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1/1/2016

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EU-UN JP Human Rights for All –Support to the Implementation and Monitoring of the National Human Rights Strategy and Action Plan

This publication has been produced with the assistance of the European Union and the United Nations Development Programme (UNDP). Its contents are the sole responsibility of the Expert and can in no way be taken to reflect the views of the European Union and the United Nations Development Programme (UNDP).

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List of abbreviations

CRPD	Convention on the Rights of Person with Disabilities
DPO	Disabled People's Organisation
NGO	Non-Governmental Organisation
NHRSAP	National Human Rights Strategy Action Plan
PDO	Public Defender of Georgia
IACHR	Inter-Agency Council for NHRSAP
EU	European Union
UNDP	United Nations Development Programme

Introduction

The project “EU/UN Human Rights for All” is a joint initiative of four UN agencies – United Nations Development Programme (UNDP), United Nations Children Fund (UNICEF), Office of High Commissionaire on Human Rights (OHCHR) and International Labour Organization (ILO) with UNDP. The project is funded by the European Union based on the Financing Agreement on “Human Rights for All ” signed between Georgia and the European Union in May 2015 and seeks to strengthen human rights protection in areas prioritized by EU-Georgia agreements, including the rights of minorities and vulnerable groups, internal and external oversight of law enforcement, labour rights, protection of privacy, freedom of expression and information.¹

The project supports the implementation and monitoring of the National Human Rights Strategy and Action Plan in selected areas prioritized by the EU-Georgia agreements and to enhance capacities of government institutions and Parliamentary Committees on Human Rights and Civil Integration and on Legal Issues and improve mechanisms for better protection of human rights in Georgia.

The objective is to enhance capacity to promote more effective government institutions, mechanisms and Parliamentary Committees (on Human Rights and Civil Integration and on Legal Issues) in implementing the National Human Rights Strategy (NHRS) and its Action Plan (AP), in areas prioritised by the EU-Georgia agreements.

One of the objectives of the project is to provide support to the implementation of the National Human Rights Strategy Action Plan (NHRSAP) to the Inter-Agency Council for NHRSAP (IACHR) and its Secretariat. Objective 19.1.2 of 2016-2017 NHRSAP provides: “[d]eveloping effective mechanisms of implementation and coordination of the Convention on the Rights of Persons with Disabilities (CRPD)”.

In 2014 Georgia ratified UN Convention on the Rights of Persons with Disabilities (CRPD). The Government of Georgia designated Coordination Council on Rights of Persons with Disabilities (the Council) as body responsible for implementation of CRPD under article 33.1 of the Convention.

The Council was established in 2009 based on the “Concept on Integration of Persons with Disabilities”. The Council is responsible for coordination of implementation of 2014-2016 Action Plan on Ensuring Equal Opportunities for Persons with Disabilities. The National Human Rights Secretariat serves as the secretariat for this Council.

¹ More information on project see on the following link:

http://www.ge.undp.org/content/georgia/en/home/operations/projects/democratic_governance/human-rights-for-all/ (last accessed on November 29, 2016).

However, because the Council was initially established as a coordination body for the implementation of the Concept on Integration of Persons with Disabilities and was not reviewed, reorganized or reformed after the ratification of CRPD its appropriateness as the “focal point” responsible for implementation and co-ordination mechanism for the purposes of article 33.1 of CRPD needs to be reconsidered. Both the Government of Georgia and civil society organisations agree with this assessment.

To support the Government of Georgia in setting up efficient national mechanisms for the implementation and monitoring of CRPD the EU-UN JP initiated to develop recommendations with a purpose to Develop recommendations for the reorganization of the Coordination Council on Rights of Persons with Disabilities to comply with the requirements of article 33.1 of CRPD.

Legal Framework: Article 33 of CRPD

Article 33 of CRPD “National implementation and monitoring” provides:

1. *States Parties, in accordance with their system of organization, shall designate **one or more focal points** within government **for matters relating to the implementation of the present Convention**, and shall give due consideration to the establishment or designation of a **coordination mechanism** within government to facilitate related action in different sectors and at different levels.*
2. *States Parties shall... maintain, strengthen, designate or establish within the State Party... one or more independent mechanisms... to promote, protect and monitor implementation of the present Convention...*
3. *Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.²*

In addition, article 4.3 of CRPD provides that:

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.

² Full text of the Convention is available at: <http://www.un.org/disabilities/convention/conventionfull.shtml> (last accessed at November 29, 2016)

General Recommendations and guidance on implementation of Article 33.1

From Exclusion to Equality: Realizing the rights of persons with disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol, OHCHR:

Focal points could be a section or a person within a ministry or cluster of ministries, an institution, such as a disability commission, or a particular ministry, such as a ministry for human rights or a ministry for persons with disabilities, or a combination of the three. Even if these bodies or mechanisms already exist, they will need to be revised to oversee the implementation of the Convention and to coordinate efforts among various sectors at the local, regional and national/federal level.

Whatever its designated form, the focal point should not act in isolation, but play a leading role in coordinating the implementation of the Convention. It should be equipped with adequate human and financial resources; be established through legislative, administrative or other legal measures; be permanently appointed; and be located at the highest possible level of government.³

Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe, OHCHR:

Focal points are an issue of internal public administration. The purpose is to appoint a governmental department for handling matters relating to the implementation of CRPD. The focal points should both have the necessary resources to carry out their function and be sufficiently accessible to persons with disabilities. States may also designate several focal points or sub-focal points.

Coordination mechanisms aim to boost cooperation between ministries and to avoid that policymakers adopt isolated measures. The establishment or designation of a coordination mechanism, however, is not a legal obligation. It is optional.

In all EU member States Parties to CRPD, the focal points are the ministries responsible for persons with disabilities. These ministries are almost always either the ministries of social affairs or ministries with broader competences including that of social affairs. This is no surprise. The designation of ministries responsible for persons with disabilities will most often simply confirm existing responsibilities, while adding a human rights perspective to their mandate. In other words, the

³ <http://www.ohchr.org/Documents/Publications/training14en.pdf> (last accessed at November 29, 2016)

major change is that these ministries will now have to focus on CRPD. Since almost all the focal points have been designated and since they have already started their activities, it will be possible to evaluate the impact of this practice within the coming years.⁴

Mental Disability Advocacy Centre (MDAC):

In order to assist in Article 33(1) implementation, MDAC has developed the following list of functions of the focal point(s):

- Serve as the CRPD contact point for government and civil society;
- Spearhead the CRPD and its values across and throughout government;
- Ensure coordination within government;
- Secure civil society involvement;
- Conduct a baseline analysis at the time of CRPD ratification;
- Publish a national CRPD implementation plan;
- Collate data and statistics; and
- Liaise with domestic and international human rights mechanisms.⁵

International Disability Alliance advises that the focal point be “*located at the highest level of the Executive.*”⁶

The CRPD as an Engine of Domestic Law Reform, Prof. Gerard Quinn:

Article 33.1 is unusual in that it actually specifies how the domestic implementation process is to move forward. While affording a certain margin of appreciation that is to be expected in order to respect diversity with respect to modes of governance, it does specifically oblige States Parties to designate ‘one or more focal points’ within government for implementation.

This is an obvious corrective to the tendency of all systems to place disability issues in a wide range of Government Department with no coordinating mechanism. The predictable result has been vagueness, conflicts, and gaps in policy.

⁴ http://europe.ohchr.org/Documents/Publications/Art_33_CRPD_study.pdf (last accessed at November 29, 2016).

⁵

http://www.mdac.org/en/building_the_architecture_for_change_guidelines_on_article_33_of_the_un_convencion_on_the_rights_of_people_with_disabilities (last accessed at November 29, 2016).

⁶ <http://www.internationaldisabilityalliance.org/en> (last accessed at November 29, 2016).

It bears emphasising that the reference to 'one or more' focal points was intended to cover Federal States and not to detract from having a core focal point at the relevant level.⁷

An analysis of the existing material suggests that focal points:

should not to act in isolation but must play leading role in co-ordination;

- have adequate human and financial resources;
- be located at the highest possible level of government with membership from key players in key ministries who can ensure delivery;
- be formally designated as the Art 33.1 body;
- **be recognized as independent of the parent ministry;**
- need to promote awareness both within and outside government;
- participate in the development of the action plan;
- monitor and report on implementation; and
- be the "channel" for civil society to communicate with government and public bodies.

Summary of General Recommendations

A focal point should be within government itself:

- in a section or person within ministry or a cluster of ministries;
- based in a ministry for human rights or for people with disabilities;
- chaired by an important minister supported by staff;
- could be focal points in all key ministries (and local administrations) and co-ordinated by links;
- could have a dual structure, with high level ministry members, meeting to co-ordinate functions, meeting civil society organizations regularly; and
- needs to be open and transparent so that details of meetings, minutes and papers are published.

Civil society and focal points, the arrangements need to:

- ensure the state party is held to account for the implementation (or failure to implement) the rights set out in the CRPD;
- that the role of civil society and DPOs in particular is robust, complies with article 4.3 of the CRPD – "Nothing about us, without us";

⁷ http://www.nuigalway.ie/cdlp/staff/gerard_quinn.html (last accessed at November 29, 2016).

- ensure the correct balance between the duty of the state to implement the CRPD and to make decisions about allocation of resources, how those rights are to be delivered and how it is accountable to civil society;
- be clear about the role of DPOs, the funding of DPOs and potential conflicts involved in service delivery, and to involve DPOs at all levels both small and large; and
- note that the majority of people with disabilities will not in contact with DPOs so that other forms of consultation and communication will be required.

The existing Coordination Council on Rights of Persons with Disabilities (“the Council”) as the Article 33.1 mechanism

The author of this report met with a number key people to discuss the correct approach to article 33.1 in Georgia. These meetings included:

- The staff of the United Nations Development Program in Georgia
- The Staff of OHCHR office in Georgia
- Head of the GOG Administration
- The Human Rights Secretariat
- Representatives of NGOs/DPOs
- Attending the major conference in Tbilisi, “UN CRPD: Two Years After Ratification” on 14th June 2016, listening to the keynote speeches and participating in the workshops.

The Ombudsman of Georgia, in his 2015 report, has commented:

“The Council’s composition, functions and modus operandi are not even formally consistent with the requirements of Article 33 of the Convention with regard to implementation bodies (focal points) and the agreement reached by the States Parties at their seventh conference. More so, in practice, the Council fails to meet its obligation under its own statute and it has only convened once during 2015.

Analysis of the existing situation shows that the focal point for the implementation of the UN Convention on the Rights of Persons with Disabilities is virtually dysfunctional in Georgia. Hence, the process of implementation of the Convention is going with impediments. The Government has to correctly determine the institutional framework required for the implementation of the Convention, re-allocate tasks between the focal

point and the coordination mechanism and make these mechanisms truly operational.”⁸

The following concerns were also expressed about the current arrangements in Georgia:

- There were too many councils, meetings and arrangements in place leading to confusion and overlap and this did not help the government make strategic decisions about the priorities for the implementation of the CRPD nor did it ensure that the government was held to account in its delivery or performance;
- NGOs/DPOs, as members of the Council with voting rights, are taking on responsibility for decisions which are the responsibility of the state party to CRPD. Consequently, DPOs are making real decisions about the allocation of resources and as a consequence accepting the denial of those scarce resources to others. It is not acceptable for DPOs to have to take on the burden of responsibility for decisions which, in practice, deny some people the rights to which they are entitled;
- The current arrangements in Georgia appear to be unique and there seems to be no other country which has created a Focal Point under Article 33.1 where decisions about the allocation of scarce resources to ensure the implementation of the rights in the CRPD are in practice and in law made by DPOs/NGOs rather than by the state party.
- Discussions at the Council were rarely focused on strategic implementation or systemic violations but too often on individual cases and their needs, particular failures of a service or on issues of contracts or grants to DPOs/NGOs;
- The requirement that the Prime Minister chair every meeting reduced the number of effective meetings in any year and resulted in frequent informal discussions and decisions made between public officials and different ministries, resulting in less effective delivery, less transparent decisions and inadequate communication or consultation with the wider community;
- The focus of the discussions at the Council resulted in confusion between the interests of individuals, the particular and direct interests of the DPOs/NGOs themselves and the wider interests of people with disabilities in Georgia;
- The nature of the current arrangements appeared to have created two categories of DPOs/NGOs, those with influence and resources and those, apparently, excluded and without influence; and
- Given the focus described above there were inadequate arrangements in place to clarify and make transparent the obvious real conflicts of interest.

⁸ Rights of Persons with Disabilities in Georgia, <http://www.ombudsman.ge/uploads/other/3/3728.pdf> (last accessed at November 29, 2016).

Recommendations on implementation of article 33.1 of CRPD

It was decided to develop two models of the national mechanism. However, it proved to be a difficult task as proposing two different models that shall be efficient and effective is almost impossible.

The responsibility for delivering the rights in the CRPD is imposed on the state. Both options create one mechanism which will be responsible for both coordination and implementation. Decision-making on how the rights in the CRPD implemented must, therefore, be the responsibility of the government itself. **No nation state can implement all the rights in the CRPD immediately and completely.** This is particularly true for states which are small, have little history of providing support for people with disabilities or are relatively poorly resourced and so difficult decisions must be made by states and public officials. DPOs/NGOs must be consulted before all these strategic and policy decisions are made including by providing information about where in government decisions are made and responsibility for implementation is located.

It is proposed that the current Council is abolished and instead a new Mechanism is created. It is also recommended that a new mechanism is the Working Group of IACHR.

It is noteworthy that, article 33.1 is about co-ordination and is designed to ensure that all ministries take their own responsibility for implementation but that this is coordinated and driven forward by the focal point. The focal point needs staff resources but if it is perceived as responsible for the implementation itself the CRPD will not be mainstreamed throughout government which is crucial to the success of delivering the rights that the CRPD contains.

Model One of the Mechanism⁹

Mandate: the implementation by the State of Georgia of the CRPD, an essential component of the Human Rights Strategy, the creation and collection of data and

⁹ This function is referred to as the Mechanism for Implementation and Co-ordination in the human rights action plan, and shortened to “the Mechanism” in this report. One possible name for this option could be “**the Inter-Agency Commission on the Implementation of the CRPD**”.

information (including segmented data by region and by disability) about disability and people with disabilities in Georgia, the coordination of the public sector within government and municipal authorities to ensure action is taken in all different sectors, to ensure implementation is a priority at different levels within the Georgian state to delivery of the rights contained in the CRPD, mainstreaming disability rights throughout the public sector and raising awareness of the needs and rights of people with disabilities, the scrutiny of all government policies and legislation to identify opportunities to implement the CRPD and any threats to that implementation, the drafting of the chapter on the CRPD in the National Human Rights Strategy, and preparing the periodic reports for the Committee of the CRPD.¹⁰

Public sector responsibility: each and every public body is itself responsible for ensuring that the CRPD is properly and effectively implemented in itself own sector and contributes positively to the focal point Mechanism. The Mechanism can never be a substitute for responsibilities of government ministries and municipalities but will provide goals and deadlines for these other public sector bodies. Policy expertise and development will remain the responsibility of experts within each department and for the implementation of the CRPD within their sector. The Mechanism also does not replace the need for individual public sector bodies to carry out their effective consultation with people with disabilities.

Local responsibility and municipalities: The Mechanism will need to intervene effectively with local public services and the municipalities to ensure that the CRPD is properly implemented at local level, in the regions and in rural areas. It will need to help to create models and modalities to try to ensure that the kind of co-ordination for the implementation of the CRPD proposed here at the national level is reflected by similar systems locally and that DPOs/NGOs are consulted and are engaged in implementation.

Composition of the Mechanism:

Membership: the high level public officials in all the key Ministries/agencies with a role in the implementation of the CRPD including:

- The Prime Minister's Advisor on Human Rights;
- Ministry of Labour, Health and Social Affairs;
- Ministry of Regional Development and Infrastructure;

¹⁰ For more details on the work of focal points see page 95, *From Exclusion to Equality: Realizing the rights of persons with disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol*, OHCHR

- Ministry of Finance;
- Ministry of Culture and Monument Protection;
- Ministry of Education and Science;
- Ministry of Justice;
- Ministry of Sport and Youth Affairs;
- Ministry of Internal Affairs;
- Ministry of Corrections;
- Ministry of Foreign Affairs, and
- GEOSTAT.

Requested to participate: Chair or deputy chair of: Human Rights and Civil Integration Committee of the Parliament of Georgia; Parliamentary Committee on Legal Issues, Healthcare and Social Issues Committee of the Parliament of Georgia; and Education, science and culture Committee of the Parliament of Georgia; municipalities representative; Public Defender.

Chair: the First Deputy Minister, Ministry of Labour, Health and Social Affairs

Co-Chair: the First Deputy Minister of Justice, or the First Deputy Minister of Finance.

Decisions: made by government officials at the meetings following open and transparent consultation.

Regularity of meetings: at least three times a year with NGOs/DPOs, international organisations promoting human rights in Georgia, the Prime Minister will be invited to every meeting and the meetings will be held in public. The Chair has the right to call additional special meetings where necessary and any member has the right to request additional meetings.

- One public meeting will be in January and will consider the progress made in implementation of CRPD over the previous year and the annual plan proposed for implementation by the government for the coming year;
- A second public meeting will consider any recommendations made by the PDO as a result of its monitoring and complaints mandate (article 33.2);
- Regular private meetings, attended by the Prime Minister's Advisor on Human Rights, the Minister or the Deputy Minister of the Ministry of Labour, Health and Social Affairs of key ministries represented at high level will happen once every two

months to ensure that the annual plan for implementation is being driven forward;¹¹

- Working groups of public officials and civil society for the consideration of detailed implementation, practical issues or thematic (but not individual cases) may be created and will have a mandate to report back to the main meetings. The working groups are likely to constitute one of the main channels available to the community to raise issues with government and to start a process to deal with these issues.

The working group formats should be created to ensure appropriate representation of both ministries and DPO/NGOs. The formats should be consultative but focus on implementation and the relation to the overall process should be spelt out. The aims of these working groups should be determined in detail in advance.

Transparency: There are three different important mechanisms which assist transparency and participation: (i) attending the meetings themselves and listening to the debate and discussion, (ii) writing and sending in submissions allows a more detailed response to government proposals and allows more detailed alternatives to be suggested, and (iii) speaking at the meetings allows greater interactivity and promotes responses from government.

- All strategic or high level policy decisions relating to the implementation of CRPD will be made at the meetings of the Mechanism. Any such decisions made outside of the Mechanism meetings for reasons of urgency etc. will be reported to the next meeting;
- All meeting dates will be announced two weeks in advance and the details set out on the website;
- DPOs/NGOs (and the PDO) will have the opportunity to send submissions to both private and public meetings and to speak and ask questions at the public meetings;
- Proposals and papers of both the closed and open meetings to be available on website in advance before strategic and policy decisions are made and the minutes of all meetings to be published;

¹¹ Delivery of the CRPD at the local level and by local authorities is crucial and can be ensured (1) by draft laws prepared by Inter-agency Commission activities which, once enacted by Parliament will oblige each local authority to act accordingly; (2) some decisions will need to be delegated by the Inter-Agency Commission to the government so that they become obligatory for local authorities; (3) the government will need to allocate funds for local authorities from the state budget for the implementation of concrete projects and the Inter-Agency Commission will need to monitor such projects to ensure that they are delivered; and (4) government will need to ensure that some local activities are delivered by local authorities rather than by central government.

- All materials and documents to be accessible and available in all appropriate formats;
- **DPOs/NGOs:** diverse and representative groups from civil society should be encouraged to attend the public meetings. All and any DPO and NGO can participate, there will be no restriction, selection or election on those that can attend and participate.

Accountability: The Mechanism is accountable to people with disabilities in Georgia, the Prime Minister, its own members, its public meetings, to DPOs/NGOs, and to the media.

Conflicts of interest: there should be no discussion of individual cases (except for illustration purposes) or service delivery issues by DPOs/NGOs, any conflicts or potential conflicts of interest by those speaking at meetings to be declared and noted in the minutes. Allocation of specific grants or contracts create particular conflicts of interest and decisions on these cannot be made at public meetings of the Mechanism. Representatives of NGOs/PDOs should not be paid to avoid any perception of conflicts of interest or any perception that the participants are subject to inappropriate influence by the government

Advice and opinions: the government may request particular advice or opinions on specific issues from public officials, the PDO or DPOs/NGOs and those will be submitted to the next meeting and published alongside the other materials for the meeting

Rules of procedure for the meetings of the Mechanism will be drafted and published. This should include: the transparency rules and the conflicts of interest rules set out above and specific rules for the conduct of the meetings which allow proper consultation and debate but which prevent unacceptable disruption of the meetings

Secretariat: a dedicated and adequately resourced staff should be created, perhaps from Human Rights Secretariat, with a clear link to Prime Minister and other key ministries. The Secretariat will prepare the agendas, draft papers or ensure that other papers are drafted in advance of the meetings, prepare the minutes, ensure that the rules on transparency and conflicts of interest are observed and all other tasks necessary to ensure the effective conduct of the Mechanism. The Secretariat will also draft and the periodic reports for the CRPD and ensure that are sent to the Ministry of Foreign Affairs to be finalised and dispatched.

Legal certainty: The creation, mandate and procedures for the new proposed mechanism should be set out in writing, agreed by the government following consultation with Parliament and civil society.

Model Two of the Mechanism¹²

Both options create one mechanism which will be responsible for both coordination and implementation. The details of the second option proposed for the Mechanism for the Convention on the Rights of People with Disabilities should be as follows:

Mandate: as for Model One

Public sector responsibility: As for Model One

Local responsibility and municipalities: As for Model One

Composition of the Mechanism:

Membership: the high level public officials in all the key departments with a role in the implementation of the CRPD, as for Model One, plus:

The DPO/NGO members will have a right to attend but no right to vote or to make decisions. All and any DPO and NGO can participate, there will be no restriction, selection or election on those that can attend and participate.

Requested to participate: as for Model One

Chair: as for Model One

Co-Chair: as for Model One

Decisions: as for Model One

Regularity of meetings: at least six times a year.

¹² This function is referred to as the Mechanism for Implementation and Co-ordination in the human rights action plan, and shortened to “the Mechanism” in this report. One possible name for option 2 could be “**the Focal Point for the Implementation of the CRPD**”.

- One meeting will consider any recommendations made by the PDO as a result of its monitoring and complaints mandate (article 33.2)
- All meeting dates to be announced two weeks in advance and to be on the website
- DPOs/NGOs (and the PDO) will have the opportunity to send submissions to the meetings and to speak and ask questions
- Working groups of public officials and civil society for the consideration of detailed implementation, practical issues or thematic (but not individual cases) may be created and will have a mandate to report back to the main meetings. The working groups are likely to constitute one of the main channels available to the community to raise issues with government and to start a process to deal with these issues.

The working group formats should be created to ensure appropriate representation of both ministries and DPO/NGOs. The formats should be consultative but focus on implementation and the relation to the overall process should be spelt out. The aims of these working groups should be determined in detail in advance.

Transparency: as for Model One

Accountability: as for Model One

Conflicts of interest: as for Model One

Advice and opinions: as for Model One

Rules of procedure for the meetings as for Model One

Secretariat: as for Model One

Legal certainty: as for Model One

Summary of differences between Option One and Option Two

The proposed: mandate, responsibility of government and local municipalities, membership by government and the public sector, additional participation, Chair and Co-Chair, principles of transparency, accountability, conflicts of interest, advice and opinions, rules, secretariat, importance of the involvement of civil society and legal certainty are the same in both options. The key differences are set out in the table below.

	Option One	Option Two
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Decisions	Made by government officials at the public and the private meetings following open and transparent consultation. Any strategic or high level policy decisions made outside of the public meetings will be reported to the next public meeting.	Made by government officials at the meetings following open and transparent consultation. All strategic or high level policy will be made at the meetings. Any such decisions made outside of the meetings for reasons of urgency etc. will be reported to the next meeting.
Membership	Formally government only are members. DPOs/NGOs are not members	Includes DPOs/NGOs. The DPO/NGO members will have a right to attend but no right to vote or to make decisions.
Regularity of meetings	Three times a year in public. Other private meetings will be held but decisions made and policies agreed will be reported to the next public meeting.	Six times a year.