

ENHANCING THE ROLE OF OMBUDSMAN INSTITUTIONS IN THE PROTECTION AND PROMOTION OF THE RIGHTS OF PERSONS WITH DISABILITIES

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Introduction

It is estimated that over one billion persons around the world live with some form of disability.¹ Persons with disabilities (PWDs) are often discriminated against, segregated, subjected to violence and otherwise treated badly by state and non-state actors. Women with disabilities are often subjected to egregious treatment such as violence, exploitation and forced sterilization. Children with disabilities are also more vulnerable. The elderly also may live with disabilities, either longstanding or appearing with the aging process.

In recent years, the international human rights system has paid greater attention to articulating and enforcing the human rights of PWDs. The international community now uses a social model of disability, instead of the medical model.² This has culminated in a broad spectrum of rights in the UN Convention on the Rights of Persons with Disabilities (CRPD).³ The international community has also emphasized the use of national human rights institutions (NHRIs) to facilitate state domestic implementation of and compliance with their international disability rights legal obligations.

While the definition of and international accreditation process for NHRIs is affected both by legal and political considerations, national-level human rights ombudsmen and human rights commissions are clearly NHRIs.⁴ Notwithstanding the debate over NHRI definition and status, there are other domestic institutions that can also play an important role in the international disability rights law compliance process, including sub-national human rights ombudsmen, national and sub-national classical ombudsmen and thematic human rights institutions such as equality bodies.

¹ WHO and World Bank, *World Report on Disability* (2011) at 29; UN Human Rights Council, *Thematic study on the issue of violence against women and girls and disability*, Report of the Office of the UN High Commissioner for Human Rights, UN Doc. A/HRC/20/5 (March 30, 2012).

² The medical model looked to the limitations of individuals due to disability. The social model looks at how societal barriers circumscribe the lives of persons with disabilities and supports rights that reduce barriers to their full participation in society. The social model accepts medical and professional *support*, Janet E. Lord et al., "Lessons From the Experience of U.N. Convention on the Rights of Persons with Disabilities: Addressing the Democratic Deficit in Global Health Governance" (2010) 38 J. Law, Medicine & Ethics 564 at 566.

³ Convention the Rights of Persons with Disabilities, 46 I.L.M. 445 (in force May 3, 2008).

⁴ Linda C. Reif, "The Shifting Boundaries of NHRI Definition in the International System" in Ryan Goodman and Thomas Pegram, eds., *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press, 2012) at 52.

In this paper I will explore the role that ombudsman institutions can play in promoting and protecting the international human rights of PWDs, with a particular focus on the CRPD. International standards and ombudsman powers and operating practices will be examined to demonstrate the many ways in which ombudsman institutions can enhance the protection and promotion of the rights of PWDs within their existing legal frameworks.⁵

Categories of Ombudsman Institutions and Their Use of International and Domestic Human Rights Law

The ability of ombudsman institutions to use international and domestic human rights law depends to a considerable extent on whether or not an ombudsman has been given express human rights protection and promotion mandates, together with the additional powers that often accompany such mandates. As ombudsmen around the world are being given a variety of new roles in addition to the core function of combating maladministration, it becomes increasingly difficult to place them in clear cut categories. This paper will make a simple distinction between ombudsman institutions based on whether or not they have an intended and expressly defined human rights protection mandate. The question whether a particular ombudsman can be classified as a national human rights institution (NHRI) is also relevant given the CRPD approach.

Human Rights Ombudsman Institutions

Human rights ombudsman institutions are those ombudsmen that have been given express human rights protection and/or promotion mandates in their governing legal framework. The number of these institutions is increasing: they are found throughout Latin America and Europe, and are scattered throughout other parts of the world both at the national and sub-national levels of governance.⁶

A human rights ombudsman mandate can be extensive, giving both human rights protection and promotion functions to the institution. In addition to investigations (on receipt of a complaint or own-motion), recommending and reporting, many human rights ombudsmen with broad human rights protection and promotion mandates will have additional powers, such as inspections of facilities where persons are confined involuntarily, launching court actions before constitutional and administrative courts to determine the constitutionality or legality of laws, making law reform proposals to government, and human rights education and research. However, there are some

⁵ While there are issues relating to the adequacy of the legal frameworks within which some ombudsmen operate in relation to the Paris Principles, this paper will leave the larger questions for another day. See Reif, *ibid.*; Linda C. Reif, "Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman" (2011) 31 Boston College Third World L.J. 269.

⁶ This section draws on Reif, "Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman", *ibid.*

human rights ombudsmen that have been given only traditional ombudsman powers of investigation, recommendation, reporting and, sometimes, inspection. In addition, they are typically not given a human rights promotional mandate.

Human rights ombudsman institutions apply international and/or domestic human rights law in their activities based on their domestic constitutional and legal frameworks and the international human rights obligations of their state. Many human rights ombudsmen are located in countries where ratified human rights treaties are either automatically part of the domestic legal system or have been implemented by constitutional provision and/or statute law.

Increasingly, ombudsmen are being designated by their state as a CRPD independent mechanism and/or a national preventive mechanism (NPM) under the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).⁷ For the purposes of this paper, classical ombudsmen that have been designated as OPCAT and/or CRPD mechanisms will be classified as human rights ombudsman institutions.

Ombudsman Institutions Without Express Human Rights Mandates

There are still many ombudsmen around the world with a mandate that focuses on maladministration and is silent on human rights protection (although even classical ombudsmen may be able to look at discriminatory practices). Even classical ombudsmen use international and domestic human rights law in their work from time to time since domestic ombudsmen apply standards of legality and fairness to their investigations.⁸ International law obligations of the state may be domesticated in one way or another which permits their application by the ombudsman. Fairness standards are even more flexible, and international law can be looked to for consensual norms and good practice. Use of international and domestic human rights norms depends on factors such as the monist or dualist approach of the state towards the domestic application of the state's international law obligations, the presence of human rights guarantees in the constitution and the use of international human rights law by domestic courts.

National Human Rights Institutions (NHRIs)

The UN and most regional systems look to NHRIs as the bodies which must protect and promote human rights in domestic systems. The Paris Principles, based on an advisory

⁷ OPCAT, UN G.A. Res. 57/199, 2375 U.N.T.S. 237 (in force June 22, 2006).

⁸ Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Martinus Nijhoff Pub., 2004).

human rights commission template, are used as the international standards for NHRIs.⁹ The Paris Principles require *inter alia* that NHRIs have independence, broad constitutional and/or legislative mandates that cover all human rights, a pluralist representation, adequate funding, and human rights protection and promotion functions that include advice, proposals and reports to government on human rights matters; promoting the harmonization of domestic law with the state's international human rights obligations; human rights public awareness raising; and involvement in human rights research and education. Individual complaints handling, however, is not required. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), composed of NHRI representatives, operates a NHRI accreditation process through interpretation and application of the Paris Principles (including the issue of General Observations that flesh out the meaning of individual Principles).

As a result, only national-level human rights ombudsman institutions and commissions with broad human rights protection and promotion mandates and other Paris Principles-compliant features obtain ICC A-status accreditation that, among other things, acts as a gatekeeper mechanism for participation in UN human rights processes. While national human rights ombudsmen with more limited human rights mandates/powers and national classical ombudsmen are not prohibited from applying for ICC accreditation, if they do so they are very unlikely to receive more than a B (partially Paris Principles compliant) or C (not Paris Principles compliant) level accreditation and will not have the same levels of access and participation.¹⁰ Sub-national and thematic institutions are not considered to be NHRIs.¹¹ As will be discussed further below, while the CRPD permits some flexibility in the establishment of the framework of domestic mechanisms, compliance with the Paris Principles is implied in the treaty and recommended by the CRPD treaty committee and the ICC.

International Human Rights Law on the Rights of Persons with Disabilities

Evolution of UN Treaties and Instruments

While all of the UN human rights treaties and other instruments apply to PWDs, the reality is that, prior to the CRPD, few made specific reference to them. While human rights treaties have non-discrimination provisions, given their vintage, disability is not expressly listed as a prohibited ground of discrimination, although it falls under general

⁹ Paris Principles (Principles Relating to the Status of National Institutions), UN G.A. Res. 48/134, UN Doc. A/RES/48/134 (1993).

¹⁰ ICC, *Report and Recommendations of the Session of the Sub-Committee on Accreditation* (Geneva: 26-30 March, 2012), < <http://www.ohchr.org/EN/ICC/ICCAccreditation/Pages/SCA-Reports.aspx> > [ICC March 2012 Report].

¹¹ *Ibid.*; Reif, "The Shifting Boundaries of NHRI Definition", *supra* note 4 at 57. Sub-national and thematic institutions are considered to be "statutory institutions established also for the promotion and protection of human rights."

terms that prohibit discrimination on any other ground. The Convention on the Rights of the Child (CRC) was the first UN treaty to contain a specific disability right (art. 23).

Overview of Regional Human Rights Law

Regional systems also protect the rights of PWDs. In Europe, the COE's European Convention on Human Rights system, the European Court of Human Rights and the Commissioner on Human Rights play important roles in disability rights protection. In addition, the evolving human rights protection elements of the European Union (EU) are important for protecting disability rights through, for example, the non-discrimination obligations in the treaty law, the Charter of Fundamental Rights and directives combating discrimination.

In the Americas, the American Convention on Human Rights, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights provide some protection as does the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities. The African counterpart is the African Charter of Human and Peoples' Rights with its remedial machinery.

UN Convention on the Rights of Persons with Disabilities (CRPD)

By August 8, 2012, the CRPD had 118 state parties. They include countries which have human rights ombudsmen (e.g. Spain, Portugal, France, Greece, Hungary, Argentina, Peru, Namibia, Victoria/Australia) and those which have ombudsmen without an express human rights mandate (e.g. other Australian jurisdictions, Canada, UK). The EU is also a CRPD contracting party.¹²

Article 1 of the CRPD considers that persons with disabilities "include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." The general principles of the CRPD are respect for the inherent dignity, individual autonomy and independence of PWDs; non-discrimination; equality of opportunity; gender equality; accessibility; full and effective participation and inclusion in society; and respect for difference and acceptance of PWDs as part of human diversity and humanity (art. 3).

Throughout, the CRPD contains state obligations to ensure and protect the rights of PWDs without discrimination through means such as the adoption or repeal of laws and administrative measures; training of staff; raising public awareness; ensuring public authorities and institutions act in conformity with the CRPD; providing services and

¹² Entered into force for the EU on January 22, 2011. All EU member states have signed the CRPD, European Union Agency for Fundamental Rights (FRA), *Fundamental rights: key legal and policy developments in 2011: Highlights 2011* (2012) at 5 [*Highlights 2011*].

assistance; and “mainstreaming” disability rights in all programs and policies. The CRPD also extends state obligations to take all appropriate measures to eliminate discrimination that takes place in the private sphere (customs, practices, discrimination by persons, organizations or private enterprises) (art. 4(1)(b), (e)). State parties are required to “closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations” in the development and implementation of legislation and policies to implement the CRPD and in other decision-making processes concerning issues relating to PWDs (art. 4(3)).

Equality and non-discrimination rights are used throughout the CRPD and the treaty contains civil, political, economic, social and cultural rights that, while based on rights in existing human rights treaties, are sometimes adjusted or expanded to address the specific issues faced by PWDs. For example, all discrimination on the basis of disability (both direct and indirect) is prohibited and states must “take all appropriate steps to ensure that reasonable accommodation is provided” (art. 5(3), art. 2 definition). There is a right to accessibility (art. 9), whereby states must take measures to ensure PWDs have access, on an equal basis with others, to the physical environment, transportation, public infrastructure, public facilities and services, and signage in public facilities in Braille, and easy to read and understand formats. The right to equal recognition before the law (art. 12) includes safeguards for PWDs concerning the exercise of legal capacity (including using the supported decision-making approach rather than guardianship or substitute decision-making), and provisions on financial affairs and property rights. The right to freedom from exploitation, violence and abuse (art. 16) applies inside and outside the home and also covers gender-based aspects of such behavior. There are also rights covering living independently and inclusion in the community (art. 19); personal mobility (art. 20); freedom of expression (art. 21) that extends to accepting and facilitating use of sign languages, Braille, alternative communication etc.; and respect for home and family (art. 23) that includes equal rights to retain fertility and rights concerning child-rearing. The right to education (art. 24) ensures an inclusive education system at all levels and life long learning opportunities, facilitating learning of Braille, sign language etc. There are rights to health, habilitation and rehabilitation (arts. 25-26) and various other economic, social and cultural rights. There are also specific sections on women and girls with disabilities (art. 6) and children with disabilities (art. 7), with the best interests of the child principle found in this and other sections of the CRPD. Economic, social and cultural rights are to be progressively realized (art. 4).

The Committee on the Rights of Persons with Disabilities, the CRPD treaty committee (CRPD Committee), examines and makes recommendations on the periodic reports submitted by the CRPD state parties on measures they have taken to comply with the treaty and makes general recommendations giving a deeper interpretation of specific CRPD provisions. The Optional Protocol to the CRPD (OPCRPD), establishing

individual complaint and inquiry mechanisms heard by the CRPD Committee, had 71 state parties by August 8, 2012.¹³

CRPD Article 33(2) Independent Mechanisms

CRPD Article 33(2) requires contracting parties to “maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of” the CRPD, “taking into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.” Article 33(3) states that civil society, in particular PWDs and their organizations, shall be involved and participate fully in the domestic monitoring process.

Article 33(2) permits the designation of institutions that already exist or the establishment of new institutions, and either one or multiple institutions can be used. In federal and decentralized states, sub-national jurisdictions will also need to designate or establish independent mechanisms for oversight of disability matters falling within their respective jurisdictions. Article 33(2) indirectly refers to the Paris Principles using their formal title, so there is a clear intention that an NHRI(s) should be used.¹⁴ As Lord and Stein state, “NHRIs should be regarded as crucial actors in the domestic-level implementation of the Convention, given their typically broad mandates to participate in the drafting of new legislation, review existing legislation, implement education and awareness-raising campaigns, and undertake investigative and quasi-judicial functions.”¹⁵ To date, a variety of human rights commissions/institutes and ombudsman institutions have been designated as art. 33(2) independent mechanisms, either alone or as one of multiple institutions, including Australia’s Human Rights Commission, Germany’s Institute for Human Rights, human rights commissions in the United Kingdom, Latvia’s Ombudsman and New Zealand’s Ombudsmen.¹⁶

In 2011, the ICC and Canadian Human Rights Commission published a survey of ICC accredited A-status NHRIs and art. 33(2).¹⁷ While the survey is rather limited, the analysis found that, while ICC-accredited NHRIs were being appointed as the sole or one of a number of independent mechanisms, some non-accredited institutions,

¹³ Optional Protocol to the Convention on the Rights of Persons with Disabilities, 46 I.L.M. 463 (in force May 3, 2008).

¹⁴ Gauthier de Beco, “Article 33(2) of the UN Convention on the Rights of Persons with Disabilities: Another Role for National Human Rights Institutions?” (2011) 29 Neth. Q. H.R. 84 at 86.

¹⁵ Janet E. Lord and Michael Ashley Stein, “The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities” (2008) 83 Wash. L. Rev. 449 at 464.

¹⁶ UN Office of the High Commissioner for Human Rights Europe Regional Office, *Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe* (2011); ICC and Canadian Human Rights Commission, *Survey of National Human Rights Institutions on Article 33.2 of the Convention on the Rights of Persons with Disabilities* (August 2011) [Survey of NHRIs] at 18, 53.

¹⁷ *Survey of NHRIs, ibid.*

including human rights and classical ombudsmen, had been designated or included as part of a multiple institutional framework. These include Denmark's Ombudsman, Senegal's Mediator, New Zealand's Ombudsmen and Luxembourg's Mediator, all used (or to be used) in conjunction with a human rights commission. For example, in 2010 the New Zealand Ombudsmen were designated as one of New Zealand's CRPD art. 33(2) independent mechanisms along with the New Zealand Human Rights Commission and the New Zealand Convention Coalition (six organizations for PWDs).¹⁸ The EU has designated four bodies as their art. 33(2) independent mechanism: European Parliament Petitions Committee, European Ombudsman, European Commission and EU Agency for Fundamental Rights (FRA).¹⁹ The FRA will engage in disability rights promotion. It can be expected that the European Ombudsman will engage in CRPD rights protection through its investigatory mandate to combat maladministration in EU institutions, bodies, etc. using EU law standards.

Is the wording of art. 33(2) sufficiently flexible to permit the inclusion in the framework of domestic human rights institutions that are not NHRIs? Article 33(2) states only that the Paris Principles must be taken into account.

The CRPD Committee has begun to issue its concluding observations on the periodic reports submitted by CRPD states. In addition to recommendations to improve the implementation of the substantive rights in the CRPD, the Committee issues comments and recommendations on art. 33(2) independent mechanisms. Spain's framework mechanism was found to be in full compliance with art. 33(2) without any discussion.²⁰ For the states parties that had not yet formed a national monitoring system or had designated a broad-based NHRI, the Committee recommended that the monitoring mechanism *must* comply with the Paris Principles, a broad-based NHRI should have a dedicated unit on disabilities, and PWDs and their representative organizations must fully participate in the institution and the monitoring process.²¹ Similarly, the ICC has started to comment on the need for accredited NHRIs to be designated as the CRPD monitoring mechanism.²²

¹⁸ New Zealand Ombudsmen, *2010/2011 Report of the Ombudsmen* at 12, 48.

¹⁹ *Highlights 2011*, *supra* note 12 at 20. The European Disability Forum, the representative organization for persons with disabilities, is included as an observer.

²⁰ CRPD Committee, Concluding Observations: Spain, UN Doc. CRPD/C/ESP/CO/1 (October 19, 2011), para. 6. While Spain had initially designated only a NGO for PWDs, it has been reported that, immediately before or during Spain's appearance before the CRPD Committee, Spain added its ICC A-status accredited *Defensor del Pueblo* as an art. 33(2) mechanism, see "Spain and Article 33.2 of the CRPD", Disability and Human Rights: <<http://disabilityandhumanrights.com/2011/11/24/spain-and-article-33-2-of-the-crpd/>> (November 24, 2011).

²¹ CRPD Committee, Concluding Observations: Peru, UN Doc. CRPD/C/PER/CO/1 (May 16, 2012), para. 49; CRPD Committee, Concluding Observations: Tunisia, UN Doc. CRPD/C/TUN/CO/1 (May 13, 2011), paras. 41-2.

²² *Survey of NHRIs*, *supra* note 16 at 9-10; ICC March 2012 Report, *supra* note 10, s. 1.9..

Gauthier de Beco argues that “[b]y referring to the Paris Principles, the drafters of CRPD applied the guidelines for NHRIs to actors other than NHRIs” since disability rights bodies will likely be involved, so that “the Paris Principles will have to be read in light of the specific mandate of these mechanisms.”²³ Yet, he has also argued that when multiple institutions are appointed as art. 33(2) mechanisms all of them should be Paris Principles compliant.²⁴

However, the CRPD Committee has not yet discussed this issue in detail in either concluding observations or a general comment. Thus, while authoritative interpretation of art. 33(2) is just beginning and there are some conflicting views, it appears that national human rights ombudsman institutions (and commissions) with broad human rights protection and promotion functions fall easily within the terms of art. 33(2) although they should have a unit dedicated to disability rights. National human rights ombudsmen with only a human rights protection mandate and more limited powers will likely need to have their mandate and powers extended to cover promotional aspects or they may have to be paired with another institution that is fully Paris Principles compliant. National classical ombudsmen standing alone will not comply with the Paris Principles. Potentially, their inclusion in a framework of multiple institutions where another institution fully complies with the Paris Principles will suffice but, if not, a substantial amendment of their mandate and powers may be called for. The CRPD Committee position on thematic disability institutions and sub-national institutions is also unclear at this point.

Ombudsman Institutions: Protecting and Promoting the Rights of Persons with Disabilities

All ombudsman institutions whether or not they have express human rights mandates and whether or not they are CRPD independent mechanisms can use their existing legal frameworks and develop operating practices to increase the protection and promotion of the rights of PWDs. This section will examine a variety of ombudsman functions, commencing with those that all or most institutions enjoy and proceeding to powers that are typically granted to human rights ombudsmen. Ombudsmen appointed as CRPD art. 33(2) mechanisms will need to exercise the powers that they have been granted to the maximum.

Investigations: Complaints Handling and Own-Motion Investigations

All ombudsman institutions have jurisdiction over a range of public sector entities that can negatively affect PWDs (e.g. health, education, social services, justice, child welfare authorities) and some also have jurisdiction over private actors.

²³ de Beco, *supra* note 14 at 93.

²⁴ *Ibid.* at 94.

All ombudsmen investigate public complaints about alleged maladministration and human rights ombudsmen can also look at complaints of human rights violations. Ombudsmen everywhere receive complaints by or on behalf of PWDs given that the vulnerabilities of the latter often bring them into conflict with the state. Impartial ombudsman investigations, based on domestic law (including human rights norms) and possibly also based on international human rights obligations such as the CRPD, may result in recommendations for changes in law, procedures and practice to improve the protection of the rights of PWDs.

For example, Greece's Ombudsman is a human rights ombudsman with functions that include the defense and protection of children's rights and equality rights protection. The Greek Ombudsman has investigated complaints and issued recommendations concerning PWDs, including on those problems in the operation of mental health units and educational supports for pupils with disabilities.²⁵ Classical ombudsmen also investigate complaints that concern the treatment of PWDs. For example, in the 2011-12 reporting year, the British Columbia Ombudsperson investigated numerous cases concerning PWDs in the seniors, children and youth, driving, health, home support, and income and community support areas.²⁶

Some complaints submitted to the European Ombudsman address disability rights. In the past year, several cases dealt with the EU staff regulations and the size of staff members' dependent child allowance when the child is disabled.²⁷ Another complaint concerned a disabled applicant for an EU staff position.²⁸

While complaints-handling is essentially a reactive activity, own-motion investigations permit an ombudsman to be proactive. Many ombudsmen around the world can conduct own-motion investigations. Further, Hungary's new Commissioner for Fundamental Rights is required to give special attention in the course of his activities, especially through own-motion proceedings, to *inter alia* "assisting, protecting and supervising the implementation of the [CRPD]".²⁹

Relevant subject matter for own-motion investigations is found in sources such as a pattern of complaints or media reports of problematic behavior. Own-motion investigations can be used to highlight systemic problems and they are also very useful to tackle problems affecting vulnerable persons who are unlikely or unable to complain to the ombudsman. PWDs are clearly a vulnerable population. Accordingly,

²⁵ The Greek Ombudsman, *Annual Report 2009: Summary* at 33, 55.

²⁶ British Columbia, Canada Ombudsperson, *2011-12 Annual Report* at 21-24, 29, 35-36, 39, 44, 46-47, 51-53.

²⁷ European Ombudsman, *Annual Report 2011* (European Union: 2012) at 36-7.

²⁸ *Ibid.* at 58.

²⁹ Hungary Constitution as am.; *Act CXI of 2011 on the Commissioner for Fundamental Rights (Hungary)*, s. 1(2)-(3) <www.obh.hu/allam/eng/index.htm>; *European Ombudsmen Newsletter* No. 18 (May 2012) at 23.

ombudsmen should pay attention to difficulties encountered by PWDs that could be the appropriate subject matter for an own-motion investigation.

For example, in 2007 the Greek Ombudsman conducted an own-motion investigation into the involuntary hospitalization of patients with mental disabilities, making a series of findings including that it was not clear that patients were properly informed of their rights including to appeal, and recommendations.³⁰ Valencia's human rights ombudsman has dealt with mental health issues for several decades, including conducting own-motion investigations such as those concerning poor conditions in sheltered accommodation for PWDs and problems encountered by persons with mental disabilities in their interactions with Valencia's public authorities.³¹ The Lithuanian Ombudsman recently conducted an own-motion investigation into the differential treatment by municipalities imposed on PWDs' car parking. The Ombudsman found the practice to be discriminatory and recommended that the responsible ministry change the law to require the application of the same permit and fee waiver rules in all municipalities.³²

Canadian provincial ombudsman institutions—classical ombudsman types—engage in own motion investigations and publish special reports on issues affecting PWDs. The Quebec Ombudsman has issued special reports on improving accessibility and content of government services for children, young people and adults with pervasive development disorders (PDDs) and on accessibility of home support services for PWDs.³³ The Ontario Ombudsman has conducted systemic investigations on issues such as parents having to give up custody of their severely disabled children to get residential treatment services for them, nine year waits for disabled support payments and inadequate mental health services for military children.³⁴ The British Columbia Ombudsperson has also conducted a number of systemic investigations over the years that pertain to PWDs. These include a recent investigation into problems with the care of seniors that resulted in public reports with extensive findings and recommendations, including on seniors involuntarily detained in residential care under mental health legislation and on dementia services in residential care.³⁵

³⁰ The Greek Ombudsman, *Own-initiative investigation by the Ombudsman into the involuntary hospitalization of mentally ill patients* Special Reports Summary (May 2007).

³¹ *European Ombudsmen Newsletter* No. 18 (May 2012) at 53; <www.elsindic.com>.

³² *Ibid.* at 57.

³³ E.g. Quebec Protecteur du citoyen, *Is Home Support Always the Option of Choice? Accessibility of home support services for people with significant and persistent disabilities* (2012); Quebec Protecteur du citoyen, *Services Provided to Young People and Adults with a Pervasive Development Disorder: From Government Commitment to Cold Hard Facts* (2012). PDDs include autism and Asperger Syndrome.

³⁴ Ontario Ombudsman, <www.ombudsman.on.ca/investigations/SORT-Investigations.aspx>.

³⁵ British Columbia, Canada Ombudsperson, *The Best of Care: Getting it Right for Seniors in British Columbia*, Part 2 (February 2012) and Part 1 (December 2009). See also *Abuse of Deaf Students at Jericho Hill School* (1993); *Listening: A Review of Riverview Hospital* (1994) (psychiatric hospital treatment of patients); *Public Services for Adult Dependent Persons* (1991).

Appointment as a CRPD independent mechanism entails that particular attention in the investigatory sphere must be given to disability rights issues. Further, own-motion investigations are an important weapon in the arsenal of ombudsmen who are appointed as art. 33(2) independent mechanisms given the obligation to affirmatively implement CRPD obligations. The New Zealand Ombudsmen carry out their CRPD functions through their ombudsman legal framework i.e. investigations on receipt of a complaint and on their own-motion concerning issues related to CRPD implementation in New Zealand.³⁶

Inspections of Facilities Where PWDs are Involuntarily Detained, CRPD Mechanism and OPCAT Inspections

A variety of ombudsmen have been granted legal powers of inspection of facilities where persons are involuntarily detained, such as prisons, detention centres, and health and disability facilities. Inspection powers may have been granted generally and, more recently, ombudsman institutions designated as OPCAT NPMs and/or CRPD independent mechanisms must have inspection powers to fulfill their new mandates.

Sweden's Ombudsmen have long had inspection powers. One important area for their inspections supports the protection of the rights of incapable adults. Public guardians who are supposed to protect incapable adults sometimes fail in their duties: Sweden's Ombudsmen conduct annual inspections of Public Guardians since the PWDs are unable to or unlikely to make their own complaints.³⁷ Sweden's experience with inspections is that they uncover issues that may not be the subject of complaints, e.g. because some vulnerable persons cannot complain, and systemic problems.³⁸ Inspections may also prevent maladministration and human rights complaints from occurring. Greek Ombudsman investigators have visited facilities for children with disabilities and have uncovered problematic living conditions and inhumane treatment.³⁹

Ombudsman designation as an OPCAT NPM can also lead to greater protection of the rights of persons with disabilities. Further, giving the same institutions OPCAT NPM and CRPD independent mechanism status can lead to enhanced performance under each mandate given that OPCAT NPMs have to inspect facilities where persons are involuntarily held, extending to facilities where PWDs are housed, including mental health care facilities, geriatric care homes and prisons where a portion of the inmate population will have disabilities.

³⁶ New Zealand Ombudsmen, *2010/2011 Report of the Ombudsmen* at 12, 48-51 (on their appointment, the Ombudsman reviewed all existing investigations to determine if CRPD issues were present)..

³⁷ Cecilia Nordenfelt, "Incapable Adults –The Most Vulnerable" in IXth International Ombudsman Institute World Conference, *Presentations at the Conference in Stockholm, Sweden June 9-11, 2009* (Stockholm: 2010) at 169.

³⁸ Kerstin André, "Inspections as a Pro-active Method of Combating Maladministration" in *ibid.* 153 at 155-6.

³⁹ The Greek Ombudsman, *Annual Report 2009: Summary* at 56-7.

The New Zealand Ombudsmen, for example, were designated as mechanisms under both OPCAT and the CRPD (as was the New Zealand Human Rights Commission). In fulfilling their OPCAT NPM duties, the New Zealand Ombudsmen monitor and inspect “prisons, immigration detention facilities, health and disability places of detention, child care and protection residences and youth justice residences, and mak[e] recommendations to improve the conditions of detention and the treatment of detainees.”⁴⁰ Mental and intellectual disability units have been the subject of inspection reports containing findings and recommendations.⁴¹ Potential cruel and inhuman treatment was found in the case of a person kept in seclusion in an intellectual disability unit for an unreasonably long period, followed by inaction of the authorities for 13 months after they indicated that the person would be transferred to a more appropriate facility.⁴² The inspection and resulting recommendations resulted in resolution for the individual and implementation of procedures to ensure that remedial actions taken by the authorities are actually implemented. Improper classification and detention of persons with intellectual disabilities under mental health legislation is another recent issue uncovered by the OPCAT NPM process.⁴³ The poor treatment of inmates with psychosocial disabilities kept in “at risk” units in prisons is also being addressed by the Ombudsmen under their OPCAT NPM duties.⁴⁴

Catalonia’s *Síndic de Greuges* acts as the autonomous community’s authority for the prevention of torture. As such, he visits and monitors a variety of facilities in Catalonia, including mental health, geriatric, social health care centres, psychiatric units in prison and centres for the protection of minors, where problematic behavior such as overuse of restraint devices on seniors and insufficient psychiatrist resources for minors have been uncovered.⁴⁵

Pursuant to legal changes that entered into force on July 1, 2012, the Austrian Ombudsman Board (OB) has been designated as an OPCAT NPM and an “authority” pursuant to CRPD art. 16(3).⁴⁶ For its OPCAT and CRPD mandates, the OB must establish at least 6 interdisciplinary and multiethnic commissions comprising at least 42 members to carry out monitoring inspections of public and private sector facilities where persons are confined, including facilities for PWDs.

⁴⁰ New Zealand Ombudsmen, *2009/2010 Report of the Ombudsmen* at 17.

⁴¹ *Ibid.* at 41; New Zealand Ombudsmen, *2010/2011 Report of the Ombudsmen* at 44.

⁴² *Ibid.* at 44-5.

⁴³ *Ibid.* at 45.

⁴⁴ New Zealand Ombudsmen, *2010/2011 Report of the Ombudsmen* at 46.

⁴⁵ Catalonia, Spain Síndic de Greuges, *Catalan Authority for the Prevention of Torture Annual Report 2011* at 20, 25-27, 42-49, 63-67.

⁴⁶ See <www.volksanwaltschaft.gv.at/en>; *European Ombudsmen Newsletter* No. 18 (May 2012) at 24-5.

Accessibility: Premises, Ombudsman Reports and other Documents, Web Site Etc.

Every ombudsman needs to work to ensure that its premises, services, signage (including public documents, web sites) and other relevant aspects of its operations are accessible to PWDs. This is particularly the case when the state is a CRPD party, required to ensure that all public sector bodies comply with the accessibility obligations in the treaty.

Thus, ombudsman office public space must be accessible to persons with e.g. physical and sensory disabilities, and signage should be provided in Braille and easy to read and understand formats. Sign language interpreters and other supportive services should be available for complainants who have hearing or speech impairments. Public documents should be available in audio, Braille and/or large print formats as appropriate. Ombudsman web sites should be easily navigable by PWDs. The accessibility services provided by an ombudsman should also be clearly advertised on its web site and other relevant public documents.

There are various examples where ombudsman and other institutions have improved accessibility of their services, documents and web site. The European Ombudsman provides many of its publications in audio and large print formats.⁴⁷ Spain's *Defensor del Pueblo* and Catalonia's *Síndic de Greuges* have engineered their web sites to make them more accessible to PWDs.⁴⁸ The Victoria Ombudsman has done the same for its web site with the availability of increased text size and the use of a "Browse Aloud" program that turns the written text to an audio version when the mouse pointer is passed over the text.⁴⁹ Ontario's Ombudsman has a teletypewriter (TTY) number for use by deaf, hard of hearing and speech impaired persons to make complaints and contact the office.⁵⁰ The informational pamphlet used by New Zealand's CRPD art. 33(2) bodies (including the Ombudsmen) will be available in large print and Braille versions.

Ideas can also be gleaned from NHRIs and NGOs working in the disability rights area. For example, New Zealand's Human Rights Commission informs persons with speech

⁴⁷ European Ombudsman, *Annual Report 2011* (European Union: 2012) at 6.

⁴⁸ Spain Defensor del Pueblo <www.defensordelpueblo.es/es/Accessibilidad/index.html>; Catalonia, Spain, Síndic de Greuges, <www.sindic.cat/es/page.asp?id=87>.

⁴⁹ Victoria, Australia Ombudsman, <www.ombudsman.vic.gov.au> "Accessibility" page.

⁵⁰ Ontario, Canada Ombudsman, <www.ombudsman.on.ca/Make-A-Complaint.aspx>; <www.ombudsman.on.ca/Contact-us.aspx>.

or hearing impairments to contact them using the country's relay service and makes a language line and sign language interpreter available.⁵¹

Inside the Ombudsman Office: Staff, Working Conditions and Other Internal Matters

Ombudsman institutions should seek to reflect the diversity of the population in its staff and, wherever possible, hire PWDs as staff members. Further, the pluralist composition standard in the Paris Principles as applied to ombudsman institutions has been interpreted by the ICC to require pluralism throughout the entire staff population. As an employer, an ombudsman needs to be mindful that its own premises and practices support staff who are PWDs and staff who care for family members with disabilities.

Ombudsman office premises should also be accessible for staff with disabilities. Staff rules should be structured so that staff with disabilities or who care for family members with disabilities are not treated unfairly in comparison to other staff members. For example, the Hungarian Commissioner for Fundamental Rights has an internal regulation on equal opportunities applicable to staff members, with objectives that include ending disadvantages suffered by workers who are *inter alia* living with a disability, raising a disabled child and/or caring for a disabled relative.⁵² The provisions include ensuring a fully accessible working environment, reduction in working hours for persons raising or caring for a disabled person and a complaint mechanism through a workplace equal opportunities committee.

Organization and Focus: the Ombudsman Office, Annual Report, Web Site, Other Communications and Outreach

Ombudsman institutions are internally organized into departments, units etc. according to the importance of particular government departments and/or themes, based on e.g. numbers of complaints and legislative requirements to focus on designated themes or populations. As directed by the CRPD Committee, broad-based ombudsman institutions that have been appointed as CRPD independent mechanisms should establish a dedicated unit on disability rights matters. In addition, ombudsmen that are not CRPD independent mechanisms may still want to create a department or unit covering issues concerning PWDs. If resources do not permit this, a unit for "vulnerable populations" or a unit focusing on protection of several types of vulnerable populations may be more feasible. A special focus on senior citizens also assists in protecting PWDs.

⁵¹ *Making disability rights real* (brochure), <www.ombudsmen.parliament.nz/imagelibrary/100442.pdf>; New Zealand Relay Service <www.nzrelay.co.nz>. See also International Disability Alliance web site accessibility, <www.internationaldisabilityalliance.org/en/accessibility>.

⁵² Instruction No. 22/2012 (03.01) of the Secretary General of the Office of the Commissioner for Fundamental Rights on the Equal Opportunities Regulation of the Office of the Commissioner for Fundamental Rights.

Similarly, greater attention to PWDs and their concerns can be provided through dedicated chapters in annual reports and dedicated pages on the institution's web page. Brochures and other publications dedicated to improving public knowledge of the ombudsman's powers to assist PWDs should also be created and distributed widely, especially in venues where relevant persons are most likely to have access to the material. Ombudsman visits to facilities where PWDs, their family members, care givers and related professionals are more likely to be located (e.g. health and disability facilities, senior care facilities, schools) are important for providing information on how the ombudsman can help and also for taking complaints from persons who find it difficult to make a complaint through other available means.

For example, Peru's human rights ombudsman has a deputy/ assistant and a unit for human rights and PWDs, a program for the defense and promotion of the human rights of PWDs and a detailed web site section on PWDs containing information on the work of the office and what the institution has done and can do for the protection of PWDs.⁵³ Catalonia's *Síndic de Greuges* has separate sections in its annual report on PWDs and on seniors, a number of whom are PWDs.⁵⁴ The British Columbia Ombudsperson also has web site and annual report sections dedicated to seniors, and highlighted cases often concern seniors with disabilities.⁵⁵ Victoria's State Ombudsman has a mandate that includes investigating whether administrative action is incompatible with the state's legislative Human Rights and Responsibilities Charter: the institution's annual report has a chapter on "Protecting vulnerable people" that includes discussion of investigations concerning PWDs.⁵⁶

Collaboration: Involvement of Persons with Disabilities and their Representative Organizations

For ombudsmen that are CRPD art. 33(2) mechanisms, art. 33(3) requires that PWDs and their representative organization be involved and participate fully in the monitoring process. This requirement has been emphasized by the CRPD Committee. Accordingly, these ombudsmen must collaborate fully with PWDs and PWD NGOs concerning all work that is CRPD-related. This can be facilitated if the state includes PWD NGOs in the formal art. 33(2) independent mechanism as is the case, e.g., with New Zealand and Spain. New Zealand's art. 33(2) mechanisms (Ombudsmen, Human Rights Commission and Coalition of PWD organizations) are working together to *inter alia* advocate for specific issues, report to the UN on the overall CRPD implementation

⁵³ Peru Defensor del Pueblo, <www.defensoria.gob.pe/grupos-atencion.pdp?des=18>.

⁵⁴ Catalonia, *Síndic Annual Report 2011: Summary*.

⁵⁵ British Columbia, Canada Ombudsperson, *2011-12 Annual Report*; <www.ombudsman.bc.ca/seniors>.

⁵⁶ Victoria, Australia Ombudsman, *Victorian Ombudsman Annual Report 2011* ch. 6 at 40-41.

and on specific issues, provide advice on legislation, policy and practice affecting PWDs, and produce an annual report to Parliament.⁵⁷

For other ombudsmen that are not CRPD mechanisms, collaboration with PWDs and their organizations on issues relating to PWDs is important. For ombudsmen that are fully-ICC accredited NHRIs, or who want to be so accredited, such collaboration is an element of Paris Principles compliance. However, collaboration with PWDs and their organizations is valuable for all types of ombudsmen in their work affecting PWDs given the rights of the latter and the need for ombudsmen to be directly informed about the concerns and views of PWDs.

Advice to Government: on Law Reform, Treaty Ratification Etc.

A number of ombudsmen around the world can make recommendations to government for changes in domestic law and policy, and some can become more formally involved in law reform processes. In addition, some human rights ombudsmen can give advice to government on ratifying human rights treaties and on implementing these treaties in the domestic sphere. As a result, these ombudsmen can recommend law reform and treaty action by their government that would improve the protection of rights of PWDs. In particular, this can include advice on CRPD ratification and domestic implementation.

For example, Austria's OB has made comments on the Austrian government's draft National Plan of Action for Persons with Disabilities, pointing out shortcomings in law and programs, in order to improve protection of PWDs and improve CRPD compliance.⁵⁸

Disability Rights Awareness Raising, Research and Education

The CRPD calls for state parties to raise awareness of the rights of PWDs. This should be carried out through various state institutions in CRPD contracting parties, including ombudsman institutions. Further, a number of human rights ombudsmen are empowered to conduct human rights research and education. More generally, most ombudsmen hold conferences, workshops etc. from time to time on issues that are relevant to their work. Through these various activities, public awareness of, training and information on the CRPD and the rights of PWDs can be furthered. Audiences can include state sector employees, private sector actors, the general public, PWDs, children and senior citizens.

⁵⁷ *Making disability rights real*, <www.ombudsmen.parliament.nz/imagelibrary/100442.pdf>.

⁵⁸ Austria: AOB Comments on Draft National Plan of Action for Persons with Disabilities (01.03.12) (e.g. poor accessibility and need to harmonize building laws, education system problems and need to improve inclusive education).

For example, Greece's Ombudsman organizes periodic conferences for professionals and organizations representing PWDs on problematic issues, specifically emergency mental health care for children and the right to psychosocial rehabilitation.⁵⁹ Bolivia's *Defensor del Pueblo* offers a variety of publications geared to the general population to raise their awareness and understanding of equality rights, nondiscrimination and the laws protecting PWDs.⁶⁰ Peru's *Defensor del Pueblo* recently inaugurated a travelling picture exhibition of art by children with disabilities.⁶¹

Litigation Powers: Constitutional Court Actions and Other Legal Interventions

A number of human rights ombudsmen, often in civil law countries in Latin America and Europe, have the power to commence litigation in constitutional or supreme courts to determine e.g. the constitutionality of laws, treaties and/or other government action, bring *amparo* or other similar action to protect individual rights, bring cases to administrative courts and/or prosecute officials. In appropriate situations, these ombudsmen may bring these types of actions in order to try to protect and enhance the rights of PWDs through court judgments.

For example, in 2011, Poland's human rights ombudsman brought a case before the Constitutional Court to challenge a provision in mental health legislation that stated that only minors aged sixteen and older needed to consent to psychiatric treatment, when Polish civil law conferred limited legal capacity on children starting at the age of thirteen.⁶² In other court proceedings, France's new Defender of Rights submitted the results of an investigation that found discriminatory treatment by easyJet of three passengers in wheelchairs to a court hearing, with court finding discrimination and ordering monetary compensation.⁶³

Collaboration with International Human Rights System Actors

The Paris Principles state that among its responsibilities, a NHRI shall cooperate with the UN and other international organizations and contribute to periodic state reports submitted to UN bodies and treaty committees and regional institutions. The current practice that has developed is that NHRIs should submit their own supplemental or shadow report to treaty committees after the state has submitted its own report both to

⁵⁹ The Greek Ombudsman, *Annual Report 2009: Summary* at 17, 56.

⁶⁰ Bolivia Defensor del Pueblo, <www.defensoria.gob.bo/filesmaterial/flinfFOLLETO.pdf> e.g. *Las Personas con Discapacidad tienen una ley* (May 2006).

⁶¹ Peru Defensor del Pueblo, <www.defensoria.gob.pe/grupos-eatencion.pdp?des=18> (called "Soy Como Tú").

⁶² FRA, *Fundamental rights: challenges and achievements in 2011* (2012) at 116; Poland Constitutional Court Judgment, K 16/10 (October 11, 2011) (Court held that law was not in violation of the Constitution or the UN Convention on the Rights of the Child).

⁶³ *European Ombudsmen Newsletter* No. 18 (May 2012) at 55.

preserve the NHRI's independence and to provide a more objective view of the actions of the state in complying with its human rights treaty obligations.

Thus, ombudsmen designated as part of or as the CRPD art. 33(2) framework independent mechanism should submit shadow reports (or multiple mechanisms should submit a joint report) when their state has submitted its periodic report to the CRPD Committee. In addition, these institutions can also submit a written report to the UN Human Rights Council when their nation is undergoing the Universal Periodic Review (UPR) process and can even consider submitting shadow reports to other UN and regional treaty committees when these bodies address PWD rights, e.g. disabled children's rights under the CRC as reviewed by the Committee on the Rights of the Child. Human rights ombudsmen that do not have CRPD art. 33(2) mechanism status can usually also submit the same types of shadow reports (their state must be a party to the treaty in question).

After the CRPD Committee or other human rights committee or body has issued their concluding observations and recommendations, art. 33(2) mechanisms and other human rights ombudsmen should work to publicize these recommendations and try to persuade their government to implement the recommendations. Web site sections on the CRPD can be used not only to provide the text of the CRPD but also any ombudsman shadow reports, the CRPD Committee's concluding observations on the state report and any individual petitions against the state resulting in Committee views and recommendations.⁶⁴

Conclusion

Ombudsmen appointed as art. 33(2) independent mechanisms for CRPD domestic implementation must engage directly with the CRPD and the international human rights of PWDs in all their activities. However, even if ombudsmen are not designated as art. 33(2) mechanisms, they can still work to increase the protection and promotion of the rights of PWDs. Human rights ombudsmen are required to protect and promote human rights domestically, including the rights of PWDs, and they often use international human rights law and constitutional and other domestic human rights norms in support of their work. Human rights ombudsmen often also have a human rights promotional mandate, and many can protect the rights of PWDs through additional powers they are endowed with, such as litigation, law reform and treaty advocacy, and human rights research, education and awareness raising. Further, all ombudsmen can strive to maximize PWD rights protection through the mandates and powers that they have been granted, primarily investigations, inspections and the entirety of their operating

⁶⁴ Under the OPCRPD individual complaints mechanism, the first petition to result in Committee Views and Recommendations was issued in *H.M. v. Sweden*, Communication No. 3/2011, UN Doc. CRPD/C/7/D/3/2011 (May 2012).

practices. While classical ombudsmen may be limited in the degree to which they can use international human rights law in their work, they can still rely on domestic law and general fairness provisions to protect the rights of PWDs.

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ENHANCING THE ROLE OF OMBUDSMAN INSTITUTIONS IN THE PROTECTION AND PROMOTION OF THE RIGHTS OF PERSONS WITH DISABILITIES

Linda C. Reif, Faculty of Law, University of Alberta

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INTERNATIONAL/DOMESTIC HUMAN RIGHTS LAW

INTERNATIONAL HUMAN RIGHTS LAW

- UN/regional human rights treaties/instruments apply to persons with disabilities (PWDs) but most do not make specific reference to PWDs and their concerns
- but see e.g. CRC art. 23, some regional instruments
- UN Convention on the Rights of Persons with Disabilities (CRPD)

DOMESTIC HUMAN RIGHTS LAW

- international human rights law obligations of the state may/may not be internalized in domestic law
- constitutional rights, human rights obligations in statutes, judicial interpretation of constitution/law may apply human rights norms
- governing statutes of domestic human rights institutions may/may not require institution to apply international/domestic human rights norms

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INSTITUTIONAL CATEGORIES

OMBUDSMAN CATEGORIES

- ombudsman institutions without express human rights mandates (but can apply domestic law)
- human rights ombudsman institutions with express human rights protection/promotion mandates
- I classify institutions given NPM status under UN OPCAT and/or domestic mechanism status under CRPD as human rights ombudsman institutions
- institutions at national and sub-national levels

NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIs)

- Paris Principles (PPs) as interpreted by ICC General Observations
- ICC accreditation process for NHRIs – A, B, C status
- NHRIs: only human rights ombudsman institutions and human rights commissions at national level will get A status accreditation



CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

CRPD

- 125 parties by November 5, 2012 (includes EU)
- broad, open-ended definition of PWDs
- covers public and private sectors
- states/parties must closely consult with and actively involve PWDs through PWD organizations

CRPD



- general principles
- equality/non-discrimination rights
- civil, political, economic, social cultural rights
- sections on children, women/girls with disabilities

CRPD COMMITTEE

- Committee on the Rights of Persons with Disabilities (CRPD Committee): issues concluding observations and recommendations on state periodic reports, general comments
- CRPD Optional Protocol: complaints heard by and inquiries undertaken by CRPD Committee

CRPD ART. 33(2) INDEPENDENT MECHANISMS

- each party required to have a framework of one or more independent mechanisms to promote, protect and monitor CRPD implementation taking into account PPs
- PWDs and their organizations shall be involved and participate fully in domestic monitoring process
- parties are using ICC-accredited NHRIs, non-accredited institutions

CRPD ART. 33(2) INDEPENDENT MECHANISMS

- e.g. NZ mechanism: Human Rights Commission, Ombudsmen, PWD coalition
- e.g. UK: human rights commissions
- e.g. EU: Petitions Committee, European Ombudsman, Commission, FRA
- ICC: accredited NHRIs should be designated as CRPD monitoring mechanism

CRPD ART. 33(2) INDEPENDENT MECHANISMS – CRPD COMMITTEE

- limited information from Committee to date
- monitoring mechanism must comply with PPs
- broad-based NHRI should have a dedicated unit for disability rights
- PWDs/organizations must fully participate in the institution(s) and the monitoring process

OMBUDSMAN AND PWD RIGHTS PROTECTION AND PROMOTION

CRPD Article 33(2) Mechanisms

Human Rights Ombudsman Institutions

Ombudsman Institutions Without Express Human Rights Mandate

COMPLAINTS-HANDLING AND OWN-MOTION INVESTIGATIONS

- complaints against government authorities often concern health, education, social services, employment, justice, child welfare, seniors, accessibility
- complaints against private entities e.g. facilities for children
- own-motion investigations: proactive focus on PWDs who are unlikely/unable to complain, systemic problems e.g. children with disabilities

INSPECTIONS

- all ombudsman categories with inspection powers
- applies to e.g. prisons, geriatric homes, mental health care facilities, residential facilities
- inspection of Public Guardian (Sweden)
- ombudsman designated as OPCAT NPM can also uncover breaches of rights of PWDs – beneficial to give OPCAT and CRPD duties to same institution(s)

OMBUDSMAN OFFICE ACCESSIBILITY

- for complainants/general public: e.g. premises, signage, services, public documents, web site
- for staff/staff family members with disabilities: e.g. pluralism of staff (PPs), work space accessibility, work-related policies for staff/family members with disabilities, work-place complaints mechanism

OFFICE ORGANIZATION, REPORTS, OUTREACH

- CRPD art. 33(2) and human rights ombudsman institutions should have a disabilities rights unit
- consider senior officer or deputy for disability rights
- annual report: dedicated sections, statistics on disability rights/issues
- web site: dedicated section for disability rights/issues
- ombudsman visits to places accessible to PWDs/families/caregivers to provide information and collect complaints

OTHER ACTIVITIES (HUMAN RIGHTS OMBUDSMAN INSTITUTIONS)

- advice to government on law reform (e.g. implementation of treaty law), treaty ratification: pay attention to disability rights
- disability rights awareness raising, research and education (of public officials, members of public etc.)
- litigation powers: constitutional court actions, administrative court actions etc. – disability rights issues

COLLABORATIVE ACTIVITIES

- with PWD organizations: requirement for CRPD art. 33(2) institutions and important for all ombudsman institutions to collaborate/work with PWD organizations
- with international human rights actors: e.g. submit independent (shadow) reports to human rights treaty committees (e.g. CRPD Committee) on state compliance with the treaty, written reports to UN Human Rights Council Universal Periodic Review (UPR) of state

THANK YOU

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