

IMPLEMENTING ARTICLE 33 OF THE  
CONVENTION ON THE RIGHTS OF  
PERSONS WITH DISABILITIES:  
TANZANIAN APPROACH

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### Summary

*This article gives an account of institutional mechanisms in place for the implementation of the Convention on the Rights of Persons with Disabilities in Tanzania. The protection of human rights depends, among other things, on how effective the institutional mechanisms for the implementation of these standards are. Article 33 of the CRPD provides for domestic implementation, monitoring and consultative mechanisms. Tanzania has in place institution mechanisms for the implementation of disability legislation, which was enacted after the ratification of the CRPD by Tanzania. There are general institutional mechanisms for the monitoring of human rights, which may also be used to monitor specific issues of persons with disabilities. It is a fact that these institutions were in place even before the CRPD. The domestic arrangements in Tanzania for purposes of implementing the CRPD manifest the changing approach, moving away from the old and limited medical/welfare approach to disability, and towards the broader and more inclusive rights approach to disability. The complete change will not be abrupt, because of competing urgent interests, all of which require significant resource mobilisation. Some issues related to law and the disability movement also need to be addressed with a view to enhancing the performance of domestic mechanisms envisaged under article 33 of the CRPD.*

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## 1 Introduction

The protection of human rights in legal or policy documents is only a step towards their actual realisation. Much also depends on how effective the institutional mechanisms for the implementation of these standards are. In various places around the world, the lack of a comprehensive approach to disability issues, and the neglect of a human rights approach to disability in policy making meant that disability rights required the transformation of social structures and not only the adoption of isolated measures.<sup>1</sup> The UN Convention on the Rights of Persons with Disabilities (CRPD) tackles the sidelining of disability by providing for means by which the rights of persons with disabilities can be implemented internationally as well as domestically. Generally, these means are through institutional/administrative as well as legislative measures, and there is also an emphasis on the participation of persons with disabilities.<sup>2</sup>

The article gives an account of institutional mechanisms for the implementation of the CRPD in Tanzania. The article begins with a brief introduction to the CRPD's requirements on national action, and proceeds to discuss the extent to which Tanzania's measures are in compliance with CRPD standards. The article is based on the view that the human rights approach to disability does not only end with the conceptualisation of disability, but the way in which the concept of disability is used to realise rights. This needs to be reflected in, *inter alia*, institutional mechanisms in place for implementation (which includes co-ordination), promotion, protection and monitoring of disability rights, as well as consultative mechanisms on matters related to persons with disabilities. This entails a shift away from the practice of limiting disability issues to health or welfare institutions.

## 2 CRPD and the requirement of national action

The earliest UN instrument to specifically address matters of persons with disabilities (albeit only a particular group),<sup>3</sup> the Declaration on the Rights of Mentally Retarded Persons (DRMRP),<sup>3</sup> did not place the emphasis on domestic monitoring and administrative measures to ensure its implementation. This also applied to the Declaration on the Rights of Disabled Persons (DRDP),<sup>4</sup> save for the requirement of consultation with organisations of persons with disabilities. In 1993, the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (Standard

1 G de Beco 'Article 33(2) of the UN Convention on the Rights of Persons with Disabilities: Another role for the national human rights institutions' (2011) 29 *Netherlands Quarterly of Human Rights* 87.

2 CRPD, arts 33(1), (2) & (3).

3 Declaration on the Rights of Mentally Retarded Persons of 1971.

4 Declaration on the Rights of Disabled Persons of 1975.

Rules)<sup>5</sup> required states to establish and strengthen national co-ordinating committees, or similar bodies, to serve as national focal points on matters relating to disability. These ought to be permanent and based on legal as well as appropriate administrative regulation.<sup>6</sup> The Standard Rules, among other things, emphasised the representation of private and public organisations, organisations of persons with disabilities and non-governmental organisations (NGOs).<sup>7</sup> Significantly, the Standard Rules required that the national co-ordinating committee should be provided with sufficient autonomy and resources to fulfil its responsibilities in relation to its decision-making capacities.<sup>8</sup>

The non-binding nature of the previous disability rights instruments necessitated the insertion of similar provisions in article 33 of the CRPD, which provides:

- (1) States Parties, in accordance with their system of organisation, 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, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.
- (3) Civil society, in particular persons with disabilities and their representative organisations, shall be involved and participate fully in the monitoring process.

Article 33 is ‘arguably the most complete provision on national level implementation and monitoring ever in international human rights’,<sup>9</sup> and one of the far-reaching structural innovations.<sup>10</sup> It must, therefore, not be interpreted as a mere incentive for states to implement the Convention, but

5 Standard Rules on the Equalisation of Opportunities for Persons with Disabilities of 1993.

6 Standard Rules (n 5 above) rule 17(1).

7 n 5 above, rule 17(2).

8 n 5 above, rule 17(4).

9 OHCHR ‘Study on the implementation of article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe’ (unpublished) 4.

10 G de Beco & A Hoefmans ‘National structures for the implementation and monitoring of the UN Convention on the Rights of Persons with Disabilities’ in G de Beco (ed) *Article 33 of the UN Convention on the Rights of Persons with Disabilities* (2013) 21; OHCHR (n 9 above).

as an extension of a general duty upon state authorities by virtue of international human rights law.<sup>11</sup> The structural shifts with respect to implementation create ‘obligations of conduct’, defining how states should reach the desired goals.<sup>12</sup> By focusing on both international and domestic mechanisms, the CRPD bridges the gap between international and national monitoring and implementation mechanisms, and between human rights standards and their practical application.<sup>13</sup> This approach is not found in older human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>14</sup>

Article 33 should be read together with other provisions of the CRPD, and should in no way limit measures intended to be taken with the ultimate goal of realising the rights of persons with disabilities. For example, article 4(1)(a) provides for the adoption of all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention.

## 2.1 Disability focal points and co-ordination mechanisms

Article 33(1) provides for two components of implementation: first, one or more entities for matters related to the implementation of the CRPD; and, second, the co-ordination mechanism aimed at boosting co-operation between ministries and avoiding that policy makers adopt isolated measures.<sup>15</sup>

This is in recognition of the fact that the implementation of international human rights treaties is ultimately a domestic issue, and also an acknowledgment that the responsibility at the national level extends across a wide range of government sectors, resulting in significant co-ordination and coherency challenges.<sup>16</sup>

11 Beco & Hoefmans (n 10 above) 21.

12 A Hoefmans & G de Beco *Background Document prepared for the International Conference* (2010) 18 [http://www.socialsecurity.fgov.be/eu/docs/agenda/18-19\\_11\\_10\\_background\\_document.pdf](http://www.socialsecurity.fgov.be/eu/docs/agenda/18-19_11_10_background_document.pdf) (accessed 5 August 2013); De Beco (n 1 above) 85.

13 De Beco (n 1 above) 90.

14 LFA Gatjens ‘Analysis of article 33 of the UN Convention: The critical importance of national implementation and monitoring’ (2011) 8 *SUR – International Journal on Human Rights* 87. It should be noted that art 3 of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contained only ‘partial’ domestic mechanisms. See n 14 above, 72. It should also be noted that the focus of both international and national implementation mechanisms is a standard feature of environmental and other international agreements. See JE Lord & MA Stein ‘The domestic incorporation of human rights law and the United Nations Convention on the Rights of Persons with Disabilities’ (2008) 83 *Washington Law Review* 462.

15 OHCHR (n 9 above) 4; Gatjens (n 14 above) 73.

16 Lord & Stein (n 14 above) 463.

However, the establishment or designation of a co-ordination mechanism is optional, since the obligation is only 'to give due consideration' to the designation of a co-ordination mechanism.<sup>17</sup>

Article 33(1) also creates the possibility of mainstreaming disability rights throughout the public administration and the different levels of power and, under the circumstances, co-ordination is necessary to avoid isolated and, at times, inconsistent measures.<sup>18</sup>

The CRPD allows more flexibility with respect to the formation of disability focal points, as it gives wide options of designing these in accordance with systems or organisations in particular states. Therefore, a disability focal point within a government can be either a statutory organ (autonomous or not) or an administrative unit within a government ministry. Within a government ministry there may also be a combination of both the statutory organ and an administrative entity.

Although the CRPD allows states the freedom to find appropriate ways of forming the disability focal points within their system of organisation, it is important that the disability focal point should be within the executive branch of government in order to avoid the blurring of responsibility within government on matters related to the implementation of the CRPD.<sup>19</sup> It should be close to the central authority which issues instructions and policies that have an effect on the rest of the ministries and government institutions, meaning that it should co-ordinate with other government agencies, and should not be a re-enforcement of the medical, welfare or other forms of limited approaches to disability.<sup>20</sup> It is also important that the principle of 'nothing about us without us' should be considered when establishing and during the conduct of the affairs of the disability focal point. It should, therefore, be open to co-ordination and consultation with organisations of persons with disabilities, and it is advisable to have among their leaders and staff persons with disabilities who are socially and politically empowered.<sup>21</sup>

The role of the disability focal point should not be service delivery, but to promote inclusive development in the field of the rights of persons with disabilities.<sup>22</sup> The proper functioning of the disability focal point requires the designated entity to have the necessary human resources, equipment and budget to perform its duties.<sup>23</sup>

17 OHCHR (n 9 above) 4.

18 De Beco (n 1 above) 100.

19 Gatjens (n 14 above) 73-74.

20 AS above

21 AS above

22 AS above

23 AS above; OHCHR (n 9 above) 4.

The oversight role of the entity tasked with promoting and co-ordinating the implementation of the CRPD should not be confused with the monitoring function of the independent mechanisms (national human rights institutions) provided for in article 33(2). The difference between the focal points under article 33(1) and the independent mechanisms under article 33(2) seems to be that the independent mechanisms are entrusted with the promotion, protection and monitoring of the implementation of the focal points.<sup>24</sup>

They are focused on the way in which the state and its institutions are performing with regard to the rights of persons with disabilities.<sup>25</sup>

In this case, monitoring by the entities mentioned in article 33(1) is aimed at promoting – in a co-ordinated manner – public policies and inclusive programmes.<sup>26</sup>

## 2.2 National human rights institutions

National human rights institutions (NHRIs) may generally be described as permanent and independent bodies, established by states through law, for the specific purpose of promoting and protecting international human rights norms domestically.<sup>27</sup> NHRIs may be (and may not be limited to) ombudsmen, rights commissions or ‘hybrid’ human rights ombudsmen.<sup>28</sup> In Africa, a few ombudsman offices were established, starting in the mid-1960s and 1970s, and the popularity of NHRIs in Africa increased in the 1980s and 1990s.<sup>29</sup> These institutions are mentioned in the respective constitutions, and detailed information is often found in the respective Acts of parliament.

With the exception of ombudsman institutions, which spread through Scandinavia in the early to mid-twentieth century, the history of

24 De Beco (n 1 above) 100.

25 Gatjens (n 14 above) 78.

26 Gatjens (n 14 above) 75.

27 JW Koo & FO Ramirez ‘National incorporation of global human rights: Worldwide expansion of national human rights institutions, 1966-2004’ (2009) 87 *Social Forces* 1324; A Pohjolainen *The evolution of national human rights institutions: The role of the United Nations* (2006) 6; LC Reif ‘Building democratic institutions: Protection: The role of national human rights institutions in good governance and human rights’ (2000) 13 *Harvard Human Rights Journal* 5-6; A Smith ‘The unique position of national human rights institutions: A mixed blessing?’ (2006) 28 *Human Rights Quarterly* 909; S Cardenas ‘Emerging global actors: The United Nations and national human rights institutions’ (2003) 9 *Global Governance* 23; T Pegram ‘Diffusion across political systems: The global spread of national human rights institutions’ (2010) 32 *Human Rights Quarterly* 739.

28 Koo & Ramirez (n 27 above) 1324; Reif (n 27 above) 2; Pegram (n 27 above).

29 Reif (n 27 above) 61; Pegram (n 27 above) 741.

international initiatives for the formation of NHRIs began shortly after the birth of the United Nations (UN), and their formation expanded significantly in the 1990s.<sup>30</sup> In 1991, the Principles relating to the Status of National Institutions (Paris Principles) were adopted by an international conference of NHRIs, and were subsequently adopted by the UN General Assembly in 1993.<sup>31</sup> Although these Principles are not binding rules, they are generally considered the international minimum standards for NHRIs.<sup>32</sup> The Principles have been welcomed by various international and national organisations, and governments have been encouraged to follow them.<sup>33</sup>

NHRIs have often been described as ‘Paris Principle institutions’. These institutions play a role as a bridge between international human rights standards, on the one hand, and their implementation at the national level, on the other.<sup>34</sup> Therefore, they are an answer to the question of the implementation gap – the inconsistency between formal treaty obligations and actual respect for human rights on the ground.<sup>35</sup> Their formation has brought hope for a possible avenue to address human rights concerns domestically.<sup>36</sup>

Article 33(2) of the CRPD calls for the frameworks of one or more independent mechanisms, which are in line with the Paris Principles, to promote, protect and monitor the implementation of the CRPD. By ‘frameworks’, it is meant that the mechanisms, irrespective of their number or organisational structure, should form a coherent whole, and no standard model exists for such frameworks.<sup>37</sup>

The spirit of article 33(2) is that these mechanisms should be independent and pluralist.<sup>38</sup> By being independent, it is meant that the

30 CR Kumar ‘National human rights institutions: Good governance perspectives on institutionalisation of human rights’ (2003) 19 *American University International Law Review* 266-268; Reif (n 27 above) 7-8; Pohjolainen (n 27 above) 6; Cardenas (n 27 above) 23, 28 & 29; Pegram (n 27 above) 729, 730 732.

31 Principles relating to the Status of National Institutions (Paris Principles), General Assembly Resolution 48/134 of 20 December 1993.

32 See Kumar (n 30 above) 266-268; Reif (n 27 above) 7-8; Pohjolainen (n 27 above) 6; Cardenas (n 27 above) 23, 28 & 29; Pegram (n 27 above) 729, 730 & 732.

33 Pohjolainen (n 27 above) 9.

34 R Carver ‘A new answer to an old question: National human rights institutions and the domestication of international law’ (2010) 10 *Human Rights Law Review* 1. The expectation that NHRIs will act as links to the international human rights regime seems to be ‘a reprise of an idea conceived in the earliest years of the United Nations that national human rights committees should be established to monitor state compliance with the norms contained in the Universal Declaration of Human Rights’ (n 34 above).

35 Carver (n 34 above) 30.

36 Kumar (n 30 above) 275; Y Ghai ‘Universalism and relativism: Human rights as a framework for negotiating interethnic claims’ (2000) 21 *Cardozo Law Review* 1099. CR Kumar ‘National human rights institutions: Good governance perspectives on institutionalisation of human rights’ (2003) 19 *American University International Law Review* 266-268;

37 De Beco (n 1 above) 97.

38 De Beco (n 1 above) 89.

mechanisms should be functionally independent, be personally independent and financially independent.<sup>39</sup> Pluralism links NHRIs with civil society,<sup>40</sup> such as the organisations of persons with disabilities or trade unions.

The inclusion in the CRPD of the obligation to align the independent mechanisms with the Paris Principles is a recent trend in human right treaties, and reflects the increased presence in recent years of NHRIs in human rights processes.<sup>41</sup>

This obligation is a 'call for change' aimed at enhancing the implementation of the rights of persons with disabilities by having independent bodies to constantly remind states of their obligations under the CRPD.<sup>42</sup>

As most of the NHRIs have been in existence before the CRPD, the use of the Paris Principles should be construed in light of the specific mandate of the disability rights mechanisms, since article 33(2) of the CRPD deals with the mechanisms concerned solely with disability rights. Therefore, it follows that, while some matters with respect to the practice of the existing NHRIs may not change, such as the principle of independence, it may be necessary to determine the inclusion of persons with disabilities (often through the organisations of persons with disabilities) in such mechanisms.<sup>43</sup>

An important question with respect to existing NHRIs is whether the existing institutions or others should be conferred with the mandate stipulated under article 33(2) of the CRPD. Despite the fact that the Paris Principles state that the human rights mandate of an NHRI should be as broad as possible,<sup>44</sup> they do not give a clear guidance as to the numbers of NHRIs within a state.<sup>45</sup> An argument has been raised that the choice of single or multiple institutions will depend on which mechanism offers more effective protection of human rights.<sup>46</sup>

39 As above.

40 As above.

41 De Beco (n 1 above 97; Gatjens (n 14 above) 75.

42 De Beco (n 1 above) 87-88.

43 De Beco 93.

44 See para 2 on 'Competence and Responsibilities' (n 31 above).

45 Carver (n 34 above) 4.

46 R Carver 'One NHRI or many? How many institutions does it take to protect human rights? Lessons from the European experience' (2011) 3 *Journal of Human Rights Practice* 8.

It has also been suggested that other bodies, especially those already dealing with disability issues, might be designated as independent mechanisms, acting either alone or together with existing NHRIs.<sup>47</sup>

One argument against conferring the CRPD mandate on the existing NHRIs is that, while existing NHRIs are obliged to pay attention to disability rights, conferring to such an institution an additional mandate with respect to the CRPD presents the danger of these institutions paying more attention to disability rights (than other human rights), resulting in the ‘imbalance’ of the mandates of NHRIs, and that these institutions may not equally execute the mandate under article 33(2).<sup>48</sup> On the other hand, the idea of separate institutions for separate groups has been criticised for, *inter alia*, portraying that ‘one particular vulnerable group is more entitled than others to have its “own” institution’.<sup>49</sup>

According to the general observations of the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (International Co-ordinating Committee), the trend, which is a strong national human rights protection system in a state by having one consolidated and comprehensive national human rights institution, is encouraged. Only under very exceptional circumstances should more than one national institution seek accreditation by the International Co-ordinating Committee. Furthermore, the Statute of the International Co-ordinating Committee provides:<sup>50</sup>

At general meetings only one NHRI per member state of the United Nations shall be eligible to be a voting member. Where more than one institution in a state qualifies for membership, the state shall have one speaking right, one voting right and, if elected, one International Co-ordinating Committee Bureau member. The choice of an institution to represent NHRIs of a particular state shall be for the relevant institutions to determine.

It follows, therefore, that the model of a single national human rights institution is widely accepted and, if effectively utilised, is likely to lead to greater effectiveness, provided that it is designed to guarantee that the unique interests of particular vulnerable groups, such as persons with disabilities, will not be neglected.<sup>51</sup>

47 De Beco (n 1 above) 94, 104 & 106. From De Beco’s conclusion, the idea of designating the national human rights institutions as the independence mechanisms to monitor the CRPD is not totally rejected: ‘NHRIs should not blindly be designated independent mechanisms. In the hypothesis that there is an NHRI in a state, the best option could be either to designate NHRI, to appoint other bodies, or to combine both.’

48 De Beco (n 1 above) 94, 104 & 106.

49 Carver (n 46 above) 21.

50 Art 39 Statute of Incorporation of the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

51 Carver (n 46 above) 2.

Because Tanzania already had in place a NHRI prior to the CRPD, whether or not to designate a new independent mechanism should depend on the possibilities of adjusting the role of the current NHRI in matters related to disability rights. That is, the current institutions may be maintained and given functions to promote, protect and monitor the implementation of the CRPD if only a human rights approach to disability is missing. It is also important to note that the reference to the Paris Principles in article 33(2) of the CRPD supports the view that the said designation should be made by a legal instrument,<sup>52</sup> meaning that the designation of such independent mechanisms should be something more than an internal administrative arrangement within existing NHRIs.

### 2.3 Civil society and consultative mechanisms

The Declaration of the Rights of Disabled Persons (DRDP)<sup>53</sup> provided for consultation with organisations of persons with disabilities, through their organisations, in all matters regarding the rights of persons with disabilities. However, the language used was such that the relevant provision did not address consultation strongly enough because, under article 12 of the Declaration, consultation was optional.<sup>54</sup> The need to involve persons with disabilities was further emphasised in the Standard Rules<sup>55</sup> which, *inter alia*, urged states to support and recognise the ongoing advisory role of organisations of persons with disabilities in decision making<sup>56</sup> and in the development of a disability policy.<sup>57</sup> The advisory role of organisations of persons with disabilities is not limited to having persons with disabilities as permanent representatives in government institutions, serving on public commissions or providing expert knowledge on projects.<sup>58</sup> These organisations form part of a broader civil society to act as ‘pressure group’ and, thereby, propelling action by state actors.<sup>59</sup>

The CRPD does not reproduce all that is stated in the Standard Rules and, as already stated, does not limit states to apply broader measures which are of benefit to persons with disabilities. States have unlimited options regarding ways in which to consult persons with disabilities. Article 33(3) of the CRPD requires civil society, in particular persons with disabilities and their representative organisations, to be involved and fully

52 De Beco (n 1 above) 92.

53 n 4 above

54 Art 12 of the Declaration provided: ‘Organisations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons.’

55 n 5 above.

56 According to Rule 17(6) (n 5 above), ‘[t]he advisory role of organisations of persons with disability should be ongoing in order to develop and deepen the exchange of views and information between the state and the organisations’.

57 n 5 above, Rule 18(1). Furthermore, according to Rule 17(8), ‘[t]he role of local organisations of persons with disability should be developed and strengthened to ensure that they influence matters at the community level’.

58 n 5 above, Rule 18(5).

59 n 5 above, Rule 18(6).

participate in the monitoring of the implementation of the Convention. Article 33(3) of the CRPD should be read together with other provisions of the CRPD, in particular article 4(3), which requires states to consult persons with disabilities (through their representative organisations) in the development and implementation of legislation and policies, and in other decision-making processes concerning issues relating to persons with disabilities.

The language of the CRPD has the effect that organisations of persons with disabilities should be consulted. Civil society can offer constructive opinion to government when they are driven by a clear goal of ensuring the equality of persons with disabilities. These organisations may also embark on self-initiative means of monitoring by demanding to be informed of what is happening, especially with regard to the entity designated to promote and co-ordinate the implementation of the CRPD.<sup>60</sup>

They can be more active, for example by demanding to be informed and duly consulted during the preparation of reports submitted to the Committee on the Rights of Persons with Disabilities, to review of such reports to assess their accuracy and objectivity, or even to prepare shadow reports, if possible with the assistance and support of human rights NGOs.<sup>61</sup> Generally, close co-operation between government and civil society will ensure that government policies on disability matters address the real problems of persons with disabilities.

Although the wording of article 33(3) is focused on the involvement of organisations of persons with disabilities, the article does not prohibit the involvement of more actors from civil society, a term generally used to refer to 'a domain mediating between state and society'.<sup>62</sup> These are non-state actors acting as 'checks and balances' mechanisms – 'a counterweight to state power',<sup>63</sup> and, therefore, crucial to the development of not only the rights of persons with disabilities, but also human rights in general. The effectiveness of the role of organisations of persons with disabilities and civil society, generally, is largely dependent on how well they organise and advocate in interaction with disability rights processes.<sup>64</sup>

60 Gatjens (n 14 above) 80.

61 n 14 above, 81.

62 M Karlström 'Civil society and its presuppositions: Lessons from Uganda' in JL Comaroff & J Comaroff (eds) *Civil society and political imagination in Africa: Critical perspectives* (1999) 33-50.

63 R Fatton 'Africa in the age of democratisation: The civic limitations of civil society' (1995) 38 *African Studies Review* 67.

64 Lord & Stein (n 14 above) 464.

### 3 Tanzanian approach

In Tanzania, there are several mechanisms which have been established for dealing with matters related to human rights, generally, and matters of persons with disabilities. Because of the constitutional and political structure of Tanzania, each side of the union (namely, Tanzania Mainland and Zanzibar) has separate institutions, save for the national human rights institution – the Commission for Human Rights and Good Governance. An examination of the institutional mechanisms under this section is limited to mechanisms in Tanzania Mainland.

The administration of policy and laws relating to disability has occasionally changed ministries. Furthermore, while there is one framework legislation dealing with disability issues, there are other pieces of legislation that provide for matters of persons with disabilities, a good example being the employment and labour legislation. On the other hand, matters of human rights generally fall under separate entities not primarily mandated to administer disability policy or legislation. Discussed in this section are the disability focal point(s) and co-ordination mechanisms; the Commission for Human Rights and Good Governance; and civil society and consultative mechanisms.

#### 3.1 National Advisory Council for Persons with Disabilities

The Persons with Disabilities Act<sup>65</sup> re-establishes the national advisory body known as the National Advisory Council for Persons with Disabilities (NACPWD),<sup>66</sup> which replaces the former council established under the repealed Disabled Persons (Employment) Act.<sup>67</sup>

The NACPWD is comprised of the Chairperson appointed by the President,<sup>68</sup> one member from the office of the Attorney-General,<sup>69</sup> six members from different ministries,<sup>70</sup> one member from the employers' association,<sup>71</sup> one representative from the apex organisation of persons with disabilities,<sup>72</sup> one member from the Commission for Human Rights and Good Governance,<sup>73</sup> and five other members to be appointed by the Minister (responsible for matters relating to persons with disabilities) from

65 Persons with Disabilities Act 9 of 2010.

66 n 65 above, sec 8(1). The former council was known as the 'National Advisory Council'.

67 See Disabled Persons (Employment) Act Cap 184 RE 2002, sec 3.

68 n 65 above, sec 11(1)(a).

69 n 65 above, sec 11(1)(b).

70 n 65 above, secs 11(1)(c)(i)-(vi).

71 n 65 above, sec 11(1)(d).

72 n 65 above, sec 11(1)(e). The first 'umbrella organisation' of persons with disabilities was established in 1992, about ten years after the enactment of the first disability legislation.

73 n 65 above, sec 11(1)(g).

organisations of persons with disabilities. This composition is not very different from the composition of the former council, except for the nature of representation, and also the fact that under the former disability legislation, the Chairperson was to be appointed by the Minister.<sup>74</sup>

The NACPWD is the national advisory body through which the needs, problems, concerns, potential and abilities of persons with disabilities can be communicated to government and its agencies for action.<sup>75</sup> The body is tasked with advising the government on a wide range of issues, such that one would be justified in concluding that the Council is tasked with advising almost 'everything' related to the rights and welfare of persons with disabilities.<sup>76</sup>

The Commissioner for Social Welfare is the Secretary to the NACPWD, who also exercises a number of functions under the disability legislation.<sup>77</sup> However, the Office of the Prime Minister is primarily responsible for the implementation of disability legislation, while co-ordinating with other ministries in appropriate circumstances. In this way, the NACPWE is linked to the office of the prime minister.

Linking the NACPWD with the office of the prime minister is a significant step away from the purely medical/welfare-oriented approach to disability. Furthermore, the placement of disability and labour issues in the office of the prime minister should not be viewed as limiting disability issues only to labour matters. Matters of disability, youth and employment have been elevated to the office of the prime minister because of the special emphasis the government have accorded to these issues. Previously, labour and disability matters were classed under the ministries responsible for labour and health respectively. Significantly, membership of the Council makes it open to co-ordination and consultation with organisations of persons with disabilities. It is also important to emphasise the fact that the functions of the Council, provided for in the Persons with Disabilities Act,<sup>78</sup> appear to embrace the human rights approach to disability.

While the Council is set at the national level, the Persons with Disabilities Act also establishes 'disability committees' which are expected to work very closely with the NACPWD and other administrative authorities. The committees trickle down to the grassroots. They are

74 See the 1st Schedule to the Disabled Persons (Employment) Act (n 67 above).

75 n 65 above, sec 12(1)(a).

76 n 65 above, secs 12(1)(a)-(l), 12(2)(a)-(j).

77 n 65 above, secs 9(a)-(m), 11(2), 23(1) & (2), 25(1)-(4), 31(4), 57(1), 58(2), 59(1) & 61(g); Persons with Disability (General) Regulations of 2012, Rules 11(1)(b), 40(1), 41(1) & (2).

78 n 65 above

established in three levels of government administration: Regional, Council and Village/Mtaa,<sup>79</sup> whereas the Council committees appear to take the position of the former district committees.

It is too early to assess the impact of the NACPWD, considering the fact that it has convened only once, and is yet to issue its first report.

### 3.2 Commission for Human Rights and Good Governance

The Commission for Human Rights and Good Governance (CHRGG) was established under the Constitution of the United Republic of Tanzania,<sup>80</sup> following the constitutional amendments of 2000,<sup>81</sup> and became operational in 2001 after the coming into force of the Commission for Human Rights and Good Governance Act.<sup>82</sup> However, the history of the Commission dates back to the 1960s. The Interim Constitution of Tanzania, 1965, established the Permanent Commission of Inquiry<sup>83</sup> and, in 1966, the National Assembly passed the Permanent Commission of Inquiry Act,<sup>84</sup> which prescribed the procedures, powers and privileges of the Permanent Commission.

The Permanent Commission, believed to be the first 'ombudsman' on the continent,<sup>85</sup> was designed to function as a mechanism by which citizens could be protected from the abuse of governmental power.<sup>86</sup> The Permanent Commission was incorporated into the Permanent Constitution of 1977. After the incorporation of the Bill of Rights in 1984, the enforcement of these rights was hampered by several unconstitutional

79 n 65 above, secs 14(1) & (2). Note that under the current legislation, the committees are established in three levels of government administration (Regional, Council and Village/Mtaa), compared to the previous two (Regional and District). The Council committees appear to take the position of the former District Committees. These committees can be compared with the 'lower councils' in Uganda (provided under secs 18 to 24 of the Uganda's National Council for Disability Act of 2003) and are expected to work very closely with the National Advisory Council for Persons with Disability and other administrative authorities. The committees have general functions with respect to the co-ordination and implementation of matters related to persons with disabilities. Experience from the previous disability legislation indicates that the committees were initially established in the then existing regions and districts, but they had not been operating due to various reasons, most notable being a scarcity of staff (social workers) and a lack of funds (LRCT, 2008 Report on the Review of Legal Framework on the Rights of Persons with Disability in Tanzania (unpublished) 17-18). The Law Reform Commission observed 'that it would make no sense to enact a new piece of framework legislation to address the rights of persons with disability if the problems facing the implementation of current laws are not addressed'.

80 Constitution of the United Republic of Tanzania of 1977.

81 Constitutional Amendment Act 3 of 2000, sec 3.

82 Commission for Human Rights and Good Governance Act.

83 Ch VI, Interim Constitution of Tanzania of 1965.

84 Permanent Commission of Inquiry Act of 1966.

85 ET Mallya *Promoting the effectiveness of democracy protection institutions in Southern Africa: Tanzania's Commission for Human Rights and Good Governance* (2009) 6.

86 B Frank 'The Tanzanian Permanent Commission of Inquiry: The Ombudsman' (1972) 2 *Denver Journal of International Law and Policy* 255.

laws, and the government had been under pressure, *inter alia*, to create a human rights commission.<sup>87</sup> Eventually, the constitutional amendments of 2000 brought about the CHRGG, which replaced the Permanent Commission of Inquiry.

The CHRGG is legally an autonomous department,<sup>88</sup> and has various functions, under both the Constitution and the relevant legislation, which include receiving and resolving complaints and conducting inquiries in relation to violations of human rights,<sup>89</sup> and instituting proceedings (where necessary) in court in order to prevent the violation of human rights or to restore the realisation of violated right(s).<sup>90</sup> Other functions include research and the promotion of human rights,<sup>91</sup> and advising government and other public institutions and the private sector on human rights and good governance.<sup>92</sup>

With respect to the rights of persons with disabilities, the CHRGG works closely with NGOs concerned with human rights and persons with disabilities.<sup>93</sup> The CHRGG had also established a desk or department dealing with 'special groups', which include persons with disabilities.<sup>94</sup> In addition, the CHRGG has one representative in the National Advisory Council for Persons with disabilities.<sup>95</sup>

The CHRGG has issued country human rights reports, but disability rights have not featured strongly, and the previous work of the Commission appears not to have had a significant impact with respect to the rights of persons with disabilities. The CHRGG's approach towards disability could be a reflection of general past approaches to disability in Tanzania, and the history of the Commission itself, which has been focusing more on civil and political rights. Nevertheless, there are signs that the CHRGG has started to pay more attention to the area of disability rights. Disability features in the CHRGG's action plan for years 2013 to 2017.

### 3.3 Civil society and consultative mechanisms

The right to freedom of association is enshrined in the Constitution of the United Republic of Tanzania,<sup>96</sup> and a growing civil society, including organisations of persons with disabilities, are registered under various

87 Mallya (n 85 above) 6-7.

88 n 80 above, art 130(2).

89 n 80 above, arts 130(1)(b), (c), (f) & (g); n 82 above, secs 6(1)(b), (c), (f) & (g).

90 n 80 above, arts 130(1)(a), (d) & (e); n 82 above, sec 6(1)(e).

91 n 82 above, secs 6(1)(a), (d), (k), (l), (m) & (o).

92 n 80 above, art 130(1)(g); n 82 above, sec 6(1)(j).

93 E-mail communication from F Mtulya on 5 June 2014 (on file with author).

94 Mallya (n 85 above) 15.

95 n 65 above, sec 11(1)(f).

96 n 2 above, art 20(1).

laws.<sup>97</sup> The earliest registered organisations of persons with disabilities are impairment specific and operate nationwide. The Non-Governmental Organisations Act allows organisations to be registered and operate in different levels – district, regional and national.<sup>98</sup> In recent years, some registered organisations have linked disability with other matters, such as gender, economic empowerment, legal aid and access to justice.<sup>99</sup>

Organisations of persons with disabilities can be a powerful force in promoting the rights of persons with disabilities. These organisations have a significant role in identifying the needs and promotion or provision of services to persons with disabilities, and they also act as representative bodies and a forum for persons with disabilities to voice opinions on their needs and to determine the destiny of their own development.<sup>100</sup>

The organisations are involved in researching and reporting on the human rights status of persons with disabilities; creating awareness in persons with disabilities and the public in general regarding disability rights; monitoring government's adherence to different international commitments on the rights of persons with disabilities; providing services to persons with disabilities; and providing expertise on disability rights.<sup>101</sup>

The development of disability rights in Tanzania has progressed through the relationship between government and civil society, especially the organisations of persons with disabilities, which have been co-operating with the authorities to keep the services on course.<sup>102</sup> Apart from having representation in the NACPWD, organisations of persons with disabilities are to be consulted by the minister in matters related to the development and implementation of the rights of persons with disabilities.<sup>103</sup> Generally, Organisations of Persons with Disability have occasionally been invited to present their plans, and a mechanism has been formed to co-ordinate their activities, and further to ensure that they are involved in development programmes.<sup>104</sup> According to official parliamentary records, organisations of persons with disabilities were consulted in the process that culminated in enacting the new disability

97 Non-Governmental Organisations Act 24 of 2002; Societies Act [Cap 337 R.E. 2002]; and Companies Act of [Cap 212 R.E. 2002].

98 Non-Governmental Organisations Act (n 97 above), sec 23(1).

99 See, eg, Disability Organisation for Legal Assistants for Social Economic Development (DOLASED); *Sauti ya Wanawake Wenye Ulemavu Tanzania* (SWAUTA) (literally translated as 'The voice of women with disabilities'); and Information Centre on Disability. The umbrella organisation is *Shirikisho la Vyama vya Watu Wenye Ulemavu* (SHIVYAWATA).

100 LRCT (n 79 above) 116.

101 E-mail communication from N Rukwago, 4 June 2014 (on file with author).

102 ETT Bagandanshwa 'Some highlights in the development of educational services for visually impaired and blind people in Tanzania' (1999) 2 *Huria: Journal of Open University of Tanzania* 55.

103 n 65 above, sec 5(3).

104 TN Mwendwa et al 'Mainstreaming the rights of persons with disabilities in national development frameworks' (2009) 21 *Journal of International Development* 670.

legislation.<sup>105</sup> According to this legislation, organisations of persons with disabilities have been given an advisory role to government in the promotion of the rights of persons with disabilities. For some time, some members of these organisations have been involved in active politics as members of parliament, and it should be noted that the current Deputy Permanent Secretary of the Ministry of Constitutional and Legal Affairs was the former Chairperson of the Federation of Organisations of Persons with Disabilities. The significant achievement of organisations of persons with disabilities' campaign has been the recent action (by the government) of placing matters of persons with disabilities under the office of the prime minister.

Other organisations can also play a significant role in the promotion of the rights of persons with disabilities. For example, an analysis of the recent reports of one of the human rights organisations in the country reveals signs of the organisation's greater engagement in disability rights issues.<sup>106</sup>

#### **4 General challenges in the implementation of article 33 of the CRPD**

The domestic arrangements in Tanzania for purposes of implementing the CRPD (the provisions of which are implemented through the Persons with Disabilities Act) manifest the changing approach, moving away from the old approaches to disability. This complete change will take some time, and a number of issues need to be addressed in order to set realistic goals.

As a developing nation, Tanzania has competing interests in terms of budget, all touching fundamental aspects of life. This means that, over a period of time, the financial needs of the disability focal point should be properly addressed. During the process of the review of the former disability legislation, it was suggested that, in order to overcome this challenge, and perhaps as a way of drawing more attention to disability issues, disability co-ordination should be shifted to the high commanding office of government. In December 2015, a Deputy Minister of State in the prime minister's office was appointed, with a specific mandate on disability issues.

With respect to monitoring mechanisms, one challenge calls for some attention. The absence of specific disability-related provisions in the law

<sup>105</sup> *Hansard* 13 April 2010 (first session) 47-49.

<sup>106</sup> LHRC ZLSC, 2013 Tanzania Human Rights Report 2012 (unpublished); LHRC ZLSC, 2012 Tanzania Human Rights Report 2011 (unpublished) 155-156; LHRC ZLSC, 2010 Tanzania Human Rights Report 2009 (unpublished) 89-92; LHRC ZLSC, 2009 Tanzania Human Rights Report 2008 (unpublished) 93-94; LHRC ZLSC, 2008 Tanzania Human Rights Report 2007 (unpublished) 67-69; LHRC ZLSC, 2007 Tanzania Human Rights Report 2006 (unpublished) 75-78.

prescribing the mandate of the CHRGG has the result that the CHRGG interprets its general mandate only in a limited way to cover persons with disabilities.<sup>107</sup> In the disability legislation, the CHRGG is mentioned only once, and this is with respect to the representative from the CHRGG in the disability council.<sup>108</sup>

Despite this legal challenge, the equality provisions under the Constitution of the United Republic of Tanzania of 1977 are applicable to persons with disabilities (despite the fact that disability is not specifically mentioned in the Bill of Rights), meaning that disability should also feature strongly in CHRGG activities; and that CHRGG reports should continuously and comprehensively cover disability issues.

The strength of consultative mechanisms largely depends on the strength of the disability movement. Organisations of persons with disabilities in developing nations have been reported as lacking various elements essential for making their voice heard.<sup>109</sup> In Africa, these organisations have been perceived to be weak and experiencing financial, organisational and operational constraints,<sup>110</sup> and their dependence on donor funding may also mean competing over funding.<sup>111</sup> Financial problems were found to be among the reasons rendering many organisations of persons with disabilities in Tanzania ineffective,<sup>112</sup> and a lack of transparency among some of these organisations may have enabled some individuals to use these for their own interests.<sup>113</sup> Furthermore, most of the 'well-known' organisations of persons with disabilities in Tanzania are urban-centred, which means that they are not easily accessible by many persons with disabilities living in rural areas, where poverty is likely to aggravate the problems of persons with disabilities. In Tanzania Mainland, in order to minimise organisational and financial challenges, it was suggested that it may be appropriate for government to co-ordinate the activities of these organisations and to provide subsidies to them to improve and maintain their quality, but without interfering with the main objective of their establishment.<sup>114</sup> However, the provision of subsidies to the organisations of persons with disabilities is made difficult because not

107 E-mail communication from F Mtulya, 5 June 2014 (on file with author).

108 n 65 above, sec 11(1) (f).

109 D Fritz et al 'Making poverty reduction inclusive: Experiences from Cambodia, Tanzania and Vietnam' (2009) *Journal of International Development* 675.

110 Generally, civil society organisations in Africa face difficulties in effectively representing, promoting or protecting the interests of their supposed beneficiaries; J Makumbe 'Is there a civil society in Africa?' (2002) 74 *International Affairs* 316-317; DFID Uganda, 2009 Disability Scoping Study (unpublished); Disability Scoping Study for DFID Uganda: Final Report 26, [http://www.ucl.ac.uk/lc-ccr/downloads/06052009\\_Disability\\_Scoping\\_Study\\_Uganda.pdf](http://www.ucl.ac.uk/lc-ccr/downloads/06052009_Disability_Scoping_Study_Uganda.pdf) (accessed 17 January 2014).

111 T Haapanen 'Civil society in Tanzania' 2007 (unpublished) KEPA's working papers 19 12.

112 LRCT (n 79 above) 115.

113 LRCT 115-116.

114 n 79 above, 116.

only of limited financial resources,<sup>115</sup> but also because of the fact that an increasing number of organisations have been dealing with disability issues, in addition to the 'traditional' organisations.<sup>116</sup> Issues regarding resources for organisations of persons with disabilities have also been reported elsewhere in Africa.<sup>117</sup>

## 5 Conclusion

The CRPD is one of the few international instruments prescribing the institutional mechanism for the domestic implementation of the rights of persons with disabilities. The institutional mechanisms envisaged under the CRPD include NHRIs, the disability focal points and the participation of civil society. Tanzania has in place the human rights commission (CHRGG) and the disability focal point (NACPWD). All these were established prior to the signing of the CRPD. The disability movement and civil society, in general, appear to be making progress, inviting more expectations of increased co-operation between governments and civil societies in matters related to persons with disabilities. Despite some progress, some challenges still need to be addressed.

A number of options need to be explored for purposes of enhancing Tanzania's institutional mechanisms. Some of these may involve the amendment of current laws to enhance the mandate and power of the NACPWD to follow examples from Ghana, Kenya, Uganda and Zambia, whose disability councils are body corporates.<sup>118</sup> The general focus should always be on mainstreaming disability in all possible aspects of life, and achieving substantial equality to persons with disabilities in Tanzania. With respect to the mandate and structure of the CHRGG, some amendments to the existing law are likely to improve the efficiency of the CHRGG in matters relating to the rights of persons with disabilities. When an extra entity (Paris Principle-like institution) is desired, it is much more practical (in terms of resource and shared experience of marginalisation) to combine disability and other equality entities, in order to avoid the danger of having too many entities dealing with different marginalised groups. Of course, the fact that the accreditation criteria of NHRIs are restricted to only one institution per state could mean that the other (extra) institution may, in some ways, lack the full qualities of the 'bridge aspect' between international law and domestic implementation. Except for the

115 Telephone communication with J Lyengi, 24 May 2014.

116 There is no consolidated national register of all organisations of persons with disabilities, since they are being registered under different laws (see n 97 above), and also at different levels (district, region or national), a fact which makes it difficult to establish their exact number. It also appears that there are fewer active organisations than the actual number of organisations registered.

117 I Grobbelaar-Du Plessis & C Grobler 'South Africa' (2013) 1 *African Disability Rights Yearbook* 333.

118 Persons with Disabilities Act of 2006; Persons with Disabilities Act 14 of 2003; n 79 above, secs 3(1) & (2); Persons with Disabilities Act of 2012, sec 11(1).

accreditation limitations, the establishment of another Paris Principles-like institution to deal with marginalised groups would place more emphasis on the protection of the rights of these groups. Regarding consultative mechanisms, these should produce powerful results where there is a strong disability movement. Therefore, in order to give more power to their voice, organisations of persons with disabilities should also consider strengthening their corporation with other civil society or professional organisations.