low number of complaints received by the Commission”.¹²²

2.5.2 Application of requirements connected to the independence of Article 33 (2-3) frameworks

Independence is *the* defining characteristic of the Article 33 (2-3) framework, setting it apart from the executive implementation and monitoring framework required under Article 33 (1, 3). Several Concluding observations by the CRPD Committee from 2023 express concern about the lack of independence of the established or designated Article 33 (2-3) framework¹²³ and the majority of Concluding observations from 2023 explicitly include securing the independence of the Article 33 (2-3) framework among the actions recommended by Committee.¹²⁴ In a number of Concluding observations by the Committee from 2023, the requirement of independence is coupled with a requirement of effectiveness, calling for the Article 33 (2-3) framework to function “effectively and independently”.¹²⁵

The question of resources is explicitly linked to independence in one Concluding observation by the CRPD Committee from 2023, noting the effects of “limited funding and the serious

¹²² Committee on the Rights of Persons with Disabilities, Concluding observations in relation to the initial report of Oman, 2 Mar 2018, UN Doc: CRPD/C/OMN/CO/1, para. 59.

¹²³ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Israel-Advance Unedited Version [hereinafter Concluding observations Israel 2023], 8 Sep 2023, UN Doc: CRPD/C/ISR/CO/1, para. 69 (b); Committee on the Rights of Persons with Disabilities, Observaciones finales sobre los informes periódicos segundo y tercero combinados de Argentina-Versión Avanzada No Editada [hereinafter Concluding observations Argentina 2023], 24 Mar 2023, UN Doc: CRPD/C/ARG/CO/2-3, para. 63; Concluding observations Paraguay 2023, para. 59 (b); Concluding observations Tunisia 2023, para. 59; and Concluding observations Malawi 2023, para. 67 (b).

¹²⁴ Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third reports of Mongolia-Advance Unedited Version [hereinafter Concluding observations Mongolia 2023], 8 Sep 2023, UN Doc: CRPD/C/MNG/CO/2-3, para. 68; Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Togo-Advance Unedited Version [hereinafter Concluding observations Togo 2023], 24 Mar 2023, UN Doc: CRPD/C/TGO/CO/1, para. 64; Concluding observations Angola 2023; para. 58 (a); Concluding observations Peru 2023, para. 67 (c); Concluding observations Israel 2023, para. 70 (b); Concluding observations Paraguay 2023, para. 60 (b); Concluding observations Argentina 2023, para. 64 (a); Concluding observations Tunisia 2023, para. 60 (b); and Concluding observations Malawi 2023, para. 68 (b).

¹²⁵ Concluding observations Peru 2023, para. 67 (c); Concluding observations Paraguay 2023, para. 60 (a); Concluding observations Togo 2023, para. 64; Concluding observations Mongolia 2023, para. 66; and Concluding observations Mauritania 2023, para. 58.

understaffing” of the Article 33 (2-3) framework to “undermine its independent monitoring role of human rights, including in the realm of disability rights”.¹²⁶

The strong attention to lacking independence, and remedying this, is likewise present in the Concluding observations adopted by the CRPD Committee between 2018-2022.¹²⁷ While most references to independence in these Concluding observations are generally phrased, some are explicit about the particular aspect of lacking independence in question. One example of this is a Concluding observation from 2019 where the Committee requires that the Article 33 (2-3) framework be “independent from the executive branch, in particular the Council of Ministers”.¹²⁸

¹²⁶ Concluding observations Malawi 2023, para. 67 (b).

¹²⁷ See e.g. from 2022 Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Indonesia-Advance Unedited Version, 9 Sep 2022, UN Doc: CRPD/C/IDN/CO/1, para. 68; Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Bangladesh-Advance Unedited Version, 9 Sep 2022, UN Doc: CRPD/C/BGD/CO/1, para. 63; Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of China-Advance Unedited Version, 9 Sep 2022, UN Doc: CRPD/C/CHN/CO/2-3, para. 60 (b); Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of China (Hong Kong)-Advance Unedited Version [hereinafter Concluding observations China (Hong Kong) 2022], 9 Sep 2022, UN Doc: CRPD/C/CHN/CO/2-3, para. 77 (a); Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Singapore-Advance Unedited Version [hereinafter Concluding observations Singapore 2022], 9 Sep 2022, UN Doc: CRPD/C/SGP/CO/1, para. 62 (a); Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of China (Macau) -Advance Unedited Version, 9 Sep 2022, UN Doc: CRPD/C/CHN/CO/2-3, para. 88 (a); Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic report of Hungary-Advance Unedited Version [hereinafter Concluding observations Hungary 2022], 25 Mar 2022, UN Doc: CRPD/C/HUN/CO/2-3, para. 65 (b); Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Jamaica-Advance Unedited Version 25 Mar 2022, UN Doc: CRPD/C/JAM/CO/1, para. 60; Committee on the Rights of Persons with Disabilities, Observaciones finales sobre el informe inicial de la República Bolivariana de Venezuela-Version Avanzada No Editada, 25 Mar 2022, UN Doc: CRPD/C/VEN/CO/1, para. 59; Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Switzerland-Advance Unedited Version [hereinafter Concluding observations Switzerland 2022], 25 Mar 2022, UN Doc: CRPD/C/CHE/CO/1, para. 64 (b); Concluding observations Lao People’s Democratic Republic 2022, para. 63 (a); and Concluding observations Japan 2022, para. 70.

¹²⁸ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Kuwait-Advance Unedited Version, 24 Sep 2019, UN Doc: CRPD/C/KWT/CO/1, para. 65.

2.5.3 Application of requirements connected to the resources of Article 33 (2-3) frameworks

In 2023, 11 out of 14 Concluding observations by the CRPD Committee explicitly note the requirement for resources.¹²⁹ The main focus of the Committee in terms of resources in these Concluding observations is on money: “funding”¹³⁰, “budget”¹³¹ and “financial resources”¹³². An additional focus is the need of the Article 33 (2-3) framework for “technical” resources¹³³ and “human” resources¹³⁴. In this regard, one of the Concluding observations by the Committee from 2023 specifies the need to address “serious understaffing” and “over 50 percent vacant positions”.¹³⁵ Another Concluding observation from 2023 notes that the State party had failed to increase the resources of an existing framework despite adding the Article 33 (2-3) work to its mandate.¹³⁶ Finally, a Concluding observation by the CRPD Committee from 2023 emphasises the need for resources in order for the Article 33 (2-3) framework to operate also on the regional level.¹³⁷

Shortcomings relating to the resources States parties accord the Article 33 (2-3) framework is also a prevalent theme in the Concluding observations by the CRPD Committee between 2018 and 2023. Notable points made in the Concluding observations from these years include the requirement for States parties to “ensure continuity in the allocation of funds” to the Article 33 (2-3) framework¹³⁸. In one Concluding observation, the CRPD Committee critiques

¹²⁹ Concluding observations Peru 2023, para. 67 (c); Concluding observations Israel 2023, para. 70 (c); Concluding observations Paraguay 2023, para. 59 (b); Concluding observations Argentina 2023, para. 64 (a); Concluding observations Tunisia 2023, para. 60 (b); Concluding observations Mongolia 2023, para. 68; Concluding observations Mauritania 2023, para. 58; Concluding observations Malawi 2023, para. 68 (c); Concluding observations Andorra 2023, para. 68 (a); Concluding observations Germany 2023, para. 74 (a); and Concluding observations Georgia 2023, para. 66 (b).

¹³⁰ Concluding observations Malawi 2023, para. 67 (b); and Concluding observations Paraguay 2023, para. 59 (a).

¹³¹ Concluding observations Tunisia 2023, para. 60 (b); Concluding observations Mongolia 2023, para. 67; and Concluding observations Mauritania 2023, para. 59.

¹³² Concluding observations Paraguay 2023, para. 60 (b); Concluding observations Argentina 2023, para. 64 (a); Concluding observations Andorra 2023, para. 68 (a); and Concluding observations Germany 2023, para. 74 (b).

¹³³ Concluding observations Andorra 2023, para. 68 (a); Concluding observations Germany 2023, para. 74 (b); and Concluding observations Israel 2023, para. 70 (c).

¹³⁴ Concluding observations Paraguay 2023, para. 60 (b); Concluding observations Argentina 2023, para. 64 (a); Concluding observations Andorra 2023, para. 68 (a); Concluding observations Germany 2023, para. 74 (b); and Concluding observations Tunisia 2023, para. 60 (b).

¹³⁵ Concluding observations Malawi 2023, paras. 67 (b); 68 (b).

¹³⁶ Concluding observations Peru 2023, para. 66 (c).

¹³⁷ Concluding observations Germany 2023, para. 74 (b).

¹³⁸ Concluding observations Estonia 2021, para. 65 (b).

a decrease in funding to the Article 33 (2-3) framework.¹³⁹ Finally, in one Concluding observation the Committee addresses the requirement to define the resources of the Article 33 (2-3) mechanism.¹⁴⁰

2.5.4 Application of requirements connected to the appointment of members and staff of Article 33 (2-3) frameworks

In the 14 Concluding observations by the CRPD Committee from 2023, four explicitly address the selection and appointment of staff.¹⁴¹ Two of those Concluding observations address the obligation for the selection and appointment of the head of the Article 33 (2-3) framework to be “clear, transparent, and participatory”.¹⁴² The two other Concluding observations address the quality of the selection and appointment process in similar terms, although not limited to the head of the Article 33 (2-3) framework. Notably, in three of the four Concluding observations the CRPD Committee refers to recommendations by the SCA.¹⁴³

In its Concluding observations between 2018 and 2022 the CRPD Committee puts little attention to State obligations regarding selection and appointment of the Article 33 (2-3) framework staff. One exception is a Concluding observation from 2018 where the Committee expresses concern that the members of the Article 33 (2-3) framework are appointed by the executive branch.¹⁴⁴

¹³⁹ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Poland, 24 Sep 2018, UN Doc: CRPD/C/POL/CO/1, para. 52 (b).

¹⁴⁰ Concluding observations Mexico 2022, para. 71.

¹⁴¹ Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third reports of Austria [hereinafter Concluding observations Austria 2023], 8 Sep 2023, UN Doc: CRPD/C/AUT/CO/2-3, para. 73; Concluding observations Paraguay 2023, para. 59 (a); Concluding observations Argentina 2023, para. 64 (b); and Concluding observations Mongolia 2023, para. 65.

¹⁴² Concluding observations Paraguay 2023, para. 59 (a); and Concluding observations Argentina 2023, para. 64 (b).

¹⁴³ Concluding observations Austria 2023, para. 73; Concluding observations Paraguay 2023, para. 60 (a); and Concluding observations Mongolia 2023, para. 65.

¹⁴⁴ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Malta, 24 Sep 2018, UN Doc: CRPD/C/MLT/CO/1, para. 49.

2.5.5 Application of requirements connected to the state responses to recommendations by Article 33 (2-3) frameworks

In the 14 Concluding observations by the CRPD Committee in 2023, one explicitly addresses how the government responded to recommendations made by the Article 33 (2-3) framework.¹⁴⁵ In this Concluding observation, the Committee critiqued the executive branch for “lack of implementation of the recommendations” from the Article 33 (2-3) framework and underscored the State obligation of “enforcing [the framework’s] recommendations”.¹⁴⁶

The only other identified example addressing this issue is a Concluding observation from 2022, indicating that this focus is recent.¹⁴⁷ In this Concluding observation, the CRPD Committee critiqued the government for “not responding to or incorporating the recommendations from reports” and calling for the government to “[s]trengthen its accountability processes and its partnership with the [Article 33 (2-3) framework] to track and publicly report on the outcomes and implementation of recommendations of [the Article 33 (2-3) framework’s] reports”.¹⁴⁸

2.5.6 Application of requirements connected to the participation and involvement in Article 33 (2-3) frameworks

One of the main themes in the Concluding observations by the CRPD Committee on Article 33 (2-3) between 2018 and 2023 is shortcomings relating to 33 (3). In 2023, 13 of the 14 Concluding observations explicitly note inadequate involvement and participation of persons with disabilities in the work of the Article 33 (2-3) framework and/or make recommendations for improvement.¹⁴⁹

¹⁴⁵ Concluding observations Georgia 2023, paras. 65 (c); 66 (c).

¹⁴⁶ Concluding observations Georgia 2023, paras. 65 (c); 66 (c).

¹⁴⁷ Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of New Zealand-Advance Unedited Version [hereinafter Concluding observations New Zealand 2022], 9 Sep 2022, UN Doc: CRPD/C/NZL/CO/2-3, paras. 59 (a); 60 (a).

¹⁴⁸ Concluding observations New Zealand 2022, paras. 59 (a); 60 (a).

¹⁴⁹ Concluding observations Angola 2023, para. 58 (b); Concluding observations Togo 2023, para. 64; Concluding observations Israel 2023, para. 70 (c); Concluding observations Argentina 2023, para. 64 (a); Concluding observations Tunisia 2023, para. 60 (c); Concluding observations Mongolia 2023, para. 67; Concluding observations Mauritania 2023, para. 59; Concluding observations Malawi 2023, para. 68 (c); Concluding observations Andorra 2023, para. 67 (c); Concluding observations Georgia 2023, para. 66 (b); Concluding observations Germany 2023, para. 74 (a); Concluding observations Paraguay 2023, para. 60 (b); and Concluding observations Peru 2023, para. 67 (c).

In the Concluding observations from 2023 the CRPD Committee underscores the requirement of participation and involvement in the work of the Article 33 (2-3) framework being effective¹⁵⁰ and expresses concern about the lack of strategies for involvement¹⁵¹. Two Concluding observations from 2023 note that that participation of organisations of persons with disabilities in the work of the Article 33 (2-3) framework requires the provision of financial resources¹⁵², specified in one of these as “independent and self-managed funding”¹⁵³.

One Concluding observation from 2023 notes the need for participation and involvement in the work of the Article 33 (2-3) framework to extend to “situations of risk and emergencies and in the recovery period”.¹⁵⁴ Another Concluding observation from 2023 specifies a particular modality for progress, to “enhance diversity and pluralism, in the composition of its Council”.¹⁵⁵

A theme closely related to involvement and participation is that of accessibility. Two Concluding observations from 2023 note the lack of accessibility regarding the work of the Article 33 (2-3) framework. One emphasises the need for the website to be accessible¹⁵⁶ and another calls for “accessible information and methodologies in [the Article 33 (2-3) framework’s] work”¹⁵⁷.

Notable points made in Concluding observations by the CRPD Committee between 2018 and 2022 include the lack of “specific mechanisms” for participation and involvement in the work of the Article 33 (2-3) framework¹⁵⁸ as well as insufficient “information about formal mechanisms” for participation and involvement¹⁵⁹. A number of Concluding observations from 2021 and 2022 note the need for participation and involvement in the work of the Article 33 (2-3) framework to extend to “the COVID-19 pandemic”.¹⁶⁰ Another Concluding

¹⁵⁰ Concluding observations Georgia 2023, para. 66 (b); Concluding observations Germany 2023, para. 74 (a); Concluding observations Mongolia 2023, para. 67; and Concluding observations Mauritania 2023, para. 59.

¹⁵¹ Concluding observations Tunisia 2023, para. 59.

¹⁵² Concluding observations Togo 2023, para. 64; and Concluding observations Malawi 2023, para. 68 (c).

¹⁵³ Concluding observations Malawi 2023, para. 68 (c).

¹⁵⁴ Concluding observations Georgia 2023, para. 66 (b).

¹⁵⁵ Concluding observations Mongolia 2023, para. 66.

¹⁵⁶ Concluding observations Mauritania 2023, para. 58.

¹⁵⁷ Concluding observations Georgia 2023, para. 66 (b).

¹⁵⁸ Committee on the Rights of Persons with Disabilities, Concluding observations in relation to the initial report of the Philippines, 24 Sep 2018, UN Doc: CRPD/C/PHL/CO/1, para. 60 (b).

¹⁵⁹ Concluding observations Switzerland 2022, para. 63 (c); and Concluding observations Estonia 2021, para. 64 (c).

¹⁶⁰ See e.g. Concluding observations Estonia 2021, para. 65 (c); and Concluding observations China (Hong Kong) 2022, para. 78 (b).

observation from 2021 specifies a particular modality for progress, to “appoint persons with disabilities, including women with disabilities as members of the independent monitoring mechanisms”.¹⁶¹ Finally, a Concluding observation from 2019 reminds that involvement and participation in the work of the Article 33 (2-3) framework must cover “the entire process of monitoring the implementation of the Convention”.¹⁶²

Many Concluding observations by the CRPD Committee underline the importance of subgroups among persons with disabilities participating and being involved in the work of the Article 33 (2-3) framework. During 2023, as well as the other years included in this analysis, the most often mentioned subgroups are women with disabilities, followed by children with disabilities.¹⁶³ General references are also made to the need for “diversity” in participation and involvement.¹⁶⁴

Concluding observations between 2018 and 2022 explicitly call for the participation and involvement of additional groups, such as older persons with disabilities, persons with psychosocial and/or intellectual disabilities, persons with disabilities in rural areas, and persons with disabilities in refugee camps.¹⁶⁵ One Concluding observation from 2022 calls for “including organizations of persons with disabilities with sharply critical views of government policies on persons with disabilities”.¹⁶⁶

¹⁶¹ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of France [hereinafter Concluding observations France 2021], 14 Sep 2021, UN Doc: CRPD/C/FRA/CO/1, para. 67 (c).

¹⁶² Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Iraq-Advance Unedited Version [hereinafter Concluding observations Iraq 2019], 24 Sep 2019, UN Doc: CRPD/C/IRQ/CO/1, para. 64 (c).

¹⁶³ From 2023 see Concluding observations Andorra 2023, para. 68 (c); Concluding observations Angola 2023, para. 58 (b); Concluding observations Tunisia 2023, para. 60 (c); and Concluding observations Togo 2023, para. 64.

¹⁶⁴ See e.g. Concluding observations Israel 2023, para. 70 (c); Concluding observations Mongolia 2023, para. 66; Concluding observations Japan 2022, para. 70; and Concluding observations France 2021, para. 67 (c).

¹⁶⁵ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Djibouti [hereinafter Concluding observations Djibouti 2021], 14 Sep 2021, UN Doc: CRPD/C/DJI/CO1, para. 60 (c); Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of South Africa, 24 Sep 2018, UN Doc: CRPD/C/ZAF/CO/1, para. 65 (c); and Concluding observations Lao People’s Democratic Republic 2022, para. 63 (c).

¹⁶⁶ Concluding observations Singapore 2022, para. 62 (b).

2.5.7 Application to Article 33 (2-3) frameworks of requirements connected to normative sources

The normative source most referred to by the CRPD Committee in its Concluding observations is the Paris Principles. Among the 14 Concluding Observations from 2023, 11 refer to the Paris Principles.¹⁶⁷ Eight of these Concluding observations explicitly observe that the State party does not have an Article 33 (2-3) mechanism which lives up to the Paris Principles.¹⁶⁸ In one of these Concluding observations the CRPD Committee explicitly recommends that the State establish a “national human rights institution that meets the requirements of the Paris Principles”¹⁶⁹, while other Concluding observations are more generally phrased, calling for the establishment of “an independent monitoring mechanism”¹⁷⁰ or “an independent monitoring framework”¹⁷¹. In another of these Concluding observations, the CRPD Committee presents the state with the choice to either “ensure that the office of the Ombudsman meet the requirements of the Paris Principles” or establish a Paris Principles compliant NHRI.¹⁷² Finally, in one Concluding observations from 2023, the CRPD Committee specifically calls for legislation establishing Paris Principles compliant Article 33 (2-3) mechanisms at the regional level.¹⁷³

The Concluding observations from 2018-2022 also display a high number of references to the Paris Principles. Like the Concluding observations mentioned above, the references are often generally phrased and do not draw out specific requirements in the Paris Principles. Further, as with the Concluding observations from 2023, the Committee sometimes

¹⁶⁷ Concluding observations Angola 2023, para. 57 (a); Concluding observations Togo 2023, para. 64; Concluding observations Israel 2023, para. 69 (b); Concluding observations Argentina 2023, para. 63; Concluding observations Tunisia 2023, para. 60 (b); Concluding observations Mongolia 2023, para. 66; Concluding observations Mauritania 2023, para. 57; Concluding observations Malawi 2023, para. 68 (b); Concluding observations Andorra 2023, para. 67 (a); Concluding observations Germany 2023, para. 74 (b); and Concluding observations Paraguay 2023, para. 59 (b).

¹⁶⁸ Concluding observations Andorra 2023, para. 67 (a); Concluding observations Israel 2023, para. 69 (b); Concluding observations Mauritania 2023, para. 58; Concluding observations Angola 2023, para. 57 (a); Concluding observations Paraguay 2023, para. 59 (b); Concluding observations Argentina 2023, para. 63; Concluding observations Mongolia 2023, paras. 66-67; and Concluding observations Tunisia 2023, paras. 59; 60 (b).

¹⁶⁹ Concluding observations Andorra 2023, para. 68 (a).

¹⁷⁰ Concluding observations Mauritania 2023, para. 60; Concluding observations Mongolia 2023, para. 67; Concluding observations Argentina 2023, para. 64 (a); Concluding observations Paraguay 2023, para. 60 (b); and Concluding observations Germany 2023, para. 74 (b).

¹⁷¹ Concluding observations Israel 2023, para. 70 (b).

¹⁷² Concluding observations Angola 2023, para. 58 (a).

¹⁷³ Concluding observations Germany 2023, para. 74 (b).

specifically recommends the establishment or designation of an NHRI as the, or part of the, Article 33 (2-3) framework, but generally leave the form of the framework unaddressed.

Another normative source often referred to by the CRPD Committee in its Concluding observations is the CRPD Guidelines on independent monitoring. Among the 14 Concluding observations from 2023, nine refer to the Guidelines.¹⁷⁴ All the references are general, noting that the CRPD Committee makes its recommendation about the Article 33 (2-3) framework “bearing in mind”¹⁷⁵, taking into account”¹⁷⁶, or “recalling”¹⁷⁷ the Guidelines. The Concluding observations by the CRPD Committee from 2018-2022 also display a high number of references to the CRPD Guidelines on independent monitoring. Like the Concluding observations by the Committee from 2023, the references are often generally phrased and do not draw out specific requirements in the Guidelines. One Concluding observation from 2019 provides an exception, explicitly leaning on the Guidelines in recommending that “the State party strengthen its national monitoring and implementation framework [and] ensure its effective operation and interoperability between the competent structures involved”.¹⁷⁸

A third normative source referred to by the CRPD Committee in its Concluding observations on the Article 33 (2-3) framework is its General comment 7. There is no reference to General comment 7 in the Concluding observations on Article 33 by the Committee from 2023 and only one in the Concluding Observations from 2022.¹⁷⁹ The bulk of the remaining references to General comment 7 in the Concluding observations on Article 33 are from 2019.¹⁸⁰ These references are generally phrased. One General comment provides

¹⁷⁴ Concluding observations Andorra 2023, para. 68; Concluding observations Israel 2023, para. 70 (b); Concluding observations Mauritania 2023, para. 60; Concluding observations Paraguay 2023, para. 60; Concluding observations Argentina 2023, para. 64; Concluding observations Peru 2023, para. 67; Concluding observations Mongolia 2023, para. 68; Concluding observations Georgia 2023, para. 66 (c); and Concluding observations Malawi 2023, para. 68.

¹⁷⁵ Concluding observations Mauritania 2023, para. 60; and Concluding observations Mongolia 2023, para. 68.

¹⁷⁶ Concluding observations Andorra 2023, para. 68; Concluding observations Georgia 2023, para. 66 (c); Concluding observations Israel 2023, para. 70 (b); Concluding observations Peru 2023, para. 67; Concluding observations Argentina 2023, para. 64; and Concluding observations Paraguay 2023, para. 60.

¹⁷⁷ Concluding observations Malawi 2023, para. 68.

¹⁷⁸ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Greece-Advance Unedited Version [hereinafter Concluding observations Greece 2019], 24 Sep 2019, UN Doc: CRPD/C/GRC/CO/1, para. 49.

¹⁷⁹ Concluding observations Hungary 2022, para. 65 (c).

¹⁸⁰ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Albania, 24 Sep 2019, UN Doc: CRPD/C/ALB/CO/1, para. 54; Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third reports of Australia-Advance Unedited

the exception by calling for “independent and self-managed funding” to enable organisations of persons with disabilities to take part in the work of the Article 33 (2-3) framework, in the name of General Comment 7.¹⁸¹

2.5.8 Application to Article 33 (2-3) frameworks of requirements connected to recommendations by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions

In addition to referring to the Paris Principles, some Concluding observations by the CRPD Committee explicitly refer to the assessment of the Article 33 (2-3) framework by the SCA. Among the 14 Concluding observations on the Article 33 (2-3) framework in 2023, five explicitly refer to the assessment of the SCA.¹⁸² In two of these Concluding observations, the CRPD Committee notes that the NHRI constituting, or being part of, a Article 33 (2-3) framework has been accredited A-status and reminds the State party to implement the recommendations issued by the SCA.¹⁸³ In two other of these Concluding observations the Committee “notes with concern the lack of progress” by the State party in the implementation of the SCA recommendations, and calls for their implementation.¹⁸⁴

In all but one of the Concluding observations from 2023 referring to the SCA¹⁸⁵, the CRPD Committee specifies the content of the former’s recommendations. For example, one Concluding observation reiterates the recommendations of the SCA for “the formalization of a clear, transparent and participatory selection and appointment processes and enhance[ing]

Version, 15 Oct 2019, UN Doc: CRPD/C/AUS/CO/2-3, para. 62 (b); Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Myanmar-Advance Unedited Version, 24 Sep 2019, UN Doc: CRPD/C/MMR/CO/1, para. 64; Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Turkey, 1 October 2019, UN Doc: CRPD/C/TUR/CO/1, para. 67 (c); Concluding observations Greece 2019, para. 49; and Concluding observations Iraq 2019, para. 64. The exception is Concluding observations Djibouti 2021, para. 60.

¹⁸¹ Concluding observations Greece 2019, para. 49.

¹⁸² Concluding observations Austria 2023, paras. 73-74; Concluding observations Togo 2023, paras. 63-64; Concluding observations Mauritania 2023, paras. 57-58; Concluding observations Paraguay 2023, para. 60 (a); and Concluding observations Mongolia 2023, paras. 65-66.

¹⁸³ Concluding observations Austria 2023, paras. 73-74; and Concluding observations Togo 2023, paras. 63-64.

¹⁸⁴ Concluding observations Mauritania 2023, paras. 57-58; and Concluding observations Mongolia 2023, paras. 65-66.

¹⁸⁵ Concluding observations Paraguay 2023, para. 60 (a).

diversity and pluralism, in the composition of [the NHRI constituting, or being part of, the 33 (2-3) framework's] Council".¹⁸⁶

The only Concluding observations by the CRPD Committee with references to the SCA identified between 2018 and 2022 are one from 2021¹⁸⁷ and two from 2022¹⁸⁸. Considering this, the CRPD Committee cross-referring to the assessment of the Article 33 (2-3) framework by the SCA appears a recent phenomenon.

¹⁸⁶ Concluding observations Mongolia 2023, para. 66.

¹⁸⁷ Concluding observations Djibouti 2021, para. 60 (a).

¹⁸⁸ Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third reports of the Republic of Korea-Advance Unedited Version, 09 Sep 2022, UN Doc: CRPD/C/KOR/CO/2-3, para. 68 (b); and Concluding observations Singapore 2022, paras. 61-62 (a).

3. Assessment by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions of the Article 33 (2-3) frameworks required under the Convention on the Rights of Persons with Disabilities

3.1. Outline of the section

This section focuses on the requirements stipulated and applied by the SCA when assessing an Article 33 (2-3) framework against the Paris Principles. Directly below follows an overview of the Paris Principles. Subsequently, an analysis is provided of how the SCA has interpreted and elaborated the requirements of the Paris Principles in relation to a CRPD Article 33 (2-3) framework in their general guidance to NHRIs. Finally, an analysis is provided of how the SCA has applied the requirements in the Paris Principles to 33 (2-3) frameworks in their assessment of individual NHRIs.

3.2. Overview of the Paris Principles

As mentioned above in the introduction, an NHRI is often mandated by a State party to independently “promote, protect and monitor” implementation of the CRPD in accordance with CRPD Article 33 (2-3). In such cases, the SCA applies the Paris Principles to said NHRI, and consequently to its mandate and function as a, or part of a, Article 33 (2-3) framework.

The Paris Principles regulate the establishment and work of NHRIs. They were stipulated at the first International workshop on national institutions for the promotion and protection of human rights, held in Paris on 7–9 October 1991, to serve as a set of guidelines for the establishment and functioning of NHRIs worldwide.¹⁸⁹

Compared to the CRPD, the Paris Principles concern the implementation of human rights, rather than the contents of those rights. In addition, the Paris Principles zoom in on one particular type of actor in the international and national infrastructure for implementation of

¹⁸⁹ As noted above in note 2, the Paris Principles were subsequently adopted by the United Nations Human Rights Commission by Resolution 1992/54 of 1992, and by the United Nations General Assembly in its Resolution 48/134 of 1993.

human rights: national actors that, independently from the executive branch, broadly promote and protect human rights.

The Paris Principles are divided into four sections: The first section is “Competence and Responsibilities”. The emphasis is that an NHRI’s mandate should be broad, both in the sense of covering the entire catalogue of human rights and in terms of encompassing a range of activities and responsibilities amounting both to promotion and protection. In addition, the mandate of an NHRI should be legally regulated.

The second section is “Composition and guarantees of independence and pluralism”. The emphasis on pluralism amounts to that the different sections of society must be represented in the NHRI, with a focus on civil society. Independence is emphasised in terms of being furnished both with a legally and physically protected distance from interference by the executive branch, as well as sufficient, secure and predictable resources to act independently.

The third section is “Methods of operation”. The emphasis here is on the NHRI possessing the powers it needs to fulfil its mandate. This includes the freedom to cooperate with whom it chooses, access premises and documentation, address the public, and make recommendations on any issue within the scope of its mandate.

Finally, the fourth and last section of the Paris Principles is “Additional principles concerning the status of commissions with quasi-judicial competence”. The Paris Principles do not require an NHRI to be vested with the competence to consider individual complaints from those experiencing violations of their human rights. However, section four provides requirements and guidance for those that do.

3.3. General standards set by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions for assessing Article 33 (2-3) frameworks

The SCA Rules of procedure mandate it to develop General observations on “common and important interpretative issues on the implementation of the Paris Principles”.¹⁹⁰ The current version of the General observations is from 2018 and contains a section titled “Assessing

¹⁹⁰ SCA General observations, p. 1. See further SCA Rules of procedure, p. 2.

NHRIs as National Preventive and National Monitoring Mechanisms”.¹⁹¹ Here, the SCA explicitly addresses the criteria for assessing whether an NHRI designated as a national preventive or monitoring mechanism, such as the mechanism required by Article 33 (2) of the CRPD, is Paris Principles compliant. In doing so, the SCA will “consider a range of factors” which have a bearing on the NHRI functioning “independently and effectively”.¹⁹²

According to the SCA, an initial criterion for assessing the compliance of an NHRI designated as a national preventive or monitoring mechanism, such as a CRPD Article 33 (2-3) framework, with the Paris Principles is whether the NHRI being assessed has provided “sufficient information to demonstrate that it is carrying out its functions in compliance with the Paris Principles”.¹⁹³

Secondly, the SCA will take into account whether the NHRI has a “formal legal mandate” to constitute a, or part of a, CRPD Article 33 (2-3) framework.¹⁹⁴ The urgency of a formal mandate depends on whether the Article 33 (2-3) framework contains any “additional roles and functions” which the general mandate of the NHRI does not cover.¹⁹⁵ It also depends on whether these roles and functions require powers which exceed the currently legally protected powers of the NHRI.¹⁹⁶ If this is the case, the position of the SCA is that “a more clearly defined legal mandate may be required in order to ensure the NHRI is able to undertake its role effectively and free from interference”.¹⁹⁷

Thirdly, the SCA will consider whether the definition of the mandate covers both the function of “protection” and the function of “promotion”.¹⁹⁸ As this requirement mirrors the Paris Principles it appears to be independent of which functions the Article 33 (2-3) framework is accorded in the CRPD. According to the SCA, the category of promotion under the Paris Principles entails “those functions which seek to create a society where human rights are more broadly understood and respected”.¹⁹⁹ To illustrate, the SCA gives the examples of “education, training, advising, public outreach and advocacy”.²⁰⁰ In comparison, the category

¹⁹¹ SCA General observations, p. 46-48.

¹⁹² SCA General observations, p. 47.

¹⁹³ SCA General observations, p. 46.

¹⁹⁴ SCA General observations, p. 46.

¹⁹⁵ SCA General observations, p. 47.

¹⁹⁶ SCA General observations, p. 47.

¹⁹⁷ SCA General observations, p. 47.

¹⁹⁸ SCA General observations, p. 46.

¹⁹⁹ SCA General observations, p. 7.

²⁰⁰ SCA General observations, p. 7.

of protection under the Paris Principles entails functions “that address and seek to prevent actual human rights violations”.²⁰¹ By way of illustration, the SCA gives the examples of “monitoring, inquiring, investigating and reporting on human rights violations, and [notes that protection] may include individual complaint handling”.²⁰²

Fourthly, the SCA will also consider whether the definition of the mandate covers “all relevant rights” in the CRPD.²⁰³ Consequently, the mandate of the NHRI must harbour all the areas of life protected in the individual articles of the CRPD.

Fifthly, the SCA will assess what the NHRI is actually doing. It will look for “evidence that the NHRI is effectively undertaking all relevant roles and functions” contained in the CRPD.²⁰⁴ The SCA illustrates by enumerating that these roles and functions may include “monitoring and investigation, the provision of constructive and/or critical advice to government and in particular, systematic follow up of its recommendations and findings on alleged human rights violations”.²⁰⁵ The SCA further indicates that it will assess the execution of relevant roles and function against CRPD Articles “4 [General obligations], 31 [Statistics and data collection], 32 [International cooperation], 33 [National implementation and monitoring] and 35 [Reports by States Parties].²⁰⁶ In terms of the principles and rights in the CRPD, the SCA notes that it will consider the work done by the NHRI in terms of Article 3 General principles as well as the entire catalogue of rights in the CRPD.²⁰⁷

Sixthly, the SCA will assess whether the NHRI has sufficient resources to carry out the Article 33 (2-3) mandate. When the Article 33 (2-3) mandate is added to the general mandate of an NHRI, the NHRI must be furnished with “additional and adequate resources”.²⁰⁸ In addition to financial resources, the SCA will assess the human resources of the NHRI: whether its staff “possess the appropriate skills and expertise” for carrying out the Article 33 (2-3) mandate.²⁰⁹

²⁰¹ SCA General observations, p. 7.

²⁰² SCA General observations, p. 7.

²⁰³ SCA General observations, p. 46.

²⁰⁴ SCA General observations, p. 46.

²⁰⁵ SCA General observations, p. 46.

²⁰⁶ SCA General observations, p. 46, note 1.

²⁰⁷ SCA General observations, p. 46, note 1.

²⁰⁸ SCA General observations, p. 46.

²⁰⁹ SCA General observations, p. 46.

The SCA underscores that “its role is to assess a[n] NHRI against the Paris Principles”.²¹⁰ The SCA contrasts this to treaty bodies such as the CRPD Committee, whose role it is to assess an NHRI designated as a, or part of a, Article 33 (2-3) framework against the CRPD.²¹¹ However, while the main normative source for assessment of the Article 33 (2-3) framework is the Paris Principles, the SCA will also, as described above, base its assessment on the articles of the CRPD: both the ‘how’ (promote, protect and monitor) and the ‘what’ (principles and rights). Along this line, the SCA notes that it “may also consider, as it thinks appropriate, any guidance that has been developed by the relevant treaty body”, in this case by the CRPD Committee.²¹² This statement is caveated by the SCA noting that such guidance has generally been drafted for “the broad range of agencies” that may be designated as a, or part of a, Article 33 (2-3) framework and may thus “not always be directly applicable to an NHRI”.²¹³ Consequently, the SCA will decide on a case-by-case basis whether and how to use documents issued by the CRPD Committee, such as the Guidelines for independent monitoring and General comment 7 elaborated in section 2 above.

The criteria above are outlined by the SCA in section 2.8 of the General observations as particularly relevant for assessing the compliance of a national preventive or monitoring mechanism, such as an Article 33 (2-3) framework, with the Paris Principles.²¹⁴ These criteria are elaborated and complemented in the remainder of the General observations where the SCA addresses matters generally relevant for assessing the compliance of an NHRI with the Paris Principles. Consequently, in addressing the compliance of an NHRI with the Paris Principles in relation to its mandate and function as a, or part of a, Article 33 (2-3) framework, it is to be expected that the SCA draws also on the remainder of the General observations. While a wholesale account of the SCA’s interpretation of the Paris Principles exceeds the scope of this study, the list of matters addressed by the SCA in the General observations are included here for reference.

The centrality of one of the two categories of matters in the General observations is underscored by its title: “Essential requirements of the Paris Principles”.²¹⁵ The matters

²¹⁰ SCA General observations, p. 47.

²¹¹ SCA General observations, p. 47.

²¹² SCA General observations, p. 46.

²¹³ SCA General observations, p. 47.

²¹⁴ SCA General observations, p. 46-48.

²¹⁵ SCA General observations, p. 5.

included here are “The establishment of NHRIs[,] Human rights mandate[,] Encouraging ratification or accession to international human rights instruments[,] Interaction with the international human rights system[,] Cooperation with other human rights bodies[,] Recommendations by NHRIs [,] Ensuring pluralism of the NHRI[,] Selection and appointment of the decision-making body of NHRIs[,] Political representatives on NHRIs[,] Adequate funding of NHRIs[, and] Annual reports of NHRIs.”²¹⁶

The second category of matters addressed in the General observation is titled “Practices that directly promote Paris Principles compliance”²¹⁷, indicating that while the criteria for assessment included here may not be explicit in the Paris Principles, they are central to their realisation. The matters included in this category are: “Guarantee of tenure for members of the NHRI decision-making body[,] Full-time members of an NHRI[,] Protection from criminal and civil liability for official actions and decisions undertaken in good faith[,] Recruitment and retention of NHRI staff[,] NHRIs during the situation of a coup d’état or a state of emergency[,] Limitation of power of NHRIs due to national security[,] Administrative regulation of NHRIs[,] Assessing NHRIs as national preventive and national monitoring mechanisms[, and] The quasi-judicial competency of NHRIs (complaints-handling)”.²¹⁸

3.4 Application of standards by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions in assessing Article 33 (2-3) frameworks.

The SCA assesses the compliance with the Paris Principles of each national Article 33 (2-3) framework as part of its wider assessment of the so designated NHRI. Each assessment results in the SCA adopting Specific recommendations to the NHRI in question. In the following, the Specific recommendations to individual NHRIs between 2018 and 2023 are analysed in terms of if, and how, they address an NHRI’s compliance with the Paris Principles in relation to its mandate and function as a, or part of a, CRPD Article 33 (2-3) framework.

²¹⁶ SCA General observations, p. 5-32.

²¹⁷ SCA General observations, p. 33.

²¹⁸ SCA General observations, p. 33-50.

Out of the Specific recommendations issued by the SCA between 2018 and 2023, ten explicitly address the CRPD 33 (2-3) framework. Two of these were issued in 2018²¹⁹, two in 2019²²⁰, one in 2020²²¹, one in 2021²²², two in 2022²²³ and two in 2023²²⁴. All of these except one concern re-accreditation.²²⁵ It should be noted here that since many NHRIs are not designated as a, or part of a, CRPD Article 33 (2-3) framework, only some NHRIs are relevant for the SCA to address in this regard.

The two Specific recommendations from 2018 mentioning the CRPD Article 33 (2-3) framework concern the question of resources and mandate. One of these Specific recommendations addresses the question of financial resources.²²⁶ The SCA notes that the NHRI has been designated as the Article 33 (2-3) framework, that the funding of the NHRI has increased gradually from 2012 and that these funds can be “used freely”.²²⁷ The SCA then encourages the NHRI “to continue to advocate for the funding necessary to ensure that it can effectively carry out its mandate, including its newly-mandated responsibilities”.²²⁸ The other

²¹⁹ Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Georgia: The Office of the Public Defender (OPD) [SCA Specific recommendations Georgia 2018], October 2018, p. 9-11; and Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Belgium: The Interfederal Centre for Equal Opportunity and fight against racism and discrimination (UNIA) [SCA Specific recommendations Belgium 2018], May 2018, p. 9-12.

²²⁰ Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Finland: Finnish National Human Rights Institution (FNHRI) [SCA Specific recommendations Finland 2019], October 2019, p. 8-10; and Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Kenya: Kenya National Commission on Human Rights (KNCHR) [SCA Specific recommendations Kenya 2019], October 2019, p. 15-17.

²²¹ Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), Serbia: Protector of Citizens of Serbia (PCRS) [SCA Specific recommendations Serbia 2020], December 2020, p. 28-32.

²²² Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), Serbia: Protector of Citizens of Serbia (PCRS) [SCA Specific recommendations Serbia 2021], October 2021, p. 24-27.

²²³ Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Cyprus: Office of the Commissioner for Administration and Human Rights (CAHR) [SCA Specific recommendations Cyprus 2022], October 2022, p. 14-15; and Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), Germany: German Institute for Human Rights (GIHR) [SCA Specific recommendations Germany 2022], March 2022, p. 34-38.

²²⁴ Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Germany: German Institute for Human Rights (GIHR) [SCA Specific recommendations Germany 2023], September and October 2023, p. 11-14; and Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Morocco: Conseil National des Droits de l’Homme (CNDH) [SCA Specific recommendations Morocco 2023], February and March 2023, p. 12-13.

²²⁵ The exception is the initial accreditation of the Belgian NHRI in 2018, see SCA Specific recommendations Belgium 2018, p. 9.

²²⁶ SCA Specific recommendations Georgia 2018.

²²⁷ SCA Specific recommendations Georgia 2018, p. 11.

²²⁸ SCA Specific recommendations Georgia 2018, p. 11.

one of the two Specific recommendations explicitly mentioning the CRPD Article 33 (2-3) framework in 2018 concerns the limited scope of the NHRI's legal mandate, as this does not "cover the full range of human rights".²²⁹ However, the reference to the Article 33 (2-3) framework notes the former's inclusion in the existing legal mandate. Consequently, the Article 33 (2-3) framework is not part of the cause for concern addressed by the SCA, rather the opposite. While noting that the NHRI "interprets its mandate broadly and undertakes a range of activities to promote and protect human rights", the SCA encourages the NHRI "to advocate for appropriate amendments to its enabling law to vest it with the mandate to promote and protect all human rights".²³⁰

The two Specific recommendations from 2019 mentioning the CRPD Article 33 (2-3) framework both concern the question of resources. In one of these Specific recommendations the SCA notes that austerity measures by the government have led to difficulties for the NHRI fulfilling its need for human resources and performing its function as a CRPD Article 33 (2-3) mechanism, which has been part of its mandate since 2017.²³¹ The SCA underscores that additional responsibilities for an NHRI require "adequate funding to effectively fulfil these duties".²³² While noting that the NHRI itself is active to this end,²³³ the SCA encourages the NHRI "to continue to advocate for a level of funding adequate to ensure that it can effectively carry out its mandate, including its additional functions, and to fulfil its staffing requirements".²³⁴ The other one of the two Specific recommendations from 2019 explicitly mentioning the CRPD Article 33 (2-3) framework notes that while the funding of the NHRI in question has increased in recent years, functions such as being a CRPD Article 33 (2-3) mechanism require "adequate funding".²³⁵ The SCA encourages the NHRI "to continue to advocate for the funding necessary to ensure that it can effectively carry out its mandate".²³⁶

The Specific recommendation from 2020 mentioning the CRPD Article 33 (2-3) framework concerns the question of financial resources.²³⁷ While noting that the NHRI in

²²⁹ SCA Specific recommendations Belgium 2018, p. 9.

²³⁰ SCA Specific recommendations Belgium 2018, p. 9.

²³¹ SCA Specific recommendations Kenya 2019, p. 15-16.

²³² SCA Specific recommendations Kenya 2019, p. 16.

²³³ SCA Specific recommendations Kenya 2019, p. 16.

²³⁴ SCA Specific recommendations Kenya 2019, p. 17.

²³⁵ SCA Specific recommendations Finland 2019, p. 10.

²³⁶ SCA Specific recommendations Finland 2019, p. 10.

²³⁷ SCA Specific recommendations Serbia 2020.

question is satisfied with its funding, the SCA observes that the NHRI expects to be designated as the CRPD Article 33 (2-3) framework.²³⁸ In light of this, the SCA encourages the NHRI to “continue to advocate for an adequate level of funding to allow it to effectively carry out the full breath of its mandate, including any new responsibilities”.²³⁹ The decision on re-accreditation relating to the NHRI concerned in this Specific recommendation was deferred, albeit not for reasons connected to the Article 33 (2-3) framework.²⁴⁰

The Specific recommendation from 2021 mentioning the CRPD Article 33 (2-3) framework concerns the application deferred from 2020 addressed just above, and like it, concerns the question of financial and human resources.²⁴¹ The SCA notes that a draft law on the NHRI contains additional responsibilities, including being designated as an Article 33 (2-3) mechanism.²⁴² The SCA also observes that the NHRI has underscored the importance of “being able to attract staff with the relevant and specific expertise necessary for [the NHRI’s] existing and new mandates”.²⁴³ Against this backdrop, the SCA encourages the NHRI to “advocate for additional funding to ensure it is able to carry out its new mandates, as well as to attract and retain adequately qualified and experienced staff through competitive and attractive salaries”.²⁴⁴ The conclusion by the SCA on the re-accreditation of the NHRI concerned in this Specific recommendation is that the latter should be accorded A-status.²⁴⁵

The two Specific recommendations from 2022 mentioning the Article 33 (2-3) framework concern the question of resources and mandate. In one of these Specific recommendations the SCA notes that the NHRI in question requires additional funding due to its expanded mandate as, inter alia, the CRPD Article 33 (2-3) framework.²⁴⁶ One of the reasons additional funding is required is the need for “recruitment of staff at senior level” to carry out the increased mandate, including as a CRPD Article 33 (2-3) mechanism.²⁴⁷ In light of this, the SCA recommends that the NHRI “continues to advocate for an increase of its budget allocation and

²³⁸ SCA Specific recommendations Serbia 2020, p. 32.

²³⁹ SCA Specific recommendations Serbia 2020, p. 32.

²⁴⁰ SCA Specific recommendations Serbia 2020, p. 31.

²⁴¹ SCA Specific recommendations Serbia 2021.

²⁴² SCA Specific recommendations Serbia 2021, p. 26.

²⁴³ SCA Specific recommendations Serbia 2021, p. 26.

²⁴⁴ SCA Specific recommendations Serbia 2021, p. 26.

²⁴⁵ SCA Specific recommendations Serbia 2021, p. 24.

²⁴⁶ SCA Specific recommendations Cyprus 2022, p. 14.

²⁴⁷ SCA Specific recommendations Cyprus 2022, p. 14.

an appropriate level of funding to carry out its mandate”.²⁴⁸ The SCA notes that such resources should cover salary levels and terms and conditions of employment “equivalent to those of other independent State agencies”.²⁴⁹ The other one of the two Specific recommendations explicitly mentioning the Article 33 (2-3) framework in 2022 concerns the scope of the NHRI’s protection mandate and the powers needed to carry out that mandate.²⁵⁰ The SCA defers the re-accreditation of the NHRI in question due to, *inter alia*, the lack of explicit legal powers relevant to carrying out the protection function of the Article 33 (2-3) mandate.²⁵¹ The SCA notes that the NHRI has been designated as the Article 33 (2-3) framework, “for which it can carry out announced and informal visits to relevant institutions and facilities”.²⁵² The SCA further notes that the NHRI’s “inquiry and investigation function is limited as it has no right to access classified documents or to visit certain facilities”.²⁵³ Against this backdrop, the SCA encourages the NHRI to “advocate for appropriate amendments to its enabling law to strengthen its protection mandate, including its capacity to monitor and have access to places of deprivation of liberty”.²⁵⁴

The two Specific recommendations from 2023 mentioning the Article 33 (2-3) framework concern the questions of mandate and resources. One of these Specific recommendations addresses the re-accreditation of the NHRI deferred from 2022 mentioned just above.²⁵⁵ The SCA notes that the NHRI in question has developed an “advocacy strategy” to address shortcomings of its constitutive legislation, including those related to the CRPD Article 32 (2-3) mandate.²⁵⁶ The SCA also notes that the NHRI has commissioned a legal opinion on how its “protection mandate” and “protection powers” could be strengthened, “including its capacity to monitor and access places of deprivation of liberty”.²⁵⁷ The SCA notes that while the NHRI has “made use of its current mandate to protect human rights in practice”, its protection mandate “could be further strengthened”.²⁵⁸ Against this backdrop the SCA

²⁴⁸ SCA Specific recommendations Cyprus 2022, p. 14.

²⁴⁹ SCA Specific recommendations Cyprus 2022, p. 14.

²⁵⁰ SCA Specific recommendations Germany 2022.

²⁵¹ SCA Specific recommendations Germany 2022, p. 34.

²⁵² SCA Specific recommendations Germany 2022, p. 35.

²⁵³ SCA Specific recommendations Germany 2022, p. 35.

²⁵⁴ SCA Specific recommendations Germany 2022, p. 36.

²⁵⁵ SCA Specific recommendations Germany 2023.

²⁵⁶ SCA Specific recommendations Germany 2023, p. 12.

²⁵⁷ SCA Specific recommendations Germany 2023, p. 12.

²⁵⁸ SCA Specific recommendations Germany 2023, p. 12.

encourages the NHRI to “continue to advocate for appropriate amendments to its enabling law to strengthen its protection mandate”.²⁵⁹ Such advocacy by the NHRI should cover “its investigation function and its powers to access information and data, as well as to monitor places of deprivation of liberty”.²⁶⁰ The conclusion by the SCA on re-accreditation of the NHRI concerned in this Specific recommendation is that the latter should be accorded A-status.²⁶¹ The other one of the two Specific recommendations from 2023 explicitly mentioning the Article 33 (2-3) framework notes that the legal mandate of the NHRI in question has been expanded to cover three mechanisms emanating from international human rights conventions, including the CRPD Article 33 (2-3) framework.²⁶² In this context, the SCA observes that this increase of the NHRI’s mandate “has been accompanied with an increase of its budget in order to fulfil it”.²⁶³

In sum, the majority of these Specific recommendations concern the financial and human resource requirements connected with an NHRI being designated as an Article 33 (2-3) mechanism. Two Specific recommendations concern the legal basis of the scope of the NHRI’s mandate.

Finally, much as was noted in relation to the SCA’s General observations above, the SCA’s Specific recommendations, irrespective of whether they explicitly mention the CRPD Article 33 (2-3) mandate, address matters generally relevant for the entire mandate of the NHRI, including as an Article 33 (2-3) mechanism. Consequently, matters addressed generally in the Specific recommendations are likely to be relevant also for the assessment of an NHRI’s compliance with the Paris Principles in relation to its mandate and function as a CRPD Article 33 (2-3) mechanism.

²⁵⁹ SCA Specific recommendations Germany 2023, p. 12.

²⁶⁰ SCA Specific recommendations Germany 2023, p. 12.

²⁶¹ SCA Specific recommendations Germany 2023, p. 11.

²⁶² SCA Specific recommendations Morocco 2023, p. 12.

²⁶³ SCA Specific recommendations Morocco 2023, p. 12.

4. Conclusions

The CRPD Committee has actively assessed and guided State party compliance with Article 33 (2-3), both in its general documents addressed to all States parties and as part of its consideration of the reports submitted by individual States parties.

The general guidance provided by the CRPD Committee to date has a strong focus on the right to, and benefits and modalities of, the participation and involvement of persons with disabilities in the work of an Article 33 (2-3) framework. Additional themes addressed by the Committee include the scope of the mandate and the function of the framework; the role of the Paris Principles in the assessment of the framework; the independence of the framework; the powers of the framework and state responses to its activities; and the framework's cooperation with other actors.

The active assessment of, and guidance on, Article 33 (2-3) provided by the CRPD Committee to individual States parties through the reporting procedure is manifest in the Concluding observations adopted by the Committee. This study has identified a number of recurring themes addressed by the Committee in its reporting dialogue with States parties: the scope of the mandate and function of the Article 33 (2-3) framework; the participation and involvement of persons with disabilities in the work of the framework; references to normative sources such as the Paris Principles in the assessment of the framework; the independence of the framework; the resources of the framework; the appointment of the framework's members and staff; state responses to the activities of the framework; and references to the SCA in the assessment of the framework.

The fact that CRPD Article 33 (2-3) explicitly refers to the Paris Principles effectively builds a normative bridge between the two instruments. As a consequence, the CRPD Committee applies the standards of the Paris Principles in its assessment of how Article 33 (2-3) frameworks comply with the CRPD. The presence of the Paris Principles is strong both in the general guidance on how to comply with Article 33 (2-3) provided by the CRPD Committee to States parties, as well as in the Concluding observations where recommendations on how to comply with Article 33 (2-3) are made to each State party. In addition, in some Concluding observations from 2022 and 2023 the CRPD Committee further strengthens the link between the CRPD and the Paris Principles. In these Concluding observations, the Committee explicitly reiterates concerns expressed by the SCA in the

latter's assessment of NHRIs designated as a CRPD Article 33 (2-3) mechanism and recommends that States parties address those concerns.

The SCA has actively assessed and guided NHRIs designated as national preventive or monitoring mechanisms such as CRPD Article 33 (2-3) mechanisms, both in its general documents addressed to all NHRIs and as part of its assessment of individual NHRIs against the Paris Principles.

The general guidance provided to date by the SCA explicitly addresses how it applies the Paris Principles to NHRIs designated as national preventive or monitoring mechanisms under human rights conventions such as the CRPD. It stipulates a number of requirements as relevant for assessing an NHRI designated as an Article 33 (2-3) mechanism against the Paris Principles. These requirements address the legality and scope of the NHRI's mandate and functions – that the NHRI formally as well as in actual effect covers both the promotion and the protection of human rights as well as all the relevant rights in the concerned convention (here the CRPD). In addition, the SCA addresses whether this mandate is legally defined. The requirements also address the resources available to the NHRI – that these are sufficient and that being designated as a CRPD Article 33 (2-3) mechanism entitles the NHRI to additional resources. Finally, a requirement related to all the above is that the SCA is provided with enough information to assess the Paris Principles compliance of the NHRI in relation to the Article 33 (2-3) mandate.

The active assessment of, and guidance for, NHRIs on how to carry out the CRPD Article 33 (2-3) mandate in compliance with the Paris Principles is manifest in the Specific recommendations adopted by the SCA in relation to individual NHRIs. This study has identified two recurring themes addressed by the SCA in its recommendations. The most prevalent theme concerns the additional requirement for financial and human resources flowing from an NHRI being designated as a CRPD Article 33 (2-3) mechanism. This theme is seconded by recommendations concerning the legal basis of the scope of the NHRI's mandate relating to its designation as a CRPD Article 33 (2-3) mechanism, including the powers required to carry out this mandate. Notably, the SCA emphasises the role of the NHRI itself in strategising and advocating for the changes recommended by the SCA.

The link from the SCA to the CRPD stems from the fact that individual states choose to designate an NHRI as the, or part of the, CRPD Article 33 (2-3) framework. Thus, the CRPD Article 33 (2-3) mandate and function becomes part of the mandate and function of the NHRI, the compliance with the Paris Principles of which the SCA assesses. The SCA underscores in

its general guidance to NHRIs that its main normative basis, also in assessing the mandate and function of an NHRI as an Article 33 (2-3) mechanism, remains the Paris Principles.

However, the SCA also notes that, when warranted, it will take recourse to the provisions in the CRPD as well as the documents produced by bodies such as the CRPD Committee as a normative source for assessing the NHRI in respect of its mandate and function as a, or part of a, Article 33 (2-3) framework.

In contrast to the Concluding observations by the CRPD Committee, the Specific recommendations of the SCA to date make no explicit references to any provisions in the CRPD when it applies the Paris Principles to an NHRI mandated as a, or part of a, CRPD Article 33 (2-3) framework. In addition, the Specific recommendations by the SCA do not refer to the assessment by the CRPD Committee of NHRIs designated as a, or as part of a, CRPD Article 33 (2-3) framework.

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