

Monitoring Symposium: A Contribution to the Formulation of Proposals for Monitoring a United Nations Convention on the Rights of People with Disabilities Report

U.S. National Council on Disability
American University, School of International Service
Mental Disability Rights International

American University, Butler Board Room
October 24, 2005

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Acknowledgements

The sponsoring organizations would like to express their appreciation to Katherine N. Guernsey and Janet E. Lord who co-facilitated the Symposium and drafted this Report. We are also grateful for the contributions of Leah Harris, Program Assistant, American University, and Renee Marlin-Bennett, Professor, International Politics, American University, who contributed their time and energy to the hosting of the Symposium at American University. Thanks are also due to the Symposium Rapporteurs, both of whom are students at American University, Lindsey Barna and Alison Long.

I. Introduction and Context

On October 24, 2005, the U.S. National Council on Disability, the American University, School of International Service, and Mental Disability Rights International, hosted a half-day meeting of an inter-disciplinary group of scholars, practitioners, government delegates, and disability activists, to consider the following questions in relation to the future monitoring of a new UN Convention on the Human Rights of Persons with Disabilities:

- What mechanisms can be used to solicit information from States Parties regarding their implementation of the Convention?
- What mechanisms can be used to collect and respond to the information submitted by States Parties regarding their implementation of the Convention?
- What mechanisms can be used to provide constructive feedback to States Parties regarding the sufficiency of their compliance with convention obligations?
- How can all relevant stakeholders (especially people with disabilities and their representative organizations) participate meaningfully in the above-mentioned processes?

A number of members of the Ad Hoc Committee, established to develop a UN Convention on the Human Rights of Persons with Disabilities, have specifically requested the submission of ideas to assist in the Committee's consideration of a monitoring mechanism for the Convention. The objective of the meeting was therefore to be responsive to this request, through the generation of creative ideas in response to the above monitoring-related questions. The meeting utilized a mixture of formal presentations and facilitated dialogue, and took into consideration some of the monitoring proposals already before the Ad Hoc Committee, the on-going discussion related to reform of the existing human rights treaty bodies, as well as the need for linkage to the larger issue of treaty implementation. With specific regard to the on-going treaty reform process, the participants noted that:

- Modernization of the existing treaty monitoring system is a key element in the UN goal of promoting and protecting human rights
- Treaty reform proposals include:
 - a more coordinated approach to treaty body activities
 - standardization of reporting requirements
 - production of a single report by States Parties to address all human rights treaties to which they are a member
 - calls for a unified body
- Treaty reform proposals have attempted to respond to critique that the existing system is:

- insufficiently effective or efficient
- lacking in inter-body coordination
- overly politicized in some instances
- overly burdensome on treaty bodies and States Parties filing reports
- Issue missing from discussions of human rights treaty body reform include:
 - some diversity in approach is needed to accommodate concerns of different issue areas
 - there may be too great a focus on reporting and not enough attention given to effectiveness of monitoring and treaty implementation as a whole
 - there may be too much deference given to the issue of “burden” on States Parties, and not enough focus on benefits to States Parties of participation in monitoring, e.g. through submission of reports

The ideas and observations raised by participants during the course of the meeting are set forth in the report that follows. They are not presented in the form of a formal proposal or draft article language, but rather reflect key concepts and principles that the Committee may find helpful to consider. In addition, some of the examples, illustrations and resources from existing treaty contexts that were highlighted by participants have also been included. ***It should be noted*** that the suggestions are drawn from the meeting discussions, but do not necessarily reflect the opinion of the meeting group as a whole, nor should they be considered as reflective of the views or positions of specific participants or the organizations they represented at the meeting.

II. General Considerations and Observations

A wide variety of views and perspectives were put forward during the meeting, and to the extent possible these observations have been captured in the thematic sections that follow. Because of the interrelated and often overlapping nature of the subject matter, these observations have not been divided by national or international level, though it is understood that the draft convention does currently make the distinction between national and international level monitoring.

The participants highlighted a number of issues of general applicability that they felt should be addressed in the operation of the monitoring mechanism developed within the framework of the UN Convention on the Rights of Persons with Disabilities, whether it is operating at national or international levels:

1. **Adherence to human rights principles** – the objective of the monitoring mechanism should be to promote the implementation of Convention obligations, but, equally important, the process by which the monitoring mechanism operates should itself comport with human rights standards and principles. For example, it was noted that reporting or inquiry procedures utilized by a treaty body should not lead to violation of, for instance, the rights to privacy and bodily integrity of an individual whose enjoyment of rights under the Convention is in question.
2. **Transparency** – except where transparency may need to be balanced against individuals’ rights to privacy, transparency should be fostered in the monitoring system in order to facilitate the meaningful participation of all stakeholders.

3. **Commitment to capacity building & technical assistance** – it was noted that the varying capacities of both governmental and non-governmental stakeholders may lead to disparities in ability to meaningfully participate in the monitoring mechanism, and that where possible technical and other forms of assistance should be made available to ensure meaningful participation. To the extent possible such capacity building efforts should themselves be monitored, to ensure that the activities are appropriate and effective.
4. **Coordination with full range of stakeholders** – participants highlighted the diverse range of stakeholders, including people with disabilities, governments, NGOs (especially disabled people’s organizations), UN agencies, other treaty bodies, international development organizations and others. Because of the unique contributions each stakeholder can make, coupled with resource constraints, engagement of all relevant stakeholders should be as coordinated as possible to maximize opportunities for stakeholder input and minimize unnecessary duplication of efforts.
5. **Depoliticize and increase expertise** – in addressing critique of the current monitoring system, a number of participants noted the need to ensure the neutrality of the monitoring mechanism, and the need for it to utilize the highest level of expertise. With regard to the issue of expertise, it was noted that people with disabilities themselves are best placed to offer relevant expertise and perspectives.
6. **Philosophy/approach of the monitoring mechanism & adversarial vs. cooperative processes** – there was much discussion of the degree to which the monitoring mechanism should focus on “catching” States Parties in contravention of their treaty obligations, and the extent to which the focus should instead be upon facilitating compliance through capacity building and other forms of assistance. Recognizing the value of both approaches, some participants suggested a balanced approach, so that the process would function as a catalyst for implementation through identification of good and bad practice *and* technical assistance, where appropriate. For example, where non-compliance is identified, constructive feedback, critique and information is provided to help facilitate the State’s future compliance. Follow-up is likewise an important component of any monitoring process.
7. **Lessons learned** – in responding to the current treaty reform process, a number of participants noted the need to learn and draw from the experience of the current system, at the same time as retaining (with improvements where necessary) those monitoring mechanisms that work and with which the various stakeholders have familiarity.

III. Specific Considerations and Observations

Symposium participants highlighted a number of more specific and focused considerations and observations with regard to monitoring and facilitating the implementation of a UN Convention on the Rights of Persons with Disabilities. These specific points were drawn from the diverse experience of the participants in the following fields of expertise: international disability rights; American disability rights law & policy; international environmental law; arms control and humanitarian law; international health law; international organizations; and international development.

It should be noted that the observations tended to fall into two categories. Participants provided illustrations drawn from their experience in monitoring international and domestic legal obligations. In this sense, monitoring relates to mechanisms and processes designed to assess and comment upon State compliance with treaty obligations. Participants also drew upon their experience to address broader aspects of implementation which may be usefully referred to as measures to support implementation, or “implementation facilitators.” In this way, discussion moved beyond traditional and quite narrow approaches to human rights treaty implementation (which has tended to revolve around monitoring through reporting), and, in some cases, towards investigative mechanisms and procedures.

i) Monitoring institutions and mechanisms

International agreements typically establish institutions to address how the treaty will be monitored and implemented. It is now standard practice for international human rights conventions to establish, usually within the treaty itself, committees or “treaty-monitoring bodies,” to monitor State compliance with obligations. International environmental treaties have particularly well-developed institutions to monitor treaty obligations, as well as measures to facilitate treaty implementation. Environmental institutions may take the form of administrative secretariats, treaty-monitoring bodies, and scientific and technology advisory committees. Institutional bodies also provide civil society with venues for active participation in the process of implementation, either through direct contact with the States Parties at Conferences of States Parties, or through treaty body procedures, or through the submission of information and reports.

The monitoring of human rights conventions has typically centered on the assessment of State Party periodic reports to the treaty body. Sometimes treaty bodies are mandated to undertake more intrusive monitoring roles, such as the review of communications (complaints) procedures, fact-finding and inspections. Environmental treaty bodies undertake a variety of functions, including monitoring through reporting processes, though they also conduct data gathering and analysis, facilitate information exchange and research and capacity building and perform other functions related to the implementation of the treaty. Recent developments in treaty monitoring in non-human rights spheres focus greater attention on facilitating implementation at the domestic level (e.g., through requiring and mandating national action plans) and on providing, sometimes through financial mechanisms, technical assistance, especially for developing countries. Participants indicated that lessons learned with regard to monitoring and implementation across the field of international law should indeed be considered in devising an effective monitoring system for the UN Convention on the Human Rights of Persons with Disabilities.

a) Composition, financing and transparency of monitoring institutions

Questions relating to the composition, financing and transparency of human rights monitoring institutions emerge in part out of a growing concern about the effectiveness of such bodies. Symposium participants pointed to a number of these concerns:

1. **Expertise essential in the composition of treaty monitoring bodies** – the composition of treaty monitoring institutions is a critical component of their success in monitoring the implementation of a UN Convention on the Rights of Persons with Disabilities. There is a clear need for individuals to possess the relevant expertise on these bodies. An international body composed of ‘political hacks’ will be a discredit to the international human rights system (as it has been to the UN Human Rights Commission) and must be avoided. Experts with human rights and disability expertise – which will indicate **a strong preference for monitoring bodies to be comprised of people with disabilities themselves** – is essential.
2. **Term limits** – imposing term limits for members of a monitoring body is an important dimension of maintaining the long-term independence and effectiveness of the body, though this must be balanced against the need to preserve institutional knowledge.
3. **Inadequate funding of treaty monitoring institutions** – funding issues have plagued human rights treaty bodies for years. There is the clear need for any treaty monitoring institutions established within the framework of a UN Convention to be adequately resourced, not only in terms of finances, but also in terms of time, skills, and expertise.
4. **Transparency** – the work of any monitoring bodies established within the framework of a UN Convention should be transparent, unless transparency would infringe upon the human rights of individuals. Transparency is especially necessary for meaningful involvement of civil society members, who cannot participate if they do not have access to information.
5. **Dispute resolution and arbitration** – though not utilized in the human rights context among States inter-se, it was noted that such mechanisms are certainly relevant in relation to individuals filing complaints/communications. Several participants noted the need for transparency for effective dispute resolution and/or arbitration, as well as capacity-building (especially for developing countries) for all parties to participate meaningfully. It should also be suggested by some that outcomes should try to reward compliance and not just punish non-compliance. It was noted that the 1909 Boundary Waters Convention may be a useful reference in this regard, as it has resolved more than 100 water boundary disputes.

b) Expanding traditional notions of human rights monitoring institutions

There is merit in exploring how traditional approaches to monitoring by human rights institutions could be usefully expanded to include components seen in other treaty contexts such as: (i) thematic inquiry/investigative panels; (ii) technical advisory bodies; and (iii) conferences of states parties. With regard to any monitoring or implementation institution established, it is essential to explicitly define roles and mandates to ensure appropriate coordination without undue overlap. In this context participants discussed the following:

1. **Thematic inquiry/ investigative procedures** – Some monitoring and implementation institutions and procedures focus on thematic issues of fundamental importance. Monitoring mechanisms that are thematic in nature can usefully address patterns of egregious human rights abuses, such as abuses within institutions. Thus, for example, the International Labour Organization has developed a specific mechanism to address the issue of freedom of association. [See **Illustration 1**]. With regard to the implementation

of a UN Convention on the Rights of Persons with Disabilities, it may be useful to consider areas in which thematic issue areas could give rise to a specific body or set of procedures.

2. **Technical advisory bodies assist in monitoring and facilitate implementation –**

Where particular expertise is required to assess information relating to the implementation of a treaty, technical bodies acting in an advisory capacity may be established by treaty provision. Technical committees of this nature typically have data-gathering and specific thematic advisory roles, quite apart from the monitoring responsibilities of the main treaty monitoring committee. Such treaty-established technical bodies typically consist of individuals with particularized expertise in the area in question. To provide one illustration, a technical advisory body might be appropriate to develop and facilitate implementation of accessibility standards. **[See Illustration 2].**

3. **Conference of States Parties –** A Conference of States Parties is a mechanism utilized by States Parties to an international convention for a variety of purposes such as amending the agreement or adopting a protocol to it, assessing strengths and weakness in implementation, sharing information and data, and facilitating coordination among all stakeholders, including NGOs. Human rights conventions have not traditionally utilized Conferences of States Parties to the extent that other international treaties have, and typically they make reference to such meetings only in the context of amending the convention. Increasingly, international agreements make provision for periodic Conferences of States Parties for the purpose of assessing implementation and for facilitating dialogue. This mechanism has been proposed as an important component of monitoring and implementation for a UN Convention.

Illustration 1

ILO Thematic Complaints Procedure: Committee on Freedom of Association

In 1951, after the adoption of an ILO convention on freedom of association, the ILO established the Committee on Freedom of Association for the purpose of examining complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant conventions. This is one of the most widely used international human rights complaints procedures. Complaints may be brought against a member state by employers' and workers' organizations. The Committee is a Governing Body committee, and is composed of an independent chairperson and three representatives each of governments, employers, and workers. If it decides to receive the case, it establishes the facts in dialogue with the government concerned. If a violation of freedom of association standards or principles is found, it issues a report and makes recommendations on how the situation could be remedied. Governments are subsequently requested to report on the implementation of its recommendations. The Committee may also choose to propose a "direct contacts" mission to the government concerned to address the problem directly with government officials and social partners through a process of dialogue. In over 50 years of work, the CFA has examined over 2,300 cases. More than 60 countries have acted on its recommendations.

For more on the supervisory procedure of the ILO Committee on Freedom of Association, see <http://www.ilo.org/public/english/standards/norm/applying/freedom.htm>. For more on the full

range of ILO human rights complaints procedure, see Lee Swepson, “Human Rights Complaints Procedures of the ILO” in Hurst Hannum, ed., *Guide to International Human Rights Practice* (3d edition, 1999).

Illustration 2

Technical Advisory Bodies to Support Implementation of Environmental Treaties

A number of environmental conventions have established subsidiary bodies to undertake particular advisory and related roles to facilitate and support implementation. These bodies perform specialized functions that a treaty monitoring body alone would be unable to undertake. As an example, the Convention on Biological Diversity established a Subsidiary Body on Scientific, Technical, and Technological Advice, as well as other subsidiary organs such as an Open Ended Working Group on Biosafety, an Expert Panel on Access and Benefit Sharing, and an Open Ended Ad Hoc Working Group on Article 8(j) (relating to the preservation of practices of indigenous and local communities relevant to biodiversity).

c) Beyond self-reporting: “reverse reporting,” external monitoring and challenge inspection systems

The traditional approach to monitoring human rights obligations through State-initiated reporting and review by a treaty body (committee of experts) has come under criticism by governments and NGOs alike in recent years. A central weakness of this system is that it relies heavily on the due diligence and accuracy of the reporting undertaken by government authorities. Reporting records in this regard are poor. Moreover, the treaty bodies are typically under-resourced and therefore are taxed to their limit in undertaking a thorough and meaningful review of State reports. Symposium participants noted that a UN Convention on the Human Rights of Persons with Disabilities could approach this challenge by amending reporting procedures, perhaps by adapting that system and requiring States to submit national disability action plans for review by a treaty body. Some participants also saw considerable merit in a “reverse reporting” procedure, utilized in many other international contexts. In particular, participants discussed the following issues:

1. **Consider “reverse reporting”** – the Convention might approach the shortcoming of traditional reporting through the use of external monitoring mechanisms utilized in other international monitoring contexts. A “reverse reporting” system is a mechanism whereby a report reviewing compliance commitments is prepared by an entity other than the government under scrutiny, and where dialogue occurs between the reviewing body and the government concerned. This is often undertaken as a peer review system, as in the OECD. [See Illustrations 3 & 4]. The IMF Country Surveillance Mechanism adopts this approach whereby expert reviewers prepare reports after an in-country visit and extensive consultations with stakeholders. In this way, monitoring moves beyond self reporting and self-certification to forms of external monitoring.
2. **Targeted inspections/thematic inquiries & fact-finding** – certain thematic issue areas might be identified for external monitoring by fact-finding teams or inspection panels

(perhaps from the membership of a treaty body). Targeted inquiry/inspection procedures are focused; they do not try to assess compliance across the board, but set priorities for inspection, thereby making the process more efficient and effective. This is a process well-known in the context of monitoring prison conditions and the prevention of torture. [See Illustration 5]. External monitoring might also take the form of “challenge inspections” whereby a State might self-certify compliance with treaty obligations in a particular area (e.g., prison conditions for detainees with disabilities or conditions in institutions) and others, such as another States Party, NGOs, or a treaty body, could challenge the veracity of the report and a neutral entity conduct the inspection.

Illustration 3

Reverse Reporting at Work: Monitoring Trade Policy and Practice by the WTO

The World Trade Organization monitoring system reviews trade policy and practice in the WTO Member States. In contrast with human rights reporting procedures initiated by the preparation of a State report, the WTO utilizes a “reverse reporting” system with peer review under its Trade Policy Review Mechanism. Reviews are conducted by the Trade Policy Review Body (TPRB) on the basis of a policy statement by the Member under review and a report prepared by economists in the Secretariat's Trade Policy Review Division. The programme of reviews for each year is adopted by the TPRB by the middle of the previous calendar year. In preparing its report, the Secretariat seeks the cooperation of the Member, but has the sole responsibility for the facts presented and views expressed.

The TPRB's debate on the policy statement, and report prepared by the Secretariat, is stimulated by two discussants chosen from the membership, acting not as government representatives, but in their individual capacity. The reports consist of detailed chapters examining the trade policies and practices of the Member and describing trade policymaking institutions and the macroeconomic situation; these chapters are preceded by the Secretariat's Summary Observations, which summarize the report and presents the Secretariat's perspective on the Member's trade policies. The procedure concludes with the Final Remarks of the Chair, which are published together with the policy statement of the country under review, the report of the Secretariat and the minutes of the meeting.

For more on the WTO system, see http://www.wto.org/english/tratop_e/tpr_e/tp_int_e.htm.

Illustration 4

OECD Peer Review System

The practice of peer review is well developed in the OECD. Peer review within the OECD refers to the systematic examination and assessment of the performance of a State by other States, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices, and comply with established standards and principles. Peer review may relate to economics, governance, education, health, environment, energy or other policies and practices. Within one

or more of those subject areas, a State is examined against a wide range of standards and criteria. Peer review can also be carried out thematically, where several countries are examined at the same time with respect to a particular theme. Peer review with regard to an individual State or theme is typically carried out on a regular basis, with each review exercise resulting in a report that assesses accomplishments, spells out shortfalls, and makes recommendations.

The OECD has used this method since its creation. All OECD peer review processes contain common structural elements which include: a set of principles, standards and criteria against which the country performance is reviewed; designated actors to carry out the peer review; and a set of procedures leading to the final result of the peer review. Peer review, directly or indirectly, can serve the following purposes:

- Policy dialogue: during the peer review process, countries systematically exchange information, attitudes and views on policy decisions and their application. This dialogue can be the basis for further co-operation, through, for example, the adoption of new policy guidelines, recommendations or even the negotiation of legal undertakings;
- Transparency: the reviewed country has the chance, in the course of a peer review, to present and clarify national rules, practices and procedures, and explain their rationale. As a result, the Secretariat is usually able to develop documentation and, in certain cases, a database which remains at the disposal of the Member countries, and which is also often made available to the public and published on the Organisation web site;
- Capacity building: peer review is a mutual learning process in which best practices are exchanged. The process can therefore serve as an important capacity building instrument – not only for the country under review, but also for countries participating in the process as examiners, or simply as members of the responsible collective body;
- Compliance: an important function of peer review is to monitor and enhance compliance by countries with internationally agreed policies, standards, and principles. However, unlike a traditional legal enforcement mechanism, peer review works as a sort of “soft enforcement” system, resulting in non-coercive final reports and recommendations rather than binding coercive acts such as sanctions.
- For more on the peer review system in OECD, see Fabrizio Pagani, *Peer Review: A Tool for Co-operation and Change* (OECD, 2002). Available at: <http://www.oecd.org>.

Illustration 5

EU Committee on Torture Inspection System

The European Committee on the Prevention of Torture (CPT) is mandated by the European Convention for the Prevention of Torture to: “[B]y means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.”

The Convention establishes non-judicial preventive machinery to protect detainees based on a system of visits by the Committee. CPT members are independent and impartial experts from a variety of backgrounds such as law, medicine, and policing. The Committee visits places of detention (e.g. prisons and juvenile detention centers, police stations, holding centers for immigration detainees and psychiatric hospitals), to see how persons deprived of their liberty are

treated and, if necessary, to recommend improvements to States. Visits are carried out by delegations, usually of two or more Committee members, accompanied by members of the Committee's Secretariat and, if necessary, by experts and interpreters.

CPT delegations visit Contracting States periodically, but may also organize additional "ad hoc" visits if necessary. The Committee must notify the State concerned but need not specify the period between notification and the actual visit, which, in exceptional circumstances, may be carried out immediately after notification. Under the Convention, CPT delegations have unlimited access to places of detention and the right to move inside such places without restriction. They interview persons deprived of their liberty in private and communicate freely with anyone who can provide information.

The recommendations which the CPT formulates based on its fact-finding during the visit are included in a report which is sent to the State concerned. This report is the starting point for an ongoing dialogue with the State concerned. The Committee meets in camera and its reports are strictly confidential. If a country fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, they may issue a public statement.

For more information on the European Committee for the Prevention of Torture, see <http://www.cpt.coe.int/en>

d) Information gathering methodologies & monitoring

A core component of both monitoring and facilitating the implementation of international obligations includes information gathering. In some instances, specific provisions in international agreements (particularly in the environmental context) require that information relevant to specific or general obligations be collected by States Parties. In other cases, the treaty monitoring body may develop, through reporting guidelines or other procedures, requirements for States to gather information and data relating to treaty implementation and compliance. Information gathering may be carried out for a variety of purposes reasons, including research or identifying patterns and trends, which reflect the state of the problems covered in the treaty. Such activities may be undertaken by States individually or jointly or by international organizations. Information gathering is required by States Parties in a number of international environmental law treaties including, for example, health of workers, carriage of oil, air quality of the working environment, fisheries conservation levels, marine environment, and freshwater resources. It should be noted that when the information is gathered (such as in a national census), those participating in the collection process should take all steps necessary to preserve the privacy of those providing information. Participants made the following observations relating to information gathering methodologies and monitoring:

1. **Encourage governments to collect their own internal data on disability** – while a specific article on disability statistics and data collection is important to include on the UN Convention, such information is relevant not only for treaty implementation but also for treaty monitoring. Appropriate data collection provides an important tool for the assessment of treaty compliance. If governments are already collecting data, they will be in a much better position to monitor their own domestic implementation, and

international efforts at monitoring will also be supported. (The Washington Group on Disability Statistics was cited as an example of a group currently helping to develop common indicators and data guidelines/methodologies that countries may find useful. For more on this group *see* <http://www.cdc.gov/nchs/citygroup.htm>)

2. **Indicators/time-bound benchmarks essential** – there is a need for indicators to allow both cross country comparison, and also to chart progress of States Parties’ implementation. Indicators are more meaningful if they constitute a mix of both qualitative and quantitative indicators. A caveat here noted by some participants is that even if indicators are used, there is still a need to be flexible, so that the indicators do not inhibit a monitoring body’s ability to conduct individualized examinations of compliance.

e) National plans of action

National action plans can serve as an anchor for monitoring compliance with obligations set forth in a UN Convention of the Human Rights of Persons with Disabilities. [See **Illustrations 6 & 7**]. The process by which national action plans are developed triggers governments to think of *how* they will implement, and what priorities they have given their own situation (e.g., developing countries, countries with federal/provincial system, countries looking to progressively realize economic, social and cultural rights.) Not only can the development of national action plans be the subject of monitoring, completed plans can provide guidance for a treaty monitoring body in the individualized examination of treaty implementation by a States Party. Participants observed the following with regard to national plans of action:

1. **Develop NAPs in consultation with disabled people** – national action plans must be developed with meaningful consultation with key stakeholders, and most importantly with disabled people’s organizations.
2. **NAPs should include benchmarking and indicators** – national plans of action should establish comprehensive, time-bound benchmarks or indicators for monitoring. They should include sources of financing, in addition to assessments of laws implemented successfully and unsuccessfully. They should also include information on which benchmarks have been met, which indicators are an appropriate and accurate measure of success, best practices, and lessons learned.
3. **Link NAPs to law-making and budgetary processes** – national action plans should be linked clearly with national law and policy-making processes, including, as appropriate, the use of budgetary resources. National action plans processes are also important tools for integrating disability into all policy areas. International monitoring of national action plans should monitor the development and content of the plan, and use its content as a basis and benchmark for review.

Illustration 6

The Beijing Platform for Action System of Monitoring National Action Plans

The Beijing Platform for Action, in paragraph 297, calls on all governments to develop implementation strategies or national plans of action for the Platform. The Division for the Advancement of Women asked all UN Members States to supply copies of these strategies/plans of action. The UN reviews national actions plans submitted in response to the requirement and provides a comprehensive analysis of where states are with respect to implementing the Beijing Platform of Action. The report analyzes whether national action plans have followed the recommendation set forth in the Beijing Platform, concerning national action plan preparation, content, action defined and resources allocated. Particular attention in the report is geared to assessing benchmarks and targets established under critical areas of action (e.g., violence against women, education of women, women in poverty). Innovative approaches are also indicated in the report.

For more on monitoring Beijing Platform National Action Plans, see
<http://www.un.org/womenwatch/daw/country/national/natplans.htm>.

Illustration 7

European National Action Plans against Poverty and Social Exclusion

European Union Member States are required to submit National Action Plans against poverty and social exclusion, in response to the common objectives on poverty and social exclusion. In these plans, every Member State presents its priorities and efforts for a two year period. The plans allow for the diversity of situations and policy priorities at national level, but are developed within the framework of a common outline to ensure some degree of coherence in order to facilitate their use in a process of mutual learning. The NAPs provide an opportunity for (i) the assessment of the strengths and weaknesses of policy instruments in light of the common objectives relating to poverty and social exclusion; (ii) how Member States' policies and actions, whether at national, regional or local level, will be further strengthened so as to meet objectives; and (iii) what specific and concrete changes or additions are proposed to existing policies or programmes or what new initiatives are planned in order to address identified problems and weaknesses.

For a copy of the common outline required for submission of the National Action Plan for the European Employment Strategy against Poverty and Social Exclusion, see:
http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/commonoutline2003final_en.pdf

ii) Measures to support implementation – “implementation facilitators”

Monitoring human rights abuses relies on more confrontational compliance mechanisms, associated with the scrutiny of State reports, individual/group and inter-State communications procedures and inquiry/inspection procedures. Beyond the more adversarial forms of ensuring compliance and enforcement of human rights treaty obligations, are measures of a more cooperative character, referred to here as “implementation facilitators” or measures to support the implementation of human rights obligations.

a) Public awareness and capacity building

Public education and awareness and capacity building are understood as vital preconditions to realizing the goals of a UN Convention on Disability Rights. Public education and awareness about disability is crucial in order to address stereotypes and prejudices against people with disabilities and for members of society to understand and appreciate the human rights to which people with disabilities are entitled. International treaties frequently require States Parties to improve public awareness and education in a given area. This is particularly true for international environmental agreements, though other treaties similarly give attention to public awareness and education. Training, which is slightly more specific, features in some international treaties on topics such as the protection of workers.

Participants noted the relevance of public awareness and capacity building with respect to monitoring in the following areas:

1. **Awareness of monitoring mechanisms** – participants noted that if the monitoring mechanisms are to be effectively utilized by civil society, members of the public and States Parties, all stakeholders must be made aware of the existence and mandate of the monitoring mechanism, and how they may best engage it.
2. **Capacity to engage** – participants focused much of their discussion in this area on the need for all stakeholders to have sufficient capacity to engage all aspects of the monitoring system. In particular, participants noted the need for technical assistance and, where necessary, training, to ensure both effective and efficient engagement in monitoring by various stakeholders.

b) Financial mechanisms to support treaty implementation

The effective implementation of a UN Convention on the Human Rights of Persons with Disabilities will not be achieved absent appropriate financial supports. While many of the treaty obligations may indeed be readily implemented without an extensive outlay of resources, the comprehensive nature of the treaty, coupled with the undeveloped state of disability laws and policies in the vast majority of countries around the world, will require financial resources.

There are various approaches to the issue of ensuring financial support for the ongoing implementation of the UN Convention, which may include the establishment of new financial mechanisms or the engagement of existing ones. In the international environmental realm, there is recognition that the development of environmental rules and standards, and the provision of

financial resources to ensure their implementation by all (especially developing countries), cannot be ignored. A number of funds have been established, often within the framework of international environmental conventions, to further environmental protection goals, most typically on a voluntary basis. Some participants noted that the development of a financial mechanism, perhaps in the form of a voluntary fund, could help foster technical assistance geared toward treaty implementation. It might also bolster the funding of monitoring mechanisms. In this regard the Global Environmental Facility (GEF) was cited by some participants as a useful model for further examination. **[See Illustration 8].** In addition, a study submitted to the Conference of States Parties to the Rotterdam Convention is currently available, which provides an assessment of “Possible Options for the Establishment of a Financial Mechanism for the Implementation of the Rotterdam Convention.” The study is currently available at: http://www.ciel.org/Publications/RotterdamStudy_Secretariat_May2005.pdf

Illustration 8

Global Environmental Facility

The Global Environmental Facility was established in 1991 by the World Bank, the UN Environmental Programme, and the UN Development Programme. The main function of the GEF is to provide funds to help developing countries meet incremental costs of environmental protection measures relating to climate change, biological diversity, international waters, ozone layer depletion and persistent organic pollutants. It also serves as the financial mechanism for four international environmental treaties, and thus helps fund initiatives that assist developing countries in meeting the objectives of the conventions. The GEF is an important mechanism that facilitates the participation of developing countries in global environmental policies and in international environmental conventions, and facilitates implementation through capacity-building. Since 1991, the GEF has provided \$4.5 billion in grants and generated \$14.5 billion in co-financing from other partners for projects in developing countries and countries with economies in transition. GEF Member Countries include developing and developed countries, as well as those with economies in transition. The GEF Council is the main governing body of the GEF, comprised of 32 Member Countries. All GEF full-size projects must be approved by the Council. The GEF Assembly, comprised of all member countries, meets once every four years to review policies and operations. A Secretariat serves and reports to the Assembly and Council and coordinates the implementation of GEF activities. NGOs participate in the GEF activities and assist in the design, execution, and monitoring of projects. Ten slots at GEF Council meetings are reserved for NGOs, and NGOs themselves have the responsibility of choosing their representatives. A Scientific and Technical Advisory Panel (STAP) provides objective scientific and technical advice to the GEF.

For more information on the Global Environmental Facility, see <http://www.gefweb.org/>.

iii) Roles of key stakeholders in monitoring and implementation

a) The role of governments in monitoring & implementation processes

Governments, and in particular States Parties, clearly have a central role to play in monitoring, as it is their action or inaction on treaty compliance that is the focus of the monitoring process. In examining the role of governments, and how governments are engaged by monitoring and implementation mechanisms, the participants noted the following:

1. **Benefits of government participation** – there is a need to better highlight the benefits to governments of participating in monitoring. For example, activities such as reporting or responding to informational requests of monitoring bodies can provide States with an opportunity to enhance coordination and collaboration both between government departments and with civil society. In turn, such enhanced coordination and collaboration can positively impact the effectiveness with which States implement their treaty obligations.
2. **Monitoring outcomes** – the monitoring process should facilitate production of more constructive feedback, showing governments not only what they have not done, but how they could do things better (i.e. good practices). Also, more information should be provided regarding the economic and social costs already borne by States Parties as a result of noncompliance.
3. **Developing country participation** – there is a need to ensure that developing countries are not disadvantaged when they participate in monitoring mechanisms. In some instances there is a need to build capacity to enable developing countries to participate meaningfully, and ensure not only the efficacy of the monitoring process, but also the efficient use of scarce developing country resources.
4. **Engage all relevant government entities** – it was noted that monitoring mechanisms have not historically engaged/ had access to all relevant government entities of States Parties, which in turn negatively impacts both the efficiency and effectiveness of the monitoring process. This is particularly important regarding States Parties with federal systems where governmental responsibilities may be spread throughout a wide system.
5. **Focus on continuous improvement** – some participants noted the need to strive for continuous improvement and implementation, which can be sought regardless of where States Parties' Need to ensure that monitoring focuses on continued improvement and implementation, no matter where the States Party's 'starting point' is.
6. **Noninterference** – a number of participants noted the need to ensure that countries do not negatively impact the ability of other countries to comply with their treaty obligations. The scope of the monitoring mechanism should thus include not only a States Party's degree of compliance and how it can do better, but also the degree to which its policies and practices support or counteract the ability of other countries to fulfill their respective obligations.

b) The role of NGOs in monitoring and implementation

The participation of non-state actors is sometimes provided for in the text of the treaty itself. It is now standard practice for international agreements to provide for the participation of relevant

NGOs, for example as observers in meetings of relevant treaty monitoring bodies, and in meetings of States Parties. In some instances NGOs have been given tasks by monitoring bodies to participate in data gathering and monitoring activities. Given the pattern of exclusion experienced by people with disabilities in decision-making processes at both the national and international level, the participation of people with disabilities and their representative organizations in any institutions and mechanisms created by an international convention on the rights of people with disabilities will be essential. The Convention on the Rights of the Child provides one good example in the human rights context. There are other examples of provisions allowing for the participation of NGOs in the environmental, as well as other contexts. The participants noted in particular:

1. **The critical role of NGOs** – especially as a source of information. There is a need to ensure that the monitoring process is *accessible*, not just in terms of disability accommodations, but that NGOs are adequately informed and have knowledge of the monitoring process and capacity to meaningfully engage it.
2. **Non-traditional roles for NGOs** – there is a need to consider non-traditional roles for NGOs regarding the monitoring of this convention. In the human rights context, NGOs have often been viewed as being on the “other side” and necessarily in opposition to States Parties. However, in some arms control and environmental contexts NGOs have been utilized as neutral parties and charged with specific roles in information gathering and assessment. It was suggested by some that similar roles be explored in the context of monitoring this convention. [See **Illustration 9**].
3. **NGO focus** – there was some concern expressed that whilst NGOs are an essential component in an effective monitoring mechanism, yet care should be taken to ensure that the monitoring mechanism does not unduly narrow the broad roles that NGOs must play in implementation; their role extends beyond monitoring and reporting on violations and NGOs need to contribute according to their capacities and the priorities of their constituents. In other words, NGOs, and in particular DPOs, should be able to productively engage the monitoring mechanism as a complement to their existing work, rather than having to deal with monitoring as an unhelpful distraction.

Illustration 9

Environmental NGOs and the Convention on International Trade in Endangered Species (CITES)

The role of NGOs has been central to the monitoring successes of the CITES convention. The CITES Secretariat has entered into a number of agreements with NGOs according to which NGOs perform important roles relating to monitoring and implementation. For example, the CITES Secretariat entered into a memoranda of understanding with the ICUN – the World Conservation Union - in which it named IUCN as a major technical advisor to the Convention and identified a number of tasks to be undertaken by IUCN for the CITES Secretariat. These include: (i) the provision of scientific information; (ii) the development and implementation of field projects, including – a system for monitoring of illegal killing of elephants; (iii) assistance with training activities, including the development of training materials and workshops as appropriate and in conjunction with other relevant

organizations; (iv) scientific and technical advisory role, including technical assistance to support States Parties in implementation of the Convention; and (v) serving a facilitation role, including arranging dialogue with States Parties and liaison with other conservation conventions and organizations. Data collection for the purposes of monitoring trade in endangered species of wild flora and fauna are collected by the Wildlife Trade Monitoring Unit (WTMU). The WTMU receives data from governmental as well as non-governmental sources. This information is utilized by the CITES Secretariat in order to identify compliance problems and to take measures where data points to gaps.

c) The Role of other relevant stakeholders in monitoring and implementation

Ensuring the effective monitoring and implementation of human rights obligations requires the engagement of a wide range of stakeholders. Global treaties recently negotiated by the international community give explicit recognition to the role that a range of key stakeholders play in ensuring the success of the treaty. Thus, international environmental treaties address the challenge of coordination and the necessity of full participation among a full range of relevant actors. Ensuring the effective monitoring and implementation of a UN Convention on the Human Rights of Persons with Disabilities will require the coordination and participation, not only of governments and disabled people's organizations, but also of other key actors such as international and regional development institutions, the United Nations and its respective agencies and so forth.

International development organizations have not typically been associated with the monitoring and implementation of human rights treaties. However, given that some 80% of the global population of disabled persons live in the developing world and most of these people live in poverty, the role of development institutions is fundamental to realizing the full range of rights to be articulated by the UN Convention on the Human Rights of Persons with Disabilities. As regards international development organizations and other actors, the participants noted:

1. **Need to include full range of stakeholders** – international development organizations, UN agencies, and other entities (e.g. private foundations), should be brought in to the monitoring process. They can be an invaluable source of useful data and helpful indicators (which many of them already have a mandate to collect), and good practices. In addition, the treaty monitoring mechanism can be a source of information that will ensure that the work of these various stakeholders usefully complements and supports the treaty's implementation.
2. **Importance of international cooperation** – several participants noted the utility of international cooperation as a mechanism to bring all relevant stakeholders together and share good practices, relevant information etc. The monitoring mechanism has the potential to provide one forum in which such cooperation may usefully occur.

ANNEX 1 - Symposium Agenda

- Welcome – Kathleen Martinez, U.S. National Council on Disability
- Introductions
- Presentation, “Monitoring in the context of the disability treaty negotiations and ongoing human rights treaty body reform process” – Katherine Guernsey & Janet Lord
- Presentation of a governmental perspective on monitoring, “Holistic approach to monitoring and implementation mechanisms of the envisaged convention on the rights and dignity of persons with disabilities” – Ambassador H. E. Luis Gallegos
- Facilitated Structured Dialogue

ANNEX 2 -Useful Resources

The following links were provided to the participants, and are included here for those who may similarly find them useful:

Official website of the UN Ad Hoc Committee:

<http://www.un.org/esa/socdev/enable/>

Link to Chair’s Text (latest draft text for the convention):

<http://www.un.org/esa/socdev/enable/documents/chairtext.doc>

Link to Covering Letter for Chair’s Text:

<http://www.un.org/esa/socdev/enable/documents/coveringletter.doc>

Study by Gerard Quinn and Theresia Degener, Commissioned by the Office of the High Commissioner for Human Rights: *“Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability”*

<http://www.unhchr.ch/disability/study.htm>

National Human Rights Institutions draft text on monitoring submitted to the sixth session of the Ad Hoc Committee:

<http://www.un.org/esa/socdev/enable/rights/ahc6nhri25.doc>

Office of the High Commissioner for Human Rights homepage on treaty body reform process:

<http://www.ohchr.org/english/bodies/treaty/reform.htm>

Israel draft text on monitoring submitted to the sixth session of the Ad Hoc Committee (at bottom of page):

<http://www.un.org/esa/socdev/enable/rights/ahc6israel.htm>

Mexican draft treaty proposal submitted to the first session of the Ad Hoc Committee (latter articles address monitoring):

<http://www.un.org/esa/socdev/enable/rights/adhocmeetaac265w1e.htm>

National Council on Disability homepage:
<http://www.ncd.gov>

Mental Disability Rights International homepage:
<http://www.mdri.org>

ANNEX 3 - List of Participants

Rapporteurs:

Alison Long – American University
Lindsey Barna – American University

Attendees:

Joelle Balfe – Consultant, Human Rights and Disability
Chris Camponovo – U.S. Department of State
Charles E. Di Leva – The World Bank Group
Robert Dinerstein – American University
Katherine Dorsey – Centre for International Rehabilitation
Joan Durocher – U.S. National Council on Disability
Ambassador H. E. Luis Gallegos – Embassy of Ecuador to the United States
Kathy Guernsey – American University (facilitator)
Leah Harris – American University
Anne Hayes – Center for International Rehabilitation
Sarah Jakiel – American University
Janet E. Lord – American University (facilitator)
Daniel Magraw – Center for International Environmental Law
Kathleen Martinez – U.S. National Council on Disability
Julie Mertus – American University
Marco Nicoli – The World Bank Group
Mariana Olivera-West – Mission of Mexico to the United Nations
Jeff Rosen – U.S. National Council on Disability
Eric Rosenthal – Mental Disability Rights International
Zhanna Son – Landmine Survivors Network
Michael Stein – Harvard University
Jeff Walker – BlueForce LLC
Amy Wilson – Gallaudet University

ANNEX 4 - Organizational Bios

Co-Sponsoring Organizations

The National Council on Disability is an independent federal agency with 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal

opportunity for all individuals with disabilities regardless of the nature or significance of the disability and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society. Over the past few years, the National Council on Disability has released several documents and reports related to the development of a UN convention on the rights of people with disabilities. They can be found at www.ncd.gov in the publications section or at the following links:

http://www.ncd.gov/newsroom/publications/2002/unwhitepaper_05-23-02.htm

(Understanding the Role of an International Convention on the Human Rights of People with Disabilities)

http://www.ncd.gov/newsroom/publications/2002/understanding_7-30-02.htm

(Understanding the Potential Content and Structure of an International Convention on the Human Rights of People with Disabilities)

http://www.ncd.gov/newsroom/publications/2002/outreach_tool.htm

(An Education and Outreach Tool for the US Disability Community on the Convention)

http://www.ncd.gov/newsroom/publications/2003/history_process.htm

(A History of the Process—UN Convention)

<http://www.ncd.gov/newsroom/publications/2004/unconvention.htm>

(Update on the 3rd Ad Hoc Committee Meeting)

<http://www.ncd.gov/newsroom/publications/2004/unadhoc.htm>

(Update on the 4th Ad Hoc Committee Meeting)

http://www.ncd.gov/newsroom/publications/2005/fifth_session.htm

(Update on the 5th Ad Hoc Committee Meeting)

http://www.ncd.gov/newsroom/publications/2005/convention_update.htm

(Update on the 6th Ad Hoc Committee Meeting)

<http://www.ncd.gov/newsroom/publications/2005/alltheseries.htm>

(A series of papers on the US disability law experience with respect to several articles on the agenda during the 6th Ad Hoc Committee Meeting)

American University Program in Ethics, Peace and Global Affairs

The Master of Arts in Ethics, Peace, and Global Affairs at American University offers an ethical response to contemporary global problems. This interdisciplinary program, offered jointly by International Peace and Conflict Resolution in the School of International Service and the Department of Philosophy and Religion in the College of Arts and Sciences, prepares students broadly in the practical application of ethical theory and policy analysis to difficult ethical choices in global affairs, and specifically to the dynamics of war, peace, and conflict resolution. For more information, see:

<http://www.american.edu/sis/academics/graduateprograms/ma/epga.htm>

American University/Amnesty International Summer Human Rights Institute: Human Rights in the 21st Century

Human Rights in the 21st Century is a collaboration between Amnesty International USA and American University. The Institute offers a series of leadership development courses for emerging human rights scholars and activists, unique in its scope and the opportunities offered to participants. It also provides a forum throughout the year for dialogue and debate on contemporary issues in international human rights. In 2005, the Summer Institute will continue to address latest developments in human rights law and practice, including on-going UN negotiations to draft a convention on the human rights of people with disabilities, the intersection of human rights and conflict, and issues of NGO accountability and legitimacy. The Institute offerings will provide students with the knowledge, skills, applied experiences, and professional opportunities to address the new human rights challenges of the global era. Students may earn a certificate of achievement in the Study of Global Human Rights upon completion of nine credits. For more information, see: <http://www.american.edu/sis/humanrights/index.html>

Mental Disability Rights International

Mental Disability Rights International (MDRI) is an advocacy organization dedicated to the human rights and full participation in society of people with mental disabilities worldwide. MDRI documents human rights abuses, supports the development of mental disability rights advocacy, and promotes international awareness and oversight of the rights of people with mental disabilities. MDRI advises governments and non-governmental organizations to plan strategies to bring about effective rights enforcement and service system reform. Drawing on the skills and experience of attorneys, mental health professionals, and people with disabilities and their families, MDRI challenges the discrimination and abuse faced by people with mental disabilities worldwide.

MDRI is based in Washington, DC with a European Regional office in London, United Kingdom. MDRI also has an office in Prishtina, Kosovo. MDRI has investigated human rights conditions and assisted mental disability rights advocates in Argentina, Armenia, Azerbaijan, Bulgaria, the Czech Republic, Estonia, Hungary, Kosovo, Lithuania, Macedonia, Mexico, Paraguay, Poland, Peru, Romania, Russia, Serbia, Slovakia, Slovenia, Turkey, Ukraine, and Uruguay. MDRI has published the following reports: *Human Rights & Mental Health: Peru* (2004); *Not on the Agenda: Human Rights of People with Mental Disabilities in Kosovo* (2002);

Human Rights & Mental Health: Mexico (2000); *Children in Russia's Institutions: Human Rights and Opportunities for Reform* (2000); *Human Rights & Mental Health: Hungary* (1997); *Human Rights & Mental Health: Uruguay* (1995). On behalf of the US National Council on Disability (NCD), MDRI Executive Director Eric Rosenthal co-authored the 2003 report *US Foreign Policy & Disability*. For access to these reports and other information about the work of MDRI, see <http://www.mdri.org>.