

UNICEF  
Office of Research

# Championing Children's Rights

A global study of independent human rights  
institutions for children – summary report

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# THE UNICEF OFFICE OF RESEARCH

In 1988 the United Nations Children's Fund (UNICEF) established a research centre to support its advocacy for children worldwide and to identify and research current and future areas of UNICEF's work. The prime objectives of the Office of Research, until 2011 known as the Innocenti Research Centre, are to improve international understanding of issues relating to children's rights and to help facilitate full implementation of the Convention on the Rights of the Child in developing, middle-income and industrialized countries.

The Office aims to set out a comprehensive framework for research and knowledge within the organization in support of its global programmes and policies. Through strengthening research partnerships with leading academic institutions and development networks in both the North and South, the Office seeks to leverage additional resources and influence in support of efforts towards policy reform in favour of children.

Publications produced by the Office are contributions to a global debate on children and child rights issues and include a wide range of opinions. For that reason, some publications may not necessarily reflect UNICEF policies or approaches on some topics. The views expressed are those of the authors and/or editors and are published in order to stimulate further dialogue on child rights.

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**UNICEF**  
**Office of Research**

# **Championing Children's Rights**

A global study of independent human rights  
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# Acknowledgements

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## Foreword

Over the last two decades, progress in the development of independent human rights institutions for children has been remarkable. In 1989, there were far fewer than the more than 200 independent institutions that exist today in over 70 countries. Taking many forms – children’s ombudspersons, human rights commissions or children’s commissioners – they share the unique role of facilitating governance processes for children, and have emerged as important actors for the implementation of the Convention on the Rights of the Child. Their work remains little known, however, and their specification as both public and independent institutions is often difficult to grasp.

Independent institutions bring an explicit children’s focus to traditionally adult-oriented governance systems. Often offering direct mechanisms for greater accountability of the state and other duty bearers for children, they fill gaps in checks and balances and make sure that the impact of policy and practice on children’s rights is understood and recognized. They support remedy and reform when things have gone wrong or results are inadequate. Far from taking responsibility away from the plethora of often better-known institutions affecting children – schools, health services, government departments, local authorities, private sector actors and parents themselves – the work of independent institutions complements and strengthens their performance to realize the rights of all children.

Amidst the current global economic uncertainty, inequities between rich and poor are widening in some countries. It is a period, too, of reflection on progress towards achieving the Millennium Development Goals and in defining sustainable and equitable goals to follow them. During such times, independent institutions are key players in promoting systems that advance and are responsive to the rights of children; the Committee on the Rights of the Child has been their most unwavering supporter.

Yet the role and position of independent institutions are contested. Their recommendations are too

often left unattended by the very governments and parliaments responsible for their creation. In the context of significant economic constraint, these typically small offices are the targets of budgetary cuts. They need to constantly demonstrate their relevance in an area where the direct attribution of results is difficult. Challenges can also be internal; the effectiveness of these institutions depends on their ability to reach out to the most marginalized children and provide an adequate remedy for rights’ violations. Leadership and capacity are core aspects of their ability to fulfil their mission.

This study, globally the first comprehensive review of independent human rights institutions for children, takes stock of more than 20 years of their experience. It represents the first phase of a body of work that will also explore, among other topics, good governance, decision-making and coordination for the implementation of children’s rights.

An associated technical report provides practitioners with a more extensive discussion of the issues summarized in the pages that follow as well as a series of regional analyses from around the world. Our aim is to help readers understand the purpose and potential of independent human rights institutions for children, what it is they do and how they operate. Both reports invite policymakers and practitioners to consider how the role of such institutions can be strengthened and enhanced.

What is at stake here is the place of children, and especially the most marginalized and excluded, in our societies. In a political system made for adults, what makes an institution fit for children? Independent institutions are a window not only on the character of childhood in a given country, but also on the way adults and the policies they create really view and respect childhood.

Gordon Alexander  
Director, UNICEF Office of Research

# Championing Children's Rights: A global study of independent human rights institutions for children

## 1. Introduction

Since the 1990s, independent human rights institutions for children<sup>1</sup> have emerged globally as influential bodies promoting children in public decision-making and discourse. More than 200 such public institutions have been established to independently monitor, promote and protect children's rights, and are now at work in over 70 countries located on all continents around the world. In the vast majority of cases their creation has followed state ratification of the Convention on the Rights of the Child (CRC), which is core to their operation.

These institutions take a variety of forms and go by many different names: in English, ombudsperson, child commissioner, child advocate, child rights or human rights commission; in French, *défenseur* or *médiateur*; in Spanish, *defensoría* or *procuraduría*; and in other languages, alternative designations. Their role is to monitor the actions of governments and other entities, advance the realization of children's rights, receive complaints, provide remedies for violations, and offer a space for dialogue about children in society and between children and the state. Defending the best interests of the child and acting as champions for children are central to their mission. Their achievements span many levels, ranging from influencing significant change in national policy to delivering interventions on behalf of individual children.

The United Nations Committee on the Rights of the Child is one of their main advocates. But why have it and so many states decided that such institutions are needed? In most countries, there already exists a plethora of better-known institutions that deal in some respect with children's rights, and many have a long heritage. Implementation of the CRC is a national responsibility requiring all the organs of the State to play their part. Legal action through the courts is a principal remedy for addressing violations of children's rights. Parliaments are responsible for enacting legislation to enshrine child rights, and specialized parliamentary committees often play an essential role in overseeing the implementation of policy and legislation. Line ministries or ministries for children have key practical responsibilities for developing and implementing government policy that realizes children's rights. Coordination mechanisms exist in principle to ensure that all areas of government recognize the obligations inherent in the Convention on the Rights of the Child.

<sup>1</sup> The terminology commonly used by the Committee on the Rights of the Child has been retained for this study. The Committee on the Rights of the Child General Comments 2, 5 and 12 refer to "independent national human rights institutions" but the denomination has since been modified slightly, most likely to take into account the fact that many such institutions are also established at subnational level.

Children's observatories monitor children's rights in order to provide evidence to influence policy. Non-governmental organizations (NGOs) and other elements of civil society, including the media, often play an important monitoring and advocacy role.

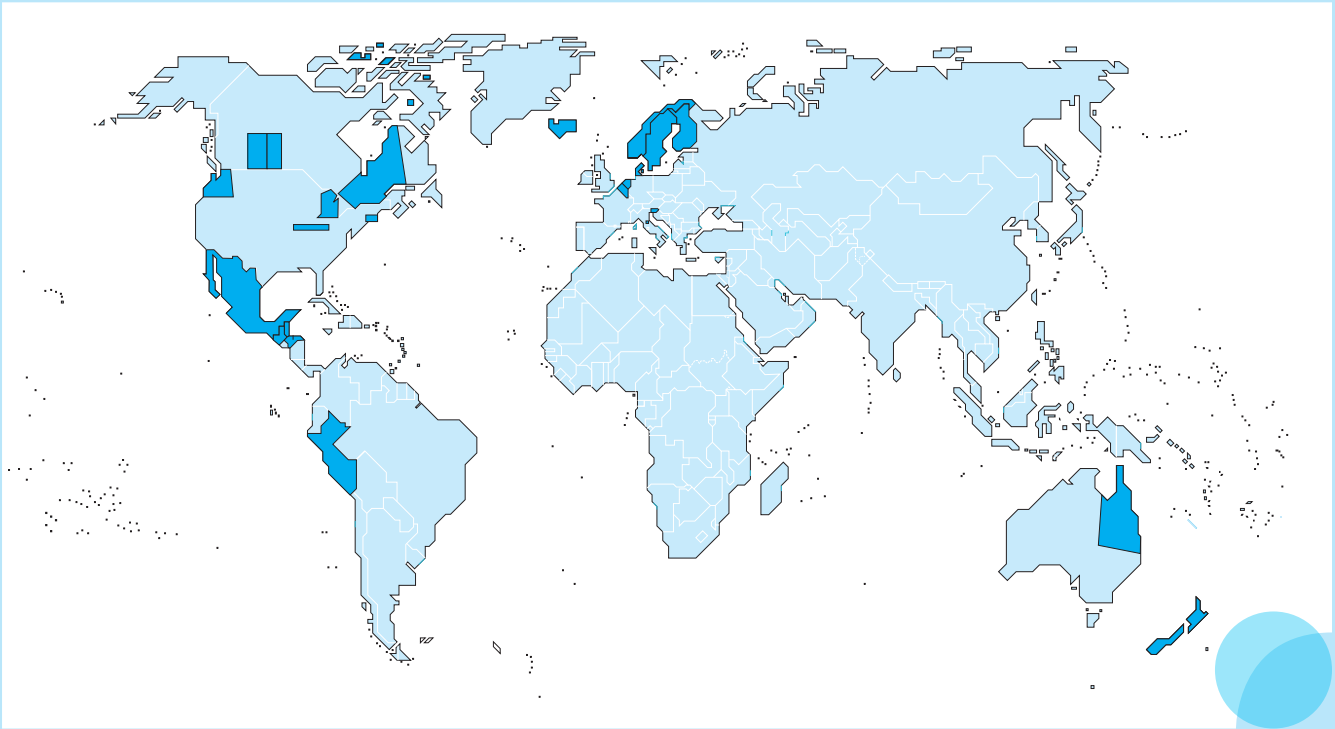
Independent human rights institutions for children do not remove responsibility from these actors but work alongside them to strengthen their performance. Their key role is to facilitate governance processes involving others. They are the 'oil in the machine', bringing an explicit children's focus to traditional adult-oriented systems, filling gaps in checks and balances as direct accountability mechanisms, making sure that the impact of policy and practice on children's rights is understood and recognized, and supporting processes of remedy and reform when things have gone wrong or procedures or policies are inadequate. They bring flexibility to political and institutional systems that can otherwise be rigid and inaccessible to the public, especially to children or those working on issues concerning them.

While the precise mandate of independent human rights institutions for children differs from place to place, their ability to effect change results from their combination of independence and 'soft power': the capacity to report, to convene, to mediate and to influence lawmakers, government bodies, public institutions and public opinion. Indeed, it is the ability to influence those with direct responsibility for policy and practice that distinguishes an effective institution.

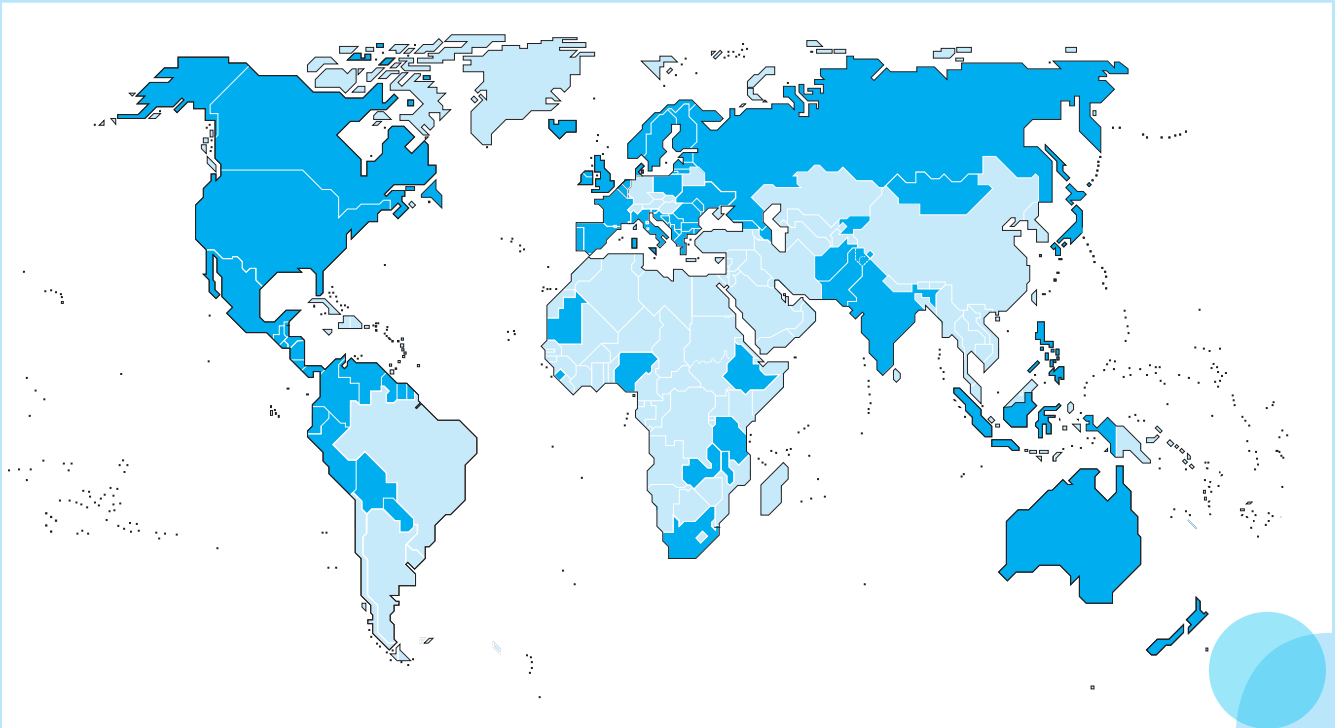
Yet the challenges faced by such institutions are many. Translating the vision of the child embodied in the Convention on the Rights of the Child into social and political reality is never straightforward. Neither is navigating national governance systems and the socially sensitive issues – including normative attitudes to childhood – that can lie at the heart of children's rights. It is not uncommon for child rights to remain low on the agenda, whether because of a limited understanding of the practical implications, competing budgetary priorities, political or institutional inertia, or social resistance based on anxiety that principles are irrelevant or inappropriate.

Independent institutions often contribute to the creation of a concrete child rights framework, with national or local discussions around their establishment involving debate about child rights concepts and what they mean in practice. Once formed, the institutions demonstrate rights in action, by advancing the rights of children through their interventions. The social, political and economic context to which they belong and contribute is a constantly shifting landscape, however, and competing interests continually affect institutions' ability to effectively carry out their mandate. While they

## Independent human rights institutions for children in 1996

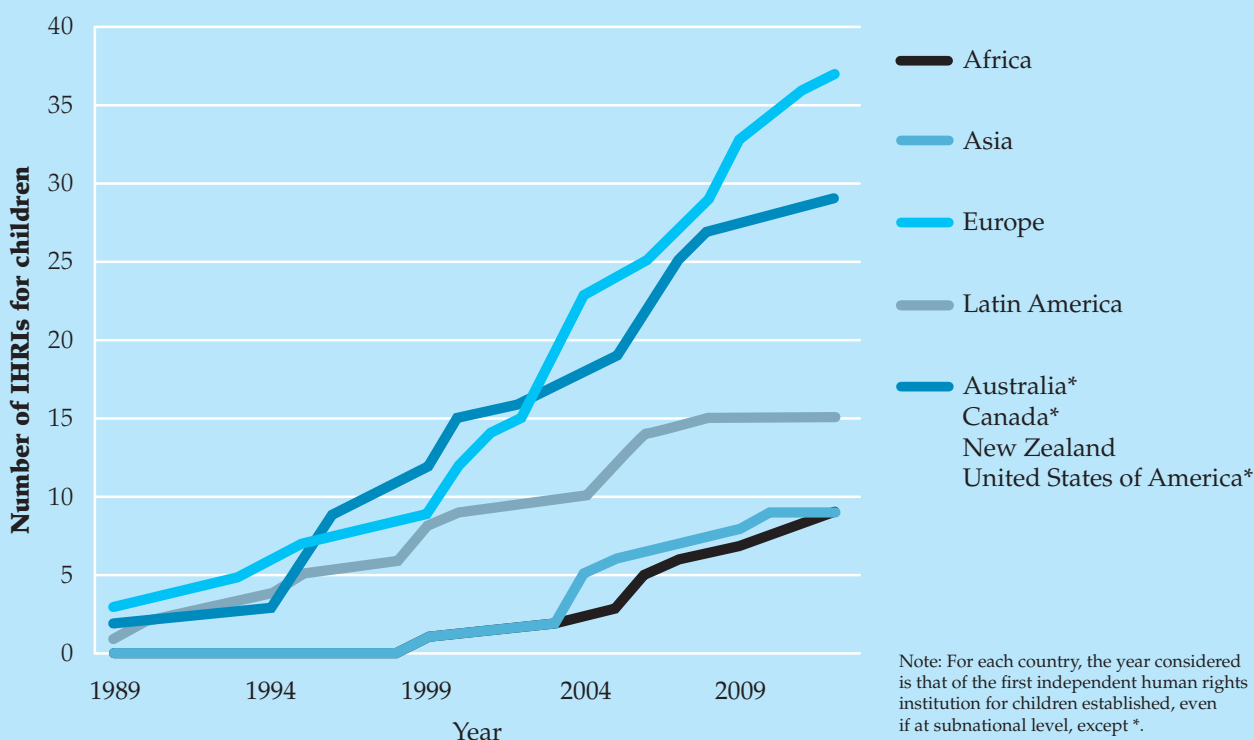


## Independent human rights institutions for children in 2012





## Regional expansion of independent human rights institutions for children 1989–2012



may remain independent of government and impartial in principle, numerous forces can, for good or for ill, impact on their actual independence, institutional capacity, funding, reputation, profile and authority – even their existence.

The Committee on the Rights of the Child – the international body in charge of monitoring and guiding States Parties in the implementation of the Convention on the Rights of the Child – considers that an independent institution with responsibility for promoting and protecting children’s rights<sup>2</sup> is a core element of a State Party’s commitment to the practical application of the Convention. The Committee’s General Comment No. 2, adopted in 2002, provides guidance on the role and characteristics of these institutions. It builds on the Paris Principles – adopted by the UN General Assembly in 1993<sup>3</sup> as the primary set of international standards for the mandate, function, composition, operations and competencies of national human rights institutions – and adapts these to the child rights framework enshrined in the Convention.<sup>4</sup>

2 Committee on the Rights of the Child General Comment No. 2: The role of independent human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November 2002, pp. 1–2.

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

4 Committee on the Rights of the Child General Comment No. 2: The role of independent human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November 2002, pp. 1–2.

The Committee on the Rights of the Child has subsequently systematically recommended in concluding observations to state party reports the creation and strengthening of independent institutions for children’s rights. It has gone on to act as a primary driving force for the development of such institutions across regions.

This report, which summarizes a longer study entitled *Championing Children’s Rights*, published by the UNICEF Office of Research, takes stock of the development of independent human rights institutions for children globally and identifies the specific roles they perform. It also pinpoints core elements, characteristics and features that contribute to their institutional success or otherwise.

The origins of the research initiative lie in a long-standing interest in the progress of these institutions, manifest in previous publications produced by UNICEF IRC (now Office of Research).<sup>5</sup> Since 2001, the Centre has received many enquiries about independent institutions from practitioners seeking advice and guidance, including policymakers, NGOs, donors, international organizations and ombudspersons

5 Flekkøy, M. G., *A Voice for Children: Speaking out as their Ombudsman*, Jessica Kinsley Publishers, London, 1991; United Nations Children’s Fund, ‘Ombudwork for Children’, *Innocenti Digest 1*, UNICEF Innocenti Research Centre, Florence, 1997; United Nations Children’s Fund, ‘Independent Human Rights Institutions Protecting Children’s Rights’, *Innocenti Digest 8*, UNICEF Innocenti Research Centre, Florence, 2001.

## History

The path to the creation of each institution is unique – each context differs socially, politically, economically and institutionally. Some bodies have originated in response to tragic failures to protect children from abuse. Others have emerged as part of wider governance reform during times of political transition or following social upheaval.

While a handful of countries had a children’s ombudsperson before the adoption in 1989 of the Convention on the Rights of the Child – the first being Norway in 1981, followed by Costa Rica in 1986 and the region of Veneto (Italy) in 1988 – the creation of independent human rights institutions for children has accelerated since its adoption.

Early front-runners were countries in Europe and Latin America.

In Europe, the Norwegian example was an influential model, with other institutions – usually specialized ombudspersons – first set up in countries with democratic governance and strong individual human rights traditions. Northern and western Europe led the way, with further institutions soon emerging in southern and eastern Europe, often in the context of democratic transition and usually integrated into general human rights bodies. In the same period, democratization in Latin America and the recognition of children as subjects of rights in law and policy paved the way for the creation of children’s offices within public defender’s institutions.

Around the mid-2000s, countries in Africa (mainly in eastern and southern parts of the continent) and in Asia (chiefly in south and east Asia) began to set up independent human rights institutions for children as part of efforts to comply with international standards. Typically these were established within existing human rights commissions and ombudsman offices; only India and Mauritius have specialized structures.

Common law countries, from North America and Jamaica to the United Kingdom, Australia and New Zealand, have usually established specialized children’s advocates or commissioners with a strong child protection mandate. This is often focused – at least initially – on protecting marginalized children from violence and abuse. In federal states such as Australia, Austria, Canada, India, and also in Italy, the model was often established early on in a few states or provinces and then progressively adopted by most federated entities or regions.

themselves. The aim is to respond to some of the questions often asked by providing a palette of lessons and experiences for use when establishing, strengthening and working with such institutions. Neither this executive summary nor the technical report purports to be a manual, however, but are invitations to reflection and dialogue informed by evidence.

Both the summary and technical report are based on information from a review of different kinds of bodies across regions. This involved direct interaction via dialogue and a survey answered by 67 institutions, and the review of academic literature, legislation, institution reports, and reports and studies from relevant international bodies and NGOs. A limitation of the review is that institutions with the most documentation available are likely to be those featured most often. The fact that a particular piece of work is given as an example does not necessarily reflect an overall

assessment of the work of an institution; it is simply an illustration of the type of activities in which such institutions can engage.

## 2. What do independent human rights institutions for children do?

The starting point for the work of independent human rights institutions for children lies in the broad spectrum of rights enshrined in the Convention on the Rights of the Child, which uniquely brings together in one legal standard civil, political, economic, social and cultural rights as they pertain to children. The Convention takes the perspective of the ‘whole child’, and this same vision informs the work of independent institutions. Four general principles of the Convention guide the analysis

## The Paris Principles and CRC General Comment No. 2

Although fundamentally rooted in the Paris Principles (formally known as the Principles relating to the Status of National Institutions), CRC General Comment No. 2 introduces significant new elements that reflect the child rights perspective. Important concepts include the best interests of the child and the significance of child participation. For example, children are citizens who do not – because of their age – have easy avenues for making their views known about issues that affect them (children do not, for example, have the right to vote). Actively establishing ways of seeking and expressing the views of children is therefore a fundamental responsibility.

|                                | <b>The Paris Principles</b>   | <b>General Comment No. 2</b>  |
|--------------------------------|---|---|
| Legal and political status     | Adopted by UN General Assembly (all UN Member States)<br>Non-binding but strong political endorsement | Adopted by the Committee on the Rights of the Child (committee of independent experts monitoring States Parties' compliance with the Convention on the Rights of the Child)<br>Non-binding but significant practical guidance value   |
| Mandate                        | Generic reference to international human rights instruments   | Convention on the Rights of the Child must be included in mandate   |
| Competency                     | Monitoring public authorities (executive, legislative, judicial and other bodies)                     | Monitoring all relevant public and private authorities  |
| Establishment process          | <i>No mention</i>   | Consultative, inclusive and transparent<br>Supported at the highest level of government<br>Participation of all relevant elements of the state, the legislature and civil society   |
| Composition                    | Pluralistic representation of the social forces   | Pluralistic representation of civil society<br>Inclusion of child and youth-led organizations   |
| Individual complaint mechanism | Optional  | Mandatory   |
| Accessibility and information  | Address public opinion directly or through any press organ  | Geographically and physically accessible to all children<br>Proactive approach, in particular for the most vulnerable and disadvantaged children<br>Duty to promote the views of children<br>Direct involvement of children through advisory bodies<br>Imaginative consultation strategies<br>Appropriate consultation programmes |
| Activities                     | Advocate for and monitor human rights   | Promote visibility and the best interests of the child in policymaking, implementation and monitoring<br>Ensure that views of children are expressed and heard<br>Promote understanding and awareness of children's rights<br>Have access to children in care and detention   |

and implementation of all other rights, namely non-discrimination; the best interests of the child; the right to life, survival and development; and the right to express views with due regard to age and maturity.

An important aspect of the Convention is that it does not consider the child as an isolated individual. Instead, it situates the child as a member of a family and community, recognizing his or her need for support to develop and thrive. Action to realize the rights of children can thus be envisaged as taking place within and through a triangular set of relations involving the state, parents (and/or guardians) and child.<sup>6</sup>

Independent human rights institutions for children are one of the general measures of implementation of the Convention identified by the Committee on the Rights of the Child.<sup>7</sup> As such they complement other measures, including law reform, resource allocation, governmental bodies and strategies, data monitoring systems, awareness-raising and the role of civil society.

The distinctive significance of independent institutions lies both in the activities they undertake and the approach they promote. Where other actors may tackle specific issues (e.g., justice for children, education, health or women's issues) from a particular governmental or non-governmental vantage point, independent institutions foster child-centred strategies that reflect the multiple dimensions of childhood, the indivisibility of the many rights children enjoy, and the factors that directly or indirectly affect a child's life and the fulfilment of those rights. A holistic analysis of child rights issues lays the foundations for institutions' policy recommendations. Their public yet independent nature places them midway between government and civil society, enabling them to create a space for dialogue between the two.<sup>8</sup> They seek to bring together different parts of the political and institutional system and society in the best interests of the child. They are bridge-builders – a role that is neither easy nor highly visible.

## 2.1 Making children and their best interests visible in policymaking

As virtually all policy decisions affect children, ensuring that the best interests of the child principle is brought to the attention of policymakers is a critical role of human rights institutions and one that they have extensively assumed. Analysis of law, policy and practice – whether existing or proposed – from the perspective of the Convention on the Rights of the Child is a core activity of many such institutions.

The institutions scrutinize policy decisions not only following their implementation but also during discussions prior to their adoption. It is common for children's ombudspersons to be involved in drafting legislation through the submission of advice to parliament, participation in drafting meetings and the taking of public positions. Illustrative examples of activities include the systematic review of child-related legislation by the Ombudsperson for Children in Mauritius and the National Commission for Protection of Child Rights in India. In 2009, the Australian state and territory children's commissioners made various recommendations in the context of federal tax system reform for evidence on the impact on child development of various policies and practices to be taken into account. The Australian Government took up some of their proposals, including in relation to tax benefits for families, parental leave and the cost of adolescents' schooling.<sup>9</sup> The National Human Rights Commission of Indonesia recommended changes to citizenship legislation for children with non-national fathers, which were reflected in the nationality law adopted in 2006.<sup>10</sup>

Taking a systematic approach, Scotland's Commissioner for Children and Young People (United Kingdom) has developed a methodology for carrying out child rights impact assessments of proposed policy. Several independent institutions and related organizations in other parts of the world have since adopted this framework for their own purposes.

Many institutions carry out enquiries and produce reports based on hearings and investigations. These have often proven influential in identifying wrongdoing or weaknesses in practice and in effecting institutional reform. In early 2012, for example, the Children's Commissioner for England (United Kingdom) shed light on the treatment of unaccompanied asylum-seeking children arriving in the United Kingdom from France and their potential rapid return without due consideration of their best interests. As a result, the border authorities undertook to stop the practice.<sup>11</sup>

Numerous institutions conduct research to examine the root causes of children's problems. An example is an analysis carried out in 2006 by the Defensoría del Pueblo in Colombia of risk factors leading to vulnerability to child soldier recruitment. This subsequently informed

6 Convention on the Rights of the Child, Articles 5 and 18. See Doek, J. E., 'Independent Human Rights Institutions for Children', *Innocenti Working Paper* No. 2008-06, UNICEF Innocenti Research Centre, Florence, 2008.

7 Committee on the Rights of the Child General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November 2003.

8 Smith, A., 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?', *Human Rights Quarterly*, 28(4), 2006, pp. 908–911.

9 Submission to Australia's Future Tax System Review Panel, 2008, and various press releases at 'Treasury Ministers Portal', <<http://www.treasurer.gov.au>>, Australian Treasury website accessed 31 August 2012.

10 The National Human Rights Commission of Indonesia, Annual Report, 2006, p. 31; Law of the Republic of Indonesia Number 12, Year 2006, on Citizenship of the Republic of Indonesia, Art. 4.

11 Matthews, A., 'Landing in Dover: The immigration process undergone by unaccompanied children arriving in Kent', Children's Commissioner for England, January. 2012. See Annex 4: 'Correspondence between Maggie Atkinson, Children's Commissioner for England and Rob Whiteman, Chief Executive of UKBA', p. 69.

recommendations for effective programming to support the reintegration of demobilized child combatants.<sup>12</sup>

Even the best resourced institutions can find it a challenge to influence law and policy development effectively. Providing quality advice on the breadth of topics that affect children requires highly specialized skills and corresponding resources, which institutions with limited staff may not be able to access easily. Institutions often have to rely on policymakers to inform them of a policy initiative early enough so they may have the opportunity to influence its outcome. Policymakers may not even consider recommendations, let alone follow them. The success of advocacy activities should therefore also be measured against their collateral impact, for example, defining the best interests principle in debate, fostering coalitions around specific themes and building capacities.

## 2.2 Promoting environments that nurture child rights

Independent human rights institutions for children seek to promote environments conducive to children's enjoyment of their rights. They are also concerned with the social changes needed to ensure the realization of child rights.

As befits the centrality of families to child well-being, it is common for independent institutions to support advocacy on state obligations to provide families with necessary assistance<sup>13</sup> and to advocate policies that support families' capacity to care for their children, including to prevent institutionalization. Examples include advocating policies that assist poor families in Azerbaijan, and calling for legislation to recognize the role of grandparents in Mauritius and step-parents in France in response to changing social contexts.

Independent human rights institutions for children often address dimensions of education, including accessibility, quality of education and the school as a safe, healthy and protective environment that respects children's rights and dignity. Many institutions carry out regular visits to schools and organize training and workshops; they produce and disseminate child-friendly material for schoolchildren and guidance tools to help teachers address human rights.

The situation of children in alternative care requires specific monitoring.<sup>14</sup> Independent institutions have a unique capacity to advocate on behalf of individual children as well as for children as a group. In close

to one third of the countries reviewed, independent institutions are specifically mandated to monitor child care institutions; many more make regular visits to children in alternative care in order to assess child well-being, respect for children's rights and the quality of services provided. For example, Peru's Deputy Ombudsman for Children and Adolescents visits state residential centres for children and assesses their functioning and the level of respect they afford children's rights. The Deputy Ombudsman's starting point is to consult children on their perceptions and experiences, in order to guide further investigation.<sup>15</sup>

Visiting detention centres and reviewing the conditions of detention of children represents a major competency for these institutions. It is a function performed by the overwhelming majority of institutions across regions – including human rights institutions that do not have a dedicated child rights department – as part of their detention centre monitoring activities. Independent institutions regularly advocate the separation of juveniles from adults and make recommendations for the improvement of juvenile detainees' living conditions. The Human Rights Commission of Malaysia, for example, monitors the conditions of detention of juveniles as part of its review of detention facilities, which includes immigrant detention centres.<sup>16</sup>

## 2.3 Promoting equitable approaches for the most marginalized children

Independent human rights institutions for children play an important role in advocating policies that aim to correct the disadvantages experienced by some children and address exclusion.

The majority of institutions reviewed address the situation of the most excluded groups of children, although they are explicitly mandated to do so in only one third of the countries studied. A number of independent institutions take a proactive approach (e.g., by disseminating specific material and visiting areas, places and institutions where vulnerable children are) to ensure their accessibility to these groups; one finding of this study, however, is that this work could be strengthened in many countries.

In relation to children belonging to minority groups or indigenous peoples, our review found that issues surrounding education and language are commonly addressed. These can be particularly important because of the role of education and language in transmitting

12 Defensoría del Pueblo Colombia and UNICEF, *Caracterización de las niñas, niños y adolescentes desvinculados de los grupos armados ilegales: inserción social y productiva desde un enfoque de derechos humanos*, Defensoría del Pueblo and UNICEF, 2006.

13 Doek, J. E., 'Independent Human Rights Institutions for Children', *Innocenti Working Paper No. 2008-06*, UNICEF Innocenti Research Centre, Florence, 2008.

14 Guidelines for the Alternative Care of Children, adopted by General Assembly Resolution 64/142 of 24 February 2010, para. 130.

15 República del Perú Defensoría del Pueblo, 'El derecho de los niños, niñas y adolescentes a vivir en una familia: la situación de los Centros de Atención Residencial estatales desde la mirada de la Defensoría del Pueblo', *Informe defensorial No. 150*, Lima, April 2010.

16 Human Rights Commission of Malaysia, 'The State of Prisons and Immigration Detention Centres in Malaysia: 2007-2008', SUHAKAM, 2010.



culture.<sup>17</sup> For example, in 2010, the Canadian Council of Child and Youth Advocates called for a national plan to improve the well-being and living conditions of Canada's Aboriginal children and youth. In particular, it recommended a coordinated strategy to narrow the significant gaps in health, education and safety outcomes apparent between Aboriginal and non-Aboriginal children.<sup>18</sup>

Several independent institutions have developed specific strategies to reach children with disabilities and ensure their accessibility to them. These institutions advocate accessibility to all services and inclusion in society for children with disabilities. For example, since the intervention in 2009 of the Persons with Disabilities Unit of the Afghanistan Independent Human Rights Commission, most schools and other public buildings built in the country are equipped with ramps.<sup>19</sup>

A few countries have specialized national human rights institutions to address specific issues or protect certain groups, e.g., the Equality Ombudsman in Sweden, the Ombudsman for Minorities in Finland and the National Commission for Women in India. Effective collaboration between children's rights offices and these and other thematic offices (e.g., offices dealing with women, people with disabilities, migrants or indigenous peoples) is crucial in promoting a holistic approach to children's rights and in helping children in these groups to realize their rights.

Overall, however, the review of independent human rights institution activities and reports suggests that collaboration across thematic programmes – whether within a broad-based institution or among specialized offices – remains limited. In the case of integrated institutions, paying attention to internal coordination among various departments is important.

Many of the challenges of promoting equitable approaches lie in the marginalization of the issues concerned in the wider social and political context. Bringing about change for excluded children requires significant efforts to increase the visibility of the issues that affect them and for these to be deemed worthy of political attention.

Other challenges concern the nature of the individual institution itself. An institution's ability to promote the rights of the most excluded children often requires specific consideration of its internal profile and workings. For example, some institutions have

specifically encouraged ethnic diversity and gender mainstreaming in staffing. Anecdotal evidence suggests that some institutions have deliberately hired staff from minority or indigenous groups to help meet the needs of the most marginalized children.<sup>20</sup>

## 2.4 Promoting child participation in society

Independent human rights institutions for children are in a unique position to promote child participation in the community and broader society. They can contribute to challenging and dismantling the legal, political, economic, social and cultural barriers that impede children's opportunity to be heard and to participate in all matters affecting them.<sup>21</sup> Institutions have become a source of expertise and support to governments and other stakeholders in creating opportunities for child participation; several have issued guides and handbooks on the subject.<sup>22</sup>

Institutions promote children's right to be heard throughout their many activities: monitoring, research, advocacy, handling complaints, carrying out investigations and advising. They have supported processes, for example, aimed at involving children in school life and promoting children's political voice. In 2010, the Northern Ireland Commissioner for Children and Young People (United Kingdom) set up Democra-School, a programme aimed at promoting democracy and youth participation in schools. The Commissioner issued a guidance pack on the inclusion of pupils in school councils and various tools including election guidelines and sample ballot papers, forms and reports.<sup>23</sup> The initiative is endorsed by the main teaching unions and led to a commitment from the Department of Education to set up children's councils in all schools in Northern Ireland.

In Europe, institutions in Austria, Flanders (Belgium) and Norway have advocated lowering the voting age (usually set at 18 years old) to give voting rights to children. This has delivered successful results in Styria (Austria), where the voting age has been lowered to 16 years, and in Norway, where several municipalities are testing a lower voting age.

17 Sedletzki, V., 'Fulfilling the Right to Education for Minority and Indigenous Children: Where are we in international legal standards?', State of the World's Minorities and Indigenous Peoples, Minority Rights Group International/UNICEF, July 2009, p. 43.

18 Canadian Council of Provincial Child and Youth Advocates, 'Aboriginal Children and Youth in Canada: Canada must do better', position paper, 23 June 2010.

19 Afghanistan Independent Human Rights Commission, Annual Report, January 1–December 31 2009, AIHRC, 2010, p. 31.

20 See Hon. T. Hughes, 'Final Progress Report on the Implementation of the Recommendations of the BC Children and Youth Review', Representative for Children and Youth, 2010, pp. 38–39, which recognizes the presence of Aboriginal staff, including at senior level, within the office and the importance of a specific mention in staffing advertisements in order to encourage Aboriginal candidates to apply.

21 Committee on the Rights of the Child General Comment No. 12: The right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. 135.

22 For example, in Australia (New South Wales, South Australia and Western Australia).

23 Northern Ireland Commissioner for Children and Young People, Annual Report and Accounts, for the year ended 31 March 2011, NICCY, 15 December 2011, p. 16.

In Asia, Nepal's National Human Rights Commission helped to organize regional workshops to give children a voice in the drafting of the country's new constitution.<sup>24</sup> Unlike its predecessor, the Interim Constitution of Nepal includes a section on child rights, providing for rights to a name and identity, to the provision of services and to protection from labour and exploitation, especially when in difficult circumstances.<sup>25</sup>

24 Nepal National Human Rights Commission, *Status of Child Rights in Nepal* (2008), p. 43.

25 The Interim Constitution of Nepal, 2063 (2007), Article 22.

The review of independent human rights institutions found that the promotion of child participation has received uneven attention. Institutions in high-income countries – often stand-alone, specialized children's ombudspersons – have usually developed this aspect of their work to a much greater extent than institutions elsewhere.

## 2.5 Addressing individual or specific situations

Most independent human rights institutions for children have the ability to address specific situations in which child rights are at stake. The complaint mechanism is the route by which to remedy individual and collective child rights violations. Access to an effective remedy for rights violations is integral to the realization of all human rights and is implicit in the Convention on the Rights of the Child. States Parties are obliged to provide effective and child-sensitive means for children to have their complaints heard before competent bodies.<sup>26</sup> Additional international standards relating to two groups of children identified as particularly vulnerable to rights violations – those in contact with the justice system and those in alternative care – also require child-sensitive complaint mechanisms.<sup>27</sup>

Examples of action based on complaints are many; what follows are just some examples. In Peru, the Defensoría del Pueblo intervened when the relevant authorities failed to act upon reports of the sexual abuse of children by a teacher. The teacher was subsequently prosecuted together with those who had obstructed the judicial process, and the education authorities initiated administrative proceedings against him.<sup>28</sup> In Mauritius, the Ombudsperson for Children received numerous complaints from parents concerned about a mobile phone company's new text messaging system

with particular features and advertising that targeted adolescents. The Ombudsperson mobilized relevant ministries on the issue, leading the company to change its strategy, put in place measures to prevent young people under 18 years old from accessing the service, and introduce a special warning about the risks to users.<sup>29</sup>

In 2011, the National Commission for Protection of Child Rights in India filed a report with the police against the owner of a mine in which nine children were employed.<sup>30</sup> Involvement in judicial proceedings is a major function of the Jamaican Office of the Children's Advocate; it has followed numerous cases, either by reporting on the case, monitoring proceedings or representing a child. In 2007, for example, the Office investigated and reported to the police a case of violence against a child by his uncle, following which the uncle was arrested and prosecuted, while at the same time observing proceedings on behalf of the child.<sup>31</sup>

Addressing specific situations is important for independent institutions as it enables them to have direct contact with children's experiences; resolving a problem also allows them to demonstrate concrete results. There is the dilemma, however, that institutions that gain public recognition of their effectiveness can in time become overwhelmed with individual complaints, reducing their capacity to work on broader policy and systemic issues.

26 Committee on the Rights of the Child General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November 2003, para. 24.

27 United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), adopted and proclaimed by General Assembly Resolution 45/112 of 14 December 1990; Committee on the Rights of the Child General Comment No. 10: Children's rights in juvenile justice, CRC/C/GC/10, 9 February 2007, para. 89; Guidelines for the Alternative Care of Children, adopted by General Assembly Resolution 64/142 of 24 February 2010, para. 130.

28 Defensoría del Pueblo de Peru, *Annual Report 2009*, pp. 167-168.

29 Ombudsperson for Children in Mauritius, *Ombudsperson for Children Annual Report 2009-2010*, chapter IX.

30 See 'Media and Communications', <[http://www.ncpcr.gov.in/childlabour\\_education.htm](http://www.ncpcr.gov.in/childlabour_education.htm)>, National Commission for Protection of Child Rights website, accessed 13 October 2012.

31 Office of the Children's Advocate – Jamaica, *Office of the Children's Advocate Annual Report, 2007-2008 Fiscal Year, 2008*, p. 30.

## The role of parliaments

Parliaments have a special role in relation to independent human rights institutions for children, which work with many public bodies that have a responsibility to advance children's rights. Parliaments adopt the law establishing the institution and its mandate and competencies – as well as any subsequent modifications. In many instances, they have a say in the selection and appointment of the individual ombudsperson or commissioner. Parliaments also oversee the performance of institutions.

The majority of institutions reviewed submit an annual report on their activities to parliament; they also provide an analysis of the state of childhood in the country and outline gaps to be addressed. The annual report and any additional publications are important sources of knowledge and information for parliamentarians and others. The study also found that ombudspersons for children often informally interact with and lobby key parliamentarians to press for legislative and other measures to advance the realization of children's rights.

## Independent human rights institutions for children and non-governmental organizations

The work of NGOs complements and supports that of independent human rights institutions for children in numerous ways. In addition to being involved in establishing institutions<sup>32</sup> in line with the Paris Principles, representatives of NGOs in many places are also members of human rights commissions and therefore have the ability to influence an institution's priorities.<sup>33</sup>

Human rights NGOs are a source of knowledge and expertise, and independent institutions often use the research that NGOs undertake. NGOs can also raise public awareness of the existence of an independent mechanism for children's rights and can work to redress violations. In some places, like Indonesia,<sup>34</sup> Jordan and Mexico, individual complaints received by independent human rights institutions for children are channelled through NGOs, which have a more extensive field presence.

Independent human rights institutions for children also have the potential to support NGOs. Because they have direct access to decision makers, the independent institutions can reiterate NGO recommendations, enhancing their influence. Independent institutions can help to foster coalitions that can benefit NGOs working towards children's rights. The Ombudsman for Children in Greece, for example, set up an NGO network for monitoring the implementation of the Convention on the Rights of the Child and facilitating cooperation between civil society and the State.<sup>35</sup>

Developing good relationships with children's rights organizations can help institutions to protect their independence and enhance their effectiveness. Connections can help an independent institution to deepen public legitimacy, reflect public concerns and priorities, receive feedback on its own work and tap into valuable information, expertise and networks.<sup>36</sup> Direct collaboration with children's organizations enriches the work of independent institutions by supporting access to a diversity of children's perceptions, opinions and experiences.

32 For example, in Sweden, NGOs established an ombudsman mechanism that paved the way for the creation of a public independent human rights institution for children.

33 Vučković-Šahović, N., 'The Role of Civil Society in Implementing the General Measures of the Convention on the Rights of the Child', *Innocenti Working Paper* No. 2010-18, UNICEF Innocenti Research Centre, Florence, 2010, p. 39.

34 International Council on Human Rights Policy, 'Performance & Legitimacy: National human rights institutions', ICHRP, Versoix, 2004, p. 99.

35 Ombudsman for Children – Greece, Ombudsman for Children Annual Report 2009, p. 54.

36 International Council on Human Rights Policy, 'Assessing the Effectiveness of National Human Rights Institutions', ICHRP, Versoix, 2005, p. 15; Reif, Linda C., 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection', *Harvard Human Rights Journal*, vol. 13, 2000, p. 26.

## Practical question: What structure should an independent institution take?

The question of what an independent human rights institution for children should look like arises again and again. Research suggests that institutional structure influences certain capacities, for example, the accessibility of an institution to children. Yet there is no single model that fits all.

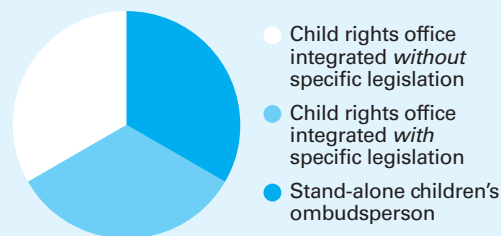
Of all the countries with an independent human rights institution for children, approximately one third has a stand-alone institution, one third has an institution integrated into a broad-based human rights institution with a legislated child-specific mandate, and one third has an institution with an integrated child rights office without a mandate based in legislation.<sup>37</sup>

What are the considerations in deciding upon a stand-alone ombudsperson for children or one that is integrated into a broader human rights institution?

**1. Children as specific rights-holders.** The distinctive feature of a stand-alone institution is its specialization in children; a broad-based human rights institution, in contrast, concerns itself with all human rights. Many stand-alone institutions were created in recognition that the protection of children's rights requires specific action. The first ombudspersons for children in the world appeared in Europe as stand-alone institutions; one such was created in Norway, for example, a country that has a legal tradition of recognizing children as rights-holders.<sup>38</sup>

**2. Accessibility to and participation of children.** Research shows that accessibility to, and involvement of, children is specified almost exclusively in the mandates of stand-alone institutions. An overview of institution activities aimed at promoting systematic, direct contact with children shows that it is primarily stand-alone institutions that perform these activities. Where an integrated office is very active in this area, it often features a highly identifiable ombudsperson for children with significant autonomy in carrying out its mandate, as is the case in Greece. Across all institutions, however, adults submit the overwhelming majority of complaints, suggesting that children themselves are generally unaware of the institution and its role.

**3. Indivisibility of human rights and coordination issues.** The main argument for an integrated institution is that it is needed to build on the interdependence and indivisibility of all human rights and to mainstream children's rights across all areas. A single institution is likely to foster greater communication, which can enhance the cross-fertilization of ideas and sharing of good practices,<sup>39</sup> and to favour a unified approach to issues affecting all children's rights.<sup>40</sup> This can also mitigate potential jurisdiction issues, where a particular problem (e.g., discrimination against a child with a disability or an indigenous girl) could fall under the scope of various specialized institutions.<sup>41</sup>



Yet an integrated structure alone does not guarantee a highly unified approach to human rights; there must also be willingness within the institution to undertake cross-disciplinary work.

**4. Status and ability to influence child rights policies.** A strong argument for an integrated institution is the visibility and authority of a single body as the beacon of human rights promotion and protection in a country. In fact, a number of broad-based human rights institutions have mandates established by the constitution and benefit from the high status this incurs; in contrast, specialized child rights institutions are virtually always established by law and almost never founded in the constitution.

There are risks associated with placing all work around rights protection under a single umbrella, however. An institution that is weak – due to a restrictive mandate, its limited capacities, an inadequate institutional head or its failure to inspire trust – can jeopardize the whole human rights protection system. Furthermore, the vision of child rights enshrined in the Convention on the Rights of the Child encompasses the responsibility of actors beyond the state: parents, civil society and, by implication, the private sector. It is only relatively recently that action by private bodies has begun to be considered a legitimate concern of the wider international human rights framework, and its extent and nature remains debated. For this reason, the mandates of some broad-based human rights institutions do not yet provide for work in relation to the behaviour of the private sector, which can limit the scope of action on behalf of children's rights.

Another related and significant issue is the visibility of children's rights within a broad-based institution. When one voice (the broad-based institution) speaks for all rights, topics across a wide range of issues must be prioritized. A legislative basis for work on child rights is therefore crucial in giving a long-term voice to children's rights. Stand-alone independent human rights institutions for children have direct access to parliament and the government to raise matters of concern – and influence policies – with respect to children's rights.

**5. Cost.** Cost-effectiveness is often a major determinant of institutional structure. A broad-based institution can pool a number of functions, e.g., logistics and infrastructure. Innovative proposals to unite administrative functions while retaining specialized mandates on a substantive level have also emerged.

Should existing institutions be merged?

An increasing number of countries are considering reforming and merging existing human rights institutions, an impulse that often arises from a desire to rationalize administration and cut costs or is articulated at a time when a new, specialized institution is under consideration.<sup>42</sup> Political factors can also prompt discussion around institutional merger. Merging pre-existing institutions is complex, and the potential benefits that stand to be gained (e.g., cost savings) must be balanced against the potential risks (e.g., compromising advances made to date, uncertain added value and loss of capacity or profile on child rights).

37 A few countries, including Spain and Serbia, have institutions at the local level with a combination of these features.

38 Flekkøy, M. G., *A Voice for Children: Speaking out as their Ombudsman*, Jessica Kinsley Publishers, London, 1991.

39 Carver, R., 'One NHRI or Many? How Many Institutions Does It Take to Protect Human Rights? Lessons from the European Experience', *Journal of Human Rights Practice*, vol. 3, issue 1, 2011, p. 9. For an example, see also Defensoría de los Habitantes de Costa Rica, Annual Report 2010–2011, DHR, San José, 2012, p. 122, concerning a case related to refugee status involving women's and children's rights, and the corresponding departments within the Defensoría.

40 Carver, R., Dvornik, S., and Redžepagić, D., Rationalization of the Croatian Human Rights Protection System – Report of Expert Team, February 2010, p. 50.

41 Carver, R., (2011) op. cit., p. 9.

42 Ibid. p. 1.



### 3. What makes independent human rights institutions for children effective?

The effectiveness of an independent human rights institution for children is a function of both the work of the institution itself and the responsiveness and support it receives from wider society and the other public institutions around it. The elements that combine to advance child rights agendas differ from society to society and issue to issue and, of course, change over time. While they may be agents of change, effective independent institutions for children also need to be able to adapt to changing circumstances in order to remain significant. Attributing success in policy development or reform to a single institution can be complex, especially when that institution's role is largely to facilitate governance processes involving others.

Nevertheless, in analysing how independent institutions operate, the dilemmas they face and the positive outcomes they yield, this study has identified a number of features that underpin their ability to advance the realization of children's rights.

#### 3.1 Independence

Independence is the defining feature of human rights institutions for children. It is their main strength and their source of legitimacy and authority. It is the quality that allows them to keep child rights front and centre regardless of political trends.<sup>43</sup> The degree of independence is pivotal in determining the success or failure of institutions.<sup>44</sup>

At the same time, independence is also their most fragile quality.

An institution's actual experience of independence is a function of its mandate, resources and management. It is influenced by politics and, to a lesser extent, the strength of the media and civil society surrounding it. Political conditions are a potent factor, determining who is appointed to lead the institution, how strong its mandate, its level of resources and whether government pays attention to its recommendations. A strong institution, in turn, is able to influence all of these factors.

<sup>43</sup> Preparatory meeting for the Second Global Meeting of Independent Human Rights Institutions for Children, UNICEF Innocenti Research Centre, Florence, 11–12 November 2002.

<sup>44</sup> International Council on Human Rights Policy, 'Assessing the Effectiveness of National Human Rights Institutions', ICHRP, Geneva, 2005, p. 12. Also, John Ackerman argues that four determinants for whether an independent agency ends up as an "authoritarian cover-up" or a "positive force for accountable governance" are public legitimacy, institutional strength, second-order accountability and bureaucratic stagnation; see Ackerman, J. M., 'Understanding Independent Accountability Agencies' in Rose-Ackerman, S. and Lindseth, P. (eds.), *Comparative Administrative Law*, Edward Elgar, London, 2010.

There is an inherent tension related to an institution's independence and its existence as a public body. Within most countries' traditional institutional landscape – which includes government, parliament and a judiciary – independent human rights institutions for children are both part of the public arena and beyond it, as they are set up to monitor these institutions yet also work with them.

#### Being perceived as independent helps an institution carry out its mandate

The perception of an institution's independence, particularly on the part of children, excluded communities and other actors engaged in rights-related work, is crucial to its ability to carry out its mandate. Perceptions of independence may influence the willingness of injured parties to file complaints with the ombudsperson; the ability of the ombudsperson to engage children and vulnerable communities in its work; the trust of all political factions and actors; and the strength of the relationships and opportunities for collaboration with NGOs.

Perceptions of independence are influenced by a number of elements including pluralistic representation within an institution (e.g., gender balance and presence of staff from various social, ethnic and cultural backgrounds); its legal basis and mandate; its physical location (having its own premises separate from other institutions is important); and its impartiality, often related to a fair and transparent appointment process of its leadership.

#### Establishment and appointment processes impact on an institution's experience of independence

Enjoying a legal and especially a constitutional status confers on an institution a certain rank and legitimacy. For adoption of legislation, a vote by parliament is typically required, and there is some form of democratic debate. Such an establishment process is likely to result in institutions that are more independent and sustainable in the long term than those created by decree of the executive branch. This latter process may limit broader political ownership, create the perception that the institution is a creature of the government of the day and leave the institution at risk of being dismantled when a new government comes to power.

Virtually all independent children's rights institutions across the globe are created by law. In nearly half of the countries with an independent institution whose mandate includes children's rights, the institution is prescribed by the national constitution. In addition to providing guarantees of sustainability, constitutional status indicates that the institution is considered a pillar of the state system.

The legislative mandate of many institutions stipulates independence. Such an explicit mention



of independence in the founding legislation is an additional guarantee of actual independence, as it determines the nature and status of the body within the national institutional system.

As previously described, mandates can cover a wide range of activities and powers, and explicitly defining these can be important in giving an institution authority and a clear identity. Examples of significant limitations inserted into institutional mandates in law and practice exist in all regions of the world, however. Some institutions, for example, require government or judiciary approval, or may face a government veto, when undertaking an investigation. This is the case for the Human Rights Commission of Malaysia, which needs government permission to conduct visits to detention centres.<sup>45</sup> A review of the Children's Commissioner for England (United Kingdom) found that the institution's obligation to consult the Secretary of State for Education before holding an enquiry, and the latter's power to direct an enquiry and to decide whether to amend findings or keep them from the public, are factors that significantly reduce its independence.<sup>46</sup>

The leadership appointment process for ombudspersons and commissioners for children is also crucial to the independence of institutions. It sets the tone for the level of trust institutions enjoy and creates a layer of accountability. The personal qualities and authority of the individual ombudsperson or commissioner are fundamental to the actual experience of independence enjoyed by the institution he or she leads.

### Financial autonomy: A key to independence in practice

Institutions need sufficient and sustainable financial resources to carry out their mandates. At the same time, funding sources must respect the legitimacy and independence of an institution. Human rights institutions with no say over their finances will be dependent on whichever body exerts financial control.<sup>47</sup> While financial dependence on the state might compromise the independence of an institution when funds are restricted or unduly controlled, state funding provides legitimacy to an institution as a public, regulatory agency.

The Committee on the Rights of the Child has consistently noted in its concluding observations to

45 Human Rights Commission of Malaysia Act 1999, Act 597, 1999, Section 4 (2). See also Asian NGOs Network on National Human Rights Institutions, 2010 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, ANNI, 2010, p. 18.

46 Dunford, J., Review of the Office of the Children's Commissioner (England), Presented to Parliament by the Secretary of State for Education by Command of Her Majesty, November 2010, p. 33. A reform process is under way as of mid-2012.

47 United Nations Centre for Human Rights, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, United Nations Centre for Human Rights, Geneva, 1995, para. 73.

state party reports that efforts to provide reasonable and secure funds to child-related institutions are insufficient.<sup>48</sup> External funding is necessary in many places – especially for child rights programmes – because of resource shortages. In these countries, private and foreign donors have become involved in supporting the work on children's rights within national institutions.<sup>49</sup>

Such support is a double-edged sword: it keeps an institution operational and potentially shields it from the political fallout that a solely state-determined budget can elicit, but it can also compromise the independence and sustainability of the institution, particularly over the long term. Donor agendas may affect an institution's own long-term strategy, especially where funding strategies are subject to change. Our study shows that this is a particular concern for children's departments within broader human rights institutions, whose funding is often project based and provided directly by donors<sup>50</sup> rather than drawn from the institution's own budget. Donor strategies therefore need to be geared towards guaranteeing both sustainability and national ownership, by promoting diversification of funding sources and contributions by the institution and the state. This also helps to address the perception that the institution is a creature of foreign interests. In Morocco, for example, funding for recruitment to the Consultative Council for Human Rights of a staff member specializing in child rights came from UNICEF during the first year but was subsequently incorporated into the Council's budget.<sup>51</sup>

### Accountability mechanisms can help to preserve independence

Independent human rights institutions for children are one kind of accountability mechanism. Other types of accountability mechanisms provide ongoing feedback on the strengths and weaknesses of the institution itself, which is crucial in fostering its independence and helping it to become stronger over time. Like any other public body, an institution must be held accountable for its own actions and performance, in a way that preserves its independence.

Clear accountability mechanisms can build public trust and reinforce legitimacy in the eyes of the public

48 See, for example, Committee on the Rights of the Child Concluding Observations on Colombia, CRC/C/OPAC/COL/CO/1, 21 June 2010, para. 11; on Guatemala, CRC/C/GTM/CO/3-4, 25 October 2010, para. 23; on Nicaragua, CRC/C/NIC/CO/4, 20 October 2010, para. 16; on Panama, CRC/C/PAN/CO/3-4, 21 December, 2011, para 15; on Bangladesh, CRC/C/BGD/CO/4, 26 June 2009; on Maldives, CRC/C/OPSC/MDV/CO/1, 4 March 2009; on the Philippines, CRC/C/PHL/CO/3-4, 22 October 2009; and on Uzbekistan, CRC/C/UZB/CO/2, 2 June 2006.

49 For example, in Afghanistan, Colombia, Costa Rica, Ecuador, Malawi, Nepal, Pakistan and Zambia, among many others.

50 As has been the case in Honduras and Nepal, for example.

51 Interview with UNICEF Country Office, August 2012.

by helping to make action transparent.<sup>52</sup> They are also a means to officially inform state bodies of the institution's recommendations – and reinforce the responsibility of state bodies to implement them.

Accountability mechanisms include:

- Written reports of activities to parliament, government or the public on an annual or regular basis. The level of accountability and oversight achieved by this process is highly dependent upon the level of engagement by these other actors.
- Informing the general public. Research for this study suggests that this practice is not yet widespread; aside from the increased use of websites and social media by institutions in some middle- and high-income countries, only a few publish regular bulletins on their activities.
- Monitoring by civil society. In Asia, for example, the Asian NGO Network on National Human

Rights Institutions issues an annual report on the functioning and independence of national human rights institutions.

- Monitoring as part of network membership. The International Coordinating Committee of National Human Rights Institutions periodically monitors and accredits human rights institutions that comply with the Paris Principles. It does not, however, assess stand-alone independent human rights institutions for children or those that are established solely at the local level.
- Assessment by international monitoring bodies (e.g., the Committee on the Rights of the Child and other treaty bodies, the Human Rights Council Universal Periodic Review, special procedures). The Committee on the Rights of the Child systematically considers the mandate, independence, financing and overall state support of children's ombudspersons during its periodic country reviews. Other treaty bodies also review the role of national human rights institutions. The Universal Periodic Review of the Human Rights Council provides the opportunity to debate the effectiveness of human rights institutions in each country and makes recommendations to strengthen them.

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52 Ackerman, J. M., 'Understanding Independent Accountability Agencies', in Rose-Ackerman, S. and Lindseth, P. (eds.), *Comparative Administrative Law*, Edward Elgar, London, 2010; International Council on Human Rights Policy, 'Assessing the Effectiveness of National Human Rights Institutions', ICHRP, Geneva, Switzerland, 2005, p. 23.

A 2007 review of democratic institutions in South Africa, including the South African Human Rights Commission, pointed to the lack of engagement by the National Assembly. Institutions' interactions with Parliament were restricted to annual meetings with portfolio committees of very limited duration (e.g., two to three hours). Challenges to greater engagement included the workload of parliamentary committees and uncertainty among parliamentarians about their role in preserving the independence of institutions.

Recommendations from the review included creating a unit within the Office of the Speaker to coordinate the oversight of these institutions; strengthening the relevant parliamentary committees (in particular by ensuring their access to relevant expertise); and adopting legislation on accountability standards to regulate the relationship between Parliament and the institutions concerned.<sup>53</sup> Following a resolution by the National Assembly in 2008, the Office on Institutions Supporting Democracy was formally established in 2010.<sup>54</sup>

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53 Parliament of the Republic of South Africa, Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions, A report to the National Assembly of the Parliament of South Africa, Cape Town, 2007, pp. 30–32.

54 'Office on Institutions Supporting Democracy', <[http://www.parliament.gov.za/live/content.php?Category\\_ID=320](http://www.parliament.gov.za/live/content.php?Category_ID=320)>, Parliament of the Republic of South Africa website, accessed 20 July 2012.

## Practical question: How can institutions withstand threats?

The sustainability of an independent human rights institution and, even more fundamentally, the regard for child rights, is not guaranteed even in those countries with the most effective institutions. While ineffectiveness is the primary risk, the findings and recommendations of human rights institutions can sometimes be uncomfortable for those in authority or may jar with different factional interests. In this context, a record of achievements and strong independence can create a backlash, leading political decision makers to question the need for an institution. In other situations, financial challenges may lead to the questioning of institutions' viability, perhaps especially if a country has multiple bodies to address different areas of human rights.

Independent human rights institutions for children have been dismantled in contexts as diverse as Ghana, Madrid (Spain) and New Jersey (United States of America). Their existence as stand-alone institutions has been questioned in a number of countries, including Croatia, England (United Kingdom), France, Ireland and Sweden. Motivations have included a combination of the rationalization of institutional structures, concerns over costs and political considerations. In light of the specificity of children's rights and the mobilization of child rights advocates, institutions were eventually maintained in all of the countries cited above except France. Here the institution became integrated into a broad-based human rights institution in 2011; advocacy led to the specific visibility of children's rights in the new legislation, however.

In the case of British Columbia's Representative for Children and Youth (Canada), vocal support for the Representative by indigenous communities played an important role in reminding

the public and judiciary that the institution's responsibility is to address the rights and needs of the province's most marginalized children – something these communities felt would have been compromised had the institution's legislation been weakened.<sup>55</sup>

These examples point to the importance of institutions building relationships beyond government and parliament, connecting with partners that can mobilize and speak out on behalf of the institution if necessary. The media can be instrumental in helping an independent human rights institution for children to establish itself as a unique and permanent feature of the national landscape. Partnerships forged with civil society, and with child rights NGOs in particular, play an important role in enhancing institutional legitimacy; these are also the primary constituencies to provide support if or when the institution faces threat.<sup>56</sup>

Another way to withstand threats is to set up internal mechanisms that can identify and anticipate them. The Northern Ireland Commissioner for Children and Young People (United Kingdom) has established an Audit and Risk Committee composed of external representatives, which provides independent oversight and regularly identifies risks to the effectiveness of the office. These can be both strategic, for example, risks to resources and independence, and substantive, for example, an adverse judicial decision on a child rights issue. The Commissioner also maintains a Corporate Risk Register, which it reviews monthly.<sup>57</sup>

Effectiveness, measured through concrete results and capitalizing on partnerships and public trust, is the best protection for and guarantee of institutional sustainability.

55 'Open Letter: UBCIC Supports Representative For Children And Youth Petition To Access Cabinet Documents', dated 11 May 2010, Indigenous Peoples Issues and Resources website, <[http://indigenouspeoplesissues.com/index.php?option=com\\_content&view=article&id=5165:open-letter-ubcic-supports-representative-for-children-and-youth-petition-to-access-cabinet-documents&catid=52:north-america-indigenous-peoples&Itemid=74](http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=5165:open-letter-ubcic-supports-representative-for-children-and-youth-petition-to-access-cabinet-documents&catid=52:north-america-indigenous-peoples&Itemid=74)>, accessed on 2 October 2012.

56 International Council on Human Rights Policy, 'Performance & Legitimacy: National human rights institutions', ICHRP, Versoix, Switzerland, 2004, p. 97.

57 See Northern Ireland Commissioner for Children and Young People, Annual Report and Accounts, For the year ended 31 March 2011, NICCY, 15 December 2011, and NICCY annual reports for previous years.

### 3.2 Child participation

The Convention on the Rights of the Child recognizes that children have the right to express their views with due regard to the child's age and maturity.<sup>58</sup> The right of the child to be heard is a right in and of itself, but it is also important in realizing all other rights.<sup>59</sup> Independent human rights institutions for children have a unique role in promoting and modelling the realization of the right to be heard.

With child participation such a crucial aspect of their work, a number of independent human rights institutions for children are finding ways to ensure direct interaction with children. This is one area where institution activities have been progressively developing

across regions since the 1990s. Engaging with children requires specific skills, resources and commitment, and has proved extremely challenging for many of the institutions reviewed in this study.

#### Children's participation in the work of the institution

A legal basis for cultivating child participation (e.g., the inclusion of child participation in an institution's legislated mandate) provides an institution with the legitimacy it needs to allocate resources to this area of work and report on it to decision makers. Around a quarter of existing independent human rights institutions for children (many of them in common law countries) have founding legislation that contains one or more of the following types of provisions:

- General provisions requesting that the office takes into account children's views.

58 Convention on the Rights of the Child, Article 12.

59 Committee on the Rights of the Child General Comment No. 12: The right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. 2.

- A requirement to establish specific structures for consulting with children.
- A link between child participation in the work of the office and the promotion of child participation in the broader society.

The direct involvement of children in independent human rights institutions for children typically takes one of two forms. The first consists of permanent, institutionalized mechanisms that involve some children on a regular basis such as youth advisory bodies, focus groups, child ambassadors and child ombudspersons, and ongoing website fora. All of these mechanisms can build participants' capacity to express their views and engage in policy dialogue. They tend to be quite structured and may not necessarily involve large numbers of children. In particular, youth councils – usually comprising around a dozen adolescents from various walks of life – have been progressively set up in independent institutions across Europe and beyond, serving as permanent advisory boards for office priorities, approaches and communication strategies. They simultaneously build participants' skills to take informed positions and to lead.

The other broad form of involvement is ad hoc and can include consultations, hearings and interviews with children in a specific geographic area or on a specific topic. Such work can be useful for obtaining the views of a larger number of children than permanent mechanisms can reach, but it may contribute in lesser ways to building children's capacities. If conducted with improper methodology, however, ad hoc involvement runs the risk of being tokenistic.

Our research shows that the substance (topics) of children's participation spans many areas, ranging from the recruitment of a head of office to communications, research, monitoring and evaluation, via office organization and logistics. To give some examples, Ireland's Ombudsman for Children conducted research in 2009 with 35 separated children living in the city of Dublin.<sup>60</sup> Children contributed to the comprehensive study and the Ombudsman supported them in issuing a publication to tell their stories and in compiling a handbook for those seeking to help children without parental care. In El Salvador, the Procuraduría para la Defensa de los Derechos Humanos has set up Unidades de Difusión Juvenil de Derechos Humanos. These juvenile dissemination units for human rights comprise approximately 300 young volunteers aged 15 to 25 years old, based in local offices of the Procuraduría. The activities of the units have evolved from focusing on human rights promotion to monitoring State action.<sup>61</sup> In 2008, the Afghanistan Independent Human Rights

Commission organized 'child-to-child' workshops to train more than 2,700 children in various child rights topics so that the participants could in turn train their peers.<sup>62</sup>

### Accessibility to children

Accessibility is the ability of an institution to come into contact with children. It is a fundamental issue of paradigm: interacting with children through proactive, age-appropriate outreach, especially to the most marginalized, and maintaining child-accessible mechanisms that enable children to reach the institution using their own initiative. Accessibility is the key to fostering child participation in the work of the institution. It is far more than an issue of location, although this is, of course, part of it.

This study has found that relatively few independent human rights institutions for children have mandates requiring their accessibility to children. Significantly, children themselves make proportionally few complaints to independent institutions. The reasons for this need to be better understood but may include the existence of other, better-known mechanisms for children to seek help (for example, child helplines), the still limited visibility of institutions among children, and inappropriate or relatively inaccessible complaint mechanisms.

The overwhelming majority of institutions whose founding legislation has provisions regarding direct accessibility to children are stand-alone, child-specific institutions, many of which were initially set up to protect children in contact with the welfare system, clearly requiring direct communication with children. Accessibility is featured in particular in the legislation of many child rights institutions located in common law countries, namely Australia, Canada, Jamaica, New Zealand, the United Kingdom and the United States of America.

### Awareness

Awareness is the first element of access, and the institutions covered by this report have used many different strategies to increase children's awareness of their existence. These include distributing material to children, partnering with the media and using the Internet and social networks. The very few assessments conducted of children's knowledge of various independent human rights institutions point to low awareness of the existence and role of the institution in question, however. An evaluation of the Children's Commissioner for Wales (United Kingdom), for example, found that only a small proportion of children aged 7 to 16 years old (3 to 21 per cent, depending on

<sup>60</sup> Ombudsman for Children's Office – Ireland, Separated children living in Ireland, A Report by the Ombudsman for Children's Office, 2009.

<sup>61</sup> Procuraduría para la Defensa de los Derechos Humanos – El Salvador, Annual Report 2010–2011, PDDH, p. 234.

<sup>62</sup> Afghanistan Independent Human Rights Commission, Annual Report, January 1–December 31 2008, AIHRC, 2009, p. 27.



## Practical question: How do independent institutions get to where children are?

A local presence fosters the accessibility to children of an independent human rights institution. It ensures that its work is in direct contact with children's local circumstances and daily lives.

Independent institutions have increasingly expanded their local level work. The more localized and autonomous an institution becomes, however, the greater its complexity and challenges of coordination.

Local-national structures generally fall into one of four categories:

1. National institutions that perform some activities at the local level. A single, central office carries out work across the country. Institutions with this structure are most commonly located in relatively small countries (e.g., Jamaica and Mauritius), in places where resources are particularly constrained or where the national political system is highly centralized, as in Jordan.
2. National institutions that have branch offices at the local level. A single office initially established in a capital or major city creates sub-offices, while the main office remains the headquarters. The presence of independent institutions at the local level is particularly strong in Latin America, where nearly all offices have a central headquarters and regional or local branches. Where a child rights office is part of a broad-based human rights institution, child rights work at the local level may be established immediately if branch offices are already in place, as was the case in South Africa and the United Republic of Tanzania. While opening branches improves accessibility, limited resources can hinder the ability of the central institution to establish them, especially in remote areas, resulting in inequities in geographic coverage, a concern often voiced by the Committee on the Rights of the Child.<sup>65</sup>
3. National institutions that co-exist with autonomous institutions at the subnational level. This configuration is found most often in countries with federal or decentralized structures where competencies are shared between subnational and federal authorities. Examples include Australia, India, Italy and Spain. One challenge, as noted above, is ensuring equitable coverage for children living in different parts of the country. Coordination among the institutions is also needed. These issues have been addressed in different ways in different areas: for example, in Italy, the national children's ombudsperson is legally mandated to coordinate with regional ombudspersons, while in India cooperation between the National Commission and State Commissions for Protection of Child Rights is informal.
4. Autonomous independent institutions that co-exist at the provincial, regional or municipal levels. This is also more common in countries with federal or decentralized regions. Examples include Austria, Belgium, Canada, the United Kingdom and the United States of America. Another important model is where autonomous institutions are created at the municipal or community level as a decidedly locally sponsored mechanism (examples exist in Japan, Peru and the Philippines). A system without a central institution raises challenges for tackling issues that are national in scope, including connecting with national decision makers. Models to address this include establishing networks of subnational institutions adopting common positions (as in Austria and Canada) or designating one subnational institution to deal with national issues (as in the United Kingdom). In some cases, difficulties with local level, autonomous constellations of institutions have subsequently led to efforts – supported by the Committee on the Rights of the Child – to establish a national or federal independent human rights institution for children, for example, in Australia, Italy and the Russian Federation, where national level institutions are now in place.<sup>66</sup>

65 CRC Committee, Concluding Observations for Panama, CRC/C/15/Add.233 30 June 2004, para. 13; CRC Committee, Concluding Observations for Bolivia, CRC/C/15/Add.257 11 February 2005, para. 13; CRC Committee, Concluding Observations for Colombia, CRC/C/COL/CO/3, 8 June 2006, paras. 18 and 19.

66 In Canada, similar proposals have been made but the national institution is yet to be established.

age group) had heard of the Commissioner.<sup>63</sup> Since children usually receive information about an institution from adults, the fact that a survey commissioned by UNICEF France in 2010 found that only 4 out of 10 adults in France knew about the Défenseur des enfants<sup>64</sup> suggests that the ombudsperson institution was not well known to the public.

One finding of this study is that school curricula seldom include references to independent child rights

63 Thomas, N., et al., 'Evaluating the Children's Commissioner for Wales: Report of a Participatory Research Study', *International Journal of Children's Rights*, 18, 2010, p. 33.

64 Survey conducted by TNS Sofres on 24 and 27 September 2010 with a representative sample of 1,000 persons aged 18 years and above. The survey was conducted with respect to the stand-alone institution, prior to the merging of the Défenseur des enfants with the broad-based Défenseur des droits.

institutions – a missed opportunity for reaching out to high numbers of children.

### *Geographic accessibility*

The physical accessibility of an office is a crucial dimension of access. Not surprisingly, evidence shows that decentralization of offices has an impact on accessibility. For institutions that began as a single office in a major city, establishing a physical presence in additional locations often had a clear and immediate impact on the number of complaints received.<sup>67</sup>

67 In contexts as diverse as Croatia, the Occupied Palestinian Territory and Uganda, independent institutions have noted an increase in individual complaints following the opening of local branches.



Many independent human rights institutions for children in Latin America have local *defensorías*. This helps rural and indigenous communities to access these institutions in the same way as people living in urban centres. In Peru, for example, there are 840 local Defensorías del Niño y del Adolescente, which dealt with more than 130,000 cases in 2010.<sup>68</sup>

Another way of enhancing the geographic accessibility of institutions is to physically travel to remote areas for the purpose of having direct interaction with people. In 2009, the Comisionado Nacional de los Derechos Humanos in Honduras set up mobile units to foster public awareness of the Commission, collect complaints and inform the public about pending cases and the outcome of investigations.<sup>69</sup>

In countries affected by armed conflict, staff travel has been used to enable the independent institution to assess the situation of children and raise awareness of their plight. The Afghanistan Independent Human Rights Commission has a Child Rights Field Monitoring team; the Uganda Human Rights Commission visited camps for internally displaced persons at the height of conflict in the north of the country.<sup>70</sup>

#### *Accessibility to all groups of children*

Being accessible to all children, including the most marginalized, embodies the principle of non-discrimination enshrined in Article 2 of the Convention on the Rights of the Child. In pursuit of equity, independent human rights institutions for children have made increasing efforts to reach the most marginalized. Conventional lists of groups of children most at risk of exclusion include those from the poorest backgrounds, those living or working on the streets, those not accessing school, children from minority groups and indigenous peoples, and those with disabilities, among others.

Such categories serve as important guides but can be misleading. The reality of exclusion is that multiple factors tend to combine. For example, a girl from a poor, single parent family may be more marginalized than her brother who may still be attending school, her gender compounding her poverty and family situation. Institutions need to develop an analysis of exclusion that identifies and understands its specific local dynamics if they are to genuinely reach the most marginalized.

Various studies, including this one, have found the lack of involvement of younger children a significant

shortcoming of child participation mechanisms.<sup>71</sup> Most participatory structures studied include adolescents; some reach out to children as young as seven or eight years old, but this is unusual.<sup>72</sup>

Having said that categorization has its limits, children belonging to minority groups or indigenous peoples, along with those who are refugees or migrants, are often at the extreme end of exclusion, with very limited access to effective remedies for violations of their rights. Mistrust of state institutions may deter the most excluded children from accessing an ombudsperson. For example, despite the existence of branches of the Defensoría del Pueblo in all 32 departments of Colombia, the Committee on the Rights of the Child has criticized the lack of access experienced by children in rural areas of the country, where high proportions of children are Afro-Colombian, indigenous or displaced.<sup>73</sup>

The Committee on the Rights of the Child has called for particular efforts to reach the most marginalized and disadvantaged children.<sup>74</sup> Our review of existing practices illustrates various approaches used to reach these groups. Some institutions promote their accessibility by publishing materials, including websites, in various languages. The website of the Defensoría del Pueblo in Peru is available in Quechua and also offers a complaint form in this indigenous language.<sup>75</sup> The website of the Children's Commissioner for Wales (United Kingdom) includes background notes on the office and its mandate translated into 10 languages of immigrant communities.<sup>76</sup>

Being accessible to children with disabilities makes an institution's advocacy efforts on behalf of children with disabilities credible and legitimate. Information relating to the physical accessibility of institutions to children with disabilities is generally lacking. A number of institutions studied, however, use appropriate methods to communicate with and convey their concerns to children with disabilities, for example, by adapting their websites, offering messages to children in sign languages and physically visiting children with disabilities to seek their views. In Ontario (Canada), the Office of the Provincial Advocate for Children and Youth makes monthly visits to special schools for hearing and vision impaired children and/or children with severe learning disabilities to hear about their experiences of accessing services. Since other means of communication present significant barriers to these

68 Directorio de Defensorías del Niño y el Adolescente Registradas, Ministry of Women and Social Development website, <[http://www.mimdes.gob.pe/archivos\\_sites/dgna/dna/directorio/index.htm](http://www.mimdes.gob.pe/archivos_sites/dgna/dna/directorio/index.htm)>, accessed 13 October 2012.

69 Comisionado Nacional de los Derechos Humanos de la República de Honduras, Annual Report 2009, CONADEH, p. 14.

70 Uganda Human Rights Commission, Annual Report 2004, UHRC, p. 110.

71 Hodgkin, R., and Newell, P., Child Participation and Children's Ombudsman Institutions within the European Union (Preliminary Report), December 2008, p. 20.

72 For more information on how to promote young children's participation, see Lansdown, G., *Can you hear me? The right of young children to participate in decisions affecting them*, Bernard Van Leer Foundation, 2005.

73 CRC Concluding Observations on Colombia, CRC/C/COL/CO/3, 8 June 2006, para. 18.

74 CRC Committee General Comment No. 2, para. 15.

75 <<http://www.defensoria.gob.pe/quechua.php>> accessed 13 October 2012.

76 <<http://www.childcom.org.uk/en/about-us/>> accessed 13 October 2012.

students, they feel more comfortable raising concerns to staff from the Advocate's office in person.<sup>77</sup> The ability of independent human rights institutions for children to communicate with those who have cognitive disabilities remains, however, little explored.

General Comment No. 2 underlines the need for institutions to have access to children in alternative care and all other settings that include children.<sup>78</sup> This is particularly important for children in 'closed' settings, who are separated from their families and communities and have fewer opportunities to file complaints about their living conditions and interact in general with the outside world.

Independent human rights institutions for children often have the power to make unannounced visits to detention centres, orphanages, children's homes, schools and hospitals. Some independent institutions, in particular those created in response to reports of abuse in the child care system (e.g., those in Australia, Canada, New Zealand and the United States of America), undertake numerous visits to 'closed' facilities. Queensland's Commission for Children and Young People and Child Guardian (Australia) organizes monthly visits to children living in alternative care in the state. The Commission staff hear their complaints directly and can advocate for the children if their needs and rights are not being met.<sup>79</sup>

Accessibility to children in institutions presents a number of challenges. Unimpeded and unannounced access to places where children spend time is important, but in practice a number of barriers to this often exist. Several institutions, including the Independent Commission for Human Rights (the Palestinian national human rights institution), have complained that staff were often prevented from accessing detention centres and making unannounced visits.<sup>80</sup>

Legal limitations can make it difficult for independent institutions to visit children in closed private settings (e.g., serving in homes as domestic servants or in factories as workers).<sup>81</sup> In only a few countries does the legislation provide extensive powers to the institution

in this respect. The Ombudsperson for Children in Mauritius is authorized for investigative purposes to enter any premises where, inter alia, a child is present either temporarily or permanently, or may be in employment.<sup>82</sup> Similarly, the Defensor del Pueblo in Colombia can visit any public or private entity to investigate a complaint or prevent a human rights violation.<sup>83</sup> These two cases are the exception rather than the rule among the institutions reviewed.

### 3.3 Receiving complaints on specific child rights violations

The scope of the complaint mechanism depends on the breadth of child rights issues covered and the limitations of the legislative mandate.

The ability to handle complaints concerning the full spectrum of children's rights rests upon a broad mandate that makes explicit reference to the Convention on the Rights of the Child and other international instruments; it also relies upon strong domestic legislation that is in line with international standards on children's rights. In many complaints brought before the institutions reviewed, there has been no violation of national law per se. In fact, it may be the strict implementation of the law that results in an inequitable situation or a negative effect on the enjoyment of children's rights. Herein lies an important quality of the independent human rights institution for children: it can take up issues that may fall outside the traditional remit of a country's courts.

Our study shows that independent institutions address complaints across the entire spectrum of children's rights: sexual violence, child abuse within families, prolonged detention in juvenile facilities, lack of access to education, inadequate provision of health services, bullying, custody, child support, child participation, ethnic and racial discrimination, treatment of unaccompanied and separated children, and access to social services by children with disabilities, among many others.

Some institutional mandates explicitly reflect the understanding that both public and private bodies are bound by the Convention on the Rights of the Child to respect the rights expressed therein, as is the case in Greece, Lithuania and Mauritius. Other institutions are restricted from considering complaints regarding private bodies, however. This is common in traditional

77 Ontario Office of the Provincial Advocate, Annual Report 2010–2011, p. 19.

78 CRC Committee General Comment No. 2, para. 15. This echoes the provisions of the United Nations Guidelines for the Prevention of Juvenile Delinquency and United Nations Rules for the Protection of Juveniles Deprived of their Liberty. United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), adopted and proclaimed by General Assembly Resolution 45/112 of 14 December 1990, para. 57; United Nations Guidelines for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly Resolution 45/113 of 14 December 1990, para. 77. See also Guidelines for the Alternative Care of Children, adopted by General Assembly Resolution 64/142 of 24 February 2010, para. 130.

79 Queensland Commissioner for Children and Young People and Child Guardian, Annual Report 2010–2011, p. 52.

80 Palestinian Independent Human Rights Commission, Annual Report 2007, p. 259.

81 Many legal systems have privacy provisions that prevent public institutions from entering private premises unless they have a judicial mandate.

82 "(2) For the purposes of an investigation under this Act, the Ombudsperson for Children may (...) (b) enter premises where – (i) a child is present, either temporarily or permanently, including an educational or health institution and a place of detention, in order to study the environment of such a place and assess its suitability; (ii) a child may be in employment; (iii) there is reasonable ground to believe that the moral and physical safety of a child may be in danger; (...) (d) enter any licensed premises where the Ombudsperson for Children suspects that alcohol and tobacco may be handled, consumed or purchased by children; (...)". The Ombudsperson for Children Act, Act 41 of 10 November 2003, Article 7.

83 Ley No. 24 of 15 December 1992, Art. 28.

ombudsman institutions that include work on children's rights as part of a broader spectrum of human rights.<sup>84</sup>

Almost all independent human rights institutions for children are restricted from taking up cases that are pending a decision by the courts or another administrative body, including cases under appeal. In some cases, institutions are prevented from considering complaints regarding specific types of public bodies, e.g., those that deal with national security or military activity.<sup>85</sup>

A very small number of independent human rights institutions for children cannot take on individual complaints. The Ombudsmen for Children in Finland, Norway and Sweden receive thousands of communications per year, including from children, but typically progress the cases by making referrals to other competent bodies, counselling and guidance.<sup>86</sup>

### Who can submit complaints?

The mandates of independent human rights institutions for children vary greatly in regard to who may submit a complaint. In some cases, no restrictions apply; in others, the roles of the child and his or her parent(s) or guardian(s) are clearly specified. A legislative mandate that allows for anyone to file a complaint is likely to ensure better protection of children's rights.

84 Hodgkin, R., and Newell, P., *The Role and Mandate of Children's Ombudspersons in Europe: Safeguarding and promoting children's rights and ensuring children's views are taken seriously*, ENOC, December 2010, p. 7.

85 For example, Sec. 11(1)(b) of the Ombudsman for Children Act, 2002, Ireland.

86 Law on the Ombudsman for Children 21 December 2004/1221, Finland; The Ombudsman for Children's Act, No. 2002:337, Sweden.

The ability to receive complaints from any source facilitates the reporting of concerns about the welfare of children and establishes the independent human rights institution for children as a body that anyone can approach with a concern. Such an open mandate encourages greater public ownership of the institution and underscores the fundamental notion that protecting child rights is everyone's responsibility.

Complaints can be filed directly by children with all of the institutions reviewed in this study. In some settings (primarily integrated institutions) the law does not explicitly state that children can make complaints, but this is implied.

Complaints filed collectively (cases submitted jointly because they involve several children in a similar situation) provide an independent human rights institution for children with additional opportunities to identify systemic issues.

Another critical way to approach the complaint mechanism is for an institution to enquire into a child rights violation on its own initiative. Three quarters of the countries with an independent institution for children's rights have explicitly equipped them with the mandate to take on cases on their own initiative. Such a mandate, whether explicit or implicit, empowers an institution to look into child rights violations no matter what the initial source of information. It is also an important legal tool that enables institutions to be proactive rather than reactive.

Carefully monitoring and recording complaints provides crucial information for evaluating the performance of an independent human rights institution for children. Complaint data can provide a picture of who is

Many institutions have created free-of-charge phone helplines for children and adults to use to contact them with concerns and make complaint forms (often with child-friendly versions) available on their websites. Numerous institutions, in particular in Europe,<sup>87</sup> have created child-friendly online forms to file complaints with the office, and the websites of many broad-based institutions<sup>88</sup> feature complaint forms.

To give some examples of the breakdown of how complaints are made, between 2008 and 2009 two thirds of complaints received by the Office of the Children's Advocate in Jamaica were by phone; the remaining complaints were submitted by walk-ins, in writing or during meetings and public education sessions.<sup>89</sup> In the Republika Srpska, more than a third of complaints are made in person by visiting the office, a quarter are made by phone and another quarter by mail, with the remaining complaints coming by email, fax and from the media.<sup>90</sup>

87 Institutions in Austria, Belgium, Estonia, Ireland, the Netherlands, Poland, and the United Kingdom.

88 Institutions in Latvia, South Africa, Thailand and Zambia.

89 Jamaica Office of the Children's Advocate, Annual Report 2008–2009, p. 31.

90 Ombudsman for Children of Republika Srpska Annual Report 2011, p. 24.

accessing an institution's services, and thus serve as one measure of effectiveness in reaching target groups. Monitoring patterns of rights violations reflected in complaints is also a crucial advocacy tool. It is therefore important that data regarding the individual and the nature of his or her complaint are properly recorded and disaggregated.

Procedures for filing a complaint vary but in general tend to be significantly more flexible than most judicial or administrative proceedings. Institutions' complaint mechanisms are free of charge and do not require the complainant to have legal representation. The formality of the process varies from institution to institution. In the majority of cases, the office can be contacted by any means – letter, phone, email or personal visit – and most strive to offer child-friendly ways to file complaints.

### Responding to complaints

Institutions have developed ways to ensure that complaints are handled in the most ethical and child-sensitive manner.

One aspect of child-friendliness is the timely handling of complaints. As pointed out in one institution's report, "A child or youth's sense of time is not the same as for adults. A month can seem like an eternity ... processes need to be timely and move at a faster rate than those that respond to adult concerns."<sup>91</sup> Some complaints may require urgent action as a child is in immediate danger or a decision has irreversible effects; others may be less urgent, but should nevertheless be tackled swiftly.

The nature of an ombudsperson's complaint mechanism is largely quasi-judicial. Consequently, when an institution receives individual complaints, it does not issue binding decisions on individual cases but instead facilitates a mediation or conciliation process between the relevant parties in order to address the concerns involved.

It is essential for independent institutions to have a strong mandate to hear and respond to individual complaints. One important tool for this is subpoena power, whereby institutions can compel the production of evidence or summon witnesses to testify; failure to comply is associated with a civil or criminal sanction. More than half of the countries with an independent institution have given it such powers. In other places, tools for compliance primarily include the request for disciplinary sanctions and special reports to parliament; here the institutions must rely chiefly on goodwill for compliance.

Around a quarter of independent human rights institutions for children have the mandate to take a case

91 Joint Special Report, BC Representative for Children and Youth and Ombudsperson, 'Hearing the Voices of Children and Youth, A Child-Centred Approach to Complaint Resolution', January 2010, p. 3.

to court or otherwise refer it to the judiciary. A dozen independent institutions, almost all of them located in common law countries, are themselves able to provide legal representation and can take cases of alleged child rights violations directly to court. This is often the case for bodies that have a specific mandate to protect the rights of children in state care. In other places, the independent institution may refer a case brought to its attention to the police or public prosecutor, particularly in situations of maltreatment.<sup>92</sup>

The Defensoría del Pueblo in Peru has created a specific tool to assess compliance with its recommendations. The 'Defensometro' evaluates how public bodies respond to the institution's requests; it measures and ranks compliance and compares performance among entities and over time. This allows the office to identify low compliance and engage in a dialogue with the bodies concerned.<sup>93</sup>

Where high-profile cases of serious child abuse have occurred, significant media attention and public concern can also contribute to agency compliance and policy reform. Publicity in the media about child deaths in Canada's care system,<sup>94</sup> in conjunction with high-profile personalities publicly expressing concerns about the shortcomings of the child protection system, led to the initiation of a comprehensive system review.<sup>95</sup> In Serbia, the lack of follow-up to the recommendations of the Protector of Citizens about discrimination against a Roma girl in school was addressed by a television show, which used the case to highlight the role of the Protector's office and the importance of implementing its recommendations.<sup>96</sup>

### The complaint mechanism as an opportunity to strengthen independent institutions and further children's rights

The complaint mechanism operates as a remedy for specific cases of rights violations affecting an individual child or a group of children and also serves to reveal broader, systemic problems in the realization of

92 Hodgkin, R., and Newell, P., *The Role and Mandate of Children's Ombudspersons in Europe: Safeguarding and promoting children's rights and ensuring children's views are taken seriously*, ENOC, December 2010, p. 13.

93 Defensoria del Pueblo de Peru, Annual Report 2011, pp. 191-192.

94 Especially where the media is involved, due respect must be given to confidentiality and the need to protect the child's privacy.

95 See, for example, Hon. T. Hughes, BC Children and Youth Review: An Independent Review of BC's Child Protection System, 7 April 2006, pp. 7-8.

96 Protector of Citizens of Serbia, Annual Report 2010, p. 87.



child rights. It can itself trigger greater government openness to changes needed to curtail rights violations and promote children's rights. Information gathered through the complaint mechanism may potentially be as important to advocacy and reform efforts as other institutional functions (e.g., research and policy analysis). The complaint mechanism can be an opportunity for those people most affected by particular issues to speak out for themselves.

Because complaints and communications received by an independent institution can stretch institutional capacity to carry out this and other functions effectively, it is important to ensure that the complaint mechanism is used to advance an office's overall strategic agenda – again, to further a proactive approach rather than remain primarily reactive. Some triage of cases is necessary: one expert has said that criteria for case selection should not only reflect the office's strategic plan but should also be well publicized so that the office is more likely to receive the kinds of cases it wants to progress.<sup>97</sup> While this makes practical sense, offices also need to remain constantly vigilant that by so doing they are not contributing to the exclusion or marginalization of children or emerging issues.

Ultimately, a child-sensitive complaint mechanism follows a number of principles: centrality of the best interests of the child; respect for the dignity, privacy and views of the child; non-discrimination; relevant information in an appropriate form; professional assistance; and timeliness.<sup>98</sup> These elements require significant capacities in terms of skills, settings and resources, which can be lacking in some environments. Evaluation of the child sensitivity of complaint mechanisms by independent institutions, with the significant involvement of children, has been limited. Some institutions have been effective at strengthening child sensitivity in handling complaints and in finding creative ways to remedy problems. The low proportion of complaints made directly by children themselves and anecdotal evidence suggest, however, that ensuring child accessibility in practice remains a challenge for institutions in all regions.

### 3.4 International engagement

International engagement between independent human rights institutions for children and with other relevant human rights bodies has developed as an important tool to address institutional needs ranging from capacity building to the desire for leverage or advocacy in support of critical issues.

<sup>97</sup> Murray, R., "National Human Rights Institutions: Criteria and Factors for Assessing their Effectiveness," *Netherlands Quarterly of Human Rights*, Vol. 25/2, 2007, p. 208.

<sup>98</sup> Joint Report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative on violence against children, UN General Assembly, A/HRC/16/56, 7 March 2011, para 41.

A number of networks of institutions exist, most of which are organized along geographic lines, gathering institutions from the same region or subregion, for example, the Central American and Panama Network of Children's Defenders and the Asia Pacific Association of Children's Commissioners. Some networks include subnational institutions while others only accept those at national level. In-country networks of institutions also exist, such as those in Austria and Canada. Networks may also be based on other common traits, including history, language and culture, like the Ibero-American Network for the Defense of Children's and Adolescents' Rights and the francophone networks of ombudspersons and human rights commissions.

Generally, networks of independent institutions correspond to, and are supported by, international intergovernmental organizations that bring together corresponding countries, such as the Council of Europe, the Organization of American States and the Organisation internationale de la Francophonie as well as specialized United Nations agencies such as the Office of the High Commissioner for Human Rights and UNICEF.

Also important are the relationships with international monitoring mechanisms such as treaty bodies (committees of experts that review compliance with certain human rights treaties). The most strategic and mutually beneficial relationship for independent human rights institutions for children is with the Committee on the Rights of the Child. Other treaty bodies such as the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination are also relevant. So too are special procedures (special rapporteurs and special representatives, such as the Special Representative on violence against children and the Special Rapporteur on the sale of children, child prostitution and child pornography) and the Universal Periodic Review of the Human Rights Council (a periodic review of the human rights situation of each United Nations Member State). Regional mechanisms such as the African Committee of Experts on the Rights and Welfare of the Child and the Organization of American States Special Rapporteur on the Rights of the Child are regionally significant.

The value of interactions between national human rights institutions and treaty bodies is captured well by the report of a 2007 workshop in Geneva organized by the Office of the High Commissioner for Human Rights. Referring to independent human rights institutions in general, not just those working on children's rights, the meeting concluded: "While national human rights institutions are the key element of strong national human rights protection systems, the international role is critically important. The more national human rights institutions are able to contribute information to, participate actively in the international human rights system, and follow up to their recommendations,

the more they enhance and strengthen their national position. National human rights institutions and UN human rights Treaty Bodies are natural partners in the protection and promotion of human rights.”<sup>99</sup>

### Networks of institutions

Despite working in partnership with a wide range of actors, the unique position of independent institutions implies some form of isolation at the national level. Networks can act as peer support groups for individual institutions, thus contributing to their effectiveness.<sup>100</sup> They provide fora where good, creative practices can be shared and future initiatives inspired. One important outgrowth of networking is a convergence of institutional practices. Child participation, for example, is an area for which a body of common practices has developed among independent human rights institutions for children.

Networks can take public, common positions on sensitive topics. This enhances an individual institution’s feelings of legitimacy when taking a stance on the issue at the national level. A network can also offer visibility and support when an institution is threatened, operating as a system to alert and mobilize support for its members. Importantly, networks create

solidarity among members beyond meetings and other official events. By nurturing interpersonal relationships and a sense of belonging, they foster collaboration among individual institutions outside formal settings.

Networks also tend to foster compliance with international standards among individual institutions. They do so particularly through membership criteria and peer monitoring. Indeed, networks of independent human rights institutions are often based on selective membership criteria.

While networking offers significant advantages for individual independent institutions and for institutions as a group, it can also present a number of challenges. The degree of openness of a network is always a contentious subject and largely depends on how the network balances its role as an information sharing and peer support group and its function as a vetting mechanism for individual institutions and the group itself. Entry barriers can have a paradoxical effect: new and fragile institutions that could benefit greatly from network support risk exclusion. Networking is also costly and takes time.

One risk of the exigencies of networking is the development of power imbalances within networks, skewing their functioning towards the concerns and issues of better-resourced institutions. Offsetting this risk involves providing space for institutions with more limited capacities to participate in key network functions and to influence decisions.

<sup>99</sup> Conclusions of the Workshop on National Human Rights Institutions and Treaty Bodies’ (Geneva, 26–28 November 2007), para. 3.

<sup>100</sup> On international networking of public bodies in general, see Slaughter, A.-M., *A New World Order*, Princeton University Press, 2004.

## The European Network of Ombudspersons for Children (ENOC)

Formed in 1997, the European Network of Ombudspersons for Children is composed of independent children’s rights institutions that are from Council of Europe member states and meet the criteria set by the network’s statutes.<sup>101</sup> In addition to its role in the strategic implementation of the Convention on the Rights of the Child, ENOC works collectively to support joint lobbying for children’s rights; serves as a forum for information exchange, capacity building and professional support; and promotes the development of effective independent offices for children within Europe and worldwide.

The network has had success in engaging in high-level dialogue on regional and international policy concerning children, including through the elaboration of child rights strategies for the Council of Europe and the European Union; the development of Council of Europe guidelines on child-friendly justice; its Committee on the Rights of the Child activities; and involvement in the World Congress III Against the Sexual Exploitation of Children and Adolescents. By mid-2012, the European Network of Ombudspersons for Children included 39 institutions from 31 countries.<sup>102</sup>

<sup>101</sup> The European Network of Ombudspersons for Children Statute, as approved May 2006, Dublin.

<sup>102</sup> ENOC website <<http://www.crin.org/enoc/about/index.asp>> accessed 18 July 2012.

Networks provide a channel for independent human rights institutions to access regional and global fora, and to participate in discussions at the international level. There is evidence that network efforts have resulted in greater systematic engagement by institutions in political dialogue at the regional and global levels, particularly in standard-setting activities. Increasingly, the direct participation of independent human rights institutions has been integral to such activities, for example, the drafting of the third Optional Protocol to the Convention on the Rights of the Child on an individual complaints procedure and the elaboration of Committee on the Rights of the Child General Comments.

Most networks of independent human rights institutions for children have close connections to either regional or global intergovernmental organizations. UNICEF's The Americas and Caribbean Regional Office supports the Ibero-American Network for the Defense of Children's and Adolescents' Rights while the Secretariat of the European Network of Ombudspersons for Children is located on Council of Europe premises (although it maintains an independent status). International organizations, including NGOs, often have access to resources that can be used to support network activities – as Save the Children has done with the Children's Rights Ombudspersons' Network in South and Eastern Europe.

### **The Committee on the Rights of the Child and other human rights mechanisms**

Independent human rights institutions for children and the Committee on the Rights of the Child (based in Geneva) have a particularly close relationship of mutual benefit. The independent institutions provide ongoing monitoring of the Convention on the Rights of the Child and concluding observations at the national level; in turn, they are supported and strengthened by the Committee and other bodies. The Committee's strong support and advocacy help to enhance the legitimacy and credibility of independent human rights institutions for children at the national level.

While engagement by the institutions can yield mutually beneficial outcomes, maximizing this engagement requires access, visibility, resources and an understanding of the entry points in the process. Independent institutions have submitted separate reports on the situation of children's rights in their countries. Many have participated in special dialogues with the Committee on the Rights of the Child, although this has been most usual among European institutions, which are geographically closer to Geneva and often have greater financial resources. The capacity of institutions from other regions to engage so directly with the Committee is an issue.

Being involved in the work of the Committee on the Rights of the Child can bring about positive

returns for individual independent human rights institutions. Interaction with the Committee can enhance an institution's legitimacy and credibility nationally, support reforms aimed at strengthening its independence and effectiveness, and assist it in advocating change.

The Committee on the Rights of the Child regularly issues concluding observations aimed at strengthening the institutions' effectiveness. These recommendations often echo concerns regarding the resources allocated to institutions, their structure and their ability to offer a child-sensitive complaint mechanism for child rights violations.

Our research shows that institutions and other child rights advocates in a number of countries have used these observations to promote structural and legislative reform and prompt increased investment in support of the efficacy of the independent institution. Following a Concluding Observation regarding the impact on its independence of the use of seconded civil servants by the Ombudsperson for Children's Office in Mauritius, this office began to recruit its investigators and some of its support staff using its own budget.<sup>103</sup> Ireland's Ombudsman for Children refers to recommendations by the Committee on the Rights of the Child and other international monitoring bodies in support of its advocacy efforts to strengthen the institution's mandate through law reform.<sup>104</sup>

Independent human rights institutions for children can benefit greatly from following up concluding observations which have the political and moral weight of the Committee on the Rights of the Child behind them. In 2011, Panama's Unidad de Niñez y Adolescencia de la Defensoría del Pueblo, with the support of UNICEF, set up an Observatorio de los Derechos de la Niñez y la Adolescencia for the ongoing follow-up of recommendations by the Committee and other UN treaty bodies together with civil society.<sup>105</sup>

Independent institutions can use other international monitoring mechanisms to further advance children's rights. Reports to other treaty bodies can give visibility to specific children's issues in relation to the implementation of other international treaties that complement the Convention on the Rights of the Child.

The Universal Periodic Review of the Human Rights Council, consisting in a comprehensive review of the human rights record of a given country by the UN Human Rights Council, also provides an important channel for independent institutions to voice their concerns. Several institutions have begun to use

<sup>103</sup> Information submitted by the Ombudsperson for Children's Office in Mauritius, 10 March 2010.

<sup>104</sup> A report by the Ombudsman for Children on the operation of the Ombudsman for Children Act, 2002, March 2012, p. 12.

<sup>105</sup> Defensoría del Pueblo de Panamá, Annual Report 2011, p. 92.

## Looking to the future: The role of independent human rights institutions for children in the Convention communications procedure

The UN General Assembly adopted a third Optional Protocol to the Convention on the Rights of the Child on a communications procedure on 19 December 2011. This allows the Committee on the Rights of the Child to receive and review communications on cases alleging violations of the rights of individual children or groups of children, and to conduct enquiries (including country visits) into allegations of grave and systematic violations of children's rights.

Given their role at the national level, independent human rights institutions for children are likely to be a primary domestic link supporting access to this international communications procedure.<sup>106</sup> They are in an opportune position to provide a preliminary assessment for eligibility for consideration under the Optional Protocol, and to refer and support potential complainants through the process or provide documentation to the Committee. They are also expected to monitor states' compliance with the recommendations made by the Committee for cases admitted under the Optional Protocol.

Independent human rights institutions can play a fundamental role in informing children and their communities about the existence of an international remedy; they can also carry out targeted efforts to reach those children whose rights are most at risk of being violated.

<sup>106</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Preamble.

opportunities to contribute to the review by sharing their views, either through the broad-based institution of which they are a part, like the Afghanistan Independent Human Rights Commission; as a stand-alone children's ombudsperson joining with the country's traditional ombudsman, as in Croatia; or by presenting a separate report, as in Ireland and in the United Kingdom (jointly by the four Commissioners).

### 4. Conclusion and recommendations

The work of independent human rights institutions for children is characterized by many achievements. Examples include the early adoption of the institutional concept and its strong proliferation across Europe and Latin America; pioneering work in comprehensive child rights policies and legislative reform in Latin America and the Caribbean; the active involvement of NGOs in watching over the concept in Asia; the creation of specialized child rights departments in national human rights institutions in Southern and Eastern Africa; the blossoming of discussions around the creation of child-focused independent rights institutions in the Middle East and North Africa; and the important focus on children in difficult circumstances in many common law countries. In each of these settings, states have recognized the need for institutions that

act independently to understand children's situations and defend their rights. Yet while the number of such institutions has increased since the 1990s, they also face challenges to their independence, insufficient funding, poor responses to their recommendations, and, in some cases, even threats to their existence.

One of the most common questions asked by those seeking guidance in setting up or working to strengthen (or defend) independent institutions is what form should the institution take. No one form fits all is the answer arrived at in this review. The national or local realities of institutional context, politics, finance and societal support for children's rights must all be taken into account. Mandates differ according to circumstances, histories and national engagement. There are pros and cons to all arrangements. In the end, the form and scope of the institution must be a product of national and local political and social processes that confer legitimacy and broad ownership.

Similarly, the set-up of an independent human rights institution for children as either an ombudsperson's office or a commission makes little difference. In both cases, the function tends to be highly personalized, with the individual ombudsperson or commissioner (or the chair of the commission, as in India) acting as the main voice for children and having a decisive role in building partnerships.



Child rights institutions integrated into broad-based human rights institutions can face particular challenges: work for children can be at risk of being squeezed by other organizational priorities, and organizational mechanisms and procedures do not necessarily encourage child accessibility. It is important that structures and leadership contribute to sustaining the influence and visibility of the children's unit. Some of the ways to do this include giving the unit an explicit legislative status, a ring-fenced budget defined as part of the national allocation, and its leadership a recognized senior status within the institution.

There is one non-negotiable attribute of all independent human rights institutions for children: a mandate rooted in the Convention on the Rights of the Child. There are also several factors that must be taken into account (and constantly reasserted) if an institution is to enjoy public support and trust. These include effectiveness and independence, which naturally reinforce one another.

Features that contribute to effectiveness include the capacity to identify and analyse child rights violations (including through child-accessible complaint mechanisms); to formulate and advocate recommendations; to communicate concerns; and to mediate, convene and build bridges between other public institutions and between government and wider society on child rights issues. The skills, character and profile of the staff of the institution, especially its leadership, are important. The serious consideration by government and other actors of its recommendations is critical.

As this report has described, independence is not just a product of an institution's mandate, but also of its financing and leadership. The wider political context and the engagement of media and civil society influence both the perception and reality of an institution's independence. The processes involved in establishing an institution – in essence, the degree to which this entails broad discussion and debate involving a representative variety of political and social interest groups – and the transparency of senior staff appointment processes all contribute to independence. Financing, of course, is key: sustained direct support from national budgets is optimal, but in the context of low- and middle-income countries further funding often comes from international donors, which carries with it both benefits and risks.

Child participation is a key issue that remains challenging for all, and most particularly for children's institutions integrated into broad-based human rights institutions. Many strides forward have been made in this regard, but it remains an area requiring further attention across the board. While participation as an issue concerns much more than the receipt of complaints alone, one of the

findings of this review is that children themselves make proportionally few complaints to institutions. There will be many reasons for this, but it strongly suggests that many complaint mechanisms remain insufficiently child-sensitive.

The following recommendations summarize more detailed recommendations laid out in the fuller technical report:

- **Governments and parliaments** should ensure that institutions are founded on adequate legislation, which includes a number of core provisions. It must explicitly set forth the institution's grounding in the Convention on the Rights of the Child, its role in representing the best interests of the child and its independence. Legislation should provide for open and transparent appointment processes and contain guarantees for the allocation of resources from the national budget. These resources should be sustainable and adequate for the institution to plan its work in the medium to long term, and they should be allocated in a way that contributes to the institution's ability to fulfil its mandate. Legislation should grant the institution adequate investigatory powers to freely access the places, documents and testimonies needed to perform its monitoring role (including of private entities). It should require the institution to be accessible to all children and to promote child participation both in its work and in broader society.
- **Governments** should instruct relevant departments and public bodies at all levels to fully cooperate with institutions in all of their phases of operation, including investigations, and should hold accountable those that do not do so. Due regard should be given to implementing recommendations. Thorough discussions of the institution's findings and proposals – in government, parliament and society (including the media) – are essential to the institution's long-term sustainability and effectiveness. It is the particular responsibility of governments to ensure the follow-up of recommendations by demonstrating their serious consideration and taking adequate measures.
- **Parliaments** should engage actively with independent institutions. They should consult with them in the process of developing and adopting legislation that affects children; support open and transparent appointment processes; and provide rigorous oversight by thoroughly reviewing and discussing annual and other reports, and through regular, comprehensive evaluations.
- **Independent human rights institutions for children**, especially those integrated into

a broad-based human rights institution, should review their effectiveness in encouraging child participation, especially of younger and marginalized children,<sup>107</sup> and take steps to strengthen this where necessary. Particular attention should be paid to providing child-accessible complaint mechanisms. Institutions should be proactive in finding ways to increase awareness of their role among children and adults with responsibilities in relationship to them. They should strengthen collaboration between themselves and other human rights bodies, including other departments within broad-based institutions, particularly those dealing with gender issues and other institutions for special interest groups. Finally, independent institutions have a responsibility to measure state compliance, highlight obstacles and identify concrete outcomes for children.

- **Civil society** should support independent institutions by cooperating with them, sharing information, supporting children and other actors in making complaints, supporting the follow-up of recommendations and, where appropriate,

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<sup>107</sup> Meaningful child participation must be based on the evolving capacities of the child. In other words, different methods need to be used and participation may have differing scope and objectives depending on the age and situation of the child.

sharing technical expertise. NGOs should be critical friends, working alongside independent institutions, but also pointing out where performance requires strengthening. Academia can support the institution's work with research and evidence. The media plays a critical role in echoing the institution's recommendations and making it known. Above all, civil society should promote and defend independent institutions, ensuring awareness of their work and coming to their support if social and political forces threaten institutions' effectiveness.

- **Donors and intergovernmental organizations** should provide technical assistance in establishing and strengthening independent institutions, raise awareness of their role, advise on their legislative mandate and build supportive capacities within the country. When providing financial assistance, due consideration should be given to the need for the long-term sustainability of child rights work and national ownership of institutions. Donors and international organizations should facilitate the establishment and consolidation of regional and international networks of independent institutions by offering technical, financial and logistical backing. They should support the participation of independent institutions in relevant regional and international bodies and debates.

**This summary is a synthesis of a comprehensive report which provides practitioners with a more extensive discussion of the issues reviewed here and includes a series of regional analyses from around the world.**





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