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Championing Children's Rights

A global study of independent human rights
institutions for children

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THE UNICEF OFFICE OF RESEARCH

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UNICEF Office of Research - Innocenti

Piazza SS. Annunziata, 12

50122 Florence, Italy

Tel: (+39) 055 20 330

Fax: (+39) 055 2033 220

florence@unicef.org

www.unicef-irc.org



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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 1991, 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 other 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 supporting systems that promote 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 often 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. Institutions’ challenges can also be internal. Their effectiveness 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.

In November 2012 the UNICEF Office of Research published a summary of the research. This technical report provides practitioners with a more extensive discussion of the issues 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 view and respect childhood.

Gordon Alexander

Director, UNICEF Office of Research – Innocenti

Glossary

Committee on the Rights of the Child	Body of independent experts whose role is to monitor State parties' compliance with the Convention on the Rights of the Child and provide guidance to strengthen implementation.
Convention on the Rights of the Child (CRC)	Human rights treaty adopted in 1989, which contains civil and political rights and economic, social and cultural rights for children. The rights it enshrines have been classified as promotion, protection and participation. The Convention has three Optional Protocols. The Optional Protocol on the sale of children, child pornography and child prostitution (2000), the Optional Protocol on the involvement of children in armed conflict (2000), and the Optional Protocol on a communications procedure (2011).
General Comment No. 2 – The role of independent national human rights institutions in the promotion and protection of the rights of the child	Adopted by the Committee on the Rights of the Child in 2002 to guide State parties in the establishment and strengthening of independent human rights institutions for children. It details the essential elements of such institutions and the activities they should carry out.
General Comment No. 5 – General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)	Adopted by the Committee on the Rights of the Child in 2003, it sets forth the measures to be taken by State parties to ensure the realization of all rights in the Convention for all children in their jurisdiction.
Human Rights Commission	National human rights institution composed of several members and a chair.
Independent human rights institution for children	A public body with independent status, whose mandate is to monitor, defend and promote human rights and which has a focus on children's rights, either as specialized institutions or because it carries out activities specifically focusing on children, with an identifiable department. It can be established at national or sub-national level.
International Coordinating Committee of National Human Rights Institutions (ICC)	Coordinates the activities of the NHRI network, encourages joint activities and cooperation among NHRIs, serves as liaison with the United Nations and other international organizations, and assists governments to establish institutions in conformity with the Paris Principles.
National human rights institution (NHRI)	An institution with a constitutional and/or legislative mandate to protect and promote human rights. NHRIs are independent, autonomous institutions that operate at the national level. They are part of the State, are created by law, and are funded by the State.
Ombudsperson/ombudsman	An autonomous national institution, independent of the government and political parties, that ensures the accountability of government through effectively overseeing the administration of government services in its jurisdiction and providing an independent complaint mechanism for citizens in case of maladministration.
Paris Principles	Adopted in 1993 by the United Nations General Assembly, the <i>Principles relating to the Status of National Institutions</i> , provide international minimum standards on the status and roles of NHRIs.

Sub-Committee on Accreditation

In accordance with the Rules of Procedure of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), the Sub-Committee on Accreditation of the ICC has the mandate to review and analyse accreditation applications and to make recommendations to ICC Bureau members on the compliance of applicants with the Paris Principles. An NHRI can receive any of the following 3 statuses; (1) "A status" compliant with the Paris Principles; (2) "B status"; observer status - not fully in compliance with the Paris Principles or insufficient information provided to make a determination; and (3) "C status"; not compliant with the Paris Principles.

Introduction

You call us the future, but we are also the present.

Children's statement at the
United Nations Special Session on Children (2002)

Since the 1990s, independent human rights institutions for children¹ have emerged globally as influential bodies promoting children in public decision-making and discourse. There are now more than 200 at work in more than 70 countries. 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 are defined as public bodies with an independent status, whose mandate is to monitor, defend and promote human rights, with a focus on children's rights. They take a variety of forms – they may be institutions exclusively focused on children or institutions with a broader mandate that have an identifiable department dedicated to specific child-focused activities. They go by many different names: ombudsperson, child commissioner, child advocate, child rights or human rights commission in English; *défenseur des enfants* or *médiateur* in French; *defensoría* or *procuraduría* in Spanish; and many other designations in other languages.

Their role is to monitor the actions of governments and other bodies, investigate and pursue violations of children's rights, advance the realization of child rights by promoting change in laws, policies and practices, and offer a space for dialogue about children in society and between children and the state. Defending the best interests of the child and championing children's rights are central aspects of their mission. Their achievements span many levels, ranging from significant changes in national policy to interventions on behalf of individual children.

The United Nations Committee on the Rights of the Child (CRC Committee) is one of the main advocates of children's rights institutions. But why has it and so many states decided that these institutions are needed? In most countries,

¹ 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 Comment Nos. 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 sub-national level.

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 primary remedy for addressing violations of children's rights. Parliaments are responsible for enacting legislation enshrining child rights, and specialized parliamentary committees often play an essential oversight role concerning the implementation of policy and legislation. Line ministries or ministries for children have key practical responsibilities in developing and implementing government policy realizing children's rights. Coordination mechanisms exist in principle to ensure that all areas of government recognize the obligations inherent in the CRC. 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 as a facilitator of child rights 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 procedures or policies have either gone wrong or are inadequate. They bring flexibility to political and institutional systems that can otherwise be rigid and inaccessible to the public, and in particular to children or those working on issues concerning them.

Even though children are a significant proportion – and in some countries the majority – of the population, they usually have very limited access to public institutions and few opportunities to participate in them. Their legal rights are restricted because of their status as minors. They cannot vote. Institutions tailored to adult concerns are often ill-equipped to deal with child rights issues; they frequently lack the flexibility to respond promptly to child rights violations and to adapt to the needs of childhood, in itself a transitory experience. Lack of understanding of the concept of child rights and its concrete implications for policy and practice is a major barrier to the realization of the rights of children.

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.

Such institutions face many challenges. Translating the vision of the child embodied in the CRC 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 political agenda, be it because of a limited understanding of the practical implications, competing budgetary priorities, political or institutional inertia, or social resistance based on anxiety that child rights 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 carry out their mandate effectively. While the institutions may be independent of government and impartial in principle, numerous forces can for good or for ill have an impact on their actual independence, institutional capacity, funding, reputation, profile and authority – even their very existence.

The CRC Committee – the international body in charge of monitoring and guiding States parties in the implementation of the CRC – considers that an independent institution with responsibility for promoting and protecting children’s rights² is a core element of a State party’s commitment to the practical application of the Convention. The CRC 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 United Nations General Assembly in 1993³ 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.⁴ The CRC Committee has subsequently repeatedly recommended in concluding observations to State party reports the creation and strengthening of independent institutions for children’s rights. It has gone on to

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

act as a primary driving force for the development of such institutions across all regions of the world.

The origins of the present research initiative lie in a long-standing interest in the progress of these institutions, manifest in previous publications by the Innocenti Research Centre (IRC), now the UNICEF Office of Research. These began in 1991 with the publication of an analysis of the world's first institution, the Norwegian Ombudsman for Children, by the first holder of the post.⁵ This was followed by two overviews of ombudspersons' work for children, published in 1997 and 2001, respectively.⁶ These publications were based on international standards and data available at the time they were issued; they mainly built on anecdotal experience from existing institutions.

The Office has continued to receive many enquiries about independent institutions from practitioners seeking advice and guidance, including policy-makers, NGOs, donors, international organizations and ombudspersons themselves. The majority of questions have been about establishing an institution, what needs to go into the legal mandate, which structure is the most effective, and how to deal with institutional threats related to independence, resources, or the child rights mandate. Despite the obvious need for such information, independent human rights institutions for children have received limited attention in human rights and children's rights literature thus far.

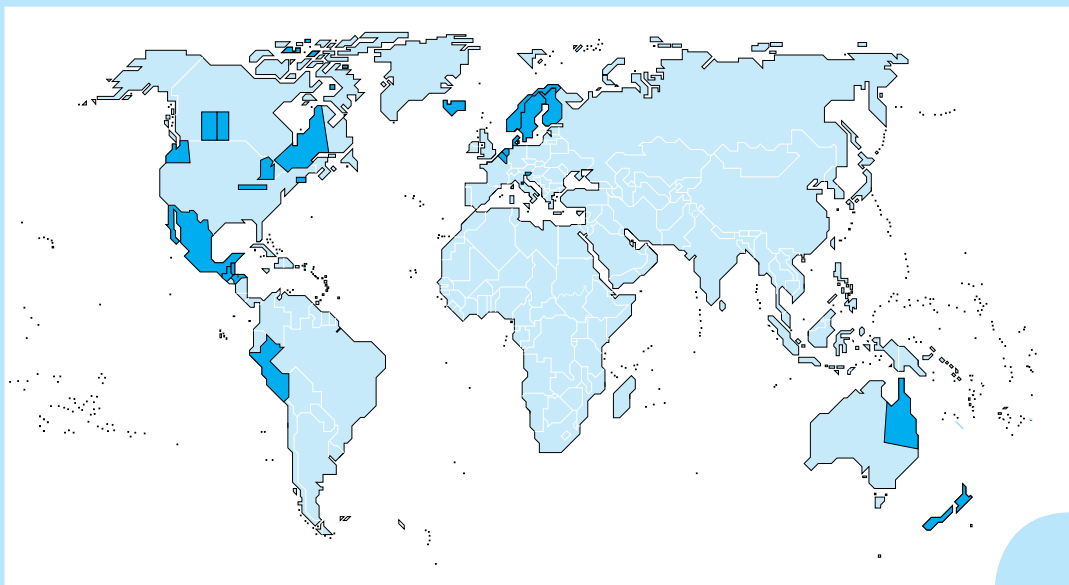
The purpose of this publication is to respond to these and other questions by providing a palette of lessons and experiences for use when establishing, strengthening and working with such institutions. Using a broad definition of human rights institutions for children, the review takes stock of their development globally and identifies the specific roles they perform. It pinpoints core elements, characteristics and features that contribute to the success or otherwise of institutions in the highly varied conditions in which they exist. However, the report does not purport to be a manual, but rather an invitation to reflect and engage in dialogue informed by evidence.

This review covers institutions created by law or decree that are independent – at least in principle. It includes institutions performing activities related to children's rights operating at the national or local level. In some instances these are stand-alone, separate institutions; in other cases, there is an office dealing with children's rights housed within a broad-based general human rights institution. In some countries where no specific office deals with child rights

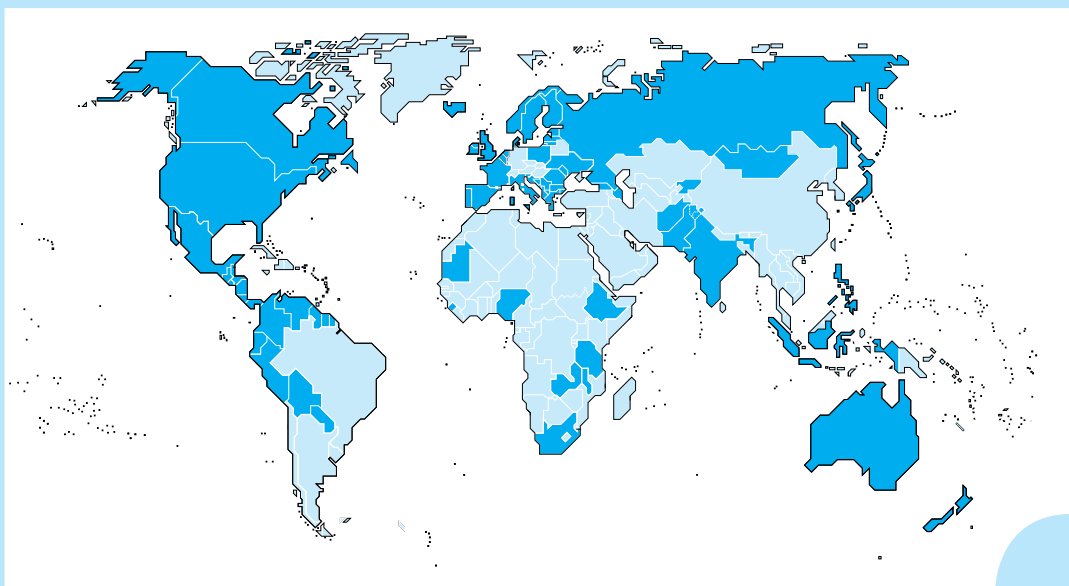
⁵ Flekkoy, M. G. (1991). *A Voice for Children: Speaking out as their ombudsman*. London: Jessica Kinsley Publishers.

⁶ United Nations Children's Fund (1997). 'Ombudswork for Children', *Innocenti Digest 1*, UNICEF Innocenti Research Centre, Florence; United Nations Children's Fund (2001). 'Independent Human Rights Institutions Protecting Children's Rights', *Innocenti Digest 8*, UNICEF Innocenti Research Centre, Florence.

Independent human rights institutions for children in 1996



Independent human rights institutions for children in 2012



issues, the overall work of an institution has been examined and activities related to children's rights highlighted. The report complements existing literature on the General Measures of Implementation of the CRC as described in the CRC Committee's General Comment No. 5.

Structure of the report

Following this Introduction, which concludes with a discussion of the methodology employed to carry out this review, the report is organized into two major parts. The main body of the report, Part I, is made up of a series of thematic chapters, drawing out lessons from practice on the distinctive principles and features underlying the function of child rights institutions. These are interwoven with 'practical' chapters that aim to provide hands-on information on key questions that arise around their functioning.

Chapter 1 sets the framework for the work of child rights institutions by laying out applicable international standards and how these have shaped the mandate and functioning of institutions. Themes that follow include, in Chapter 2, consideration of the question of independence and its concrete application, in Chapter 5, the concept of the 'whole child', which most institutions embrace, and, in Chapter 7, the role of these institutions in promoting child participation both within their work and in broader society.

Chapter 9 examines the function of institutions as mechanisms to receive and address specific complaints and reports of child rights violations. Given the importance of the environment in which institutions operate, Chapter 10 discusses their position in the national institutional landscape vis-à-vis a number of actors and the way they collaborate and interact. Chapter 12 considers the significance of international networking for institutions, and Chapter 13 their engagement with international monitoring mechanisms.

The interspersed 'practical' chapters address: How can independent child rights institutions be sustained over the long term (Chapter 3)? How are they monitored and evaluated (Chapter 4)? What structure should they take (Chapter 6)? How do they reach children (Chapter 8)? How are they established (Chapter 11)?

Part I ends with conclusions and recommendations (Chapter 14), starting with some key findings in summary form, continuing with general thematic recommendations, before concluding with focused recommendations for national governments, parliaments, NGOs, the CRC Committee, international and regional organizations, academia and the research community, and independent human rights institutions for children themselves.

Part II, which starts with a short introduction giving an overview of their international development, looks at the work of institutions by region. These chapters lay out a detailed story of the development of these institutions and show the opportunities and challenges evident in each regional context. Regions are defined according to several criteria with a view to ensuring analytical coherence. These criteria, which are explained at the beginning of each chapter, include geographic location, existence of a regional organization, and significant commonalities in their historical, political and socio-economic circumstances.⁷

Methodology

This review is grounded in international standards for human rights institutions, with specific attention to the CRC (1989) and its current Optional Protocols (2000 and 2011), the Paris Principles relating to the Status of National Institutions (1993), and General Comment No. 2 of the CRC Committee (2002).

The researchers systematically collected and analysed data drawn from a survey, and an examination of reports and legislation. The questionnaire-based survey (in relevant languages) was sent to independent human rights institutions for children in Europe and Latin America and the Caribbean, and to institutions in Australia, Canada, New Zealand and the United States of America in 2007–2008. The head of the institution or the office for children was asked to reply. Responses were received from 66 institutions – almost all those surveyed. Given the limited number of independent institutions with a children’s rights department in Asia and Africa, other sources of data were used for these regions.

Survey questions were drafted at a consultation held in 2007 and reviewed by statistics specialists and UNICEF field staff. Questions were based on international standards and explored the mandate, structure, activities and working conditions of independent human rights institutions for children. Replies were verified and updated against available documentation and through direct contact with the institution where necessary.

For other regions, and in order to complement survey responses, data were gathered through review of institutions’ reports and their founding legislation. Legal mandates typically contain the terms of appointment, tenure and reporting duties of institutions, as well as details about their structure and competencies.

⁷ For the regional repartition of countries, this study has retained as main criteria geographic considerations and coherence of analysis. As a result, geographic organization of chapters may differ from traditional regional groupings used by the United Nations, the United Nations Children’s Fund and other organizations. This does not imply any position regarding regional groupings in other settings and these criteria are solely used for the purpose of the current research. Institutions in Australia, Canada, New Zealand and the United States of America, for example, are analysed in a joint chapter, because of the similarity of their socio-economic conditions, history, legal traditions and institutional settings – meaning that exchange of good practices also occurs among these countries.

Institutions' reports, in particular annual reports and reports on specific issues, typically contain information on the activities carried out by the institution, as well as descriptions of results achieved and challenges encountered.

Systematic data collection was complemented by information-gathering activities. Review of existing academic literature, often focused on independent institutions with a broad human rights mandate, was used to deepen understanding and seek an external perspective on the activities of institutions. Additional information and perspectives were gathered through field missions, participation in conferences and dialogue with partners in all regions.

Ombudspersons for children themselves contributed substantially to the research process outlined above, beyond merely responding to the survey. Acting as the Secretariat of the Global Network of Independent Human Rights Institutions for Children, an informal network of independent institutions representing all regions, the UNICEF Innocenti Research Centre (IRC) was in regular contact with ombudsperson institutions from different regions throughout the period of the research and as a result was additionally exposed to the nature of their daily work, their achievements and the many obstacles they face.

Importantly, a meeting of the Global Network of Independent Human Rights Institutions for Children held at Innocenti in Florence, Italy, in November 2007 gathered institutions from all regions in preparation for the five-year Review of the United Nations Special Session on Children. The meeting provided the opportunity for the independent institutions to have substantive discussions on their role and mission, assess common features of their work while operating in very different contexts, and point to shortcomings and emerging challenges to be addressed. The report of this meeting helped frame the present study.⁸

The research process built on partnerships with academics and practitioners in various disciplines related to independent human rights institutions for children. This made it possible to assess the most frequently-asked questions and issues raised, to review and test the data collected, and to gather additional information on developments under way in various countries. The former chairperson of the CRC Committee contributed to developing the framework for the analysis of independent human rights institutions for children as a CRC implementation mechanism.⁹

Nevertheless, this research has limitations. The subject matter covers a complex combination of different areas, across highly diverse national contexts. While the

⁸ United Nations Children's Fund (2007). *Report of the Preparatory Meeting for the Second Global Meeting of Independent Human Rights Institutions for Children*, 11–12 November. Florence: UNICEF Innocenti Research Centre.

⁹ Doek, J. E. (2008). 'Independent Human Rights Institutions for Children', *Innocenti Working Paper*. Florence: UNICEF Innocenti Research Centre.

study attempted to analyse multiple dimensions where possible, isolating specific factors contributing to institutional effectiveness remains challenging. Attributing credit for achievements is difficult because independent institutions wield soft power – they often act as facilitators or initiators of processes involving a wide range of actors.

Another limitation is that a primary source for the study was information shared by institutions themselves. Accordingly, the data may present some biases because respondents may tend to portray the work of their office positively – be it in the survey, in the reports they submit to their government or parliament or others, or in their contributions to various forums and discussions. Efforts have therefore been made to balance institutions' perspectives with additional documentation, in particular academic research, NGO reports, concluding observations of the CRC Committee and other information.

A further form of bias is that institutions with the most available documentation (through the extent of their own reports, websites and external evaluations) are more likely to be featured in this report. Attempts have been made to provide a balance of examples from different countries. The fact that a practice by an institution is highlighted in the report does not necessarily reflect an overall assessment of the work of that institution, but is rather used to illustrate the types of activities such institutions can be involved in. Conversely, if work by an institution is not mentioned, this does not indicate an assessment of its quality.

PART I



1

Independent Human Rights Institutions for Children: Standards and Frameworks

The Convention on the Rights of the Child (CRC) provides the legal and ethical foundation on which independent human rights institutions for children are built. Together with additional instruments that guide their competencies and structure, the CRC's vision infuses the way institutions carry out their mandate and defines how they act as voices for children. The CRC belongs to the tradition of human rights instruments adopted after the Second World War that articulate the universal and inalienable rights inherent to all human beings and the corresponding duties of States parties in protecting and fulfilling those rights.¹ By establishing that children are rights holders too, the CRC offers a vision of the child that has significant consequences nationally and internationally.

A social contract for children

There is no universal definition of childhood.² The CRC was itself inspired by diverse legal and cultural systems and is not based on one single theory of childhood. How childhood is perceived varies across the globe, from region to region, from country to country, and even within countries, and is influenced by cultural and socio-economic factors and local traditions. The Convention embodies this holistic experience and takes due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child.³ It is a reflection of the universality of children's rights and the increasing priority accorded them that 193 states have ratified the Convention.

The most important contribution of this unprecedented global social contract⁴ is the explicit recognition of children as human beings with the same human rights as other human beings.⁵ Previous human rights treaties such as the International

¹ For more details on the development of children's rights, see Verhellen, E. (1996). 'The Convention on the Rights of the Child'. In E. Verhellen, ed. *Understanding Children's Rights: Collected papers presented at the first International Interdisciplinary Course on Children's Rights*. Ghent: University of Ghent.

² Steward, R. (2009a). 'Child Participation and Independent Human Rights Institutions for Children in Europe', *Innocenti Working Paper*, IWP-2009-23, Florence: UNICEF Innocenti Research Centre, 5.

³ United Nations Convention on the Rights of the Child, adopted by UN General Assembly Resolution 44/25 of 20 November 1989, preamble.

⁴ Verhellen (1996). 'The Convention on the Rights of the Child', op. cit., 43.

⁵ Doek, J. E. (2008). 'Independent Human Rights Institutions for Children', *Innocenti Working Paper*, IWP-2008-06, Florence: UNICEF Innocenti Research Centre, 18.

Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights addressed children’s rights to some extent, but it was felt necessary to state explicitly that human rights are also applicable to children.⁶

The Convention is more than a copy of existing treaties replacing words such as ‘a person’ by ‘a child’. While general provisions of preceding human rights treaties are anchored and elaborated upon within it,⁷ the CRC also includes the recognition of rights and a set of general principles that are specific to children. The four general principles of the CRC that reflect this specificity are: non-discrimination; best interests of the child; life survival and development; and the right to express views with due regard to age and maturity.

Best interests of the child

The CRC gives a central place to the best interests of the child. Article 3 states that in all actions concerning children, the best interests of the child shall be a primary consideration. This principle was first included in the 1959 Declaration of the Rights of the Child.⁸ The CRC, however, has given it new life. The scope of the principle is very wide: it goes beyond state-initiated actions to include private bodies and also covers all actions affecting children as a group.⁹ The UN Committee on the Rights of the Child (CRC Committee) has emphasized that children’s views are an essential element in determining what constitutes their best interests.¹⁰ The concrete implementation of this principle, however, raises significant challenges. Defining a child’s best interests implies an understanding of children’s own experiences of life and the ability to seek children’s views directly.

Protecting the best interests of the child when those interests compete with other considerations requires a dedicated advocate standing by children and echoing their voices. A central aspect of the mission of all independent child rights institutions is to defend the best interests of the child, whether or not it is explicitly mentioned in their legislative mandate.

Evolving capacities and the right to be heard

Articles 5 and 12 of the CRC in particular recognize the child as a human being with growing or ‘evolving’ capacity and autonomy. As explained by Gerison Lansdown, “while people continue to develop throughout life, all societies acknowledge a period of childhood during which children’s capacities are

⁶ Ibid.

⁷ Ibid.

⁸ Hodgkin, R. and P. Newell (2007). *Implementation Handbook for the Convention on the Rights of the Child*, New York: United Nations Children’s Fund, 35.

⁹ Ibid., 36.

¹⁰ See for example, Concluding Observations of the CRC Committee on Albania, CRC/C/15/Add.249 of 31 March 2005, para. 26.

perceived as evolving rather than evolved. A key difference between adulthood and childhood lies in the presumption as to the attainment of these capacities."¹¹ In this context, the CRC helps ensure that children's agency is engaged at the right time in their development.¹² There is a need to strike a balance between the perception of children as dependents requiring protection and as individuals seeking autonomy.¹³

Article 12 of the CRC also articulates the right of the child to be heard and taken seriously. Together with other articles, it provides the framework for children's participation in various settings and in all matters affecting them. Giving due weight to the views of the child means that a child should be actively involved in all matters.¹⁴ This right constitutes one of the fundamental values of the Convention.¹⁵ Children need "to be respected in their individuality and in their evolving capacity to influence decisions relevant to their lives".¹⁶ On the one hand, the CRC views the child as a social actor, and on the other, expects others to provide appropriate guidance to the child in exercising his or her rights.

The concept of evolving capacities of children and children's participatory rights has far-reaching consequences for the activities and methods of operation of independent human rights institutions for children. They can initiate awareness-raising campaigns to make all stakeholders understand and respect the principle of the evolving capacities of the child and child participation. They can undertake studies and make recommendations for specific legislative measures. They can mobilize civil society.¹⁷ Advocating the participation of children in all matters concerning them, as well as involving them directly in an institution's work, are key elements of an institution's mission.¹⁸

Children and families

The CRC does not simply consider the child as an isolated individual with human rights. Its unique vision of childhood also situates the child as a member of a family who needs family support to develop and thrive. The CRC shows great respect for the family, describing it in its preamble as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children".

¹¹ Lansdown, G. (2005). *The Evolving Capacities of the Child*, Innocenti Insight. Florence: United Nations Children's Fund and Save the Children Sweden, xiii.

¹² *Ibid.*, 3

¹³ *Ibid.*, 3 and 29.

¹⁴ Doek (2008), *op. cit.*, 20.

¹⁵ UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, para. 2.

¹⁶ Santos Pais, M. (1999). 'A Human Rights Conceptual Framework for UNICEF', *Innocenti Essay*, No. 9. Florence: UNICEF International Child Development Centre, 5.

¹⁷ Doek (2008), *op. cit.*, 21 and 22.

¹⁸ Steward (2009a), *op. cit.*, 2.

Consequently, the promotion of the human rights of children occurs in the context of a triangle consisting of the state, the parents and the child (see Figure 1.1).¹⁹ Independent human rights institutions for children have an important function in this triangular relationship. They can help parents receive necessary support for carrying out their child-rearing responsibilities and they can monitor and promote a sound balance between state intervention and parental care. At the same time, the institutions have a role in reminding states of their obligation to provide parents with assistance; they can if necessary mobilize stakeholders to ensure that political promises are translated into concrete measures.²⁰

The CRC also mentions the right of children to be cared for by their parents and requires States parties to respect and recognize the primary responsibilities, rights and duties of parents in the upbringing and development of the child and in providing appropriate direction and guidance in the exercise by children of their rights.²¹ This includes securing the conditions of living necessary for the child's physical, mental, spiritual, moral and social development.²² It also places the duty on States parties both to assist parents in performing their child-rearing responsibilities appropriately and to ensure the development of institutions, facilities and services for the care of children. If parents cannot fulfil their responsibilities, states must meet their children's needs.²³

The whole child

The indivisibility of all rights is central to the role, functioning and value of independent human rights institutions for children. The CRC Committee has underlined the holistic perspective on children's rights put forth by the CRC, as well as the connection between enjoyment of economic, social and cultural rights and those that are civil and political.²⁴ The concept of interdependence considers relationships between rights²⁵ and is therefore at the heart of strategies aimed at promoting and protecting children's rights.²⁶ The implementation of each right set forth in the CRC therefore facilitates the implementation of other rights.

¹⁹ United Nations Convention on the Rights of the Child, adopted by UN General Assembly Resolution 44/25 of 20 November 1989, Arts. 5 and 18; see also Hodgkin and Newell (2007) *op. cit.*, 75.

²⁰ Doek (2008), *op. cit.*, 19 and 20.

²¹ United Nations Convention on the Rights of the Child, adopted by UN General Assembly Resolution 44/25 of 20 November 1989, Arts. 5 and 18.

²² *Ibid.*, Art. 27.

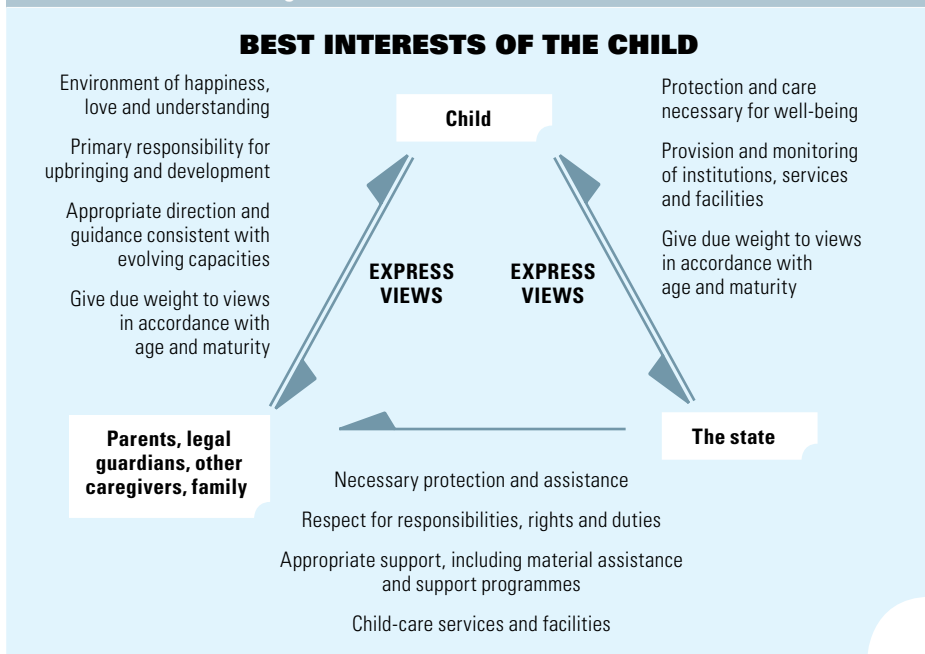
²³ Hodgkin and Newell (2007), *op. cit.*, 231.

²⁴ General guidelines regarding the form and contents of periodic reports to be submitted by States Parties under article 44, paragraph 1 (b), of the Convention, adopted by the UN Committee on the Rights of the Child on 11 October 1996, CRC/C/58 (Basic Reference Document), para. 9; UN Committee on the Rights of the Child (2003). General Comment No. 5: 'General measures of implementation of the Convention on the Rights of the Child', CRC/GC/2003/5, 27 November, para. 6.

²⁵ Whelan, D. J. (2008). *Untangling the Indivisibility, Interdependency, and Interrelatedness of Human Rights*, Storrs, CT: Human Rights Institute, University of Connecticut, 3.

²⁶ United Nations Children's Fund (1999). *Human Rights for Children and Women: How UNICEF helps make them a reality*, 15. Available at: http://www.unicef.org/publications/files/pub_humanrights_children_en.pdf (accessed 3 January 2013).

Figure 1.1 How the best interests of the child are promoted through a triangular relationship between the the child, caregivers and the state



The General Measures of Implementation of the CRC are important tools which ensure the Convention’s multi-faceted and holistic implementation.²⁷ Independent human rights institutions for children – the general measure focusing on independent monitoring – are a vital part of a coordinated approach to protecting and promoting children’s rights among all parts of a society.

Where other actors may tackle specific issues (e.g., justice for children, education, health, women’s issues), or act from the vantage point of their particular position in society (governmental, non-governmental or private stakeholders), independent institutions can foster child-centred strategies that touch on multiple dimensions of childhood, the many rights children enjoy and all the factors that directly or indirectly affect a child’s life and fulfilment of those rights. In other words, they can consider the ‘whole child’.

Cross-sectoral and inclusive perspectives to promote all child rights enhance the value of more targeted efforts.²⁸ The nature of government functioning, however, often makes comprehensive approaches difficult to implement in practice because ministries, government agencies and public services are usually specialized by

²⁷ Doek (2008), op. cit., 5.

²⁸ Santos Pais (1999), op. cit., 9.

sector. The proliferation of specialized structures has often resulted in excessive fragmentation and lack of cooperation, resulting in diminished effectiveness.²⁹

One response to this has been the ‘whole-of-government’ approach, whereby public service agencies work ‘across portfolio boundaries’ to create an integrated response to issues.³⁰ This approach includes both horizontal and vertical linkages and can involve a group, locality or policy domain, within and outside the government.³¹ The whole-of-government concept has emerged as countries tackle problems that cut across traditional fields.³² It is helpful in devising approaches to the whole child.

International standards for independent human rights institutions

As United Nations Member States built the international human rights framework after the Second World War, they early on identified independent national human rights institutions as important mechanisms for the realization of rights. The concept of such institutions therefore evolved in the context of human rights and culminated with the adoption of the Paris Principles in 1993. The Committee on the Rights of the Child then embraced this model to fit child-specific concerns.

While the features of institutions have been progressively crafted, their core functions were already defined in the initial stages of reflection concerning their role. In 1946, the United Nations Economic and Social Council invited Member States to “consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights”.³³

The United Nations has since actively promoted the establishment of these institutions and strengthened their independence and effectiveness. A first set of guidelines on the structure and functioning of national institutions was adopted

²⁹ Christensen, T. and P. Laegreid (2006). ‘The Whole-of-Government Approach: Regulation, performance, and public-sector reform’, *Working Paper*, No. 6, Bergen: Stein Rokkan Centre for Social Studies, University of Bergen, 7; Verhoest, K., J. Rubecksen and M. Macrathaigh (2010). *Autonomy and Control in State Agencies*. Basingstoke: Macmillan, quoted in Peters, B. G. (2012). ‘Governance and the Rights of Children: Policy, implementation and monitoring’, *Innocenti Working Paper*. Florence: UNICEF Office of Research.

³⁰ Management Advisory Committee (2004). *Connecting Government: Whole of Government Responses to Australia’s Priority Challenges*, Canberra: Commonwealth of Australia, quoted in Christensen and Laegreid (2006), op. cit., 9.

³¹ Christensen and Laegreid (2006), op. cit., 9.

³² *Ibid.*, 11.

³³ UN Economic and Social Council, ECOSOC Resolution 2/9 of 21 June 1946, quoted in Office of the High Commissioner for Human Rights (1995). ‘National Human Rights Institutions: A handbook on the establishment and strengthening of national institutions for the promotion and protection of human rights’, *Professional Training Series*, No. 4. Geneva: United Nations Centre for Human Rights, 4.

in 1978 under the auspices of the Commission on Human Rights.³⁴ The guidelines divided institutions into two categories, one concerned with the general promotion of human rights; the other with reporting and advising the state. They also recommended cross-sectoral composition and immediate accessibility to the public.³⁵ These features remain the decisive characteristics in international standards for human rights institutions, including child rights institutions.

The Paris Principles

This precedent paved the way for the adoption of the Principles relating to the Status of National Institutions, commonly called the Paris Principles, by the United Nations General Assembly in 1993.³⁶ Non-binding, the Paris Principles have nevertheless benefited from strong political endorsement by United Nations Member States.

The Paris Principles are an international set of standards for the mandate, functions, composition, methods of operation and quasi-judicial competence of national human rights institutions. They set forth six essential characteristics for these institutions: independence guaranteed by statute or constitution; autonomy from government; pluralism, including in membership; a broad mandate based on universal human rights standards; adequate resources; and adequate powers of investigation.³⁷

The Paris Principles are an authoritative instrument for establishing independent institutions and assessing their conformity to international human rights law. They draw their status not only from their endorsement by the United Nations General Assembly, but also from their explicit recognition in more recent human rights treaties, such as the Optional Protocol to the Convention against Torture³⁸ and the Convention on the Rights of Persons with Disabilities.³⁹ They constitute the standards against which the International Coordinating Committee of National Institutions for the Promotion and Protection of Human

³⁴ Pinheiro, P. S. and D. C. Baluarte (2000). 'The Role of National Human Rights Institutions in State Strategies', background paper for the Human Development Report, New York: United Nations Development Programme, 4–5.

³⁵ Lindsnaes, B. and L. Lindholdt (2001). 'National Human Rights Institutions: Standard setting and achievements'. In B. Lindsnaes, L. Lindholdt and K. Yigen, eds. *National Human Rights Institutions: Articles and working papers*, Copenhagen: The Danish Centre for Human Rights, 5–6. Available at: <http://www.humanrights.dk/files/Importerede%20filer/hr/pdf/nhrbook.pdf> (accessed 3 January 2013).

³⁶ Principles relating to the Status of National Institutions (the Paris Principles), adopted by UN General Assembly Resolution A/RES/48/134 of 20 December 1993, para. 2.

³⁷ Office of the High Commissioner for Human Rights (2007). 'The Role of the UNCT in Establishing or Strengthening a National Human Rights Institution', information note, April 2007. Available at: <http://www.osce.org/odhr/26104>.

³⁸ Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 by the UN General Assembly by resolution A/RES/57/199, Art. 18.4.

³⁹ United Nations Convention on the Rights of Persons with Disabilities, adopted by UN General Assembly Resolution A/RES/61/106 of 13 December 2006, Art. 33.2.

Rights ranks and accredits institutions.⁴⁰ Official recognition of compliance with Paris Principles by the International Coordinating Committee enables national institutions to participate in debates at the Human Rights Council and other international and regional bodies.

National human rights institutions further benefited from clear political backing at the 1993 World Conference on Human Rights. This Conference’s Declaration and Programme of Action “reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights”.⁴¹ The declaration also stated that “it is the right of each State to choose the framework which is best suited to its particular needs at the national level”.⁴² It further highlighted the importance of networking both among institutions and with regional organizations and the United Nations.

Since the adoption of the Paris Principles, there has been increased international recognition of, and support given to, national human rights institutions, which are viewed as a key element of a strong national human rights protection system and an essential component of an ‘enlightened democracy’.⁴³ Such support has accelerated the establishment of new national human rights institutions.

General Comment No. 2 of the Committee on the Rights of the Child

The evolution of national human rights institutions was initially largely disconnected from efforts to promote children’s rights. Similarly, at the international level, national human rights institutions have overall paid limited specific attention to children’s rights.⁴⁴

⁴⁰ The Guidelines for Accreditation and Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions, April 2008, para. 2.4 requires “a detailed statement showing that the organization complies with the Paris Principles” as part of the application process. Institutions are then given A, B or C status depending on their degree of compliance with the Paris Principles. An A status is needed to be accredited and that status is regularly reviewed. As of August 2012, there were 70 national human rights institutions accredited with A status by the International Coordinating Committee (see: http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf).

⁴¹ Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, para. 36.

⁴² Ibid.

⁴³ Decaux, E. (2003). ‘Le dixième anniversaire des principes directeurs des institutions nationales des droits de l’homme dits “Principes de Paris”’, *Droits Fondamentaux*, 3:25.

⁴⁴ Children’s issues tend to be addressed when specific events – and the advocacy processes that accompany them – draw the attention of human rights institutions to children’s rights. Moreover, this attention often focuses on particular topics and does not tackle more general approaches to childhood. As a consequence, consideration of children is primarily reactive to evolutions happening outside the realm of human rights institutions. See for example the reports of the Secretary-General submitted to the Commission on Human Rights and the Human Rights Council (and the General Assembly) since 1979:

Just as the CRC was developed within the international human rights framework to take into account the specificity of children’s rights, so standards for independent human rights institutions for children have adapted the Paris Principles to the child rights framework.

The establishment of a mechanism for monitoring the status of children’s rights was foreseen from the outset as an implementation tool for the Convention. Since 1991, guidelines for reporting to the CRC have requested information on “existing or planned mechanisms at national or local level ... for monitoring the implementation of the Convention”⁴⁵ and on “any independent body established to promote and protect the rights of the child, such as an Ombudsperson or a Commissioner”.⁴⁶

After the CRC Committee issued General Comment No. 2, which relates to the role of independent national institutions for the promotion and protection of the rights of the child, in 2000, it began systematically to recommend the establishment of independent institutions in country-specific Concluding Observations following its periodic review of State party reports.⁴⁷ General Comment No. 2 elaborated and harmonized an approach to monitoring children’s rights that had hitherto been inconsistent.⁴⁸

Although the Convention does not explicitly refer to independent human rights institutions, the CRC Committee with General Comment No. 2 identifies their establishment as a component of the general obligation of States parties to implement the CRC in the sense of its Article 4.⁴⁹ According to the CRC Committee, every state needs an independent institution able to independently and effectively monitor, promote and protect children’s rights.⁵⁰

National Institutions for the Protection and Promotion of Human Rights, E/CN.4/1989/47; *National Institutions for the Protection and Promotion of Human Rights*, E/CN.4/1991/23; *National Institutions for the Promotion and Protection of Human Rights*, E/CN.4/1998/47; *National Institutions for the Promotion and Protection of Human Rights*, E/CN.4/2000/103; *National Institutions for the Promotion and Protection of Human Rights*, E/CN.4/2001/99; *National Institutions for the Promotion and Protection of Human Rights*, E/CN.4/2002/114; *National Institutions for the Promotion and Protection of Human Rights*, E/CN.4/2003/110; *National Institutions for the Promotion and Protection of Human Rights*, A/58/261; *National Institutions for the Promotion and Protection of Human Rights*, A/60/299; and *National Institutions for the Promotion and Protection of Human Rights*, E/CN.4/2006/101.

⁴⁵ General guidelines regarding the form and content of initial reports to be submitted by States Parties under article 44, paragraph 1 (a), of the Convention, adopted by the UN Committee on the Rights of the Child on 30 October 1991, CRC/C/5 (Basic Reference Document), para. 9.

⁴⁶ General guidelines regarding the form and content of periodic reports to be submitted by States Parties under article 44, paragraph 1 (b), of the Convention, adopted by the UN Committee on the Rights of the Child on 11 October 1996, CRC/C/58 (Basic Reference Document), para. 18.

⁴⁷ Doek (2008), op. cit., 9. As noted by the author, no specific recommendations were made on initial reports submitted for example by Algeria (1997), Belarus (1994), Bolivia, Plurinational State of (1993), Egypt (1993), France (1994), as well as Indonesia, Jamaica, Mexico and Nepal.

⁴⁸ For examples of concluding observations: see Steward, R. (2009b). ‘Independent Human Rights Institutions for Children and the Committee on the Rights Child Reporting Process’, *Innocenti Working Paper 2009-22*. Florence: UNICEF Innocenti Research Centre, 4.

⁴⁹ UN Committee on the Rights of the Child (2002). General Comment No. 2., op. cit., para. 1.

⁵⁰ UN Committee on the Rights of the Child (2002). General Comment No. 2., op. cit., para. 7.

General Comment No. 2 provides detailed guidelines on the mandate, powers, establishment, functioning and activities of independent human rights institutions for children. Its introduction clearly states the importance of independent monitoring of children’s rights:

While adults and children alike need independent NHRIs [national human rights institutions] to protect their human rights, additional justifications exist for ensuring that children’s human rights are given special attention. These include the facts that children’s developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments’ response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children’s access to organizations that may protect their rights is generally limited.⁵¹

The General Comment incorporates a child rights approach that is a practical translation of the CRC’s vision of the child in the context of independent human rights institutions. For instance, it states that independent institutions for children should have broad mandates in relation not only to the state but to all relevant public and private entities. This requirement reflects the reality that there is a wide range of duty bearers involved in the protection of children’s rights – and also a wide range of actors who can violate children’s rights.

The power to consider individual complaints and provide effective remedies for a breach of children’s rights constitutes another essential competency of independent human rights institutions for children. Even though the CRC does not contain an express provision requiring an effective remedy in cases of violations of children’s rights – contrary to the International Covenant on Civil and Political Rights – the CRC Committee considers that providing such a remedy is an inherent obligation of States parties.⁵² Finally, the focus on child accessibility and participation is one of the most distinctive aspects of General Comment No. 2. The CRC Committee provides extensive details on the implementation of this feature.

The key features of the Paris Principles and the General Comment No. 2 are compared in Table 1.1. Discrepancies are not simply technical; they reflect how

⁵¹ UN Committee on the Rights of the Child (2002). General Comment No. 2., op. cit., para. 5.

⁵² Doek (2008), op. cit., 6. Referring in particular to UN Committee on the Rights of the Child (2003) General Comment No. 5, op. cit., para. 24.

General Comment No. 2 promotes the unique child rights perspective offered by the Convention and upholds a vision of children as active agents.

International standards for national broad-based human rights institutions have emerged from a constant dialogue between practice and standard-setting – and this is true for child-oriented institutions as well. These standards have in turn influenced the shape and mandate of new institutions and contributed to expanding the reach of the model. While the existence of international standards has tended to harmonize institutional practices, the reality of independent human rights institutions for children is as diverse as the regions, countries, towns and children they serve.

Table 1.1 A comparison between the Paris Principles and General Comment No. 2		
	Paris Principles	General Comment No. 2
Legal and political status	<ul style="list-style-type: none"> ✓ Adopted by United Nations General Assembly (all United Nations Member States) ✓ Non-binding but strong political endorsement 	<ul style="list-style-type: none"> ✓ Adopted by the CRC Committee (independent experts monitoring States parties' compliance with the CRC) ✓ Non-binding but significant practical guidance value
Mandate	<ul style="list-style-type: none"> ✓ Generic reference to international human rights instruments 	<ul style="list-style-type: none"> ✓ CRC must be included in mandate
Competency	<ul style="list-style-type: none"> ✓ Monitoring public authorities (executive, legislative, judiciary and other bodies) 	<ul style="list-style-type: none"> ✓ Monitoring all relevant public and private authorities
Establishment process	<ul style="list-style-type: none"> ✓ No mention 	<ul style="list-style-type: none"> ✓ Consultative, inclusive and transparent ✓ Supported at the highest level of government ✓ Participation of all relevant elements of the state, the legislature and civil society
Composition	<ul style="list-style-type: none"> ✓ Pluralistic representation of the social forces 	<ul style="list-style-type: none"> ✓ Pluralistic representation of civil society ✓ Inclusion of child and youth-led organizations
Individual complaints mechanism	<ul style="list-style-type: none"> ✓ Optional 	<ul style="list-style-type: none"> ✓ Mandatory

Continued overleaf

Table 1.1 Continued

	Paris Principles	General Comment No. 2
Accessibility and information	<ul style="list-style-type: none"> ✓ Address public opinion directly or through any press organ 	<ul style="list-style-type: none"> ✓ Geographically and physically accessible to all children ✓ Proactive approach, in particular for the most vulnerable and disadvantaged children ✓ Duty to promote the views of children ✓ Direct involvement of children through advisory bodies ✓ Imaginative consultation strategies ✓ Appropriate consultation programmes
Activities	<ul style="list-style-type: none"> ✓ Advocate for and monitor human rights 	<ul style="list-style-type: none"> ✓ Promote visibility and best interests of the child in policy-making, implementation and monitoring ✓ Ensure that views of children are expressed and heard ✓ Promote understanding and awareness of children's rights ✓ Have access to children in care and detention

2

Independence

It is essential that institutions remain entirely free to set their own agenda and determine their own activities.

UN Committee on the Rights of the Child, General Comment No. 2

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.¹ Their level of independence is pivotal in determining their success or failure.²

Independence is also their most fragile quality.

Often granted on paper, independence is in practice complex to realize. Institutions in every region struggle to achieve and maintain their independence. They also work to remain responsive to their core constituencies, namely children, their families and communities, and others concerned with the rights and well-being of children.

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 that surround it. Political conditions are a potent factor, determining who gets appointed to lead the institution, how strong the institution's mandate is and its level of resources. A strong institution in its turn is able to influence all these factors. The UN Committee on the Rights of the Child (CRC Committee) considers independence of these institutions to be essential.³

There is an inherent tension related to an institution's independence and its existence as a public body. Within the traditional institutional landscape of most countries, which

¹ Preparatory meeting for the Second Global Meeting of Independent Human Rights Institutions for Children, UNICEF Innocenti Research Centre, Florence, Italy, 11–12 November, 2002.

² International Council on Human Rights Policy (2005). *Assessing the Effectiveness of National Human Rights Institutions*, Geneva: International Council on Human Rights Policy, 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. (2010). ‘Understanding Independent Accountability Agencies’. In Rose-Ackerman, S. and P. L. Lindseth, eds., *Comparative Administrative Law*, London: Edward Elgar.

³ UN Committee on the Rights of the Child (2003). General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November, para. 65.

includes government, parliament and a judiciary, independent human rights institutions for children are both part of the public arena and beyond it, because they are set up to monitor and yet work with these other institutions.

The processes of institutional establishment and appointment, an institution's mandate, its level of financial resources and degree of budgetary control, and its accountability structure can all serve to reinforce an institution's independence. These qualities can help it strike a delicate balance between being able to respond to outside influence and its capacity to cope with pressures on its independence.

Independence is not an absolute quality. It depends on an institution's operating context and relationship with other institutions in the country.⁴ The circumstances in which independent institutions exercise their independence can change over time, making institutional independence a dynamic quality.

The perception of independence

The perception of an institution's independence is a crucial factor in its success – and together with a perception of effectiveness contributes to a virtuous cycle for the fulfilment of its role.⁵ Both can influence the willingness of victims to file complaints with the ombudsperson, the ability of ombudspersons to engage children and vulnerable communities in their work, and the strength of the relationships and opportunities for collaboration with non-governmental organizations (NGOs).

Within an institution, qualities such as the presence of staff from different social, ethnic and cultural backgrounds and a gender balance, have an impact on how its independence is perceived. When children and other members of vulnerable groups, who may have an uneasy relationship with public institutions because of past or ongoing marginalization, see themselves and their concerns represented within the institution, the likelihood of creating trust and a perception of independence is greater.

Statutory setting and physical location also influence public perception of an institution's independence. There was increased demand for the services of the Children's Interest Bureau in South Australia when it physically moved out of the department that it was designed to monitor.⁶

⁴ Office of the High Commissioner for Human Rights (1995). 'National Human Rights Institutions: A handbook on the establishment and strengthening of national institutions for the promotion and protection of human rights', *Professional Training Series*, No. 4, Geneva: United Nations Centre for Human Rights, para. 69.

⁵ The analytical framework adopted here is based on the work of Thomas Carothers. See Carothers, T. (1998). 'The Rule of Law Revival', *Foreign Affairs*, 77 (2): 95–106, elaborated in Dodson, M., D. W. Jackson and L. O'Shaughnessy (2001). 'Political Will and Public Trust: El Salvador's procurator for the defense of human rights and the dilemmas of institution-building', *Human Rights Review*, 2 (3):51–75.

⁶ McBride, M. (2006). 'Report on Child Advocacy and Complaint Resolution Process', background paper for the BC Children and Youth Review, M. McBride & Associates Management Consulting Inc., 57. Available at: http://www.mcf.gov.bc.ca/about_us/pdf/Child_Advocacy_and_Complaint_Resolution_Process.pdf.

Perceptions of impartiality are equally important, and the nature of the appointment process is crucial to easing concerns in this respect. An institution's mandate to advocate children's rights and promote their best interests invites impartiality.

Remaining impartial and acting only on behalf of children's interests can however provoke charges of bias when an institution is tackling issues that may nationally be perceived as highly political, for example immigration policies, juvenile justice or tax reform. In El Salvador, for example, some scholars have asserted that:

... persons of high moral character, who also have professional expertise in defending human rights as they would be understood in the liberal democratic tradition, are not apt to be perceived as 'apolitical' – at least as the word 'apolitical' is understood in El Salvador. Indeed, the very implementation of a liberal scheme of human rights protections is seen as part of a partisan political agenda.⁷

The Latin America Public Opinion Project conducts public opinion surveys on governance issues, and as part of this it assesses citizens' trust in state institutions.⁸ These public opinion surveys show that independent human rights institutions typically rank high in citizens' trust compared with other state institutions. Nevertheless, the level of trust in the independent institution is closely correlated with people's overall trust in public institutions. While this example of public opinion assessment is notable, there needs to be more research in most countries to assess public – and in particular child – perception of independent human rights institutions for children.

Establishment processes and independence

The Paris Principles and the CRC Committee's General Comment No. 2 both emphasize the importance of enshrining the mandate of an independent human rights institution for children in law or in the constitution.⁹ Almost all such institutions across the globe are indeed created by law. To adopt legislation, some form of democratic debate and a vote by parliament is typically required. One result of such a process is that institutions created through legislation are likely to be more independent and sustainable in the long term than are institutions created by the executive branch, which can be done and undone by the

⁷ Dodson, Jackson and O'Shaughnessy (2001), op. cit., 71.

⁸ See: <http://www.vanderbilt.edu/lapop/survey-data.php>.

⁹ Principles Relating to the Status of National Institutions (the Paris Principles), adopted by UN General Assembly Resolution 48/134 of 20 December 1993, para. 2; UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, para. 8.

government of the day. Enjoying a legal – and in particular a constitutional – status confers a certain rank and legitimacy to an institution.

In close to a half of countries with an independent institution whose mandate includes protecting children’s rights, the institution is mentioned in the constitution. In addition to providing guarantees of sustainability, constitutional status indicates that the institution is seen as one of the pillars of the state system. Examples include the Commission on Human Rights in the Philippines,¹⁰ the Protector of Human Rights and Freedoms in Montenegro,¹¹ the South African Human Rights Commission¹² and the overwhelming majority of all such institutions in Latin America and the Caribbean.¹³ It is notable that these are all examples of broad-based human rights institutions that also promote children’s rights, with the exception of the Polish Ombudsperson for Children.

Its mandate gives an institution its overarching framework for independently and effectively monitoring, promoting and protecting children’s rights.¹⁴ The legislative mandates of many of the institutions studied as part of the current review state that they are independent.¹⁵ Such an explicit mention of an institution’s independence in its founding legislation is an additional guarantee of actual independence because it determines the status of the institution within the national institutional system vis-à-vis other actors. Limits to the mandate signal the scope of the independence an institution has been granted and as such have concrete implications for the daily work of the institution.

Mandated activities can include freely considering any questions falling within an institution’s purview, including on its own initiative, initiating public inquiries, hearing any person and obtaining any information and any documents necessary for its work, directly addressing the public, meeting regularly, establishing working

¹⁰ §7 of the Constitution of the Philippines, 1987.

¹¹ §6, Art. 81 of the Constitution of Montenegro, adopted 19 October 2007.

¹² §184 of the Constitution of the Republic of South Africa, 1996.

¹³ For example, Arts. 43 and 86 of the Constitution of Argentina; Arts. 127–131 of the Constitution of Bolivia; Arts. 281–283 of the Constitution of Colombia; Art. 96 of the Constitution of Ecuador; Art. 194 of the Constitution of El Salvador; Arts. 273–275 of the Constitution of Guatemala; Arts. 53–56 and 191–196 of the Constitution of Guyana; Art. 59 of the Constitution of Honduras; Art. 102 of the Constitution of Mexico; Art. 138 of the Constitution of Nicaragua; Arts. 110–117 of the Constitution of Santa Lucia; and Arts. 91–98 of the Constitution of Trinidad and Tobago.

¹⁴ UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 7.

¹⁵ For example, Art. 2 (2) of the Ombudsman Act, Barbados: “The Ombudsman shall perform his functions in accordance with his own independent judgment but shall be responsible to Parliament for the general discharge of his duties.” Art. 3 of the Law on the Ombudsman for Children, Croatia: “(1) The Ombudsman for Children acts independently and autonomously, adhering to the principles of justice and morality. (2) No one is allowed to instruct or give orders to the Ombudsman for Children in his/her work.” Art. 8 of the Law of the Human Rights Commission of the Congress of the Republic and of the Procurador de los Derechos Humanos (Decree No. 54–86 of the Congress of the Guatemalan Republic): “To fulfil the functions established in the Political Constitution and in this law, the Procurador will not be subject to any body, institution or public official and acts with absolute independence.” [author translation] Art. 4 of the Law on the Public Defender of Georgia: “In exercising his functions, the Public Defender shall enjoy independence and he is subject only to the Constitution and law. Any pressure on the Public Defender or interference in his activities shall be prohibited and be punished by law.” Art. 1 (2) of the Law on Síndic de Greuges de Catalunya, Spain: “The Síndic de Greuges fulfils his functions with independence and objectivity, inquiring into and resolving on proceedings filed ex officio or claims presented upon the request of parties.”

groups, consulting other bodies, developing relationships with NGOs, and, where applicable, handling cases in a quasi-judicial manner.¹⁶

In a number of countries, institutions have subpoena powers that enable them to request documents and call witnesses, with the responding agency obliged to meet the request. Failure to comply can lead to penalties, for example, as in New Zealand¹⁷ and Venezuela.¹⁸

Similarly, a mandate to visit places where children spend time, including juvenile detention centres, is essential for independent monitoring. The Ombudsperson for Children in Mauritius has the ability by law to enter any premise, public or private, where a child might be at risk of rights violations.¹⁹

There are however significant limitations to institutional mandates in all regions of the world. Some institutions require either government or judiciary approval – or may face government veto – when undertaking an investigation. This is the case in Malaysia where the Human Rights Commission (SUHAKAM) needs court permission to conduct visits.²⁰ In England (United Kingdom), a review of the office of the Children’s Commissioner found that the institution’s obligation to consult the Secretary of State before holding an inquiry, and the latter’s power to direct an inquiry and decide to amend or even not to publicize findings, are factors that significantly reduce its independence.²¹

In Hungary and Ireland, ombudspersons are prevented from carrying out investigations into activities of the military, police and other bodies involved in security and privileged matters.²² Cooperation with relevant government authorities might also be challenging, as was the case in British Columbia (Canada) where the Representative for Children and Youth had to file a case in court in order to gain access to cabinet documents.²³ The Palestinian Independent Commission for Human Rights has reported restrictions in its access to detention facilities.²⁴

16 Paris Principles (1993), op. cit.

17 Sections 20 and 21 of the Children’s Commissioner Act 2003 (Public Act no. 121 2003), New Zealand.

18 Art. 277 of the Constitution of the Bolivarian Republic of Venezuela, 1999.

19 The Ombudsperson for Children Act 2003, Art. 7.

20 Section 4 (2) of the Human Rights Commission of Malaysia Act 1999, Act 597.

21 Dunford, J. (2010). *Review of the Office of the Children’s Commissioner (England)*, Cm 7981, London: Department of Education, 33.

22 Annex to Act LIX of 1993, Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (Ombudsman), Hungary; Art. 11 (1) (b), Art. 11 (1) (e) (i) and Art. 11 (1) (e) (iii) of the Ombudsman for Children Act, 2002, Ireland. For more details, see Part II: Regional Overviews, Chapter 17: Europe.

23 CBC News (2010a). ‘B. C. Children’s Rep Wins Court Decision’, 14 May. Available at: <http://www.cbc.ca/canada/british-columbia/story/2010/05/14/bc-mary-ellen-turpel-lafond-lawsuit.html>.

24 Independent Commission for Human Rights (2009). *The Status of Human Rights in the Palestine: The Fifteenth Annual Report – 1 January–31 December 2009*, Ramallah, ICHR, 234.

Appointment processes and independence

The appointment process for ombudspersons for children, which the CRC Committee in General Comment No. 2 says should be open, transparent and appropriate,²⁵ is also crucial to the independence of children's rights institutions. It sets the tone for the level of trust institutions enjoy, thus influencing their effectiveness. The appointment process also creates a layer of accountability to those involved in it that goes beyond formally expressed accountability mechanisms.

Appointment by the executive branch is a practice used in approximately one third of countries with an independent institution for children's rights. Yet executive branch appointment can create difficulties for institutional independence, especially if institutions are called upon to monitor the body that appointed their leaders. There is a risk of politically influenced appointments that can cast doubt on the impartiality of the appointed candidate.²⁶

An appointment process led by the legislative branch is generally considered a better guarantee of independence because it usually involves consultations among various political parties and is a more transparent process. Institutions in approximately half the countries studied for this report use this process. In some places, and in particular in most countries in Latin America, appointment requires the approval of a qualified majority (typically two thirds) of parliament.²⁷ Appointment by the legislative branch encourages parliamentary engagement in and oversight of the work of the institution and follow-up of recommendations.

In a few countries, appointment of the ombudsperson involves both the executive and legislative branches. In Malta, the Commissioner for Children is appointed by the Prime Minister in consultation with the Social Affairs Committee of the House of Representatives.²⁸ The Ombudsperson for Children in Mauritius is appointed by the President of the Republic, in consultation with the Leader of the Opposition, the Prime Minister and any others selected by the President.²⁹ As a result, the institution is not perceived as a partisan institution, but as an independent body enjoying trust across the political spectrum.

²⁵ UN Committee on the Rights of the Child (2002), General Comment No. 2, op. cit., para. 12.

²⁶ See for example, Mallya, E. T. (2009). 'Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: Tanzania's Commission for Human Rights and Good Governance', *EISA Research Report*, No. 40, Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 22.

²⁷ In 12 countries in Latin America, a qualified majority is required to appoint a *defensor* including for example, Bolivia (Plurinational State of) (Art. 128 of the Political Constitution of the State, 2009; Ecuador (Art. 3 of the Constitution of the Republic of Ecuador, 2008); El Salvador (Art. 4 of the Constitution of the Republic of El Salvador, 1893 (as amended to 2003); and Peru (Art. 161 of the Constitution of Peru); among others.

²⁸ Art. 3 (1) of the Commissioner for Children Act, 5 December 2003, Malta.

²⁹ Art. 4 (1) of the Ombudsperson for Children Act, 10 November 2003, Mauritius.

In a number of places with a monarchical system or royal allegiance (notably Australia, Norway and Scotland (United Kingdom)), the head of the independent human rights institution for children is appointed by the Crown or its representatives.³⁰ This sometimes follows an extensive process led by political representatives – either ministers (like in Norway) or parliament (like in Scotland). A highly symbolic approach, this is usually understood as a guarantee of independence from the government of the day and often confers respected institutional status.

In a very limited number of countries appointment is made by a committee which reviews candidates and makes recommendations based on a clear set of eligibility criteria. In Denmark, members of the National Council for Children are appointed by the Minister for Family and Consumer Affairs from among candidates nominated by organizations doing child-related work.³¹ Overall, using a committee in the appointment process may increase the likelihood that selection will be based on merit and thus remain independent of political interests. Although no specific case has been documented, it is also possible that the opposite could occur: a committee with divergent outlooks can politicize the appointment process.³²

Civil society engagement can help ensure an open and transparent appointment process while laying the groundwork for institutions' interactions with civil society organizations. In Bolivia, Malawi, Nicaragua and Tanzania, civil society involvement in the appointment process is required by law.³³ In Malawi, the involvement of the public promotes transparency and ensures that members of the Human Rights Commission are diverse in their views and representative of society.³⁴ In Tanzania, the openness of the process to civil society organizations has enabled the appointment of highly-qualified members to the Commission on Human Rights and Good Governance.³⁵ In Asia, however, the Asian NGO Network on National Human Rights Institutions (ANNI) has expressed its concern at the lack of participation of civil society – and resulting lack of transparency and institutional trust – in appointment processes there.³⁶

30 Division 2 of Australian Human Rights Commission Amendment (National Children's Commissioner) Act No. 89 (2012); §2 of Act No. 5 of 6 March 1981 relating to the Ombudsman for Children (with changes from 17 July 1998), Norway; Art. 2 (1) of the Commissioner for Children and Young People (Scotland) Act 2003. Other Children's Commissioners in the United Kingdom are appointed by the executive branch.

31 Art. 2 (2) of the Executive Order on a National Council for Children Executive Order No. 458 of 15 May 2006, Denmark.

32 Commonwealth Secretariat (2007). *Comparative Study on Mandates of National Human Rights Institutions in the Commonwealth*, 79. Available at: www.thecommonwealth.org/publications.

33 Art. 7 of the Ley del Defensor del Pueblo, Ley No. 1818 de 22 de Diciembre de 1997, Bolivia, Plurinational State of; Art. 8 of the Ley de la Procuraduría para la Defensa de los Derechos Humanos, Ley No. 212, 1995, Nicaragua; Section 4 of the Human Rights Commission Act, 1998, Malawi; and Section 7 of the Commission for Human Rights and Good Governance Act, 2001 (No. 7), United Republic of Tanzania.

34 Commonwealth Secretariat (2007), op. cit., 79.

35 Bösl, A. and J. Diescho (2009). *Human Rights in Africa: Legal perspectives on their protection and promotion*. Windhoek: Konrad Adenauer Foundation, MacMillan Publishers, 365.

36 Asian Forum for Human Rights and Development (2009). *ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia*, Bangkok: FORUM-ASIA, 15–16.

In only a handful of places – Cyprus, England (United Kingdom), Ireland and New South Wales (Australia) – do children have a say in selecting their ombudsperson (see Chapter 7: Child Participation). The inclusion of children in the appointment process helps build an institution’s reputation as one that is child-focused. Children’s involvement also helps de-politicize the selection process and places children’s best interests at its centre.

The ultimate goal of the appointment process is to select a competent, independent individual who will enjoy the public’s (including children’s) trust – as well as that of parliament, government and NGOs – and who will not only speak out but also influence decision-making. The character, experience and independent-mindedness of the person selected as ombudsperson reflects the strength and true independence the state is willing to grant a human rights institution for children. The personal qualities and authority of the ombudsperson can be crucial to the actual experience of independence enjoyed by the institution he or she leads.³⁷

As part of this review, ombudspersons for children were asked about what they considered to be the most important aspects of their work. In all regions surveyed, ombudspersons saw their role as one oriented towards consensus rather than conflict, with independence a constructive characteristic to forge alliances rather than a ground for opposition.

When asked about what they felt were the three most desirable personal characteristics in an ombudsperson for children, interestingly respondents in all regions noted their capacity to be network builders and good listeners as a key trait. Having a critical mind was mentioned as essential by a number of participants in Europe, and to a certain extent in Latin America and the Caribbean. However, this characteristic did not feature among the most cited by respondents from Australia, Canada and New Zealand. The ability to be creative was considered an important element everywhere, although less overtly in responses from Australia and New Zealand.

The duration of the appointment of the ombudsperson (of those studied, tenure is similar to a typical elected mandate, four to seven years) and the protections afforded the person while in office are additional factors which determine an institution’s actual experience of independence. Protections (for example, immunity from civil and criminal proceedings related to official actions) play an important role in preserving independence, particularly where the institution has the authority to

³⁷ Oosting, M. (2000). ‘Protecting the Integrity and Independence of the Ombudsman Institution: The global perspective’, paper delivered at the VIIth International Conference of the International Ombudsman Institute, Durban, South Africa, 20 October to 2 November 2000.

receive and act on complaints of human rights violations.³⁸ In Malawi, for example, it has been argued that because members of the Human Rights Commission lack immunity it has limited their independence and increased their vulnerability to pressure from the state and other powerful actors.³⁹

A sufficient, competitive salary can help ensure that the ombudsperson is not subject to undue influence. It is also an indication of the importance accorded the function. Salary levels in most places are typically aligned to those of high-level state positions (for example, judges of the highest court,⁴⁰ members of parliament,⁴¹ or deputy ministers⁴²).

Furthermore, because dismissal of an ombudsperson is serious and can put an institution's independence at risk, circumstances and procedures for dismissal are included in nearly all institutions' founding documents. Grounds for dismissal usually include serious reasons such as incapacity to perform duties, misconduct and conviction of criminal acts, as well as acceptance of an incompatible position or elective mandate. Beyond formal dismissal mechanisms involving individuals heading institutions, comprehensive structural overhaul through merger with other institutions or abolition of the institution itself operate as de facto reasons for dismissal (see Chapter 3: How Can Institutions Withstand Threats?).

Financial autonomy: A key to independence in practice

Institutions need sufficient and sustainable financial resources to carry out their mandates, because without them they will be deprived of independence and doomed to ineffectiveness.⁴³ 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.⁴⁴ 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.

³⁸ Yigen, K. (2000). 'Guarantees of Independent of National Human Rights Institutions: Appointment and dismissal procedures of leading members'. In Lindsnaes, B., L. Lindholdt and K. Yigen, eds. *National Human Rights Institutions: Articles and working papers*. Danish Centre for Human Rights, 5–6. Available at: <http://www.humanrights.dk/files/Importerede%20filer/hr/pdf/nhribook.pdf>.

³⁹ Patel, N. (2009). 'Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: The Malawi Human Rights Commission and the Office of the Ombudsman', *EISA Research Report*, No. 46. Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 14. Available at: <http://www.eisa.org.za/PDF/tr46.pdf>.

⁴⁰ As in British Columbia (Canada), Nepal and the Philippines.

⁴¹ As in the Republic of Bolivia.

⁴² As in Saskatchewan (Canada).

⁴³ Ackerman (2010), op. cit.; and Cardenas, S. (2003). 'Emerging Global Actors: The United Nations and national human rights institutions', *Global Governance* 9 (1):23–42.

⁴⁴ Office of the High Commissioner for Human Rights (1995), op. cit., para. 73.

Yet, according to the CRC Committee, state efforts to provide reasonable and secure funds to child-related institutions have been largely insufficient.⁴⁵ For example, in 2008 the Palestinian Independent Commission for Citizens' Rights received only 5 per cent of its budget from the Palestinian National Authority, with the rest coming from various international donors.⁴⁶ In this particular case, political instability in 2008 prevented the passage of draft laws that would have allocated funds to the Commission's annual budget from the Palestinian National Authority, although the Commission expects funding from this source to increase in the future.⁴⁷

Resource shortages have meant that in many places child rights programmes rely on external sources of funding. In resource-strapped countries, private and foreign donors support the work on children's rights within national institutions.⁴⁸

Such support is however a double-edged sword: while it keeps an institution operational and potentially shields it from the political fallout of a solely state-determined budget, it can also compromise the independence and sustainability of the institution, particularly over the long term. External funding can foster a lack of investment in and ownership of the institution by the state – whose relationship to the institution is what ultimately distinguishes an independent human rights institution for children from other kinds of organizations (for example, NGOs). Donor agendas may affect an institution's own long-term strategy, especially where funding strategies are subject to change. The children and adolescents programme of the Comisionado Nacional de los Derechos Humanos in Honduras was at risk of disappearing in 2009 because its budget relied entirely on international cooperation and donors' willingness to continue their engagement, and donors withdrew their funding.⁴⁹ The National Human Rights Commission in Nepal has also expressed concern at the disconnect between short-term funding by donors and the need for long-term engagement to affect children's rights.⁵⁰ In Malawi, the Human Rights Commission depends primarily on one single donor, raising serious concerns about sustainability. In this context, additional funding from the government and diversification of donor support for the Commission is seen as essential.⁵¹

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

46 The Independent Commission for Human Rights (2013). 'About ICHR: Donors', Ramallah: ICHR. Available at: <http://www.ichr.ps/en/2/2/258/Donors-Donors.htm>.

47 The Independent Commission for Human Rights (2008). *Strategic Document 2008–2010*, Ramallah: ICHR.

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

49 Information provided by the Office for Children, the Comisionado Nacional de los Derechos Humanos (CONADEH), Honduras, August 2008.

50 National Human Rights Commission (2008). *Status of Child Rights in Nepal: Annual report 2008*, Kathmandu: National Human Rights Commission, 50.

51 Patel (2009), op. cit., 19.

As this review shows, the instability of donor funds is a particular concern for children’s departments within broader human rights institutions, whose funding is often project-based and directly provided by donors,⁵² 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 from the institution and the state. This also helps reduce the risk of a perception that the institution is the creature of foreign interests. In Morocco, for example, funding for a staff member specializing in child rights within the Human Rights Consultative Council was provided by UNICEF for the first year but thereafter was incorporated into the Council’s budget, ensuring its sustainability and ownership by the Council.⁵³

Accountability mechanisms can help preserve independence

While independent human rights institutions for children are themselves an accountability mechanism, charged with monitoring actions by others, like any other public body, any such institution must be held accountable for its own actions and performance in a way that preserves its independence. Accountability mechanisms can foster independence because they can provide ongoing information about the strengths and weaknesses of an institution, which is crucial to helping it become stronger over time. Clear accountability mechanisms are important for building public trust in an institution and reinforcing its legitimacy in the eyes of the people⁵⁴ because they help make an institution’s workings transparent. They also serve to inform various state bodies officially of the recommendations of an institution, making these entities responsible for implementing them.

Therefore the question arises of ‘second-order accountability’, or who will hold the human rights institution accountable?⁵⁵ The challenge is to set up accountability mechanisms in a way that preserves independence.

In the most common method of accountability, the independent institution provides a regular written report of its activities, including an overview of expenditures, to parliament, government or the public. The level of accountability and oversight achieved in this process is highly dependent on the report recipient’s engagement in the process. For parliament, such involvement includes traditional budgetary oversight of the institution’s activities and spending, as well as discussion of substantive issues raised in the report.

⁵² As has been the case in Honduras and Nepal, for example.

⁵³ Information provided by the UNICEF Country Office for Morocco, August 2012.

⁵⁴ Ackerman (2010) op. cit.; International Council on Human Rights Policy (2005), op. cit., 23.

⁵⁵ Schedler, A. (1999). ‘Conceptualizing Accountability’. In Schedler, A., L. Diamond and M. F. Plattner, *The Self-Restraining State: Power and accountability in new democracies*. London: Lynne Rienner, 25.

Enhancing engagement by responsible bodies can improve institutional accountability and independence. A review of democratic institutions in South Africa, including the South African Human Rights Commission, pointed to the lack of engagement by the National Assembly, indicating that the institutions' interactions with Parliament were restricted to annual meetings with portfolio committees of very limited duration, typically only two to three hours.⁵⁶ Parliamentary committees had a heavy workload and parliamentarians were uncertain about their role in preserving the independence of the institutions.⁵⁷ Recommendations included creating a unit within the Speaker's Office in charge of coordinating the oversight of these institutions, strengthening the key 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.⁵⁸ Following a resolution by the National Assembly in 2008, the Office on Institutions Supporting Democracy was formally established in 2010.⁵⁹

In other instances, independent human rights institutions for children submit their reports – whether required by law or not – to the government either because it is accountable to the executive branch, or to provide information.

Some institutions issue annual reports for the general public, which are typically shorter and written in a more accessible form than official annual reports. However, research conducted for the purposes of this review suggests that the practice is not yet widespread. While two thirds of independent human rights institutions for children in Europe issue annual reports for the general public, only one third do so in Latin America and the Caribbean.⁶⁰ Child-friendly versions of annual reports are generally scarce, however, issued by only six institutions in Europe and two in Latin America and the Caribbean.⁶¹ In Asia, Africa and the Middle East the practice has not been recorded. A handful of institutions in Australia and Canada issue reports accessible to adolescents, and a few institutions publish regular bulletins on their activities globally. An increasing number of institutions, especially in high- and middle-income countries, use websites and social media tools – easily accessible to the public and in particular to children – to provide regular reports and information on their activities.

⁵⁶ Parliament of the Republic of South Africa (2007). *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: Parliament of the Republic of South Africa, 27.

⁵⁷ *Ibid.*, 27.

⁵⁸ *Ibid.*, 30–32.

⁵⁹ Parliament of the Republic of South Africa (2012). 'Office on Institutions Supporting Democracy (OISD): National Assembly', Available at: http://www.parliament.gov.za/live/content.php?Category_ID=320.

⁶⁰ UNICEF Innocenti Research Centre Survey (2007–2008).

⁶¹ *Ibid.*

Civil society has an important role to play in keeping institutions accountable. NGOs can help monitor institutions by continually assessing their functioning and reporting publicly on independence issues. In Asia, the regional network of national human rights institutions, ANNI, issues an annual report on the functioning of national human rights institutions in the region. In addition to providing regional analysis, the report reviews the effectiveness of national institutions paying specific attention to their independence and their relationship with NGOs.⁶² ANNI also regularly engages with the Asia Pacific Forum of National Human Rights Institutions to share concerns and recommendations drawn from its ongoing monitoring.

International and regional standards for and monitoring of independent human rights institutions can also strengthen institutional independence. One avenue is through network membership. The International Coordinating Committee of National Human Rights Institutions (ICC) monitors and accredits those institutions that comply with the Paris Principles, but does not assess independent human rights institutions for children that are either stand-alone or established solely at the local level. Although the practicalities of admitting a high number of institutions into the ICC would present significant management and coordination challenges, being included in a regular, thorough review by peers with specific expertise in this sector would benefit child rights institutions and make them directly accountable to an international body.

Another avenue is through international monitoring bodies, such as the CRC Committee and other treaty bodies, the Human Rights Council Universal Periodic Review, or special procedures. The CRC Committee itself is an important forum for review of independent human rights institutions for children, systematically considering the mandate, financing and overall state support of the ombudsperson during its periodic country reviews. The CRC Committee's Concluding Observations frequently comment on institutional independence, typically making general observations on the lack thereof.⁶³ The CRC Committee also comments on threats to independence, particularly those related to staffing of the office by seconded civil servants;⁶⁴ budget; appointment procedures;⁶⁵ possible political biases;⁶⁶ and relations with the executive.⁶⁷ The CRC Committee

⁶² ANNI's annual reports are available from the website of the Asia Forum for Human Rights and Development at <http://www.forum-asia.org/?issues=civil-society-anni>.

⁶³ Concluding Observations of the CRC Committee on Sri Lanka CRC/C/OPAC/LKA/CO/1, 19 October 2010, para. 6; Concluding Observations of the CRC Committee on the United Kingdom, CRC/C/GBR/CO/4, 20 October 2008, para. 16.

⁶⁴ Concluding Observations of the CRC Committee on Mauritius, CRC/C/MUS/CO/2, 17 March 2006, para. 16.

⁶⁵ Concluding Observations of the CRC Committee on Afghanistan, CRC/C/AFG/CO/1, 8 April 2011, para. 13; Concluding Observations of the CRC Committee on the Maldives, CRC/C/OPSC/MDV/CO/1, 4 March 2009, para. 17; Concluding Observations of the CRC Committee on Nicaragua, CRC/C/NIC/CO/4, 20 October 2010, para. 17.

⁶⁶ Concluding Observations of the CRC Committee on Guatemala, CRC/C/GTM/CO/3-4, 25 October 2010, para. 23.

⁶⁷ Concluding Observations of the CRC Committee on Burkina Faso, CRC/C/BFA/CO/3-4, 9 February 2010, para. 14.

also gives special attention to issues of independence faced by child rights offices within broad-based human rights institutions.⁶⁸

For example, with respect to the Philippines, the CRC Committee recommended that the State party provide adequate human and financial resources to the Child Rights Center through the Commission on Human Rights of the Philippines, to ensure that the Center could carry out its mandate effectively. It also recommended that the Center be accorded adequate legal basis to carry out its activities independently.⁶⁹ In the case of Malawi, the CRC Committee expressed its concern about the dual role of the Child Rights Unit of the Human Rights Commission, given that it is responsible for both coordinating and monitoring children's rights and policies. The CRC Committee therefore recommended a review of the status of the Commission and its child-related unit.⁷⁰ The CRC Committee also gave special attention to the abolition of the child rights department within the Ghanaian Commission of Human Rights and Administrative Justice.⁷¹

There remains some degree of complexity in relation to the CRC Committee's Concluding Observations: they are addressed to States parties to the Convention on the Rights of the Child (CRC), yet they often concern areas in which governments should not interfere (e.g., whether an independent institution should have an accessible and child-sensitive complaint mechanism, or how it should be structured to deal with child rights issues) if the human rights institution for children is to be fully independent.⁷² In its review of Nicaragua, for example, the CRC Committee recommended that the State party assign greater resources to the Office of the Special Ombudsperson for the Protection of Children and Adolescents.⁷³ However, the resources of the latter come under the budget of the general ombudsperson office, and are therefore not under direct government or parliamentary control. So while threats to independence are often detailed in Concluding Observations directed at States parties represented by government, they must often be addressed by other actors, not least the institution itself. This underlines once more the double nature of human rights institutions for children, as both independent and public bodies.

⁶⁸ Concluding Observations of the CRC Committee on the Philippines, CRC/C/PHL/CO/3-4, 22 October 2009, para. 17; Concluding Observations of the CRC Committee on the former Yugoslav Republic of Macedonia, CRC/C/MKD/CO/2, 23 June 2010, para. 14.

⁶⁹ Concluding Observations of the CRC Committee on the Philippines, CRC/C/PHL/CO/3-4, 22 October 2009, paras. 17 and 18.

⁷⁰ Concluding Observations of the CRC Committee on Malawi, CRC/C/15/Add.174, 2 April 2002, paras. 12 and 13.

⁷¹ Concluding Observations of the CRC Committee on Ghana, CRC/C/GHA//CO/2, 17 March 2006, para. 15.

⁷² Murray, R. (2007). *The Role of National Human Rights Institutions at the International and Regional Levels: The experience of Africa*. Oxford and Portland, Oregon: Hart Publishing, 73–74.

⁷³ Concluding Observations of the CRC Committee on Nicaragua, CRC/C/NIC/CO/4, 1 October 2010, para. 17.

3

Practical Question: How Can Institutions Withstand Threats?

Perhaps the defining moment for the long-term survival and success of an independent accountability agency is whether and how it overcomes this almost inevitable backlash [where politicians, government officials and other affected parties try to cut back on its independence or powers].

John M. Ackerman, *Understanding Independent Accountability Agencies*

The sustainability of an independent human rights institution, and even more fundamentally of regard for child rights, is not guaranteed even in those countries with the most effective institutions. While a strong legal basis, including guarantees of independence, is necessary to ensure the effectiveness of an independent institution, a legal framework in and of itself cannot secure the institution's future over time. An institution's ability to monitor, promote and protect children's rights effectively – and whether the public perceives this – is also critical.

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 factional interests. 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 questions about institutional viability, especially if a country has multiple bodies addressing different areas of human rights.

Institutional fate is closely related to the status children enjoy in the country, with challenges to survival often an indicator of the need to reinforce the very concept of child rights in a society.

Independent human rights institutions for children have been dismantled in contexts as diverse as Ghana, New Jersey (United States of America) and Madrid (Spain). In the case of the Office of the Child Advocate of New Jersey, its effectiveness and the significant improvements it had achieved in the statewide child care and protection system led elected officials in 2010 to the conclusion that it was no longer needed. The argument put forward was that the systemic issues it was established in 2003 to address had significantly improved by 2010.

This argument raises a number of questions, given that, however successful an institution is, it is unlikely that children's rights can ever be completely fulfilled in its jurisdiction.¹

The existence of stand-alone child rights institutions has been questioned in a number of countries, including Croatia, England (United Kingdom), France, Ireland and Sweden. Motivations have included the desire to rationalize institutional structures, cost concerns and political considerations. In light of the specificity of children's rights and the mobilization of child rights advocates, institutions in all the countries cited above were eventually maintained, except in France where in 2011 the institution was merged into a broad-based human rights institution. However, in this case advocacy did lead to specific visibility of children's rights within the broader institution.

Effectiveness, as measured through evaluations and by attracting and drawing on partnerships and public trust, typically remains the best guarantee for institutional sustainability. Sustainability also depends on integrity and good performance, an ability to counter threats, and the role that civil society, child rights advocates and the media play in supporting the institution. The ability to show concrete results quickly is central to creating the perception that an independent human rights institution for children is necessary, performs well and can be trusted.² Ultimately, institutions themselves need to demonstrate their commitment to holding the government accountable for its child rights obligations. Demonstrating such effectiveness is one antidote to a threatening environment.

Long-term existence, surprisingly, is not necessarily correlated with increased effectiveness. In fact, there is evidence that independent human rights bodies can lose their effectiveness over the long term. While counterintuitive, this may be due to an institution's lack of ability to navigate changing circumstances. Institutional safeguards are therefore key to sustaining their status. As pointed out in relation to human rights institutions in Indonesia and Mexico:

The decline in effectiveness of these commissions might seem to run counter to the common-sense expectation that they would gather experience (and assertiveness) that would make them more independent of government in their functioning. In practice it seems that they exhaust the possibilities available to them in the rather

¹ Additional factors may have had a bearing on the decision, including the appointment of a federal monitor for protection services following a lawsuit, and economic considerations. See Livio, S. K. (2010). 'N.J. Gov. Chris Christie's Proposed Budget Eliminates Office of the Child Advocate', *N. J. News*, 25 March 2010. Available at: http://www.nj.com/news/index.ssf/2010/03/nj_gov_chris_christie_proposed.html.

² Ackerman, J. M. (2010). 'Understanding Independent Accountability Agencies'. In Rose-Ackerman, S. and P. L. Lindseth, eds., *Comparative Administrative Law*, London: Edward Elgar, 5–6.

limited political space that they occupy. In the early days, no one quite knows the rules whereby they operate, including themselves, and they are perhaps able to get away with more. They belong to a particular historical moment in which a certain liberalisation takes place but they need to develop stronger institutional guarantees of independence if they are to expand their role in changing political circumstances.³

While this sobering analysis is about broad-based institutions, there is little reason to suppose child-focused institutions do not face the same obstacles. Their long-term viability (measured by existence and effectiveness) depends on a broad range of factors that ultimately extend beyond the work of the institution itself.

What do threats look like and how are they met?

Child rights institutions may experience a backlash because their work inevitably involves highlighting the shortcomings of government, agencies or other bodies whose work involves children. In this process, it is almost a given that these institutions will face resistance from the bodies they are set up to monitor.⁴

There are a number of challenges that can diminish an institution's effectiveness over the long term, and all institutions reviewed here have faced them to some extent. Key threats to long-term effectiveness and sustainability relate to the structure and functioning of the office and include, among others, bureaucratization and positioning in domestic politics. These internal dangers are linked closely with external threats, in that external factors such as the appointment process influence how the office ultimately functions, while the strength of the office in turn influences the ability of the institution to navigate its operating environment and address external dangers.

With workload expanded and jurisdiction increased, bureaucratization and its concomitant development of increasingly complex and burdensome administrative procedures and processes can make offices less flexible, accessible and personable. Undertaking an expanded range of activities leads to more specialization within an office, which sometimes occurs at the expense of a personalized approach to complaints and other issues. As one analyst pointed out in relation to ombudsperson offices generally: "It is becoming increasingly difficult in such circumstances to preserve the personal touch which is so important

³ International Council on Human Rights Policy (2004). *Performance and Legitimacy: National human rights institutions*, 2nd edition, Geneva: International Council on Human Rights Policy, 64.

⁴ Ackerman (2010), op. cit., 11–12.

in handling sensitive personal problems.”⁵ What is more, while a key value of independent agencies is their ability to bring innovative views on governance issues, the development of bureaucratic procedures to manage the office may hinder creative thinking and independence.⁶

Bureaucratization is all the more significant in the area of children’s rights, because upholding children’s rights in an environment not always hospitable to them requires thinking creatively about solutions in the face of processes that are not typically child-sensitive and whose effects on children may be quite different from those on adults. This is a particular concern for broad-based human rights institutions that cover a wide range of human rights issues and which may have more complicated structures and a more complex division of labour among departments. As mentioned in Chapter 7, which deals with the structure of institutions, while broad-based institutions present a number of advantages, their procedures tend to be less child-sensitive than those of child-specialized ombudspersons.

Independent children’s rights institutions need to be aware of these risks (particularly at the management level). They need to take steps to ensure that the size of the office and its internal procedures support the flexibility needed to be a mediator and facilitator of processes and to react quickly to emerging challenges. They must ensure they are perceived by citizens, particularly children, as an approachable body rather than as yet another large bureaucracy. This is crucial if the office is to maintain trust and accessibility.

While an independent institution is in principle impartial and above day-to-day politics, the more active it is in the public policy arena the more likely it is to be drawn to the centre of political disputes.⁷ Supporting the rights of marginalized groups and poorer social classes can be perceived as political partisanship. Criticism of government policies can be seen as taking sides.⁸ In situations of armed conflict, political sensitivities are heightened and institutions’ possible biases, whether real or perceived, can significantly affect their ability to fulfil their role. In all cases, becoming mired in political positioning (whether by accident or necessity) results in a loss of influence and therefore effectiveness.

Legislative review of the budget, reporting to parliamentary committees, and an appointment process involving major political parties, can all play major roles in

⁵ Caiden, G. E. and D. A. Valdés (1999). ‘Maturation Issues for the Ombudsman’. In L. C. Reif, ed. *The International Ombudsman Anthology: Selected writings from the International Ombudsman Institute*, The Hague: Kluwer Law International, 113.

⁶ Ackerman (2010), op. cit., 11.

⁷ Caiden and Valdés (1999), op. cit., 103.

⁸ Ibid., 105.

diffusing controversies.⁹ The personality of the head of office is also critical to its ability to navigate the political waters.

Like internal threats, external threats can take many forms: the imposition of new restrictions on the mandate and powers of the institution, limits on funding and resources, and attempts to diminish the work of the office by other means. Compared with broad-based human rights institutions, children's institutions face additional challenges because children's issues may not be perceived as a priority for the government and children's best interests may conflict with other government priorities. Institutions included in this review commonly reported experiencing some form of external backlash to their activities: being threatened or simply ignored, or their requests and recommendations left unaddressed by relevant bodies. If not countered, such resistance can debilitate an institution.¹⁰

Another way child rights institutions can come under threat is through promulgation of new legislation that restricts their powers. In 2010, after the Representative of Children and Youth in British Columbia (Canada) asked to review cabinet documents (the request was refused¹¹), the Government introduced a bill to limit access to key cabinet documents, effectively preventing the Representative's office from reviewing how the top levels of government were handling children's issues.¹² The Representative sued the Government¹³ and won the case.¹⁴ Other actors also supported the Representative, notably the former judge who had carried out a review of the child protection system in the province¹⁵ and the Union of British Columbia Indian chiefs, which saw attempts to weaken the Representative's powers as a "barrier to the primacy of well-being of Indigenous children, families, and communities".¹⁶ Such attempts to restrict the access to information may reflect an institution's success

⁹ Ibid., 105.

¹⁰ Ackerman (2010), op. cit., 11–12.

¹¹ CBC News (2010a). 'B. C. Children's Watchdog Sues Province', *CBC News*, 4 May 2010. Available at: <http://www.cbc.ca/canada/british-columbia/story/2010/05/04/bc-turpel-lafond-lawsuit.html>.

¹² *The Globe and Mail* (2010). 'New Legislation Will "Cripple" B.C.'s Children's Representative', *The Globe and Mail*, 30 April 2010. Available at: <http://www.theglobeandmail.com/news/national/british-columbia/new-legislation-will-cripple-bcs-childrens-representative/article1553245/>; CBC News (2010b). 'B.C. Children's Rep Wins Court Decision', *CBC News*, 14 May 2010. Available at: <http://www.cbc.ca/canada/british-columbia/story/2010/05/14/bc-mary-ellen-turpel-lafond-lawsuit.html>.

¹³ On the basis of the institution's founding law, which provided for access to any information in the custody of a public body necessary for the Representative to perform his or her functions or duties. See Section 10 (Right to Information) of the BC Representative for Children and Youth Act, Bill 34 of 18 May 2006.

¹⁴ CBC News (2010b), op. cit.

¹⁵ Palmer, V. (2010). 'Hughes Breaks Vow of Silence to ask Campbell not to Weaken Legislation', *The Vancouver Sun*, 18 May 2010. Available at: <http://www.canada.com/vancouvernews/news/westcoastnews/story.html?id=13f3a600-af95-482a-a442-2d2f05575853>.

¹⁶ Indigenous Peoples Issues and Resources (2010). 'Open Letter: UBCIC supports Representative for Children and Youth petition to access cabinet documents', 11 May 2010. Available at: http://indigenousepeoplesissues.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.

in attaining greater visibility for its work.¹⁷ They also underline a key challenge, because cooperation between independent institutions and governments is key to institutional success.¹⁸

Insufficient and unpredictable financial resources can also threaten an institution. In high- and middle-income countries, restrictions in the public budget mean that institutions risk budget cuts. This was the case in New Jersey (United States of America), where the Office of the Child Advocate was closed after being eliminated from the public budget.¹⁹ In Slovenia, a reform of the public salary system placed staff of the Office of the Human Rights Ombudsman on lower salary scales than previously, which according to the Ombudsman resulted in problems with recruiting staff and experts. Because the reforms also affected the office's status in the public sector hierarchy, its authority suffered, as did the performance of its supervisory function vis-à-vis public authorities.²⁰ In Madrid (Spain), the debt crisis and ensuing budgetary cuts led to the demise of the Defensor del Menor in June 2012.²¹

Withholding or withdrawing funding is often a symptom of underlying doubts about the need for an institution and its 'value for money' compared with other public expenses.²² It is therefore critical that children's rights institutions continually demonstrate their relevance and effectiveness by monitoring and evaluating their own progress and achievements, and supporting independent assessments of performance.

In addition to quantifiable, documented threats related to government resistance and lack of funding, independent human rights institutions for children may face a more nebulous (yet no less damaging) threat that stems from lack of attention to – or little regard for – child rights. With children having little political power and policies related to childhood often a low priority, decision-makers may believe that a focus on children's rights is not necessary.

¹⁷ In this particular case, some media outlets suggested that the proposed bill came as a reaction to the fact that the Canadian Government had been criticized by the office in recent years. See *The Globe and Mail* (2010), op. cit.; *CBC News* (2010b), op. cit.

¹⁸ In an interview on the relationship between her office and other government ministries, the British Columbia Representative for Children and Youth was asked if she was concerned for the future existence of the office. She responded that she was "not really worried about the future of the office, but just worried about the effectiveness", referring to the challenges in getting government ministries to engage with their office. See Holman, S. (2010), 'Turpel-Lafond: A very significant part of my work will not happen', YouTube, 27 January 2010. Available at: <http://www.youtube.com/watch?v=QtixdmaQmno&NR=1>.

¹⁹ Livio (2010), op. cit.; Delli Santi, A. (2010). 'NJ Legislature Wrapping up FY11 Budget Work', *Businessweek*, 24 June 2010. Available at: <http://www.businessweek.com/ap/financialnews/D9GHKUQ80.htm>.

²⁰ Human Rights Ombudsman of the Republic of Slovenia (2008). 'Human Rights Ombudsman on Officials' Salaries', press release, 17 January 2008. Available at: <http://www.varuh-rs.si/medijsko-sredisce/sporocila-za-javnosti/novice/detajl/human-rights-ombudsman-on-officials-salaries/?L=6&cHash=10af0b3b45>.

²¹ European Network of Ombudspersons for Children (2012). 'The Office of the Defensor del Menor en la Comunidad de Madrid is closed down', press release, 21 June 2012. Available at: <http://www.crin.org/enoc/recursos/infodetall.asp?id=28815>.

²² Caiden and Valdés (1999), op. cit., 105.

For this reason, the UN Committee on the Rights of the Child (CRC Committee) insisted in General Comment No. 2 that independent institutions should be legislatively mandated and their legislation “should include provisions setting out specific functions, powers, and duties relating to children linked to the Convention on the Rights of the Child and its Optional Protocols”.²³ The aim is to ensure that attention to children’s rights becomes a legal requirement that can weather possible changes in political or office priorities. Despite these recommendations, this review has found that only a limited number of broad-based institutions expressly include children’s rights in their mandate.

Even when an independent human rights institution for children is legislatively mandated, challenges and questions about its mandate and the value of promoting child rights arise regularly. In Ireland, a report looking at ways to reduce public spending argued for the merger of the Ombudsman for Children’s Office with the Office of the Ombudsman on the basis of budget savings.²⁴ The Ombudsman for Children’s Office, however, was successful in demonstrating its own relevance. It highlighted its specific role as a child rights institution working for society, arguing: “Given all that we know about the capacity of society, administrators and institutions to do serious harm to children, these unique powers must be protected and the independence of the Office guaranteed now and in the future.”²⁵ The proposed merger was not implemented. One additional protective element for the Office was probably the fact that implementation of the proposal, which came from the executive branch, would have required legal change and thus parliamentary debate and approval.

This example from Ireland shows that a focus on children is vulnerable to being pushed into the background. The sustainability of independent institutions should be understood in the broader context of ongoing investment in childhood and keeping children’s rights a priority of the political agenda.

The role of partnerships in sustaining an institution

The capacity of an independent human rights institution for children to deal with threats is linked to its ability to build partnerships beyond the government and parliament – partners that can mobilize and speak out on behalf of the institution if necessary.

²³ UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, para. 8.

²⁴ Department of Finance (2009). *Report of the Special Group on Public Service Numbers and Expenditure Programmes*. Available at: <http://www.finance.gov.ie/viewdoc.asp?DocID=5861>.

²⁵ Ombudsman for Children (2009). ‘*Children Need and Deserve a Distinct and Independent Ombudsman for Children*’, press release, 16 July 2009. Available at: <http://www.oco.ie/whats-new/media/press-release-archive/children-need-and-deserve-a-distinct-and-independent-ombudsman-for-children.html>. See also Chapter 7, Practical question: What structure should an institution take?

The media can be instrumental in helping independent institutions establish themselves as unique and permanent features of the national institutional landscape. Many institutions reviewed for this study use the media to raise awareness of their work. The Ombudsman for Children of Republika Srpska (Bosnia and Herzegovina) developed a media strategy that resulted in increased requests for partnerships from associations, as well as greater numbers of individual complaints and contacts by citizens.²⁶ In 2011, the Children’s Commissioner for Wales (United Kingdom) reported having secured 200 news articles and 8,000 seconds of broadcast media resulting in extensive outreach.²⁷

Because enforcement powers for independent human rights institutions for children tend to be weak and ombudspersons often rely on goodwill for compliance with their recommendations, a strong relationship with the media can strengthen an institution’s ability to increase public pressure to back its work. The media can provide an extra arm of soft power that can help embed an institution within the national system and strengthen the likelihood that its decisions will be enforced. The media can also help communicate the threats and challenges faced by an institution. In Serbia, lack of follow-up on the recommendations of the Protector of Citizens on a case of discrimination against a Roma girl in school was taken up by a TV show, which used the case to highlight the role of the Protector’s office and the importance of implementing its recommendations.²⁸

Partnerships forged with civil society and child rights NGOs in particular play an important role in enhancing institutional legitimacy and effectiveness.²⁹ Civil society groups are typically the primary constituencies supporting a threatened institution.³⁰ In the case of the British Columbia Representative for Children and Youth (Canada), the vocal support of indigenous communities for the Representative played an important role in reminding the public and judiciary that the institution’s responsibility was to address the rights and needs of the province’s most marginalized children – something they felt would have been compromised if the institution’s legislation had been weakened.³¹

26 Ombudsman for Children of Republic of Srpska (2011). *Annual Report for the Year 2010*, 136. Available at: <http://www.djeca.rs.ba/uploaded/AR%202010..pdf> .

27 Children’s Commissioner for Wales (2010). Available at: <http://www.bettercarenetwork.org/enoc/resources/InfoDetail.asp?ID=23592>.

28 Protector of Citizens (2010). *2009 Annual Report of the Protector of Citizens*, Belgrade: Protector of Citizens, 87.

29 International Council on Human Rights Policy (2004), *op. cit.*, 97.

30 *Ibid.* See also Chapter 7, Practical question: What structure should an institution take?, which discusses the role of child rights advocates in ensuring an identifiable ombudsperson for children in France, in the context of the merger of independent institutions.

31 Indigenous Peoples Issues and Resources (2010), *op. cit.*

Anticipating threats

One 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 Commissioner's 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.³²

³² See Northern Ireland Commissioner for Children and Young People (2011). *Annual Report and Accounts: For the year ended 31 March 2011*, Belfast, NICCY, and other annual reports for previous years.

4

Practical Question: How Should the Effectiveness of Institutions be Monitored?

An institution cannot expect to survive for long unless it is able to prove its worth to society.

Victor Ayeni, *The International Ombudsman Anthology*

Monitoring and evaluating its work are essential for ensuring that an independent human rights institution for children remains adapted to the constant evolutions transforming childhood – and is able to demonstrate its relevance. Regular monitoring and evaluation provide vital information and insight into the effectiveness of an independent institution, and are a solid foundation for strengthening it and for ensuring that its work remains focused on the needs of children.

Monitoring consists of regularly tracking progress and making the changes needed to improve performance. An evaluation is an assessment (as impartial as possible) of a programme or of institutional performance that examines achievement, as well as the factors that have influenced it.¹

Institutions must constantly strike a balance between longer-term social and policy goals and responsiveness to the issues (often crises) of the day. They are assessed on their ability to demonstrate their involvement in both. There is a risk of reacting to daily demands and crises at the expense of broader visionary work – and vice versa. To be able to undertake both types of work most effectively, strategic planning is very important.

Monitoring and evaluation are not therefore simply bureaucratic line items for independent institutions to tick off – they are essential to addressing a childhood in constant transformation. They are also crucial to meeting evolving challenges to institutional independence and sustainability. Where resources are scarce, institutions need to demonstrate their cost-effectiveness, and monitoring and evaluation are the gateway to doing so.

¹ United Nations Evaluation Group (2005). *Norms for Evaluation in the UN System*, 5–6.

Yet, despite their importance, monitoring and evaluation are not always part of the culture of independent human rights institutions for children. The present review of institutions' activities suggests that very few have been able to set up an effective monitoring and evaluation system.

What are the challenges to monitoring an institution's work?

Because the effectiveness of child rights institutions depends on many internal and external factors, monitoring and evaluating institutional effectiveness as agents of advocacy and policy change can be extremely challenging.

Key issues and problems include:

- *Complexity and attribution.* The path to policy change involves multiple actors and complex external dynamics, and change is not always readily visible and quantifiable. Isolating contributions from each actor tends to be difficult.²
- *Time frame.* Outcomes arising from policy change typically do not happen in the traditional time frame allocated for evaluations, hence the importance of setting interim goals.
- *Shifting strategies and milestones.* With an environment in flux, goals – and the strategies to achieve them – can and often do shift.

As more and more institutions hone their policy and advocacy work, monitoring and evaluation methods pertinent to child rights work are being refined and can provide useful guidance. For example, one typical responsibility of an office is to produce well-thought-out policy recommendations to improve respect for children's rights within proposed legislation. A monitoring process could look at the extent to which such policy proposals have led to effective improvements within the law, reflecting not only good analysis and sound work but also institutional standing among legislators. Advocacy for law reform – aside from potentially changing the letter of the law – can have such positive side-effects as capacity-building among stakeholders and coalition-building among partners who can keep working together to advance children's rights in the long run.

Monitoring must be set against a strategic plan, which itself rests on a theory of change that "lays out what specific changes the group wants to see in the world, and how and why a group expects its actions to lead to those changes".³

² Guthrie, K., J. Louie, T. David and C. Foster (2005). *The Challenge of Assessing Policy and Advocacy Activities: Strategies for a prospective evaluation approach*, Los Angeles, CA: The California Endowment, 8–9.

³ Ibid., 21.

It requires setting goals and then laying out strategies to achieve these goals.⁴ Strategic planning is crucial for helping child rights institutions fulfil their long-term role of changing social norms, policies and practices so that child rights are realized and protected. It enables an institution to set priorities and helps ensure that it does not focus on issues solely in a reactive manner, but proactively drives its work towards well-defined outcomes and contributes to setting an agenda to advance child rights.

In addition to the international standards contained within the Paris Principles and General Comment No. 2, independent child rights institutions also have distinct categories of policy- and advocacy-related outcomes that can help frame their objectives:

- Shifts in social norms – knowledge attitudes, values and behaviours that compose the normative structure of culture and society.
- Strengthened organizational capacity – skills, leadership, structures and systems of organizations and coalitions that carry out advocacy work.
- Strengthened alliances – level of coordination, collaboration and mission alignment among community and system partners, including non-traditional alliances and unlikely allies.
- Strengthened base of support – grassroots, leadership and institutional support for particular policy changes.
- Improved policies – stages of policy change in the public policy arena, including policy development, support, adoption, funding and implementation.
- Changes in impact – ultimate changes in children’s lives and conditions.⁵

Once outcomes have been identified, strategies and interim goals can be outlined.⁶ Setting interim goals enables measurement of progress towards outcomes and can show whether an institution is influencing the larger policy process. Examples of internal and external indicators which can be used to monitor progress towards defined goals and outcomes are listed below.

⁴ Ibid., 21.

⁵ Reisman, J., A. Gienapp and S. Stachowiak (2007). *A Guide to Measuring Advocacy and Policy: Organizational research services*, Baltimore, MA: The Annie E. Casey Foundation, 17.

⁶ For further discussion of indicators of effectiveness for national human rights institutions, see International Council on Human Rights Policy (2005). *Assessing the Effectiveness of National Human Rights Institutions*, Geneva: International Council on Human Rights Policy.

Internal evaluation of management and functions

- Ability to respond quickly to pressing and/or unexpected events or issues
- Effective balance between proactive and reactive approach to child rights issues
- Handling complaints in timely manner
- Reaching fair resolution of complaints and children's rights violations, commensurate with the nature of the problem
- Pluralism in staff representation
- Effective management of resources and funding
- Producing child-friendly materials; using traditional and new media outlets to provide information on children's rights
- Office staff being competent and knowledgeable
- Engaging with children as participants and change agents in the work of the office
- Carrying out work in a transparent way, and regularly consulting constituents to obtain feedback

Assessment of external environment and impact of the office

- Visibility of the office among the general public, and children in particular
- Accessibility of the office, particularly for marginalized constituencies
- Strong partnerships with a range of stakeholders, including NGOs and public institutions serving children
- Public policy and legislative reform processes incorporating a child rights approach (institution's recommendations are seriously considered and taken up by relevant policy-makers)
- Government of the day respecting the independence of the office by ensuring stable and sufficient funding base
- Government of the day respecting the independence of the office by not exerting pressure that interferes with its ability to set their own agenda
- Mandate and powers of the office being sufficient for responding to all child rights issues
- Compliance with institution's investigations by relevant bodies and actors
- Office is trusted by the public, and children in particular, to act in the best interests of the child

Since the mid-2000s, an increasing number of institutions worldwide have adopted strategic plans. This is likely the result of a push for results-based accountability mechanisms, including from international donors. Strategic plans have been produced by institutions located in places as diverse as Afghanistan, Australia, Canada, Colombia, the Occupied Palestinian Territory, Tanzania and Zambia, among others.⁷ These plans typically outline the institution's priority

⁷ Afghanistan Independent Human Rights Commission (2010). *Strategic Plan and Action Plan, 1389–1392 (2010–2013)*, Kabul: AIHRC; Commissioner for Children Tasmania (2011). *Strategic Directions 2011–2013*, Office of the Commissioner for Children Tasmania (Australia); Office of the Child and Youth Advocate (2011). *Business Plan: 2011–2014*, Office of the Child and Youth Advocate, Province of Newfoundland and Labrador (Canada); Defensoría del Pueblo (2010). *Plan Estratégico Institucional Defensoría del Pueblo 2009–2012*, Defensoría del Pueblo (Colombia); Independent Commission for Human Rights (2011). *Strategic Plan 2011–2013*, Ramallah: ICHR (Occupied Palestinian Territory); Commission for Human Rights and Good Governance (2010). *Medium Term Strategic Plan 2010/11–2014/15*, CHRAGG (United Republic of Tanzania); Human Rights Commission (2006). *Human Rights Commission Strategic Plan 2007–2011*, Human Rights Commission (Zambia).

areas over three to four years and include concrete goals or outcomes, strategies and performance indicators to measure progress. For child rights departments within broad-based institutions, the inclusion of child rights priorities in the institution's strategic plan paves the way to recognition and allocation of resources. To strengthen transparency and accountability, many institutions have made their strategic plans public and some structure their annual report accordingly.

The strategic plan produced by the Commission for Human Rights and Good Governance in the United Republic of Tanzania, whose work includes children's rights, models how a holistic approach to monitoring and evaluation can guide the future work of the institution with the aim of strengthening its effectiveness. Through a consultative process involving staff and external stakeholders, in early 2010 the Commission identified institutional strengths and weaknesses along with external opportunities and challenges. Medium- and long-term strategic objectives and outcome indicators were then identified, including specific strategies, targets and responsible divisions. Continuous monitoring and evaluation – internal and external – is also included in the plan.⁸

In 2010 the Commission for Children and Young People and Child Guardian in Queensland, Australia, produced a tool to ensure a systematized and coherent approach to strategic planning over time. The Corporate Standard on Planning, Performance and Risk Framework explains the policies and practices required in the Commission and serves as an ongoing guiding framework for strategic planning and evaluation.⁹

Another type of monitoring and evaluation of child rights institutions is cost-effectiveness analysis. Assessment of costs is regularly part of debates related to reviewing and reforming independent institutions.¹⁰ However, given the difficulty of quantifying outcomes and costs in light of the complexity of policy change processes and problems in assessing 'soft power' influence, indicators for cost-effectiveness are elusive. Significantly, our research has not identified institutions that have successfully carried out such an assessment.

⁸ Commission for Human Rights and Good Governance (2010). *Medium Term Strategic Plan 2010/11–2014/15*, CHRAGG. Tanzania Commission for Human Rights and Good Governance. Available at: http://chragg.go.tz/docs/strategic_plan/2010-2014.pdf.

⁹ Commission for Children and Young People and Child Guardian (2010). 'Corporate Standard No. BPP.01.001: Planning, Performance and Risk Framework'. Available at: <http://www.ccyepg.qld.gov.au/pdf/RTI/Governance/Planning-Performance-and-Risk-Framework.pdf>.

¹⁰ See for example, Parliament of the Republic of South Africa (2007). *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: Parliament of the Republic of South Africa, 37; Commission Nationale Consultative des Droits de l'Homme (2010). 'Avis sur le Défenseur des droits', [Opinion on the Human Rights Defender], 4 February 2010, 6. Available at: <http://www.cncdh.fr/fr/publications/avis-sur-le-defenseur-des-droits> (France); and Dunford, J. (2010). *Review of the Office of the Children's Commissioner (England)*, CM 7981, London: Department of Education.

Evaluating office management is also important,¹¹ through such indicators as office organization, staff capacity and conditions of service. It is also critical to evaluate the role and leadership of the head of the office.¹²

What does monitoring look like in practice?

Ongoing monitoring involving multiple actors is indispensable. It enables the institution to adjust to an evolving environment.¹³ Ongoing monitoring also helps institutions create a culture of thinking critically about their work and constantly seeking to improve performance.¹⁴

Independent human rights institutions for children also need to consider the expectations of other child rights stakeholders, including children, partners and those bodies they are seeking to influence.¹⁵ Institutions have used various tools to obtain ongoing external feedback, including:

- *Advisory boards.* A common practice for institutions located in high-income countries is to rely on youth advisory boards to help set priorities, monitor progress and give advice on child rights issues. The practice is currently limited in developing countries but there are signs that it is increasing. Very few institutions use adult advisory boards to support them in carrying out their mandate effectively. The Commissioner for Children in Tasmania (Australia) is required by law to have one or more advisory panels¹⁶ while the Défenseur des Droits in France is supported by a council of child rights experts.¹⁷
- *Polls and surveys.* Polls and surveys can provide immediate feedback on a specific topic. Surveys can be carried out at the end of an activity to assess participants' satisfaction with the quality of the activity, such as a training course or seminar. Polls can be carried out via websites or in schools to sound out a large number of children on issues affecting their lives and priorities for the office, and also to obtain feedback on performance. Very few institutions use this method, because of the logistics and costs. One that has is the Children's Commissioner for Wales (United Kingdom), which commissioned

11 Ayeni, V. (1999). 'Evaluating Ombudsman Programmes'. In Reif, L. C. *The International Ombudsman Anthology: Selected writings from the International Ombudsman Institute*, The Hague: Kluwer Law International, 180.

12 Ibid.

13 Coffman, J. (2007). 'What's Different About Evaluating Advocacy and Policy Change?' *The Evaluation Exchange*, XIII (1), Spring, 2.

14 Guthrie et al. (2005), op. cit., 34.

15 International Council on Human Rights Policy (2005), op. cit., 27.

16 Section 84 of the Children, Young Persons and Their Families Act, 1997, Act No. 28, (Tasmania, Australia).

17 Chapter 1 of Loi organique No. 2011-333 du 29 mars 2011 relative au Défenseur des droits, (France).

an evaluation involving a widespread survey of schoolchildren between 2005 and 2008.¹⁸

- *Media.* Media analysis can provide useful and timely feedback that can help an independent child rights institution reflect on its strengths and weaknesses. Media reports can also help an institution see how its work is perceived in the broader society. Media presence also fosters public engagement in the work of an institution and feedback on positions taken by individuals, as was the case in the Republika Srpska (Bosnia and Herzegovina) following public statements by the Ombudsman for Children.¹⁹
- *Informal feedback.* Continual networking and informal interactions with partners to seek their views on a particular strategy, activity or position and assess achievements can be an important source of feedback for institutions. Discussions with individual ombudspersons suggest that this is a common occurrence, although its effectiveness would probably depend on the nature of the institution's partnerships.
- *Data analysis.* For monitoring purposes it is important that independent human rights institutions for children collect and analyse data on contacts made to the office (to understand how accessible an office really is) and on complaints filed regarding alleged violations (to better understand the picture of abuse and the key issues of childhood that may be at play in the country). Many offices have made such data collection a routine part of their work, like the Défenseur des Droits in France,²⁰ but our research has shown that this is an area that could be strengthened tremendously, in particular by disaggregating data. Offices need to know who is accessing their services, and if they are serving children marginalized or socially excluded by virtue of poverty, ethnicity, age, gender or other locally relevant factors (see Chapter 9: Complaint Mechanisms).
- *Reporting.* Virtually all of the independent institutions reviewed here are required to submit annual reports to parliament or other government ministries. Some independent institutions use their reports to alert stakeholders to challenges; others take the opportunity to monitor and report on their progress.²¹ Keeping track of follow-up to recommendations can provide information on an office's effectiveness as well as guidance for

18 Thomas, N. et al. (2010). 'Evaluating the Children's Commissioner for Wales: Report of a participatory research study', *International Journal of Children's Rights* 18, 19–52.

19 Ombudsman for Children of the Republic of Srpska (2011). *Annual Report*, 136. Available at: <http://www.djeca.rs.ba/uploaded/AR%202010..pdf>.

20 Défenseur des Droits in France [2012]. *Annual Report 2011–2012*, 92–97.

21 The Afghanistan Independent Human Rights Commission regularly highlights in its annual reports the difficulties it faces in its work that stem from the unstable environment in which it operates and the resource limits it faces.

further work. The Office of the Children’s Advocate in Jamaica provides a good example of both types of reporting. In addition to reporting on the situation of children in the country and the activities of the office, the office also provides clear information on the outcomes of its work, particularly in the area of policy and legislative review.²²

How have external evaluations been conducted?

External evaluations of independent child rights institutions have been conducted in a number of countries, occurring at the request of the institution itself or of government ministries or parliament. In a few places, such as British Columbia (Canada), the legal basis of the institution calls for an institutional review after a period of time, in this case five years.²³ These evaluations typically involve a wide range of actors.

The offices of the Ombudsman for Children in Norway and Sweden have both gone through external review processes. In Norway, the evaluation came in 1995 (12 years after the establishment of the office and at the request of the Norwegian Parliament.) It was administered by the Ministry of Children and Family Affairs and conducted by a small team that included academics, a political representative and a researcher from a child rights non-governmental organization. The evaluation produced important guidance for the ombudsperson and insight into areas where the institution could be strengthened.²⁴

In 1998, the Ombudsman for Children in Sweden went through a similar review process led by a government-appointed Committee of Inquiry that was spearheaded by one individual and included special advisors, experts and children.²⁵ In 2009, the Ombudsperson for Children in Croatia contracted a team of national and international experts in children’s rights, psychology, and constitutional and family law to conduct an assessment of the office on the fifth anniversary of its establishment.²⁶

In some instances, evaluation processes have been conducted in the context of overall reviews of either the child protection or the human rights protection

22 Office of the Children’s Advocate [2009]. *Office of the Children’s Advocate Annual Report 2008–2009*. Kingston: Office of the Children’s Advocate.

23 Section 30 of the Representative for Children and Youth Act, [SBC 2006] Chapter 29, British Columbia (Canada).

24 The Ombudsman for Children and Childhood in Norway (1996). *A Summary of the Committee’s Conclusions from the Norwegian Official Report* (NOU 1995:26), Oslo: Ministry of Children and Family Affairs.

25 While the review process produced a broad range of positive feedback, the Committee of Inquiry expressed concern that the Ombudsman was not sufficiently independent from the Swedish Government. The final report laid out a series of recommendations to increase the independence of the Ombudsman’s office. See Ombudsman for Children in Sweden (1999). *Inquiry into the Role and Function of the Children’s Ombudsman in Sweden*, Swedish Government Official Report No. 1999:65. English summary available at: <http://www2.ombudsmet.org/Ombudsmen/Sweden/SwedenOmb.htm>.

26 Ombudsperson for Children, Zagreb (2009). *Evaluation of the Institution of the Ombudsperson for Children*. Zagreb: Ombudsperson for Children.

systems. Such systemic reviews look at the interactions and comparative advantages of various actors, institutions and services. For example, the review of the South Africa Human Rights Commission was conducted as part of an overall parliamentary review of state institutions supporting constitutional democracy.²⁷

How can monitoring and evaluation strengthen independent human rights institutions for children?

Regular self-monitoring as well as external evaluation can help strengthen institutions over time. External review helps ensure the accountability of an ombudsperson and that children's best interests are being served and protected. Moreover, reviews can strengthen an institution by highlighting the areas where improvements can be made or where governments can respond more rapidly to recommendations.

Crucial to making an institution stronger is institutional readiness to implement findings and other actors' openness to improve responsiveness and cooperation. Anecdotal evidence points to the usefulness of evaluations in strengthening independent institutions. In Canada, the Newfoundland and Labrador Child and Youth Advocate identified the lack of subpoena powers as an obstacle to its effectiveness. In 2008, it successfully lobbied government officials to amend its legislative mandate to include these powers.²⁸ In Sweden, a revision of the legal mandate of the Ombudsman for Children three years after a comprehensive review of the institution in 1998 addressed a number of the concerns raised in the evaluation, in particular the need for additional legal powers to obtain information.²⁹

²⁷ The Committee in charge of the review consulted institutions, relevant ministries and parliamentary committees, as well as civil society organizations, academic and legal institutions. It also commissioned a public opinion survey. Having analysed the functioning and effectiveness of each institution, the Committee made a series of recommendations for making the system more efficient in protecting and promoting human rights. For example, it recommended strengthening the involvement of the parliament, in particular its oversight role, to enhance the effectiveness of the institutions and ensure follow-up to their recommendations. See Parliament of the Republic of South Africa (2007), op. cit.

²⁸ Office of the Child and Youth Advocate, (2008). *Annual Report 2007–08*, 7. Available at: [www.childandyoutheadvocate.nf.ca/pdfs/AnnualReportOCYA2007-08.pdf](http://www.childandyouthadvocate.nf.ca/pdfs/AnnualReportOCYA2007-08.pdf).

²⁹ Ombudsman for Children Act, 1 July 2002 (Sweden).

5

The Whole Child

The child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religious and cultural systems.

UN Committee on the Rights of the Child, General Comment No. 13

While policy-makers often consider the child as a pupil, as a son or daughter, or as a user of public services, independent human rights institutions for children, by their nature and mandate, consider the whole child. Institutions regularly apply a holistic approach to their work.

Central to this approach is a focus on the interdependence and indivisibility of children's rights – all rights. Independent human rights institutions consider children not in isolation but as part of their environment (family, school, child-care institutions) – all settings. They also uphold the principles of universality and non-discrimination by paying attention to groups of children who are discriminated against, marginalized or excluded – all children. They build bridges between various actors within society, and between government and civil society – all actors. Here again their inspiration is the Convention on the Rights of the Child (CRC) and its overarching approach and principles. Their ability to do this is grounded in the trust they gain through their independent status.

The role of independent human rights institutions for children as bridge-builders and conveners on child rights can be difficult to implement in practice, because of either the institution's own functioning or the environment in which it operates. Independent institutions need to lead by example; they must make their own policies and practices as inclusive as possible by engaging a wide variety of partners in their work. Translating this into systemic change in approaches and policies beyond the institution itself however remains a challenge.

All rights: The indivisibility of child rights

While independent human rights institutions for children are distinct from governmental coordinating mechanisms, their holistic analysis of child rights issues can stimulate and guide coordinated responses. While carrying out

research on a child rights concern within their country, many institutions examine the root causes of the problem from various perspectives, and issue recommendations aimed at a wide range of actors working in various positions and disciplines.

Several independent human rights institutions for children have issued advice in areas involving a large spectrum of public and private actors. For example, a 2006 study on the demobilization of child soldiers conducted by the Defensoría del Pueblo in Colombia in partnership with UNICEF analysed the wide range of rights issues involved and concluded with recommendations highlighting the specific responsibilities of each actor within the government and outside, and at national and local levels. The report also identified the duties of illegal armed groups and recalled the obligations of Colombian families and society.¹ The aim was to lay the groundwork for an integrated policy response at national and regional levels.²

Gender

Some rights violations, including child domestic work, child marriage, foeticide (selective abortion) and infanticide, as well as various other forms of discrimination including on the basis of sexual orientation, have a strong gender component and affect boys and girls differently. A comprehensive and multidimensional approach to children's rights necessarily needs a gender perspective.

Developing a gender analysis of children's rights helps to address one of the primary risk factors for inequalities in societies – and often within the same family – and break the vicious circle of gender discrimination where it begins, in childhood.³

Children's rights and women's rights are closely interrelated. When women, as children's primary caregivers, are healthy, educated and empowered, they are more likely to make sound decisions for their children. In addition, furthering women's rights also fosters the realization of the rights of girls.⁴

Gender discrimination is particularly widespread and tenacious because it can have deep roots in a society.⁵ Some independent human rights institutions for children have helped to publicize the plight of girls and the gender dimension of child rights violations. In South Asia, for example, independent human

¹ Defensoría del Pueblo and United Nations Children's Fund (2006). *Caracterización de las niñas, niños y adolescentes desvinculados de los grupos armados ilegales: Inserción social y productiva desde un enfoque de derechos humanos*, Bogota: Defensoría del Pueblo.

² *Ibid.*, 243.

³ Goonesekere, S. and R. de Silva de Alwis (2005). *Women's and Children's Rights in a Human Rights Based Approach to Development*, New York: United Nations Children's Fund, 1.

⁴ United Nations Children's Fund (2006). *The State of the World's Children 2007: Women and children – The double dividend of gender equality*, New York: United Nations Children's Fund.

⁵ *Ibid.*, 8.

rights institutions for children in several countries have sought to tackle gender discrimination rooted in sociocultural mores and its serious implications for the enjoyment of women's and children's rights.⁶ The Indian National Commission for the Protection of Child Rights largely focuses on upholding the rights of girls in the face of violations, in particular foeticide, child labour and trafficking. The Commission's 2008 report on child labour stressed the status of women and the unequal treatment they receive, the feminization of poverty and the position of the girl child in this context.⁷ The Commission recommended that the Indian Government focus on its female citizens and advocated education opportunities for girls.⁸

The Afghanistan Independent Human Rights Commission has carried out a number of activities to address women's and children's rights violations, particularly violence against women. It has tackled domestic violence through mediation and legal advice in specific cases. It has also worked with local communities through its provincial offices to eliminate harmful traditional practices. The Commission has formed, and regularly trains, working committees composed of clerics, teachers and civil society representatives whose goal is to eliminate customs that violate women's rights.⁹

Some African institutions have also addressed gender discrimination. In 2006, the Malawi Human Rights Commission reported the findings of its gender-based study on cultural practices and their impact on the enjoyment of human rights, particularly the rights of women and children.¹⁰ Among the practices reviewed, early marriage was identified as especially discriminatory against girls because of its negative effects on girls' health, development and education. The Commission's report acknowledged that changing harmful traditional practices is a complex process and recommended involving all stakeholders, including traditional leaders, community members, religious groups and the government. The Commission also stressed the need to promote girls' education and involve women in the process of modifying negative cultural practices.

While these examples show how some institutions have integrated a gender dimension into their work, an overview of most institutions' activities shows that attention to gender is uneven. Offices' priorities, as well as the reports they issue, have limited focus on gender issues and on how rights violations affect

6 Ibid., 4.

7 Raghuram, S. and P. Jain (2008). 'Abolition of Child Labour, Social Exclusion and the Girl Child', *NCPCR Policy Dialogue Series*, New Delhi: National Commission for the Protection of Child Rights, 60.

8 Ibid., 61.

9 Afghanistan Independent Human Rights Commission (2009). *AIHRC Annual Report: 1 January 2009–31 December 2009*, Kabul: AIHRC, 44.

10 Malawi Human Rights Commission (2006). *Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi*, Lilongwe, Malawi: MHRC.

boys and girls differently. A truly holistic approach to child rights requires that the gender dimension be integrated into institutional work. Crafting a thorough understanding of the relationship between children's rights and women's rights will help mainstream such a gender perspective. It may also involve additional capacities, resources and guiding tools.

Laws and policies

Virtually all policy decisions affect children, irrespective of the sector or activity – agriculture, mining, health or business – to which they relate.¹¹ Independent human rights institutions for children play an important role in ensuring that laws, policies and economic decisions all reflect consideration of children's rights.¹²

Scrutiny of policy decisions should therefore occur not only after they are implemented but also before their adoption. In some places this happens regularly. Scotland's Commissioner for Children and Young People (United Kingdom) has put in place an innovative model for child rights impact assessments of policies. The goal is to examine decisions, policy, practice and legislation and assess their effect on children's rights. Ideally they will forecast possible impacts on children, particularly the most marginalized, and suggest relevant measures to address them.¹³ In 2012, the Children's Commissioner in England (United Kingdom) undertook a child rights impact assessment of a pending welfare reform bill. This highlighted the likely outcome of measures contained in the bill for children in general, as well as the impact on specific groups of children.¹⁴

National economic and budgetary decisions have an impact on the realization of children's rights, and several independent human rights institutions for children participate in debate and discussion about them in order to highlight their consequences. For example, in 2008 the Australian children's commissioners submitted a report to the Tax System Review Panel on the impact of the tax system on children's well-being, within the context of a wider tax reform process. The commissioners collectively recommended revising the tax system to reflect recent scientific evidence on the child-development outcomes of various policies and practices, with a particular emphasis on the effects of the tax code on young

¹¹ Thukral, E. G., ed., (2011). *Every Right for Every Child: Governance and accountability*, London: Routledge, 13.

¹² UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, para. 19 (i), 19 (f).

¹³ Paton, L. and G. Munro (2006). *Children's Rights Impact Assessment: The SCCYP model*, Edinburgh: Scotland's Commissioner for Children and Young People, 7.

¹⁴ Office of the Children's Commissioner (2012). *A Child Rights Impact Assessment of the Welfare Reform Bill*, London: Office of the Children's Commissioner.

children. They also recommended that maternity and paternity leave, child-care facilities, baby bonuses and family tax benefits be considered.¹⁵

Influencing a country's economic and budgetary agenda requires specialized expertise. This is not an area traditionally within the skills range of most independent institutions, but a capacity that some institutions are increasingly seeking to develop.

All settings: Enabling environments that nurture child rights

Independent human rights institutions for children seek to foster environments that nurture child rights. They are concerned with the social changes needed to ensure the realization of these rights. One important function is to “promote public understanding and awareness of the importance of children’s rights” and conduct training, research, human rights education, and other awareness-raising activities to sensitize actors.¹⁶ The ability of independent human rights institutions to act as interlocutors with both public and private entities is crucial.

Indeed, a unique feature of the CRC is its recognition of the role of private actors, not just the state, as duty bearers for the realization of children’s rights. 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 the subject of much debate. 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 their work on behalf of children’s rights.

However, being an interlocutor with both the public and private sectors provides independent human rights institutions for children with an opportunity to influence a child’s environment in a holistic manner. The UN Committee on the Rights of the Child (CRC Committee) in General Comment No. 2 explicitly states that independent institutions should engage with all relevant public and private entities, not only state bodies.¹⁷ Of the countries where such institutions exist, approximately half have institutions which have jurisdiction over private entities as well as public bodies.¹⁸

¹⁵ Australian Capital Territory Children and Young People’s Commissioner, New South Wales Commission for Children and Young People, Queensland Commission for Children and Young People and Child Guardian, Commissioner for Children Tasmania and Western Australia Commissioner for Children and Young People (2008). *The Tax Review: Improving outcomes for children and young people – Submission to the Australia’s Future Tax System Review Panel*. Available at: <http://www.actkids.act.gov.au/res/081103%20Joint%20ACCG%20submission%20to%20Tax%20Review.pdf>.

¹⁶ UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 19 (l)–(o).

¹⁷ *Ibid.*, para. 9.

¹⁸ That proportion reaches two thirds if private structures that are publicly owned or perform services on behalf of the state are also included.

A holistic approach to ensuring the realization of child rights means that a child should be seen not only as an individual but also as a member of a family.¹⁹ It is thus a state's duty to foster a family environment conducive to this. The CRC contains a number of provisions to support and protect parents and families as they raise their children.²⁰ Stemming from this 'state–parents–child' triangle²¹ articulated in the CRC, independent institutions have frequently advocated for state support to parents and other caregivers for the upbringing of children.

Independent human rights institutions for children remind the state of its obligation to provide families with necessary assistance²² and they encourage policies that support families' capacity to care for their children. Institutions advocate on behalf of families in various ways, such as pressing for adequate fiscal policies and increased state efforts to prevent institutionalization of children, and reviewing family law. The Commissioner for Human Rights in Azerbaijan, for example, has made a number of proposals to Parliament to provide support to poor families, promote children's deinstitutionalization and protect their rights in cases of divorce.²³ The Ombudsperson for Children in Mauritius, after receiving a number of complaints from grandparents having difficulties keeping up contact with their grandchildren (mostly after separation of parents or the death of a parent), in 2007 successfully pushed for an amendment to the Civil Code to facilitate access to their grandchildren. The Ombudsperson's office then broadcast information about the changes in the law.²⁴ In a similar vein, the Child Safety Commissioner in Victoria (Australia) issued a booklet on parenting skills for grandparents and other family members taking over parental care responsibilities.²⁵

In 2007, the Défenseure des Enfants in France advocated legal recognition of the status of step-parents against a backdrop of high divorce rates in a society where step-parents often take a major role in the child's upbringing.²⁶ In 2008 the Ombudsman for Children in Ireland proposed a constitutional amendment to add a state duty to support families, arguing that families needed to receive

¹⁹ Doek, J. E. (2008). 'Independent Human Rights Institutions for Children', *Innocenti Working Paper* 2008-06. Florence: UNICEF Innocenti Research Centre, 19.

²⁰ United Nations Convention on the Rights of the Child, adopted by UN General Assembly Resolution 44/25 of 20 November 1989, preamble, Arts. 5, 7, 9, 18 and 27.

²¹ Doek (2008), op. cit.

²² Ibid. See also Chapter 2: Independence.

²³ Commissioner for Human Rights of the Republic of Azerbaijan (2006). *The Annual Report of the Commissioner (Ombudsman) for Human Rights of the Republic of Azerbaijan for 2005*, 50–51. Available at: <http://www.theioi.org/europe/azerbaijan/commissioner-for-human-rights-ombudsman>.

²⁴ Ombudsperson for Children's Office [2008]. *Annual Report 2008*, 45 and 46. Available at: <http://www.gov.mu/portal/sites/ncb/oco/report2008.htm>; The Code Civil Mauricien (Amendment) Act, 2007.

²⁵ Child Safety Commissioner (2009). *Parenting for Grandparents and other Relative Carers*, Melbourne, Child Safety Commissioner.

²⁶ Défenseure des Enfants (2007). 'L'Enfant au coeur des nouvelles parentalités: Statut des tiers, statut du beau-parent?', report of a conference organized by the Défenseure des Enfants, 7 November 2007.

adequate, timely support to help them prevent problems from worsening.²⁷ This recommendation triggered a national level debate, underscoring just how sensitive these kinds of issues can be.

Education and schools

As the CRC Committee has stated, “children do not lose their human rights by virtue of passing through the school gates”.²⁸ The right to education itself is central to the interdependence of children’s rights: it is a multiplier that enhances “all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated”.²⁹ Consequently, institutions commonly pay specific attention to education issues and often work in and with schools.³⁰

Individual complaints and regular interaction with children often help institutions identify the most urgent education-related issues in their communities. Together with family concerns, problems in educational settings (e.g., discrimination, lack of access to education, and use of such disciplinary measures as corporal punishment) are frequently the subject of individual complaints, particularly in Europe and Latin America.³¹

Independent human rights institutions for children have addressed various dimensions of education, including accessibility, quality of education and the school as a safe, healthy and protective environment that respects children’s dignity and rights. Protection of children from violence in school appears to be an important focus of the overwhelming majority of institutions’ work.

As bullying appears to be a frequent concern of children and young people in New Zealand, the Children’s Commissioner embarked on a study of student safety in schools using a mix of surveys and focus groups.³² Ensuing recommendations included encouraging shared responsibility among students, teachers and parents for a positive environment in the school, changing policy and procedures, ongoing review and professional development, and collaborative

27 Ombudsman for Children (2008). *Submission of the Ombudsman for Children to the Joint Committee on the Constitutional Amendment on Children*, 18. Available at: http://www.oireachtas.ie/documents/committees30thdail/j-conamendchildren/submissions/list_of_submissions/14Ombudsman.pdf.

28 UN Committee on the Rights of the Child (2001). General Comment No. 1: The Aims of Education, CRC/GC/2001/1, 17 April, para. 8.

29 Tomasevski, K. (2006). *Human Rights Obligations in Education: The 4A scheme*, Wolf Legal Publishers.

30 Hodgkin, R. and P. Newell (2008). *Child Participation and Children’s Ombudsman Institutions within the European Union: Preliminary report*, Strasbourg: Council of Europe and European Network of Ombudspersons for Children, 29.

31 For example, the majority of complaints submitted to the Greek Ombudsman are related to education, in particular in connection with children with disabilities and with disciplinary sanctions (see The Greek Ombudsman, Department of Children’s Rights (2011). ‘Annual update 2010–2011’, presented at the 15th ENOC Annual Conference, Warsaw, Poland, 14–16 September 2011, 1). The Catalan ombudsman office, Síndic de Greuges (Spain), analysed the complex phenomenon of school segregation in different municipalities of Catalonia after it received a number of complaints on this issue (see Síndic de Greuges de Catalunya (2008). ‘La segregación escolar en Catalunya’, Informe Extraordinari, Síndic de Greuges de Catalunya).

32 Carroll-Lind, J. (2009). *School Safety: An inquiry into the safety of students at schools*, Wellington, New Zealand: Children’s Commissioner.

responses. Elsewhere, institutions have investigated other aspects of safety in educational facilities. The Uganda Human Rights Commission looked into the problem of school fires and recommended specific actions to government, school administrations and the police.³³

Schools are also a natural environment in which to raise awareness of children's rights among students, teachers and parents. According to the CRC Committee, independent institutions should "assist in the formulation of programmes for the teaching of, research into and integration of children's rights in the curricula of schools",³⁴ and many institutions do indeed advocate incorporating human rights into school curricula. In addition to carrying out regular visits and organizing training courses and workshops in schools, independent human rights institutions for children commonly produce and disseminate child-friendly material for schoolchildren and guidance tools to help teachers address human rights.

Respect for children's views and participatory mechanisms in educational settings are also a common area of work for independent institutions.³⁵

In spite of extensive reporting of activities by independent institutions in relation to the promotion of human rights education in schools, this review has found that information on the role and mandate of child rights institutions is included in school curricula in very few countries. Existing public surveys, though very limited, point to a lack of awareness of the existence of child rights institutions on the part of children.³⁶

Children in care

Children in alternative care environments need particular protection.³⁷ In light of their special vulnerability, the CRC Committee recommends that legislation includes the right of independent institutions to "have access in conditions of privacy to children in all forms of alternative care".³⁸ Work in this area reflects an important and unique aspect of child rights institutions: their capacity to advocate on behalf of individual children as well as on behalf of children as a group.

Just under a third of independent human rights institutions for children reviewed as part of this study are explicitly mandated to monitor child-care institutions.

³³ Uganda Human Rights Commission (2008). *11th Annual Report (2008)*, Kampala: UHRC, 12–13.

³⁴ UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 19 (n).

³⁵ See Chapter 7: Child Participation.

³⁶ See Chapter 7: Child Participation.

³⁷ The CRC lays out the right to special protection and assistance of children temporarily or permanently deprived of their family environment (see Art. 20 of the Convention on the Rights of the Child).

³⁸ UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 15.

Many more make regular visits to children in alternative care to assess their well-being, respect for their rights and the quality of services they receive.

The United Nations Guidelines for the Alternative Care of Children encourage monitoring mechanisms that are easily accessible to children, parents and those responsible for children who do not have parental care.³⁹ Independent human rights institutions for children can often use these guidelines to evaluate care services.⁴⁰ In practice, institutions often adopt a proactive approach to ensure their true accessibility to and direct interactions with children in alternative care.⁴¹

Because institutions in Australia, Canada, New Zealand and the United States of America were typically established in response to situations of neglect, abuse and deaths of children under the responsibility of the child welfare system, these countries have extensive experience of monitoring children in care.⁴² In an example that typifies the type of work in this area, the Office of the Child Advocate in Connecticut (United States of America) monitored the state children's psychiatric hospital and warned about regular, excessive use of such restrictive measures as restraint and seclusion, as well as the use of pepper spray to control behaviour. The Child Advocate's intervention helped lead to corrective actions.⁴³ Broad-based human rights institutions have also paid specific attention to children in care.⁴⁴

All children: A holistic approach and tailored strategies

The principles of non-discrimination and universality are central to the notion of the indivisibility of rights and lead naturally to a holistic approach to promoting rights that encompasses all girls and boys from birth to childhood to adolescence. Many child rights institutions advocate policies aimed at correcting disadvantages faced by some children and addressing vulnerabilities. Ensuring the accessibility of institutions to marginalized groups

³⁹ United Nations Guidelines for the Alternative Care of Children, adopted by UN General Assembly Resolution 64/142, 24 February 2010, para. 130.

⁴⁰ Atwool, N. (2010). *Children in Care: A report into the quality of services provided to children in care*, Wellington, New Zealand: Children's Commissioner, 28.

⁴¹ See 'Accessibility to Children' in Chapter 7: Child Participation.

⁴² See Part II: Regional Overviews, Chapter 20: Australia, Canada, New Zealand and the United States of America.

⁴³ Office of the Child Advocate [2009]. *Annual Report, 1 July 2008–30 June 2009*, Hartford, CT: Office of the Child Advocate.

⁴⁴ For example, the Defensoría de la Niñez y de la Adolescencia in Guatemala periodically monitors the living conditions in state and private children's homes and shelters in order to prevent mistreatment of children (see Procurador de los Derechos Humanos (2008). *Informe Anual Circunstanciado*, Volume II, Procurador de los Derechos Humanos, 541). In Peru, the Peruvian Deputy Ombudsperson in charge of children and adolescents visited state residential centres for children and assessed their functioning and the level of respect they afforded to children's rights. The starting point for this investigation was consultation with children living in these centres on their perceptions and experience; these guided the investigation and the final recommendations (Defensoría del Pueblo, 2010). PEI 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: Defensoría del Pueblo.

(and institutional attention to the needs of these groups) is therefore key to their effectiveness and credibility.⁴⁵

One significant dimension relates to the life course approach and the importance of considering the specific needs of children of every age group. A review of institutions' activities shows that issues faced by older children, particularly adolescents, seem to draw a great deal of attention.⁴⁶ Few institutions, however, focus on early childhood. The issues confronting younger children are often very different from those confronting adolescents, as are the policy recommendations and interventions needed to address them. Working for and with children of different age groups requires skill and flexibility. It is a challenge for independent institutions to maintain the diverse skill base needed for working with children of different ages. Lack of focus on the very young may stem from the perception that care of young children is in the realm of the family. The CRC Committee has reaffirmed, however, that the Convention is to be applied holistically in early childhood, just as it is for other groups of children.⁴⁷

The effectiveness of an independent human rights institution for children depends on its capacity to defend the rights of the most vulnerable children.⁴⁸ The most marginalized and excluded children often experience multifaceted discrimination; it is more difficult for them to realize their rights and seek remedies for rights violations. The CRC acknowledges the specific cultural, linguistic and religious needs of children belonging to minorities or indigenous peoples.⁴⁹ Such children are frequently among the most disadvantaged and marginalized and cannot enjoy their rights.⁵⁰

The majority of institutions reviewed address the situation of the most excluded groups of children in their countries, though in only about a third of the countries are they explicitly mandated to do so. Independent child rights institutions promote and protect the rights of vulnerable children by assessing their situations and advising on legislation, policies and practices; investigating alleged violations of children's rights; and organizing activities to raise awareness of children's

⁴⁵ For further analysis, see Chapter 7: Child Participation.

⁴⁶ For example, interactions with children at school and through youth advisory councils and focus groups, which help ombudspersons identify priorities, are more likely to involve older children.

⁴⁷ UN Committee on the Rights of the Child (2006). General Comment No. 7: Implementing Child Rights in Early Childhood, CRC/C/GC/7/Rev.1, 20 September, para. 3.

⁴⁸ Mohamedou, M.-M. (2001). 'The Effectiveness of National Human Rights Institutions'. In B. Lindsnaes, L. Lindholdt and K. Yigen, eds. *National Human Rights Institutions: Articles and working papers*. Copenhagen: The Danish Centre for Human Rights, 5–6. Available at: <http://www.humanrights.dk/files/Importerede%20filer/hr/pdf/nhrbook.pdf>.

⁴⁹ United Nations Convention on the Rights of the Child, adopted by UN General Assembly Resolution 44/25 of 20 November 1989, Art.30.

⁵⁰ Junkala, P. and S. Tawah (2009). *More Similar than Different: The welfare of Roma children and youth and the realization of their rights in Finland*. English summary available at: http://www.lapsiasia.fi/c/document_library/get_file?folderId=535182&name=DLFE-9954.pdf.

rights issues among the general public.⁵¹ They are also proactive in ensuring their accessibility to marginalized groups (e.g., they have specific materials or visit places and institutions where the most vulnerable children are). However, this review found that in many countries this type of proactive work could be strengthened.⁵²

Because of their strong initial focus on children in state care, independent human rights institutions in Australia, Canada, New Zealand and the United States of America often pay specific attention to groups of children who are overrepresented within the care system, including indigenous children. This has given institutions in these countries considerable expertise in developing strategies for vulnerable groups.

Where minority groups or indigenous peoples are concerned, education and language tend to dominate the children's rights agenda. These areas are particularly relevant for countering the disadvantage experienced by these groups and enabling the transmission of culture.⁵³ A good example of proactive work in this is that carried out in 2008 by the Ombudsman for Children in Finland in relation to the Roma minority involving interviews with Roma children and youth aged 10–18. The subsequent report contained numerous suggestions for local, regional and national decision-makers related to improving the welfare of Roma children. Recommendations included increasing the teaching and everyday use of the Roma language, and improving knowledge of Roma culture among the non-Roma majority population – particularly teachers.

In Western Australia, the state Children's Commissioner works to address the needs of indigenous children in the area of education. The Commissioner has encouraged Aboriginal students to be active participants in developing education plans, policies and programmes;⁵⁴ other recommendations include ensuring that service providers respect and acknowledge the values and culture of indigenous communities.

In 2010, the Canadian Council of Provincial 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

⁵¹ United Nations (2005). United Nations, *Minorities and National Human Rights Institutions: Report of the Office of the High Commissioner for Human Rights*, E/CN.4/Sub.2/AC.5/2005/3, Geneva: United Nations, 3.

⁵² For further analysis, see section 'Accessibility to children' in Chapter 8.

⁵³ Sedletzki, V. (2009). 'Fulfilling the Right to Education for Minority and Indigenous Children: Where are we in international legal standards?', In Taneja, P., ed., *State of the World's Minorities and Indigenous Peoples 2009*, London: Minority Rights Group International in association with United Nations Children's Fund, 43.

⁵⁴ Scott, M. (2010). 'Comment on the National Indigenous Education Action Plan Draft 2010–2014', letter to the Ministerial Council for Education, Early Childhood Development and Youth Affairs from the Australian Children's Commissioners and Guardians, 26 February 2010. Available at: <http://www.ccypeg.qld.gov.au/pdf/submissions/Final-Submission-Joint-ACCG-National-Indigenous-Education-Action-Plan.pdf>.

strategy to tackle significant gaps in health, education and safety outcomes between Aboriginal and non-Aboriginal children.⁵⁵

Improving the day-to-day life of children who are members of minority groups or indigenous peoples requires relevant expertise. In Latin America, specialized offices for indigenous peoples are integrated into several broad-based human rights institutions, as in Colombia (Deputy Ombudsperson for Indigenous Peoples and Ethnic Minorities) and Guatemala (Ombudsperson for Indigenous Peoples).⁵⁶ In Bolivia, a special programme on indigenous peoples within the Defensoría del Pueblo has been set up to study the human rights of vulnerable groups and, in particular, the perception of the role of women and children in indigenous communities.⁵⁷

Children with disabilities face significant challenges in the enjoyment of their rights because states often fail to invest in adapting environments, especially public services, to their needs. The CRC Committee has outlined the important role of independent institutions for children's rights in monitoring the rights of children with disabilities.⁵⁸ The CRC was the first human rights treaty to contain a specific reference to discrimination on the basis of disability (Article 2) and a separate article on the rights and needs of children with disabilities (Article 23). The Convention on the Rights of Persons with Disabilities also refers to the role of national human rights institutions in relation to child rights implementation and monitoring.⁵⁹

Several institutions have developed tailored strategies to reach children with disabilities and ensure ease of access and exchange between them.⁶⁰ These institutions advocate the accessibility of all services to children with disabilities and their inclusion in society. Education is a particular concern, because in many parts of the world, the majority of children with disabilities are still far from enjoying access to any kind of school. One example of effective advocacy to counter this comes from Afghanistan, where following an intervention in 2009 of

55 Canadian Council of Provincial Child and Youth Advocates (2010). 'Position Paper: Aboriginal Children and Youth in Canada: Canada must do better', 23 June 2010. Available at: <http://www.gnb.ca/0073/PDF/positionpaper-e.pdf>.

56 For more information about the work of national human rights institutions on indigenous peoples in Latin America see: Instituto Interamericano de Derechos Humanos (2006a). *Ombudsman y Acceso a la Justicia de los Pueblos Indígenas: Estudios de caso en Bolivia, Colombia, Guatemala y Nicaragua*, San José, Costa Rica: Instituto Interamericano de Derechos Humanos; Instituto Interamericano de Derechos Humanos (2006b). *Ombudsman y Derechos Indígenas en América Latina: Estudio comparativo sobre el marco normativo e institucional*, San José, Costa Rica: Instituto Interamericano de Derechos Humanos.

57 Defensoría del Pueblo de la República de Bolivia (2009). 'XI Informe al Honorable Congreso Nacional' [report to the National Congress], November 2009, 154.

58 The CRC Committee recommends that institutions be: "(a) Independent and provided with adequate human and financial resources; (b) Well known to children with disabilities and their caregivers; (c) Accessible not only in the physical sense but also in a way that allows children with disabilities to send in their complaints or issues easily and confidentially; and (d) It must have the appropriate legal authority to receive, investigate and address the complaints of children with disabilities in a manner sensitive to both their childhood and to their disabilities." See: UN Committee on the Rights of the Child (2006). General Comment No.9: The rights of children with disabilities, CRC/C/GC/9, 27 February, para. 24.

59 United Nations Convention on the Rights of Persons with Disabilities, adopted by UN General Assembly Resolution A/RES/61/106 of 13 December 2006, Art. 33.2.

60 For further analysis, see Chapter 7: Child Participation.

the People with Disabilities Unit of the Afghanistan Independent Human Rights Commission, most of the schools and other public buildings built thereafter were equipped with ramps.⁶¹

In a few countries, specialized national human rights institutions have been established to address specific rights-related issues or to protect specific groups, for example, the Equality Ombudsman in Sweden and the Ombudsman for Minorities in Finland.⁶² Effective collaboration between children's rights offices and these types of thematic offices is crucial to promoting a holistic approach to children's rights and to helping children in these various groups realize their rights. Overall, however, a review of activities and reports of independent human rights institutions suggests that collaboration across thematic programmes within a broad-based institution or among specialized offices remains limited.

Experience shows that an institution's ability to promote the rights of the most excluded children often requires internal, structural changes in the institution itself. One way to go about this is by adjusting and strengthening one or more aspects of institutions' functioning – namely diversity in staffing and gender mainstreaming – and, in the case of an integrated institution, by paying more attention to internal coordination among various departments.

Following a review of the child protection system in British Columbia (Canada), it was recommended that at least one of the three senior people heading the office of the children's advocate be Aboriginal and that Aboriginal people be represented at other levels within the organization.⁶³ As an indigenous person in British Columbia noted, "We often don't like to contact an organization that doesn't look like us."⁶⁴

All actors: Building bridges for greater realization of children's rights

Independent human rights institutions are bridge-builders between government and civil society. The public yet independent nature of the institutions puts them

⁶¹ Afghanistan Independent Human Rights Commission (2009), op cit., 31.

⁶² In early 2009 Sweden set up a commission with a mandate to address discrimination on grounds of sex, transgender identity or expression, ethnicity, religious or other beliefs, disability, sexual orientation or age. The four former anti-discrimination ombudsmen (Equal Opportunities Ombudsman, Ombudsman against Ethnic Discrimination, Disability Ombudsman and Ombudsman against Discrimination because of Sexual Orientation) were merged into a single body: the Equality Ombudsman. In Finland, the prohibition of ethnic discrimination is at the centre of the work of the Ombudsman for Minorities.

⁶³ Hughes, T. (2006). *BC Children and Youth Review: An independent review of British Columbia's child protection system*, 62. Available at: http://www.mcf.gov.bc.ca/bchildprotection/pdf/BC_Children_and_Youth_Review_Report_FINAL_April_4.pdf. See also recommendations of an International Meeting on the Role of National Human Rights Institutions in Promoting the Implementation of the UN Declaration on the Rights of Indigenous Peoples, held in Bangkok, Thailand, 16–17 December 2009.

⁶⁴ Hughes (2006), op cit., 61.

in a midway position between government and civil society, enabling them to create space for dialogue between the two.⁶⁵

A holistic approach to promoting respect for children's rights requires collaboration among a strong network of actors.⁶⁶ During the five-year review which culminated in the publication of *A World Fit for Children* in 2007, the United Nations General Assembly stated that: "our collective aspirations will be realized if all relevant actors, including civil society, are united for children".⁶⁷ Independent human rights institutions for children are important actors in this mix.⁶⁸ One essential role of these institutions is to engage at all levels with a large spectrum of national actors, stimulate dialogue, facilitate cooperation among other children's advocates and build alliances.⁶⁹ To do this, an institution relies on its independence, its unique position in the national landscape and the trust it generates from various parts of society.

Institutions rely on partnerships to fulfil their mandate.⁷⁰ Yet fostering partnerships is not a goal per se. The key is to nurture cooperation that can help all actors be more effective. In Jordan, the National Center for Human Rights works closely with a network of civil society organizations to raise awareness of the CRC and to address violations of children's rights adequately.⁷¹

Developing good relationships with children's rights organizations enriches the work of independent institutions with a diversity of children's perceptions, opinions and experiences. It can help independent human rights institutions for children protect their independence and enhance their effectiveness, deepen their public legitimacy, reflect public concerns and priorities, receive feedback on their work, and tap into valuable information, expertise and networks.⁷²

While partnerships with child rights advocates and other organizations are indispensable, engaging less traditional stakeholders, including those in the

⁶⁵ Smith, A. (2006). 'The Unique Position of National Human Rights Institutions: A mixed blessing?', *Human Rights Quarterly*, 28 (4):908–911.

⁶⁶ Verhellen, E. (1996). *Monitoring Children's Rights*, Leiden: Martinus Nijhoff, 9.

⁶⁷ Declaration of the Commemorative High-level Plenary Meeting Devoted to the Follow-up to the Outcome of the Special Session on Children, adopted by UN General Assembly Resolution A/RES/62/88, 13 December 2007, para. 6.

⁶⁸ Regarding the respective roles and complementarity of national actors in implementing children's rights, see also Chapter 10: Independent Human Rights Institutions for Children in the National Institutional Landscape.

⁶⁹ Doek (2008), op. cit., 14.

⁷⁰ For example, in line with the Paris Principles, CRC Committee's General Comment No. 2 stresses the complementarity between NGOs and independent human rights institutions and the need for close collaboration. See UN Committee on the Rights of the Child (2002). General Comment No. 2, op cit., para. 26.

⁷¹ National Center for Human Rights (2008). *5th Annual Report: State of Human Rights in the Hashemite Kingdom of Jordan (2008)*, Amman: National Center for Human Rights, para. 199.

⁷² International Council on Human Rights Policy (2005). *Assessing the Effectiveness of National Human Rights Institutions*, Geneva: International Council on Human Rights Policy, 15; Reif, L.C. (2000). 'Building Democratic Institutions: The role of national human rights institutions in good governance and human rights protection', *Harvard Human Rights Law Journal*, 13, (Spring):26.

private sector, is equally important. To this end, the Office of the Children's Advocate in Jamaica organized consultations with church leaders from over 15 denominations and all parishes across the country, in order to inform them about children's rights and the role of the office, and to build partnerships with the church community.⁷³ The South Africa Human Rights Commission has successfully fostered strategic engagements with a wide range of partners, particularly in the private sector, in order to address child sex tourism.⁷⁴

The special position of independent human rights institutions for children is particularly visible in settings of armed conflict. Throughout this report, examples are cited of work by independent institutions in armed conflict. One additional example is the participation of some in the monitoring and reporting mechanism on child rights violations established by the United Nations Security Council in 2005.⁷⁵ Its purpose is to enable systematic gathering of accurate, timely, objective and reliable information on grave violations committed against children in situations of armed conflict. The information is gathered and verified by the United Nations with the assistance of national and international non-governmental organizations (NGOs), and reported back to the Security Council, which then takes appropriate measures, including applying sanctions. National monitoring and reporting mechanisms typically encompass a wide range of actors (e.g., civil society organizations and international organizations such as UNICEF and the Office of the United Nations High Commissioner for Human Rights (OHCHR)).

While governments and public institutions are traditionally excluded from these mechanisms, because of the need to demonstrate impartiality, in some cases independent institutions for children have been made members. In Colombia, for example, an early warning system aimed at preventing child rights violations builds on the unique position of the Defensoría del Pueblo. Civil society organizations report child rights violations to the Defensoría, which in turn presents cases to a governmental committee. The latter then initiates the necessary action to prevent further violations from occurring.⁷⁶ The system is based on the mutual trust between civil society organizations and the Defensoría, and government confidence in the reliability and judgement of the Defensoría. Although to date recommendations made by the Defensoría have not been systematically acted upon, the set-up provides an example of an innovative use of child rights institutions.

⁷³ Office of the Children's Advocate [2009]. *Office of the Children's Advocate: Annual Report 2008–2009*, Kingston: Office of the Children's Advocate, 44.

⁷⁴ South African Human Rights Commission [2008]. *Annual Report: 1 April 2007 to 31 March 2008*, SAHRC, 73.

⁷⁵ United Nations Security Council Resolution S/RES/1612 [on children in armed conflict], adopted 26 July 2005.

⁷⁶ Information provided by the Defensoría del Pueblo, Colombia, date. See also http://www.defensoria.org.co/red/?_item=110202&_secc=11&ts=2&hs=1102.

6

Practical Question: What Structure Should an Institution Take?

Deciding the form an independent human rights institution for children should take is a central consideration when new institutions are being debated or existing institutions are being reviewed. The findings of this research suggest that the structure of an institution can influence certain capacities, such as its accessibility to children. However, there is no ‘one-size-fits-all’ model which guarantees institutional effectiveness. Ultimately, it is a combination of factors, many of them locally defined, that determines the form an effective institution takes. The key point that emerges is that institutions must have the capacity to operate in their environment. They must have expertise on childhood, be open and close to children and be proactive in their efforts to reach them.

Nevertheless, rehearsing the experiences of different structures – the pros and cons – points up issues to be aware of.

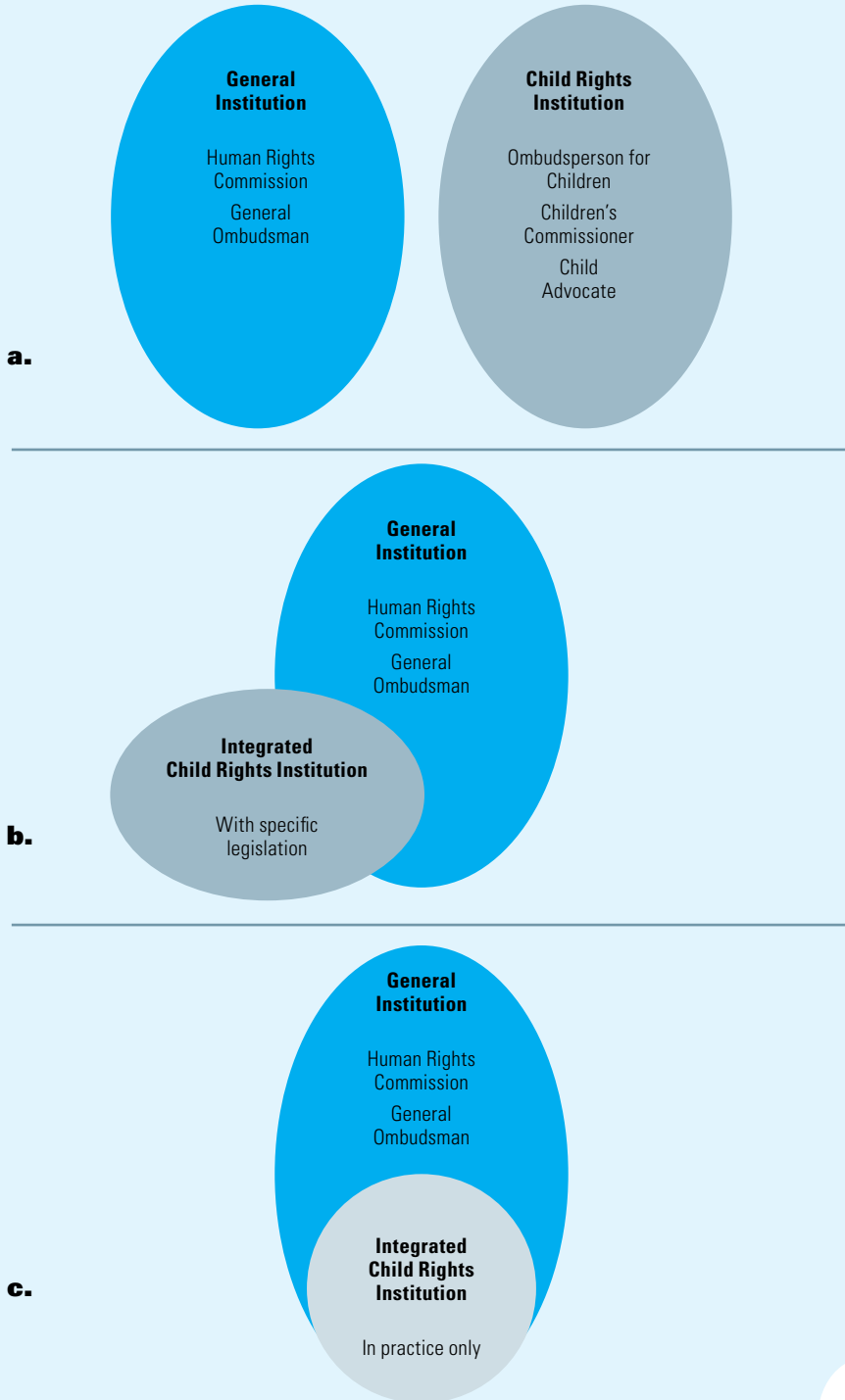
Possible structures

Institutions fall within one of three main structural categories: those that are completely separate from any broad-based human rights institution that may also exist in the country, referred to in this study as stand-alone institutions; those that are integrated into a broad-based human rights institution and where child rights are a mandated, legislated area of work for the broad-based body; and those that are integrated into a broad-based institution where child rights form part of the work of the institution but are not prescribed by legislation (see Figure 6.1).¹ Globally, institutions are roughly equally distributed across the three categories.

There are 23 countries that have stand-alone independent human rights institutions for children. Most of them function in parallel with a general human rights institution and other specialized independent institutions, with which they collaborate formally or informally. This is the majority model in Europe, and is also favoured in a number of common-law countries, including in Australia, Canada, India, Jamaica, New Zealand and the United States of America. Mauritius is home to the sole stand-alone human rights institution for children in sub-Saharan Africa. Independent institutions for children established at the local

¹ A few countries, such as Serbia and Spain, have institutions at the local level which combine these features.

Figure 6.1 The three main structural categories of child rights institutions



level in federal or highly decentralized countries, as well as city and community ombudspersons for children (typical in Japan and in Andean countries in Latin America), are usually also stand-alone.²

In the second category, where children's rights are integrated into the work of general institutions through a child-specific mandate established by law, either at the time of establishment or at some later date, the law usually provides for a special child rights deputy ombudsperson or commissioner. Examples of this include Greece, where the existing ombudsman law was revised to create a position for an ombudsperson for children with a specific child rights mandate.³ In Ethiopia, the legal mandate of the Office of the Ombudsman provides for an ombudsman for women and children.⁴ The law establishing the national human rights institution in Nicaragua includes a special Procurador for children and adolescents.⁵ In Romania, legislation requires that the Advocate of the People has a deputy specializing in the rights of child, family, young people, pensioners and persons with disabilities.⁶

In other places, the law may simply refer to children's rights, often in reference to specific vulnerable groups, providing the basis for the creation of a specialized department. This is the case in human rights institutions in Afghanistan,⁷ Honduras,⁸ Malawi⁹ and Venezuela.¹⁰

Elsewhere, the mandate of the broad-based institution in relation to children's rights is contained in separate child rights or child protection legislation, which usually provides for a comprehensive legal framework for children's rights and attributes specific functions to the independent institution for the implementation of the law. Institutions in Ecuador,¹¹ Guatemala¹² and the Philippines¹³ are structured in this way.

In the third category, child rights units are integrated into a general institution in practice, but not in law. The lack of a legislative base makes this structure

2 Exceptions include for example the Commission des droits de la personne et de la jeunesse (Quebec, Canada), the Sindic de Greuges (Catalonia, Spain) and the Provincial Ombudsman (autonomous province of Vojvodina, Serbia).

3 Law No. 3094/2003, 22 January 2003 (Greece).

4 Parliament Proclamation No. 211-200 of 4 July 2000 (Ethiopia).

5 Art. 18–23 of the Ley de la Procuraduría para la Defensa de los Derechos Humanos, Ley No. 212, 1995 (Nicaragua).

6 Art. 10. of the Law on the Organisation and Functioning of the Institution of the Advocate of the People, Law No. 35, 1997 (Romania).

7 Art. 26 of the Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission, Law No. 3471 of 14 May 2005.

8 Art. 9 of the Ley organica del Comisionado Nacional de los Derechos Humanos, 2005 (Honduras).

9 Human Rights Commission Act of 1998 (Malawi).

10 Art. 15 of the Ley organica del Defensoría del Pueblo, 2004 (Venezuela, Bolivarian Republic of).

11 Art. 208 of the Codigo de la Niñez y Adolescencia, 2002 (Ecuador).

12 Ley de Protección Integral de la Niñez y Adolescencia, 2003 (Guatemala).

13 Section 11 of the Juvenile Justice and Welfare Act, No. 9344 of 25 July 2005 (the Philippines).

inherently weaker. The influence and existence of the child rights department is an institutional management decision. To qualify as an independent human rights institution for children, this model must feature an identifiable commissioner or unit dedicated to children's rights. This is true of the focal point for children of the South African Human Rights Commission, the child rights department of the Mongolian National Human Rights Commission and the Office of the Commissioner for Children in Zambia's Human Rights Commission.

There is variability within these three main types of structures, particularly among child rights offices that are part of a broad-based institution. Also structures of institutions can change over time.

A legislative mandate alone does not guarantee that an institution's structure and functions will remain static or conform to any one particular model. Within offices integrated into broad-based human rights bodies (even those with a legislative mandate to address children's rights), the priority placed on children's issues can shift as a result of changes in budget allocation and funding, overall capacity, needs within the country and other factors. Stand-alone children's rights bodies, for their part, frequently face questions about whether they should be integrated into a general human rights or an oversight organ (see below).

Influences on an institution's structure

Many factors – social, political and systemic – influence the shape of an independent human rights institution for children. Some institutions were established at defining political moments at the constitutional level as part of a response to widespread social and political injustice and violence and conflict, and as a result their legislative mandates focus on the entire population, as is the case in Rwanda and South Africa and several countries in Latin America.¹⁴ In other places, child rights institutions were established as stand-alone institutions in response to reports of widespread abuse – and lack of independent monitoring – within the child welfare system. Accordingly, their mandates are closely linked to the child welfare system. This is the case for most institutions located in Australia, Canada, New Zealand and the United States of America.

The costs of running an independent human rights institution for children are no small factor in determining institutional structure. In South Africa, children's rights are currently integrated in practice into the mandate of the South African Human Rights Commission. This Commission was established within the Constitution of the Republic of South Africa, along with other rights-related commissions.¹⁵

¹⁴ Columbia, El Salvador, Guatemala, Nicaragua, Paraguay and Peru.

¹⁵ For example, the Commission for Gender Equality; the Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities; and several others (see Chapter 9 of the Constitution of the Republic of South Africa), 1996.

The UN Committee on the Rights of the Child (CRC Committee) has suggested that where financial resources are a challenge, States parties should integrate the functions of an independent human rights institution for children into existing institutions.¹⁶ Cost arguments for the integration of the child rights mandate into a broad-based institution have also been made in high-income countries, including France, Ireland and the Netherlands.

Regional norms can significantly influence institutional structure. For example, in Europe, the European Network of Ombudspersons for Children (ENOC) plays a standard-setting role for independent human rights institutions for children through its membership criteria. For full membership, institutions must be able to demonstrate establishment through legislation, have at least one commissioner working exclusively on children's rights, and must meet criteria for independence (including the ability to set its own child rights agenda).¹⁷

Stand-alone or integrated?

While institutional structure is only one element among many that determines the effectiveness of an institution, this review has revealed some common features of stand-alone and integrated institutions that are likely to foster success in their ability to monitor, protect and promote children's rights.

International standards provide limited guidance on the merits of stand-alone versus integrated independent human rights institutions for children. The Paris Principles do not require a specific institutional structure, although they indicate that the mandate should be as broad as possible.¹⁸ The CRC Committee has stated explicitly that its "principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights".¹⁹ Nevertheless, the CRC Committee while indicating its preference for separate, specialized independent monitoring bodies such as children's ombudspersons or commissioners, acknowledges that budgetary issues might lead to the establishment of either stand-alone or integrated institutions.²⁰

The differences in how the two broad structural categories actually perform their work revolve around several key concepts: the vision of children as specific rights holders; their accessibility to children and their ability to cultivate child

¹⁶ UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, para. 6.

¹⁷ The European Network of Ombudspersons for Children Statutes, as approved in May 2006 in Dublin.

¹⁸ Principles relating to the Status of National Institutions (the Paris Principles), adopted by UN General Assembly Resolution A/RES/48/134 of 20 December 1993, para. 2.

¹⁹ UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 7.

²⁰ Ibid., para. 6. See Doek, J. E. (2008). 'Independent Human Rights Institutions for Children', *Innocenti Working Paper 2008-06*, Florence: UNICEF Innocenti Research Centre, 11; Carver, R. (2011). 'One NHRI or Many? How many institutions does it take to protect human rights?', *Journal of Human Rights Practice*, 3 (1):5.. This issue remains debated, however.

participation in their work; how they manifest the indivisibility of children's rights; how they coordinate their work with other relevant bodies; an institution's status and ability to influence child rights policies; and cost.

Children as specific rights holders

Stand-alone institutions are distinctive because they specialize in children, as opposed to taking on all human rights. The first ombudspersons for children in the world were created in Europe as stand-alone institutions; this happened in Norway, for example, a country with a legal tradition that has recognized children's specificity in its legislation for 700 years.²¹

Where institutions were created to protect children in contact with the state system, recognition of children's special vulnerability to rights violations led to the creation of children's advocates and commissioners. This rationale is also reflected in the CRC Committee's General Comment No. 2, which sets forth the need for independent institutions to protect and promote children's rights.²² In many ways, the rationale that led to the creation of stand-alone institutions is reminiscent of the arguments that prevailed during the adoption of specialized human rights treaties to protect the rights of vulnerable groups.

The risk with stand-alone institutions is that their mandate may remain fairly restricted to the protection of only the most vulnerable and excluded children at the expense of a comprehensive approach to realizing the rights of all children. This is particularly a concern for institutions created in reaction to the mistreatment, abuse and neglect of children in contact with the welfare system. Yet experience has shown that, while these institutions defined their early mandate in terms of child protection, subsequent changes in law or practice have tended to foster a more comprehensive child rights approach. This has occurred in New Zealand, for example, where initial legislation was later amended in this direction.²³

Accessibility to and participation of children

A child rights focus has a number of consequences in law and practice, in particular with respect to child-friendly accessibility and participation. This review of the legal bases of ombudsperson offices shows that accessibility to, and involvement of, children is almost always only specified in the mandates of stand-alone institutions.²⁴ Likewise, institutions' activities aimed at promoting

²¹ Flekkøy, M. G. (1991). *A Voice for Children: Speaking out as their ombudsman*, London: Jessica Kinsley Publishers, 31.

²² UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 5.

²³ Para. 3 of the Children's Commissioner Act 2003 (Public Act No. 121 2003), Part 1 (New Zealand).

²⁴ For further details, see Chapter 7: Child Participation.

systematic, direct contact with children, through various child-appropriate communication strategies, consultations and advisory groups among others, tend to be performed mostly by stand-alone institutions. Whereas an integrated office can be very active in this area, it is often only because of a highly identifiable ombudsperson for children with significant autonomy in carrying out his or her mandate, as is the case in Greece.

The specialization of the office, and in particular of its staff, can play a major role in the institution's ability to foster partnerships with relevant civil society organizations and professionals.

Indivisibility of human rights and coordination issues

The main argument for an integrated institution is the need to build on the interdependence and indivisibility of all human rights and mainstream children's rights across all areas. The assumption is that a single institution will foster greater communication (which will enhance the cross-fertilization of ideas and sharing of good practices²⁵) and favour a unified approach to issues affecting all rights.²⁶ 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 remit of various specialized institutions.²⁷ However, this review has found that an integrated structure alone does not guarantee a highly unified approach to human rights unless there is willingness – and incentives within the institution – to undertake cross-disciplinary work.

In many cases, institutions' annual reports are divided by topic into specialized areas reflecting the structure of the institution, often organized by category of person, for example, rights of women, rights of children, and rights of persons with disabilities, but do not systematically build on the relationships between these categories. One exception is the right to education, which is a theme often found across vulnerable groups. A dilemma with organization by category of person – or vulnerable groups – is the potential this creates for duplicative, or conversely 'insufficient', work. Should violations of the rights of girls with disabilities, for example, be handled by a team working on gender, a team working on children or a team working on persons with disabilities? Building expertise and functional linkages across sectors is an aspect that could be further strengthened in integrated institutions. Sometimes children's rights are

²⁵ Carver (2011), op. cit., 9. A further example of good practice is provided by a case related to refugee status which also involved women's and children's rights and the input of corresponding departments within the Costa Rican Defensoría de los Habitantes (see Defensoría de los Habitantes [2011]. *Annual Report 2010–2011*, Defensoría de los Habitantes, 122.

²⁶ Carver, R., S. Dvornik and D. Redžepagić (2010). *Rationalization of the Croatian Human Rights Protection System: Report of Expert Team*, 50. Available at <http://www.docstoc.com/docs/85487801/Rationalization-of-the-Croatian-Human-Rights-Protection-System>.

²⁷ Carver (2011), op. cit., 9.

mainstreamed and given significant attention across issues, but a comprehensive child rights approach is lacking in some integrated institutions. This is particularly true in broad-based institutions without a specific child rights department, such as the Uganda Human Rights Commission and the Palestinian Independent Commission for Human Rights.

Status and ability to influence child rights policies

A strong argument for an integrated institution is the visibility and authority conferred by one body as the focus of human rights promotion and protection in a country. A single broad-based human rights institution is likely to be better known by the public and better heard by decision-makers. In contrast, a proliferation of specialized institutions can lead to fragmentation, which can weaken the ability of each stand-alone institution to carry out its mandate. A number of broad-based human rights institutions have a mandate established by the constitution and benefit from the high status that goes along with this. Specialized child rights institutions, in contrast, are almost always established by law and almost never founded in the constitution.

Naturally, there are risks to having all rights protections under a single umbrella. An institution that is weak, because of a limited mandate, a weak institutional head or a failure to inspire trust, can jeopardize work to achieve the realization of children's – and everyone else's – rights.

Another significant issue is the profile of children's rights within broad-based institutions and, along with this, the access of child rights focused commissioners or staff to decision-makers. A stand-alone child rights institution often has direct access to the parliament and the government making it easier to bring up matters of concern and influence policies. When one voice (the broad-based institution) speaks for all rights, however, issues must be prioritized. Attention to children's rights then depends on the priorities of the head of the institution, and sustainability of efforts on behalf of children will depend on management choices, as guided by the institutional head. Ultimately, with a broad-based institution there can be more filters on children's issues before they reach decision-makers.

A legislative basis for work on child rights is therefore critical to secure a space for child rights over the long term; not having one poses a very real threat to their realization. In Ghana and Togo, for example, where there is no such legislative base, broad-based human rights commissions have dropped children's rights from their agenda to focus on other issues.

One way to address these concerns is to provide channels for direct interaction of the child rights office within a broad-based institution with policy-makers, as in France where the Défenseur des Droits has the legal obligation to present

a separate annual report on children's rights to the government and the parliament.²⁸ In fact, according to a survey carried out by ENOC among its members, none of the nine broad-based institutions in Europe that responded indicated that their institutional structure limited their ability to speak out on behalf of children.²⁹ These results need to be put into perspective, with factors such as the public nature of the survey and tendency for institutional loyalty most likely influencing responses.

Successfully bringing forward children's issues in a broad-based institution is also a function of the working relationship between the institutional head and the person in charge of children's issues. In Greece this is crucial: the Greek Ombudsman for Children in response to the ENOC survey commented:

The department of children's rights' independence so far is achieved through a good personal agreement between the ombudsman and the deputy ombudsman. Activities regarding children are planned solely at the department level, and the Ombudsman is only informed on particular public events. However this is a little risky, as it has been achieved on a personal agreement level and not on a provision of the law.³⁰

Cost

Cost is often a major determinant of an institution's structure. Having a broad-based institution enables pooling of a number of functions, for example logistics and infrastructure. A thorough study of the cost implications of merging institutions in Croatia, however, showed that while the merger would lead to significant savings, benefiting programme activities and accessibility, it was also possible to maintain specialized institutions while sharing some costs. The study concluded that each institution should retain its specialized mandate on substantive matters, but consider sharing premises and managing some functions in common, such as a website and complaints database.³¹

Merging existing institutions

A number of countries have considered reorganizing and/or merging their existing human rights institutions, an impulse often arising out of a desire to rationalize administration and cut costs. The issue also comes up when a new specialized institution is created and concerns are raised about the proliferation

²⁸ Art. 36 of the Loi organique No. 2011-333 du 29 mars 2011 relative au Défenseur des droits (France).

²⁹ Hodgkin, R. and P. Newell (2010). *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 Survey 2010*, Strasbourg: Council of Europe and European Network of Ombudspersons for Children.

³⁰ *Ibid.*, 17.

³¹ Carver, Dvornik and Redžepagić (2010), *op. cit.*, 56.

of this type of institution.³² Political considerations can also prompt discussion of institutional merger.

Merging pre-existing institutions is complex. Benefits (e.g., cost savings) need to be balanced with the risks (e.g., compromising advances made to date or the uncertainty of added value). Attempts to merge institutions have occurred in Croatia, France, Ireland, Scotland (United Kingdom) and Sweden. In France, the decision was made to proceed with the merger while other countries opted to maintain a separate child rights institution.

In France, a law was adopted in 2011 leading to the merger of some independent institutions into a single Défenseur des droits. The institutions merged included the general ombudsman, the ombudsperson for children, the High Authority Against Discrimination and the National Commission on Ethics and Security. While a combination of budgetary, rationalization and political factors swayed the decision in favour of the merger, advocacy efforts by child rights advocates³³ and others³⁴ led to the amendment of the initial proposal and the inclusion of an identifiable position of Défenseur adjoint aux Droits des Enfants with a child-specific mandate based on the Convention on the Rights of the Child (CRC).³⁵

In Sweden, an Equality Ombudsman created by the Discrimination Act in 2008 replaced four specialized anti-discrimination ombudsmen.³⁶ The proposal to include the Children's Ombudsman was dropped, mainly because the Discrimination Act does not specifically extend to children and young people, and because the CRC has a broader scope. Moreover, unlike the anti-discrimination institution, the country's Children's Ombudsman does not handle individual cases.³⁷

³² Carver (2011), op. cit., 1.

³³ United Nations Children's Fund-France in particular took a strong leadership role in this process. See: <http://www.unicef.fr/contenu/tags/defenseur-des-droits>.

³⁴ See, for example, Commission Nationale Consultative des Droits de l'Homme (2010). 'Avis sur le Défenseur des droits' [Opinion on the Human Rights Defender], 4 February 2010, 6. Available at: <http://www.cncdh.fr/fr/publications/avis-sur-le-defenseur-des-droits> (France).

³⁵ Loi organique No. 2011-333 du 29 mars 2011 relative au Défenseur des droits (France).

³⁶ Carver (2011), op. cit., 6.

³⁷ Hodgkin and Newell (2010), op. cit., 41.

7

Child Participation

To do this job I need to hear what children and young people have to say.

Emily Logan, Ireland's first Ombudsman for Children, 2007

The Convention on the Rights of the Child (CRC) recognizes that children have the right to express their views with due regard to their age and maturity.¹ 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.² The establishment of independent human rights institutions for children is a key way for states to fulfil their core obligations with respect to children's right to participate and to help fill the gap in child participation so common in many countries.³ Independent human rights institutions for children have a unique role in promoting and modelling the realization of the right to be heard. These institutions encourage and model child participation in their own work and seek to cultivate child involvement in society at large.

Children's participation in decisions that affect them is beneficial to both children and society. It helps strengthen children's self-esteem and builds their capacity to contribute. It is a key that can unlock the door to a more engaged youth body and adult citizenry. Children's involvement in the work of independent human rights institutions ensures that decisions are both relevant to children's concerns and informed by their views and experiences. Participation is also a critical channel for accountability of decision-makers at the local and national level. Finally, child participation, by encouraging children to speak out, is a child protection mechanism that provides the opportunity to bring to the fore experiences of abuse, violence and exploitation.⁴ It supports resilience.

Child participation is not merely an event; it is a process in which children become better able to express their views and take a stance on issues that affect

¹ United Nations Convention on the Rights of the Child, adopted by UN General Assembly Resolution 44/25 of 20 November 1989.

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

³ *Ibid.*, paras. 48–49.

⁴ See Lansdown, G. (2011). *Every Child's Right to be Heard: A resource guide on the UN Committee on the Rights of the Child General Comment No. 12*. London: Save the Children UK, 5–9.

them. Cultivating child participation is an activity with no endpoint; it must be renewed from generation to generation.⁵

Yet child participation remains a challenge in many countries. Children often have limited direct access to state institutions to express their views and participate in either individual or policy-level decision-making. In schools, in care institutions and sometimes in the family, a child may have few opportunities to be heard. While the right to be heard applies to children at all stages, from early childhood to adolescence, a major challenge in practice has been fostering opportunities for participation in line with the evolving capacities of the child.

Although child participation is a crucial aspect of institutions' work and a major component of institutional effectiveness, it has proved extremely challenging for many of the institutions reviewed in this study. Engaging with children requires specific skills, resources and commitment. Many institutions, however, are finding ways to ensure direct interaction with children. This is an area where since the 1990s institutions across all regions have been progressively developing their activities.

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 to report on it to decision-makers. Inclusion of child participation in the legislative mandate shows that the authority that established the institution had a clear vision of its role as a spokesperson for children. 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;
- a requirement to establish specific structures for consulting 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 regularly, such as youth advisory bodies, focus groups, child ambassadors and child ombudspersons, and ongoing website forums. All of these mechanisms can build participants' capacity to express their views and engage in policy dialogue. They tend to be

⁵ Lansdown, G. (2001). 'Independent Institutions: Protecting children's rights', *Innocenti Digest*, No. 8. Florence: UNICEF Innocenti Research Centre, 9.

fairly structured and may not necessarily involve large numbers of children. Youth councils – usually comprising around a dozen adolescents from various walks of life – in particular have increasingly been established 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 arrive at informed opinions and to lead.

The other type of involvement is more 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 in obtaining the views of a large number of children, more than permanent mechanisms can reach, but may contribute in lesser ways to building individual children’s capacities. If conducted with improper methodology, ad hoc methods run the risk of being tokenistic.

Children involved in the work of independent institutions are typically selected by the office in order to gather the views of children in different types of situations. They are not elected by their peers. Children are considered experts of their own condition – and not spokespersons for their peers. ‘Representative’ in this context is therefore a way of ensuring diversity and adequately reflecting the child community. As pointed out by the Ombudsman for Children in Ireland: “We are clear with the young people that they are not expected to represent the views of all young people in Ireland but are there representing their own views.”⁶

Our research shows that the nature and substance of children’s participation spans many areas, ranging from recruitment of the head of an institution, to communications, research, and monitoring and evaluation, via office organization and logistics.

Involving children in the appointment of the head of an office, itself often perceived as a political process involving primarily the executive and/or legislative branch, can help depoliticize it. Such child involvement can strengthen the independence of the institution and its staff. It also reinforces the institution’s accountability to its main constituency – children. So far, in only a few places have children participated in the recruitment of their ombudsperson or commissioner or in the hiring of office staff. Children have been involved in Cyprus and in New South Wales (Australia). All permanent staff of the office of the Children’s Commissioner for England are recruited with the involvement of children and young people.⁷ In Ireland, the appointment of the Ombudsman for Children involved children throughout the process.

⁶ Ombudsman for Children’s Office (2008). *Annual Report 2008*, Dublin: Ombudsman for Children’s Office, 50.

⁷ *11 Million Annual Report 2008–2009*, 7. Available at: http://www.childrenscommissioner.gov.uk/content/publications/content_376.

Children have also participated in the design and organization of ombudsperson offices, helping make the institutions reachable, welcoming and appropriate to children. In Ireland, for example, children were involved in making the office space a more colourful and friendly place. The office features an activity room for children, as well as a small amphitheatre where groups of children can meet office staff.

Some independent human rights institutions for children have involved them in the design of communication materials aimed at children, such as child-friendly publications, websites aimed at various age groups, and logos. In Malta, about 250 children aged 4–15 years were consulted by the Office of the Commissioner for Children regarding the design of its new website.⁸ In 2008 the Office organized a competition for the design of a mascot in order to promote children's rights to children.⁹ The Flemish Children's Rights Commissioner (Belgium) has involved young people in designing and producing a television programme to inform children about their rights and the work of the Commissioner.¹⁰

Children are also involved in institutions' work as researchers or advocates and trainers in child rights. Child participation in research¹¹ enables institutions to better understand the situation of children in specific circumstances and ensure that these children's views are taken into consideration. In 2009, the Ombudsman for Children in Ireland, for example, conducted research with 35 separated children – children outside their country of origin and separated from their parents or caregivers – living in the city of Dublin. The research team included one adult and two young people, both of whom were formerly separated children.¹² In addition to contributing to the study, participants issued a publication telling their stories and compiled a handbook for those seeking to help separated children.

In El Salvador, the Procuraduría para la Defensa de los Derechos Humanos has set up several Unidades de Difusión Juvenil de Derechos Humanos. These juvenile dissemination units for human rights comprise approximately 300 young volunteers aged 15–25 years and are based in the local offices of the Procuraduría. The activities of the units have evolved from focusing on human rights promotion to monitoring state action.¹³ In 2008, the Afghanistan Independent Human

8 Office of the Commissioner for Children (2010). *Celebrating 20 Years of the UN Convention on the Rights of the Child: Annual report 2009*, Santa Venera, Malta: Office of the Commissioner for Children, 22.

9 Office of the Commissioner for Children (2009). *Children Must be Heard: Annual report 2008*, Santa Venera, Malta: Office of the Commissioner for Children, 9.

10 Hodgkin, R. and P. Newell (2008). *Child Participation and Children's Ombudsman Institutions within the European Union: Preliminary report*, Council of Europe and European Network of Ombudspersons for Children, 16.

11 Research activities involving children need to be carefully planned and special precautions taken to guarantee that children are participating voluntarily, on the basis of confidentiality, and are not put at risk.

12 Charles, K. (2009). *Separated Children Living in Ireland: A report by the Ombudsman for Children's Office*, Dublin: Ombudsman for Children's Office.

13 Procuraduría para la Defensa de los Derechos Humanos (2011). *Annual Report 2010–2011*, PDDH, 234.

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.¹⁴

While most institutions included in this review have not undertaken an in-depth review of their mandate and work (see Chapter 4), in one notable exception such a review involved extensive child participation. From 2005 to 2008, the Child Commissioner in Wales looked at children’s awareness of their rights and of the work of the Commissioner. From the outset, the project employed 15 young researchers aged 12–20 years who provided advice on the study methodology and the design of child-friendly communication materials. About 2,500 girls and boys aged 7–16 years were consulted in the evaluation process through a school-based survey.¹⁵

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, especially the most marginalized, through proactive, age-appropriate outreach, and maintaining child-accessible ways for children to reach the institution using their own initiative. Accessibility is the key to fostering child participation and enables institutions to fulfil their institutional and ethical mandate. It is far more than an issue of location, although this is, of course, a part of it.

An institution cannot be defined as accessible to children only by virtue of opening its office to them. Its staff need to go out to children, have the ability to communicate with them and be able to hear what they have to say.¹⁶ While there are many challenges, geographic, legal and practical, gaining access to children – and being accessible to them – is a prerequisite for children’s participation in the life of the independent institution.

This study has found that relatively few independent human rights institutions for children have mandates that require their accessibility to children (although some feature this as part of their complaint mechanism). 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 (e.g., child helplines), the still limited visibility of institutions among children, and inappropriate or relatively inaccessible complaint mechanisms.

¹⁴ Afghanistan Independent Human Rights Commission (2009). *Annual Report: January 1–December 31 2008*, Kabul: AIHRC, 27.

¹⁵ Thomas, N. et al. (2010). ‘Evaluating the Children’s Commissioner for Wales: Report of a participatory research study’, *The International Journal of Children’s Rights*, 18 (1):19–52.

¹⁶ UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, para. 15.

The overwhelming majority of institutions whose founding legislation has provisions on 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, which clearly requires the ability to talk directly to children. Accessibility is featured in particular in the legislation of many child rights institutions located in common-law countries: Australia, Canada, Jamaica, New Zealand, the United Kingdom and the United States of America.

In Europe, less than one third of institutions responding to our survey were subject to laws mandating that they be accessible to children.¹⁷ Among institutions in Latin America and the Caribbean, the Office of the Children's Advocate in Jamaica is the only one with legislation stating that it must ensure that children are aware of the Office and of ways to communicate with it.¹⁸ In this region, though, overarching child participation provisions do generally exist, particularly in child protection laws that typically provide independent human rights institutions for children with their mandate.¹⁹

Awareness

Awareness is the first step to access, and institutions everywhere 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 internet and social networks. In order to increase its visibility, during 2007 and 2008 the Office of the Children's Advocate in Jamaica distributed 10,000 brochures and pamphlets on its role and on child rights and child abuse. The Office also contracted the Jamaican Information Service to develop three radio announcements and one television spot to educate children and adults about their rights.²⁰

Since its establishment in 2006, the Children's Desk of the Commission for Human Rights and Good Governance in the United Republic of Tanzania has campaigned, using a combination of office visits by children, media spots and publications, to make its services known to the public and other stakeholders.²¹ In Greece, staff from the office of the children's ombudsman regularly visit and speak to children in schools, talk to them about their rights and the role of the office, gather their views, and disseminate information.

¹⁷ These include the four children's commissioners in the United Kingdom, the Moscow ombudsman for children in the Russian Federation, the ombudsman for children in Upper Austria and the Flemish Office of the Children's Commissioner in Belgium.

¹⁸ Art. 11 (c) i of The Child Care and Protection Act (Jamaica).

¹⁹ For more information on legislation and the child's right to be heard, see United Nations Children's Fund (2007). *Law Reform and Implementation of the Convention on the Rights of the Child*, Florence: UNICEF Innocenti Research Centre, 28–31.

²⁰ Office of the Children's Advocate [2008]. *Annual Report: 2007–2008 Fiscal year*, Kingston: Office of the Children's Advocate, 26.

²¹ Commission for Human Rights and Good Governance (2009). *Children's Desk: Report for the CRC Committee Members and Rapporteurs for the Optional Protocols*, Dar es Salaam: CHRAGG, 6.

Communication strategies, particularly in high-income countries, also include child-friendly websites, online forums and the use of social networking tools. The Ombudsman for Children in Norway has Facebook and Twitter accounts. The Children's Commissioners in England and Scotland (United Kingdom) have set up YouTube channels to advertise their activities.

Gauging the impact of these awareness-raising efforts is difficult because there have been very few assessments of children's knowledge of independent institutions. The few that have been carried out point to low awareness of the existence and role of the institution in question. An evaluation of the Children's Commissioner for Wales, for example, found that only a small proportion of children aged 7–16 years (3 to 21 per cent, depending on age group) had heard of the Children's Commissioner.²² 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 Enfants²³ suggests that the ombudsperson institution is not well known to the public, let alone children who would usually obtain such information from their parents or teachers.

Other stakeholders, including public institutions, non-governmental organizations (NGOs) and the media, can help make child rights institutions known to children. The UN Committee on the Rights of the Child (CRC Committee), for its part, encourages states to include information on contacting such institutions in their strategies for disseminating Convention information.²⁴ One finding of this review is that school curricula seldom include references to independent child rights 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. This can present a challenge, particularly when an institution is located in a capital city or main provincial town, far from where many children are living. This particular challenge is shared by institutions working in very diverse contexts and regions. For example, in 2007 the Défenseure des Enfants in France (later folded into a broader Défenseur des Droits) identified a lack of accessibility beyond the capital city²⁵ and subsequently appointed local representatives of the institution.

²² Thomas et al. (2010), *op. cit.*, 33.

²³ Survey conducted by TNS Sofres on 24 and 27 September 2010 with a representative sample of 1,000 persons aged 18 and above. The survey was conducted on behalf of the stand-alone institution, before the merging of the Défenseur des Enfants with the broad-based Défenseur des Droits.

²⁴ UN Committee on the Rights of the Child (2003). General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November, para. 67.

²⁵ La Défenseure des enfants [2008], *Rapport d'activité 2008*, 2. Available at: <http://www.ladocumentationfrancaise.fr/rapports-publics/084000715/index.shtml>.

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 844 local Defensorías del Niño y del Adolescente, which collectively dealt with more than 130,000 cases in 2010.²⁶

Not surprisingly evidence shows that decentralization of offices has an impact on an institution's accessibility. For institutions that began as a single office in a major city, establishing a physical presence in additional locations has often had a clear and immediate impact on the number of complaints received.²⁷

However, even where there is an extensive network of local branches, staff need to get out of the office in order to visit remoter areas or populations less likely to put themselves forward and make complaints. It is essential to proactively reach out to children who may otherwise be marginalized. In 2006, for example, the CRC Committee criticized the lack of access experienced by children in rural areas of Colombia, where high proportions of children are Afro-Colombian, indigenous or displaced, despite the existence of branches of the Defensoría del Pueblo in all 32 departments of the country.²⁸ Concern has also been expressed about the access of rural communities to the Malawi Human Rights Commission, in spite of the establishment of local offices.²⁹

Virtually all institutions indicate in their official reports that staff undertake field trips to meet children and raise awareness of their institution. In 2009, the Comisionado Nacional de los Derechos Humanos in Honduras, for example, set up mobile units to raise public awareness of its existence, collect complaints and inform the public about pending cases and the outcome of investigations.³⁰ In countries affected by armed conflict, staff travel has been used to enable independent institutions to assess the situation of children and draw attention to 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.³¹

²⁶ Ministry of Women and Social Development. 'Directorio de Defensorías del Niño y el Adolescente Registradas' See: Línea de acción 4, available at: http://www.mimp.gob.pe/index.php?option=com_content&view=article&id=149:logros-dgna-2010&catid=72:dgna-inicio.

²⁷ In contexts as diverse as Croatia, the Occupied Palestinian Territory and Uganda, independent institutions have reported an increase in individual complaints following the opening of local branches.

²⁸ Concluding Observations of the CRC Committee on Colombia, CRC/C/COL/CO/3, 8 June 2006, para. 18.

²⁹ Patel, N. (2009). 'Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: The Malawi Human Rights Commission and the Office of the Ombudsman', *EISA Research Report*, No. 46, Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 18.

³⁰ Comisionado Nacional de los Derechos Humanos [2009]. *Annual Report 2009*, CONADEH 14.

³¹ Uganda Human Rights Commission (2004). *7th Annual Report (2004)*, Kampala: UHRC, 110.

Independent human rights institutions for children can also rely on civil society organizations dispersed around a country to channel complaints and inform the public about the institution. The National Centre for Human Rights in Jordan reports on cases of child rights violations collected and addressed by a network of civil society organizations. These cases are actually more numerous than those reaching the institution directly.³²

However, reporting by partners often requires they have significant capacity and skills and it can also create questions of institutional independence from the civil society organizations that an independent institution is also mandated to monitor. In countries where resources are limited, such a use of the network can nevertheless provide a means to ensure that complaints and issues reach the independent institution at the national level.

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 CRC. 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 attending school, children from minority groups and indigenous peoples, and those with disabilities, among others.

The above 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, who is out of school, may be more marginalized than her brother who is 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.

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.

Reaching out to all children means hearing from children in all age groups. Various studies, including this one, have found the lack of involvement of younger children a significant shortcoming of child participation mechanisms.³³ Most participatory

³² National Centre for Human Rights (2009). *State of Human Rights in the Hashemite Kingdom of Jordan (2008): 5th Annual Human Rights Report*, Amman: National Centre for Human Rights, para. 199.

³³ Hodgkin and Newell (2008), op. cit., 20.

structures studied include adolescents; some reach out to children as young as 7 or 8 years old, but this is unusual.³⁴ Younger children can provide important and unique insights into their own condition. By capturing their views and experiences, institutions can address issues affecting them more effectively. However, involving young children requires age-appropriate methodologies and specialized skills. Only in very few cases has this been attempted: the ombudsperson for children in Cyprus, for example, uses specially adapted educational programmes to explain children's rights to 4-year-olds who visit the office.³⁵ But, overall, opportunities for pre-school and primary-school aged children to contribute to the work of independent institutions remain nearly non-existent.

The CRC committee has called for particular efforts to reach the most marginalized and disadvantaged children.³⁶ However, creating institutional accessibility to marginalized and excluded children is by definition difficult. Our review of existing practices shows various approaches to reach such children. Some institutions promote their accessibility by publishing materials, including websites, in various languages. The website of the Defensoría del Pueblo in Peru is available also in Quechua and contains information in this indigenous language.³⁷ The Children's Commissioner for Wales (United Kingdom) includes on its website background notes on the office and its mandate translated into 10 languages of immigrant communities.³⁸ Although limited data are available on staff composition, anecdotal evidence suggests that some institutions have staff from minority or indigenous groups as part of a conscious effort to break down barriers to reaching these groups.³⁹

Being accessible to children with disabilities makes an institution's advocacy efforts on behalf of children with disabilities both credible and legitimate. Accessibility encompasses physical accessibility as well as the use of appropriate methods to communicate with children with disabilities and convey their concerns. Information relating to the physical accessibility of institutions to children with disabilities is

³⁴ For more information on how to promote young children's participation, see G. Lansdown (2005). *Can You Hear Me? The right of young children to participate in decisions affecting them*, Bernard Van Leer Foundation.

³⁵ Commissioner for Children's Rights (2011). *Summary of Annual Activities*. Available at: http://www.crin.org/docs/FileManager/enoc/2011_Annual_Update_Cyprus.pdf.

³⁶ UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 15.

³⁷ See: <http://www.defensoria.gob.pe/quechua.php> (accessed 28 November 2012).

³⁸ See: <http://www.childcom.org.uk/en/about-us/> (accessed 23 April 2010).

³⁹ Ted Hughes, QC, writes "the Representative is a First Nations person from the Muskeg Lake Cree Nation. The Associate Deputy Representative (responsible for Advocacy, Aboriginal and Community Relations) is a member of the Nisga'a Nation. Two other staff members are of Aboriginal ancestry. A number of temporary or co-op staff members have been Aboriginal, and in some cases Aboriginal candidates have been specifically recruited for these positions. Typically, RCY [Representative for Children and Youth] postings for permanent and short-term positions (at every level of the organization) include the phrase 'preference may be given to applicants who are of Aboriginal descent'. This encourages Aboriginal candidates to apply and allows RCY to take this into consideration when evaluating applicants." (see Representative of Children and Youth (2010). *Final Progress Report on the Implementation of the Recommendations of the BC Children and Youth Review ("Hughes Review")*, 38–39. Available at: <http://www.rcybc.ca/Images/PDFs/Reports/Hughes%20Progress%20Rpt%202010%20FINAL.pdf>).

generally lacking. A number of institutions report using appropriate methods to communicate with children with disabilities, for example, by adapting their websites, offering messages in sign languages and visiting children with disabilities in their homes or schools to seek their views.

Scotland's Commissioner for Children and Young People, for example, offers several messages to children in English sign language on its website.⁴⁰ 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 students, they feel more comfortable raising concerns with staff from the Advocate's office in person.⁴¹ The ability of independent human rights institutions for children to communicate with children who have cognitive disabilities remains little explored, however.

As in some other areas of work, a significant barrier to building the participation of children with disabilities is the lack of knowledge and specialized skills in ombudspersons' offices. In broad-based institutions with a department dealing with persons with disabilities, as in Panama and Peru, opportunities for accessing knowledge and skills exist and can be utilized.

The CRC Committee has also stipulated that independent institutions should have access to children in alternative care and to all institutions that work with children.⁴² The specific needs of this group of children are also articulated in the United Nations Guidelines for the Alternative Care of Children, which recommend that independent human rights institutions for children advise on draft legislation and policies to improve the situation of children in alternative care and ensure that they are in line with major research findings in this area.⁴³ Reaching out to children in alternative care 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,

⁴⁰ See: <http://www.sscyp.org.ukwww.sscyp.org.uk>.

⁴¹ Office of the Provincial Advocate for Children and Youth [2011]. *Annual Report 2010–2011*, Ontario: Office of the Provincial Advocate for Children and Youth, 19.

⁴² UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 15. See also the provisions of the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), adopted and proclaimed by UN General Assembly Resolution 45/112 of 14 December 1990, para. 57 and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by UN General Assembly Resolution 45/113 of 14 December 1990, para. 77.

⁴³ United Nations Guidelines on the Alternative Care of Children, adopted by General Assembly Resolution 64/142 of 24 February 2010, para. 130.

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. In 2010/11, over 41,000 visits to 7,600 children and young people in alternative care and detention were made.⁴⁴ As a result of this active engagement, a large number of complaints reached the Commission.⁴⁵ Nearly 90 per cent of the issues identified during these visits were resolved locally within three months.⁴⁶

Accessibility to children in alternative care and other institutions presents a number of challenges, especially in terms of freedom of access. For monitoring to be effective, child rights institutions must have unimpeded and unannounced access to places where children spend time. In practice, a number of barriers to this often exist. Several institutions, for example the Palestinian Independent Commission for Human Rights,⁴⁷ have complained that staff have been prevented from accessing detention centres and undertaking unannounced visits.

Legal limitations can make it difficult for independent institutions to visit children in closed private settings (e.g., children who work in homes as domestic servants or in factories).⁴⁸ In only a few countries does legislation give 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.⁴⁹ Similarly, the Defensoría del Pueblo in Colombia can visit any public or private entity to investigate a complaint or prevent a human rights violation.⁵⁰ These two cases are the exception rather than the rule among the institutions reviewed. While on the one hand unrestricted access is more likely to bring the child's

⁴⁴ Commission for Children and Young People and Child Guardian (2011). *Annual Report for the Commission for Children and Young People and Child Guardian 2010–2011*, Brisbane: CCYPCG, 52.

⁴⁵ Information provided by the Commission for Children and Young People and Child Guardian, Brisbane, Australia, 16 April 2010.

⁴⁶ Commission for Children and Young People and Child Guardian (2011), op. cit., 52.

⁴⁷ Independent Commission for Human Rights Commission [2007]. *Annual Report 2007*, Ramallah: ICHR, 259.

⁴⁸ Many legal systems have privacy provisions that prevent public institutions from entering private premises unless they have a judicial mandate.

⁴⁹ Art. 7. of The Ombudsperson for Children Act, Act 41 of 2003 (Mauritius) states: "(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."

⁵⁰ Art. 28. of Ley 24 of 15 December 1992 (Colombia).

interests to the fore, it does raise questions about the right to privacy and non-interference of a public institution with the private sphere. However, institutions in several countries (Bolivia, Panama, the Philippines and Uganda) do have the power to monitor private bodies that deliver a public service. The National Commission for the Protection of Child Rights in India can inspect homes run by civil society organizations.⁵¹

Promoting child participation in society

Independent human rights institutions for children are uniquely positioned to promote a culture of child participation in broader society and the community to ensure that children's voices resonate across the social and political landscape. Institutions have the opportunity to contribute to challenging and dismantling legal, political, economic, social and cultural barriers that may curtail children's right to be heard and their participation in all matters affecting them.⁵²

This is a difficult task. One important way to promote child participation in broader society is for child rights institutions to 'lead by example': to be a credible advocate for child participation, institutions must embody such participation in their own work and communicate extensively on the value it brings. As noted by the Commissioner for Children in Tasmania (Australia): "The new Child Consultative Council is designed to build participation and consultation into the fabric of the Commissioner for Children's work and to encourage Government to build such collaborative work into the fabric of Government policy formation and evaluation."⁵³

Independent institutions promote the child's right to be heard throughout their many activities: monitoring, research, advocacy, handling complaints, carrying out investigations and advising. They advocate including mechanisms and clauses in legislation mandating that children's views be listened to. For example, in response to a 2000 study by the Children's Ombudsman of Sweden pointing out deficiencies in handling asylum cases involving children – in particular with respect to special safeguards, due consideration of children's best interests, and children's right to be heard – the Swedish Migration Board adopted new guidelines for questioning children and on what information should be sought from them.⁵⁴

⁵¹ Art. 13 (1) (i) of The Commissions for Protection of Child Rights Act, Law No. 4 of 2006 (India).

⁵² UN Committee on the Rights of the Child (2009). General Comment No. 12, op. cit., para. 135.

⁵³ Commissioner for Children [2009]. *Annual Report 2009*, Hobart, Tasmania: Commissioner for Children, 10.

⁵⁴ O'Donnell, D. (2009). 'The Right of Children to be Heard: Children's right to have their views taken into account and to participate in legal and administrative proceedings', *Innocenti Working Paper 2009-04*, Florence: UNICEF Innocenti Research Centre, 30.

It is especially important for children involved in judicial and administrative proceedings to participate and have their voices heard. Yet this involves legislative provisions requiring that children's views be heard – along with the child-appropriate mechanisms to enable it to happen. Various institutions have tackled these difficult areas. In 2007, the Ombuds-committee for the Rights of the Child in Luxembourg, for example, issued advice on a draft divorce law recommending that it include details on how children can formally be heard in proceedings, and that children be assisted by a children's lawyer.⁵⁵

In the context of the elaboration of the 2007 interim Constitution the Nepalese National Human Rights Commission helped organize five regional workshops to give children a voice in the drafting process. Key topics included a guarantee of child rights in the Constitution's preamble, compulsory participation of children in matters affecting them, declaring schools as peace zones, making education free up to at least secondary level and granting people over the age of 16 voting rights.⁵⁶ In a similar vein, the Defensoría del Pueblo in Bolivia contributed to supporting children's involvement in the work of the Constituent Assembly, resulting in the recognition of children's rights in the 2009 Constitution.⁵⁷

In Finland, after gathering the views of Sami children in Nordic countries, the Ombudsman for Children promoted their right to participate in the Sami Parliament through the establishment of a youth council.⁵⁸ The CRC Committee recommends that independent institutions advocate for meaningful participation of child rights NGOs, especially those that include children, in the development of legislation.⁵⁹

Independent human rights institutions for children have often supported processes aimed at involving children in school life. 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.⁶⁰ The initiative was endorsed by the main teaching

⁵⁵ Ombuds-committee for the Rights of the Child (2007). 'Avis sur le projet de loi sur la réforme du divorce', 4 December 2007, 2.

⁵⁶ National Human Rights Commission (2009). *Status of Child Rights in Nepal: Annual report 2008*, Kathmandu: National Human Rights Commission, 43.

⁵⁷ Defensoría del Pueblo de la Republica de Bolivia (2009). 'XI Informe al Honorable Congreso Nacional' (report to the National Congress), November 2009, 154.

⁵⁸ Inari (2008). 'Ombudsman for Children Wants to See More Opportunities for Participation for Sami Children', press release, 21 April.

⁵⁹ UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 19 (k).

⁶⁰ Northern Ireland Commissioner for Children and Young People (2011). *Annual Report and Accounts: For the year ended 31 March 2011*, Belfast: NICCY, 16.

unions and led to a commitment from the Department of Education to set up children's councils in all schools in Northern Ireland.

In a number of countries in Europe, institutions have campaigned for lowering the voting age (usually set at 18 years) to give voting rights to children. Institutions in Austria, Flanders (Belgium) and Norway have all advocated lowering the voting age, with success 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. While lowering the voting age may be controversial in many countries, advocacy in this area has the merit of highlighting that children are a social group with no voice in political processes. It also challenges common ideas on children's capacity to contribute to decision-making.

Indeed, in many places independent institutions for children have become a source of expertise and support to governments and other stakeholders on creating opportunities for children's participation. Several offices have issued guides and handbooks on child participation. The New South Wales Commission for Children and Young People (Australia) has developed a 'Participation Kit', which provides organizations with practical advice on involving children and young people in activities, events and decision-making issues affecting them.⁶¹ Child rights institutions in South Australia and Western Australia have issued, respectively, a 'Guide to Good Practice'⁶² and guidelines for government and other organizations to encourage the participation of children and young people in decisions that affect them.

⁶¹ Extract from website, New South Wales Commission for Children and Young People, Australia. <http://www.kids.nsw.gov.au/>

⁶² Office of the Guardian for Children and Young People (2009). *Guide to Good Practice: Participation of children and young people in decisions made about their care*, Adelaide: Government of South Australia; Commissioner for Children and Young People (2009), *Involving Children and Young People: Participation Guidelines*. Available at www.cyp.wa.gov.au/files/



Practical Question: How Do Independent Human Rights Institutions for Children 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. The ability of an institution to respond to local contexts, provide adequate information to marginalized communities and ensure access to its services by all children in part determines whether it is effective in carrying out its mandate. With many states having federal structures or engaged in decentralization processes, having a presence at the level of decentralized decision-making is important.

Independent institutions have increasingly expanded their local level work, often citing as a motivating factor the need for children's greater access to their workings.¹ The UN Committee on the Rights of the Child (CRC Committee) also emphasizes the importance of institutional accessibility to all children, and calls on institutions to be proactive in this regard – reaching out in particular to vulnerable and disadvantaged children.²

The national–local composition and structure of child rights institutions largely reflect the national political structure prevailing at the time of their establishment. In centralized systems of governance, independent human rights institutions for children tend to have first been established at the national level, with jurisdiction over the country as a whole. In non-centralized systems, most institutions were first established at the sub-national level with jurisdiction limited to a specific city, state, province or region. Irrespective of their origins, however, almost all institutions have tended to evolve over time in accordance with resource allocation, public support and political will.

The more localized and autonomous an institution becomes, the greater its complexity and the challenges of coordination. Other challenges include discrepancies in mandates and resources, and possible conflicts of jurisdiction; these have usually been addressed either through formal means mandated by

¹ La Défenseure des enfants [2008], Rapport d'activité 2008, 2. Available at: <http://www.ladocumentationfrancaise.fr/rapports-publics/084000715/index.shtml>; Republic of Croatia, Ombudsman for Children, Summary Report about the Work of the Ombudsman for Children for 2007. Available at: <http://www.crin.org/docs/Summary%20Report%202007.pdf>

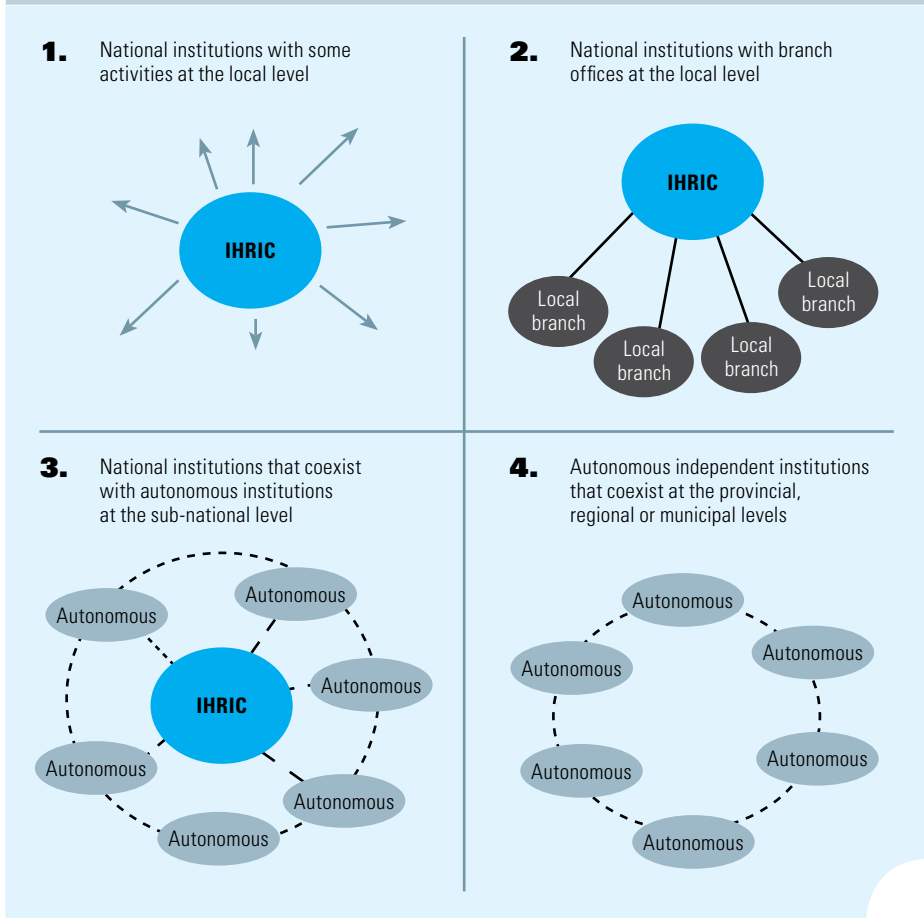
² UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, para. 15.

legislation or through less formal forms of cooperation, such as networking. Institutional presence at the local level must be matched by the ability to liaise and coordinate with other local rights bodies and with national structures where they exist.

Local–national structures generally fall into one of four categories (see Figure 8.1):

- national institutions with some activities at the local level;
- national institutions with branch offices at the local level;
- national institutions that coexist with autonomous institutions at the sub-national level;
- autonomous independent institutions that coexist at the provincial, regional or municipal levels.

Figure 8.1 The four categories of local–national structures for independent human rights institutions for children (IHRIC)



National institutions that perform some activities at the local level

Institutions comprising a single, central office which carries out work across a country 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.

The central location of the office provides ready access to government ministries and parliament, important for monitoring and advocacy. The main challenge, however, is ensuring a presence in local communities beyond the urban centre. Reaching out to children throughout the country requires frequent travel and partnership-building with other organizations to maintain an active presence throughout the country.

National institutions that have branch offices at the local level

Most national institutions with local branch offices started off as a single office in a capital or major city, and later created sub-offices across the country. The need for independent human rights institutions for children to establish a presence outside a single major city has been strongly encouraged by the CRC Committee as a way to ensure accessibility.

The presence of independent institutions with this type of structure is particularly strong in Latin America, where nearly all offices have a central headquarters and a number of regional or local branches.³ While opening branches can improve accessibility, limited resources may hinder the ability of the central institution to establish them, especially in remote areas, resulting in inequities in geographic coverage. This concern is often voiced by the CRC Committee.⁴

Where a child rights office is part of a broad-based human rights institution, child rights work at the local level can be undertaken immediately if branch offices are already in place, as in South Africa and the United Republic of Tanzania. In the case of the latter, the Commission for Human Rights and Good Governance

³ In Guatemala, for example, Juntas Municipales de Protección a la Niñez y la Adolescencia [Municipal Committees for the Protection of Children and Adolescents] are made up of individuals elected at the municipal level to monitor and respond to children's rights violations, under the supervision of the Procurador de los Derechos Humanos, of which the Defensor(a) de la Niñez [Children's Rights Defender] is a part. See: Defensoría de los Derechos de la Niñez y Juventud (2005). *Manual Juntas Municipales de Protección a la Niñez y Adolescencia*, Guatemala City: La Institución del Procurador de los Derechos Humanos, 2005.

⁴ Concluding Observations of the CRC Committee for Panama, CRC/C/15/Add. 233, 30 June 2004, para. 13; Concluding Observations of the CRC Committee for Croatia, CRC/C/15/Add. 243, 1 October 2004, paras. 13 & 14; Concluding Observations of the CRC Committee for Bolivia, CRC/C/15/Add.257, 11 February 2005, para. 13; Concluding Observations of the CRC Committee for Colombia, CRC/C/COL/CO/3, 8 June 2006, para. 18; Concluding Observations of the CRC Committee for Austria, CRC/C/OPSC/AUT/CO1, 22 October 2008, paras. 14 & 15.

established a Children’s Desk in 2006, operating out of the Commission’s main offices and in three of its zonal branch offices.⁵ In 2008, the CRC Committee recommended that Tanzania provide the resources necessary to ensure that the Commission be accessible to all children at both the local and regional level,⁶ advice that coincided with a shortcoming identified by the Commission regarding a lack of community awareness and limited resources for publicizing its work.⁷ Following its establishment, the Children’s Desk undertook to inform and educate the public about the work of the office and about children’s rights in general, and complaints began to be filed at the branch level.⁸

This type of structure can ensure a local presence for child rights institutions while providing an important channel for children’s participation in the work of the national office. In El Salvador, for example, young people are directly involved with the Procuraduría para la Defensa de los Derechos Humanos through its regional offices.⁹ It also enables the engagement of the national institution with local authorities, which furthers institutional accessibility, which can expand through partnerships with local communities and institutions and through communication across geographic areas.

Of significant concern is the ability of the central institution to establish enough branches across the country. Very often the number of branch offices is limited as a result of inadequate resources, resulting in discrepancies in geographic coverage in the country. The CRC Committee has called on states to provide an adequate and equitable distribution of resources to ensure that the independent human rights institution for children has a strong presence throughout the country.¹⁰ For example, the CRC Committee commended Bolivia, Colombia and Panama for establishing regional or local branches of their independent human rights institutions for children – but expressed regret that the number of local offices was not adequate to ensure full accessibility.¹¹

⁵ Commission for Human Rights and Good Governance (2009). *Children’s Desk: Report for the CRC Committee Members and Rapporteurs for the Optional Protocols*, Dar es Salaam: CHRAGG, 6.

⁶ Concluding Observations of the CRC Committee on the United Republic of Tanzania, CRC/C/OPAC/TZA/CO/1, 10 October 2008, paras. 14 & 15; Concluding Observations of the CRC Committee on the United Republic of Tanzania, CRC/C/OPSC/TZA/CO/1, 10 October 2008, paras. 18 & 19.

⁷ Mallya, E. T. (2009). ‘Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: Tanzania’s Commission for Human Rights and Good Governance’, *EISA Research Report*, No. 40, Johannesburg: Electoral Institute for Sustainable Democracy in Africa.

⁸ Commission for Human Rights and Good Governance (2009), op. cit.

⁹ Procuraduría para la Defensa de los Derechos Humanos (2011). *Annual Report 2010–2011*, PDDH, 234.

¹⁰ Concluding Observations of the CRC Committee for Austria, CRC/C/OPSC/AUT/CO/1, 22 October 2008, paras. 14 & 15; Concluding Observations of the CRC Committee for Colombia, CRC/C/COL/CO/3, 8 June 2006, para. 18; Concluding Observations of the CRC Committee for Bolivia, CRC/C/15/Add.257, 11 February 2005, para. 13; Concluding Observations of the CRC Committee for Croatia, CRC/C/15/Add. 243, 1 October 2004, paras. 13 & 14; Concluding Observations of the CRC Committee for Panama, CRC/C/15/Add. 233, 30 June 2004, para. 13.

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

An additional challenge is that presence in main cities – such as regional capitals – may not be sufficient in itself to ensure coverage of remote areas. A report on Malawi stated:

The [Malawi Human Rights Commission's] head office is in the capital city and regional offices are not yet fully operational. Even when they eventually become operational it cannot be assumed that the rural population will be able to access them unless the Commission initiates extra outreach measures using means such as mobile clinics, radio/TV programmes, and so on, but these would require funding to which the [Commission] does not currently have access.¹²

National institutions that coexist with autonomous institutions at the sub-national level

This institutional configuration is found most often in federal and highly decentralized countries where competencies are shared between sub-national 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 by different countries; for example, in Italy the national children's ombudsman is legally mandated to coordinate with regional ombudspersons,¹³ while in India cooperation between national and state Commissions for the Protection of Child Rights is informal.¹⁴

In Spain, independent human rights institutions for children are present in several autonomous communities. Because these local offices are freely established by local authorities, they can take various shapes and either be stand-alone¹⁵ or integrated into another sub-national human rights institution. There is also a national Defensor del Pueblo that does not have a child rights office. As

¹² Patel, N. (2009). 'Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: The Malawi Human Rights Commission and the Office of the Ombudsman', *EISA Research Report*, No. 46, Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 18.

¹³ Discussions on the creation of a national children's ombudsman (Garante dell'Infanzia) have sought to address dilemmas raised by the existence of sub-national institutions and decentralization in general. Currently, sub-national offices operate in each region and implement competencies allocated at the regional level. While 19 regions out of 21 have adopted a law instituting a children's ombudsman, to date only 10 have been appointed. Concerns have been expressed, including by the CRC Committee, at the disparities of mandate and resources among regional offices (author's notes, UNICEF-Italia meeting on a children's ombudsman, held in Rome, Italy, 16 December 2008). See also Concluding Observations of the CRC Committee on Italy, CRC/C/ITA/CO3-4, 31 October 2011.

¹⁴ The law does not provide for collaboration between the national and state offices, although this does take place. The National Commission for the Protection of Child Rights has actively monitored the status of children at the local level; it has received and recorded complaints and carried out investigations. In cases of specific violations of children's rights, follow-up has occurred on several different levels, including by the National Commission, by a state Commission for the Protection of Child Rights and by a state Human Rights Commission (see India's *Human Rights Report for 2009*).

¹⁵ See: http://www.defensordelmenor-and.es/opencms/opencms/DPA/portal/el_defensor/el_defensor_del_menor/.

a result, two systems of cooperation coexist. The broad-based offices at the local level benefit from a law formally detailing the nature and scope of coordination among institutions at the national and local levels.¹⁶ There is also an informal system of cooperation among ombudspersons for children. It is based on personal interest and is therefore largely dependent on the ombudspersons' willingness to collaborate.¹⁷

Autonomous independent institutions that coexist at the provincial, regional or municipal levels

Multiple autonomous institutions are also more common in federal and decentralized states, and examples include Austria, Belgium, Canada, the United Kingdom and the United States of America. A variation of this model, where autonomous institutions are created at the municipal or community level as a locally sponsored mechanism, has been adopted by Japan, Peru and the Philippines. A system without a central institution may face challenges when tackling issues that are national in scope, including connecting with national decision-makers. Strategies to address this include using networks of sub-national institutions for adopting common positions (as in Austria and Canada), or designating one sub-national 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 CRC Committee – to establish national or federal independent human rights institutions for children. This has happened in Australia, Italy and the Russian Federation, where national level institutions are now in place.¹⁸

All nine states in Austria have established an independent human rights institution for children. Rooted in federal legislation on child and family welfare, their mandates are similar.¹⁹ The offices work together through a coordinating body that includes non-governmental organizations (NGOs) and child advocates and adopt common positions. However, the CRC Committee has called on Austria to create a specific body that can coordinate the implementation of the Convention on the Rights of the Child (CRC) at the national level.²⁰

In Belgium, two ombudspersons for children operate in parallel to the organization of the country's political system, one serving the Flemish- and

¹⁶ Ley 36/1985, *Por la que se regulan las relaciones entre la institución del defensor del pueblo y las figuras similares en las distintas comunidades autónomas*, 6 November 1985 (Spain).

¹⁷ Ruggiero, R. (2008). *Ombudsman for Children in Federal and Regional States*, doctoral thesis, Università degli Studi del Molise, 145.

¹⁸ In Canada, similar proposals have been made but the national institution is yet to be established.

¹⁹ *Federal Law Gazette 7/1993* (Austria).

²⁰ Concluding Observations of the CRC Committee on Austria, CRC/C/15/Add. 251, 31 March 2005, paras. 10 & 11.

the other the French-speaking communities. In the absence of a federal ombudsperson for children and given the lack of legislative requirements for cooperation, collaboration between the two offices is informal and takes place in cases of common interest.²¹ Both institutions believe that the creation of an institution at the national level would help strengthen cooperation, address child rights violations falling under federal jurisdiction, and enable institutional links with the federal parliament and government.²² The same arguments have been put forward in Canada, where provincial child advocates, while organized into a network, face difficulties in dealing with issues under federal jurisdiction (in particular concerning indigenous children and migrant children) and in influencing national policies.²³

In the United Kingdom, the creation of children's commissioners in England, Northern Ireland, Scotland and Wales followed the wider devolution of political powers. Each commissioner deals with issues related to their geographic area. For issues that reach across the United Kingdom, the law gives formal responsibility to the Children's Commissioner for England.²⁴ However, a network of children's commissioners in the British Isles, including the United Kingdom and Ireland, also operates as an informal but important coordinating mechanism.

In addition, a number of cities have established an ombudsperson for children, which is a core element of a 'child-friendly city'. The child-friendly city is a system of local governance committed in its institutional structures, processes and policy-making to fulfilling children's rights.²⁵ The Kawanishi City Ombudsperson for Children's Human Rights in Japan, for example, was established by city ordinance in 1998. It investigates children's human rights in the city, acts as a third-party body to foster protection of child rights and redress for rights violations, provides recommendations and opinions to relevant city authorities, and asks such authorities to report on remedial action taken. There is currently no national independent human rights institution for children in Japan.²⁶

In the Philippines, local councils for the protection of children have been established at the barangay, municipal, city and provincial levels.²⁷ Their work has been instrumental in preparing the ground for collaboration between

²¹ Ruggiero (2008), op. cit., 105.

²² Ibid., 106.

²³ See Part II: Regional Overviews, Chapter 20: Australia, Canada, New Zealand and the United States of America; United Nations Children's Fund (2009). *Not There Yet: Canada's implementation of the general measures of implementation of the Convention on the Rights of the Child*, UNICEF Innocenti Research Centre and UNICEF-Canada, 45–50.

²⁴ Children Act 2004 (United Kingdom); see also Ruggiero (2008), op. cit., 151.

²⁵ United Nations Children's Fund (2004). *Building Child Friendly Cities: A framework for action*, Florence: UNICEF Innocenti Research Centre.

²⁶ The CRC Committee has noted with concern the absence of an independent nationwide system to monitor children's rights, while at the same time welcoming the establishment of ombudsmen at the local level. See Concluding Observations of the CRC Committee on Japan, CRC/C/15/Add.231, 26 February 2004, para. 14.

²⁷ Concluding Observations of the CRC Committee on the Philippines, CRC/C/PHL/CO/3-4, 22 October 2009, para. 13.

national and local institutions in the area of children's rights.²⁸ In Latin America, a number of countries have children's ombudsperson offices which operate at the municipal or community level. For example, the 600 Defensorías municipales del Niño y del Adolescencia (municipal child and adolescent defence centres) in Peru are appointed by the mayor and have ombudsperson functions within the municipality in relation to children's rights.²⁹

²⁸ See, for example, Commission on Human Rights (2005). Summary Outline for Action Programme on Child Labor: Advocacy on rights-based approach to development and child labor concerns in governance, and establishment and/or strengthening of Barangay human rights action centers (BHRACs) in selected ILO-IPEC target areas in Davao Region, Davao City: Commission on Human Rights.

²⁹ Ley No. 27337, Código de los niños y adolescentes, 2 August 2000 (Peru); see also Terreros, C and A. Tibblin (2003). *Putting Children's Rights on the Local Agenda: The experience of the Demuna model in Peru*, Save the Children Sweden.

9

Complaint Mechanisms

For rights to have meaning, effective remedies must be available to redress violations.

UN Committee on the Rights of the Child, General Comment No. 5

Effective remedies for the violation of human rights ensure that the violation stops and victims obtain assistance and redress. They require the existence of an accessible complaint mechanism and its ability to pursue appropriate action. Child rights violations can be the result of systemic problems or perpetrated by trusted persons, and they often go unnoticed.

Although judicial mechanisms exist in all countries, because of their special and often dependent status children often face significant challenges in pursuing remedies for violations of their rights. In the context of the protection of children from violence, for example, the lack of safe, trustworthy and effective complaint mechanisms is of great concern, especially for marginalized children who may be particularly at risk.¹ Furthermore, in many complaints brought before the institutions reviewed in this study there was no violation of national law per se – in fact it may have been the strict implementation of the law that led to an inequitable situation or a negative effect on the enjoyment of children’s rights. Herein lies an important value of the independent institution – it can take up problems that may fall outside the traditional remit of a country’s courts. The existence of child-accessible pathways to remedies for child rights violations in wider society remains limited.

Most (but not all) child rights institutions, whether stand-alone or integrated into broader human rights institutions, have a formal, mandated mechanism for receiving individual complaints related to children’s rights. The scope of the complaint mechanism depends on the breadth of child rights issues covered by

¹ The *World Report on Violence Against Children* concludes that “States should establish safe, well-publicized, confidential and accessible mechanisms for children, their representatives and others to report violence against children. All children, including those in care and justice institutions, should be aware of the existence of mechanisms of complaint.” (Pinheiro, P. S. (2006). *World Report on Violence Against Children*, United Nations Secretary-General’s Study on Violence Against Children, 21). See also: Joint Report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative on violence against children, submitted to the UN General Assembly pursuant to Human Rights Council Resolution 13/20, A/HRC/16/56, 7 March 2011, paras. 5 and 19.

each institution and the limitations set in its legislative mandate, particularly with respect to monitoring of private structures and military or security bodies.

The complaint mechanism is the route through which individual and collective child rights violations can be remedied. 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 (CRC). States parties are obliged to provide effective and child-sensitive means for children to have their complaints heard before competent bodies.² 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.³

The UN Committee on the Rights of the Child (CRC Committee) sees the complaint mechanism as a mandatory feature for independent human rights institutions for children.⁴

A complaint mechanism is a significant asset for an independent institution. Where attribution for progress in policy work may be elusive, addressing complaints enables institutions to demonstrate immediate and concrete improvements in children's lives through specific cases. It is a direct source of information for institutions, a window on the daily lives and challenges of individual children and on the experience of childhood within a country.

The extent to which an institution can receive and respond to complaints strengthens its capacity to carry out policy work, report on systemic violations, monitor ongoing challenges in the fulfilment of children's rights, and raise awareness about pressing issues facing children – all critical to institutional effectiveness and credibility. There is the dilemma, however, that institutions which gain public recognition of their effectiveness can in time become overwhelmed with individual complaints, reducing their capacity (in the typical context of limited resources) to work on broader policy and systemic issues.

Whether an institution receives high or low numbers of complaints, the nature of the complainant is a significant issue. Although the primary strength of

² UN Committee on the Rights of the Child (2003). General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November, para. 24.

³ United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), adopted and proclaimed by UN General Assembly Resolution 45/112 of 14 December 1990; UN Committee on the Rights of the Child (2007). General Comment No. 10: Children's rights in juvenile justice, CRC/C/GC/10, 9 February, para. 89; United Nations Guidelines for the Alternative Care of Children, adopted by UN General Assembly Resolution 64/142 of 24 February 2010, para. 130.

⁴ The CRC Committee states: "NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children ... They also have a duty to seek to ensure that children have effective remedies - independent advice, advocacy and complaints procedures - for any breaches of their rights." See Committee on the Rights of the Child (2002). General Comment No. 2: 'The role of independent national human rights institutions in the promotion and protection of the rights of the child', CRC/GC/2002/2, 15 November, para. 13.

child rights institutions is their direct accessibility to children (institutions do not require children to have legal, nor in most cases parental, authorization), this review has found that only a small proportion of complaints are directly submitted by children. This raises questions about how accessible the institutions really are. These issues are important to institutions that are struggling to balance offering an effective way to redress specific rights violations with addressing critical systemic issues and reaching out to the most marginalized children.

Handling of complaints within independent human rights institutions for children is expected to take on even greater importance when the third Optional Protocol to the CRC on a communications procedure, which was adopted in December 2011 and explicitly mentions the role of institutions, enters into force.⁵

Receiving complaints: Scope and jurisdiction

The ability to handle complaints concerning the full spectrum of children's rights rests on a broad mandate that makes explicit reference to the CRC and other international instruments, as well as strong domestic legislation that is in line with international standards on children's rights.

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.

There are many examples of action taken by child rights institutions in response to complaints, a few of which are given below. In Peru, the Defensoría del Pueblo intervened when the relevant authorities failed to act on 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.⁶ 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

⁵ Optional Protocol to the United Nations Convention on the Rights of the Child on a communications procedure, adopted by UN General Assembly Resolution A/RES/66/138 of 19 December 2011, preamble. The Optional Protocol enters into force three months following the tenth ratification.

⁶ Defensoría del Pueblo (2010). *El Decimotercer Informe Anual de la Defensoría del Pueblo: Enero–Diciembre 2009*, Lima: Defensoría del Pueblo, 167–168.

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.⁷

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.⁸ 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. The Office followed up on the case and observed the court proceedings on behalf of the child.⁹

With violations of individual's economic, social and cultural rights addressed through complaint mechanisms, independent institutions are significant actors in ensuring that all children's rights can be accepted for court review at the national level, and that states are living up to their commitment to the progressive realization of children's rights in all aspects of their lives.¹⁰ Education is a major area of intervention for institutions in all regions, with complaints often linked to availability of schools, violence within schools, and access to schools in general. In Zambia, for example, the parents of a student expelled from school appealed to the Human Rights Commission, whose investigation and recommendations led the Ministry of Education to request the school to reinstate the student.¹¹ In Costa Rica, the Defensoría de los Habitantes has dealt with a wide array of cases related to economic and social rights, ranging from securing access to potable water for families deprived of water because of lack of coverage by water utility services,¹² extending basic toddler immunization to cover additional diseases,¹³ through to acting on behalf of mothers failing to receive state benefits due to administrative errors.¹⁴

7 Ombudsperson for Children's Office [2010]. *Annual Report 2010*, Beau-Bassin: Ombudsperson for Children's Office, Chapter IX.

8 National Commission for Protection of Child Rights. 'Media and Communications' (webpage). <http://www.ncpcr.gov.in/NewsClippings/india%20news%2020%20sep%202011.jpg>.

9 Office of the Children's Advocate [2008]. *Annual Report: 2007–2008 Fiscal year*, Kingston: Office of the Children's Advocate, 30.

10 In reference to ensuring that the most marginalized peoples have access to human rights institutions, one scholar noted that "the ability and willingness of the institution to address economic, social and cultural rights is also a factor and our research suggests that institutions that address such rights are more likely to be seen as relevant and accessible to the public." See: Murray, R. (2007). 'National Human Rights Institutions: Criteria and factors for assessing their effectiveness', *Netherlands Quarterly of Human Rights*, 25 (2):189–220, 218. Further research in this area could shed light on the similarities and differences of domestic legal systems in considering cases of child rights violations under international law.

11 Human Rights Commission [2005]. 'HRC/C/042/2005 Lawrence Temfwe vs Chengelo School'. In *Annual Report 2005*, Human Rights Commission, 5. Available at: http://www.hrc.org.zm/media/2005_annual_report.pdf.

12 Defensoría de los Habitantes [2009]. *Annual Report 2008–2009*, Defensoría de los Habitantes, 131.

13 Defensoría de los Habitantes [2010]. *Annual Report 2009–2010*, Defensoría de los Habitantes, 32.

14 Ibid.

Many institutions' mandates are general, with no specific limitations on the type of complaints that can be considered. The Indian National Commission for Protection of Child Rights, for example, can inquire into complaints relating to "deprivation and violations of child rights".¹⁵ The Uganda Human Rights Commission can "investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right".¹⁶ Similarly, the Defensoría de la Niñez y Juventud in Guatemala can investigate complaints about any rights in the CRC, with no restrictions regarding parties to the complaint.¹⁷

Some institutional mandates explicitly reflect the understanding that both public and private bodies are bound by the CRC to respect the rights expressed therein. The Ombudsperson for Children Act of 2003 in Mauritius, for example, provides that the Ombudsperson shall "investigate cases relating to the situation of children in the family, in schools and in all other institutions, including private or public bodies, as well as cases of abandoned children or street children".¹⁸ The mandate for the Lithuanian Ombudsman for Children also allows for investigation of cases involving acts or omissions carried out by "natural and legal persons" that have (allegedly) violated children's rights, as well as "complaints concerning misuse of powers of officials or bureaucracy in the field of the protection of the rights of children".¹⁹ The mandate of the Greek Ombudsman for Children, part of a general ombudsman office, specifies that "for the protection of children's rights the Ombudsman also has jurisdiction over matters involving private individuals, physical or legal persons, who violate children's rights".²⁰

Some institutions are however restricted from considering complaints regarding private bodies. This is common in traditional ombudsperson institutions that include children's rights as part of a broader spectrum of human rights work.²¹ In Slovenia, for example, the Ombudsman can only deal with complaints related to an action by a holder of public authority.²² Yet, as noted by the Ombudsperson in Azerbaijan, whose mandate is also limited to the public sphere, "it is a known

¹⁵ Art. 13 (1) (j) (i) of The Commissions for Protection of Child Rights Act, 2005, No. 4 of 2006 (India).

¹⁶ Art. 52 (1) (a) of the Constitution of Uganda of 1995.

¹⁷ Art. 98 (a) of the Decreto Numero 78-1996, Código de la niñez y la juventud, 27 September 1996, Guatemala.

¹⁸ Art. 6 (g) of the Ombudsperson for Children Act, No. 41 of 2003 (Mauritius).

¹⁹ Art. 16 (1) of the Law on the Ombudsman for Children, 25 May 2000, No. VIII-1708, as amended on 18 December 2007 (Lithuania).

²⁰ Art. 3.1 of Law No. 3094, 22 January 2003, The Ombudsman and Other Provisions (Greece).

²¹ Hodgkin, R. and P. Newell (2010). *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 Survey 2010*, Council of Europe and European Network of Ombudspersons for Children.

²² Art. 26 of the Human Rights Ombudsman Act, 20 December 1993 (Slovenia), mentioned in Hodgkin and Newell (2010), op. cit., 24.

fact that the rights of children are violated in their homes, schools, streets, communities, workplaces etc. as well”.²³

Because so many complaints filed by or on behalf of children concern issues within family settings, the ability to handle family-related cases is important. Yet the overwhelming majority of institutions are prevented from taking on family issues. The Ombudsman for Children in Norway, for example, “shall reject applications concerning specific, individual conflicts between a child and its guardians, between the guardians mutually concerning the exercise of parental responsibility and similar matters”.²⁴ This restriction was included in response to concerns raised at the time of establishment that the Ombudsman would interfere with private matters or dynamics within the family.²⁵ The mandate to handle family-related complaints does risk opening the floodgates to this type of complaint, as has happened in Uganda, where most cases received by the Uganda Human Rights Commission relate to child support.²⁶

As a matter of principle, the CRC applies to all children under the state’s jurisdiction, without the possibility for emergency derogation. However, almost all institutions are restricted from taking up cases that are pending before the courts or other administrative bodies, including cases under appeal; some institutions are also restricted from considering complaints about specific types of public bodies, for example, those dealing with national security or the military.²⁷ This is a significant limitation, because children may be directly involved in the military – either in military schools or in countries that recruit children under the age of 18 into their armed forces – and may be directly or indirectly affected by security activities. Furthermore, although no specific occurrence has been identified, certain activities could be qualified by the state as falling into this category in order to prevent invocation of the monitoring mechanism. The CRC Committee has called on States parties to remove restrictions that prohibit independent human rights institutions for children from carrying out investigations related to the defence forces, national security and the military.²⁸

A very small number of independent human rights institutions for children are unable to 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

²³ Hodgkin and Newell (2010), op. cit., 7.

²⁴ Sec. 3 of the Instructions for the Ombudsman for Children, laid down by Royal Decree of 11 September 1981 with changes last by Royal Decree of 17 July 1998 (Norway).

²⁵ Flekkøy, M. G. (1991). *A Voice for Children: Speaking out as their ombudsman*, London: Jessica Kinsley Publishers, 48.

²⁶ Uganda Human Rights Commission (2008). *11th Annual Report (2008)*, Kampala: UHRC, 25.

²⁷ Sec. 11 (1) (b) of the Ombudsman for Children Act, 2002 (Ireland).

²⁸ Concluding Observations of the CRC Committee on Ireland, CRC/C/OPAC/IRL/CO/1, 14 February 2008, paras. 8–9.

to other competent bodies, and by offering counselling and guidance.²⁹ The CRC Committee has called on all three countries to comply with international standards by implementing a formal complaint mechanism for individual complaints.³⁰

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. Who may file a complaint is significant: a legislative mandate that allows for anyone to file a complaint is likely to ensure better protection of children's rights. In addition, the profile of complainants is a reflection of the accessibility of an institution, thus collection and disaggregation of this data is important.

In the vast majority of cases, the law does not set any limitation regarding potential complainants, although it often requires that the complainant have some interest in the case.³¹ Some laws contain a list of probable complainants, complemented by a general provision stating that anyone else who has knowledge of a child rights violation can bring it to the attention of the institution.

In other places, the law does not make specific mention of complainants, leaving the possibility open for anyone to file a complaint. The Office of the Child Advocate in Connecticut (United States of America), for example, can review "complaints of persons concerning the actions of any state or municipal agency providing services to children" without any specification of who may file complaints.³² The Ugandan Human Rights Commission can investigate complaints filed by "any person or group of persons against the violation of any human right".³³ Similarly, the Provedor de Justiça in Portugal explicitly accepts complaints without any limitations.³⁴

The ability to receive complaints from any source facilitates the reporting of concerns about the welfare of children and establishes the independent

²⁹ Law on the Ombudsman for Children, 21 December 2004/1221 (Finland); The Ombudsman for Children's Act, No. 2002:337 (Sweden).

³⁰ Concluding Observations of the CRC Committee on Finland, CRC/C/15/Add.272, 20 October 2005, para. 10; Concluding Observations of the CRC Committee on Norway, CRC/C/NOR/CO/4, 3 March 2010, paras. 13 & 14; Concluding Observations of the CRC Committee on Sweden, CRC/C/SWE/CO/4, 12 June 2009, para. 16.

³¹ See for example Art. 20 of the Ley del Defensor del Pueblo, Ley No. 1818 de 22 de Diciembre de 1997 (Republic of Bolivia).

³² Sec. 46a–131 (a) (3) of the Statute Relating to the Office of the Child Advocate, Connecticut (United States of America).

³³ Art. 52 (1) of the Constitution of Uganda of 1995.

³⁴ Art. 24 (2) of the Statute of the Ombudsman, Law nr. 9/91 of 9 April 1991 (Portugal) states: "The complaints addressed to the Ombudsman depend neither on the complainant's direct, personal and legitimate interest nor on any time limits."

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. In other places, and in particular with stand-alone institutions, the law explicitly refers to the ability of the child to submit a complaint directly.³⁵

Some institutional mandates only allow certain actors to file complaints. Those authorized typically include the child, the child's legal guardians, and at times social workers or organizations working in the field of child protection. This type of restriction typically applies to institutions with a strong child protection mandate and/or those that are responsible for monitoring the rights of children in alternative care.

Complaints filed collectively (cases submitted jointly because they involve several children in a similar situation) provide an independent human rights institution for children with a useful opportunity to identify systemic issues. Moreover, a collective complaint can provide greater support for children who might otherwise be uncomfortable filing a complaint on their own. One example of how collective complaints can be considered comes from the Office of the Child Advocate in the Canadian province of New Brunswick, which has a mandate that allows the advocate to "receive and review a matter relating to a child, youth or group of children or youths".³⁶

Another approach to complaints is for an institution to inquire into a child rights violation on its own initiative (*suo motu*). Three quarters of the countries with an independent institution for children's rights have provided their institution(s) with the mandate to take on cases *suo motu*. Such a mandate, whether explicit or implicit, empowers the institution to look into child rights violations no matter what the initial source of information (e.g., media or other actor not specifically identified in the law). It is also an important legal tool that enables institutions to be proactive rather than reactive in fulfilling their mandate. The National Commission for Protection of Child Rights in India, for example, can inquire into complaints and investigate on its own initiative matters relating to the deprivation and violation of child rights, the non-implementation of laws pertaining to child protection, and the non-compliance of policy decisions affecting children.³⁷

³⁵ See for example Art. 6 (j) of the Ombudsperson for Children Act, No. 41 of 2003 (Mauritius).

³⁶ Sec. 13 (1) (a) of Chapter C-2.7, the Child and Youth Advocate Act, 26 June 2007 (New Brunswick, Canada).

³⁷ Ch. 3 Sec. 13 (1) (j) of The Commissions for Protection of Child Rights Act 2005, No. 4 of 2006 (India).

Given their overriding objective is to ensure that complaints are handled in the child's best interests, institutions are faced with the question of whether the child's or guardian's permission is required to receive or look into a complaint. Institutions have adopted various ways of dealing with this, with rules typically understood as guiding principles with a flexible application depending on the case. The law in The former Yugoslav Republic of Macedonia, for example, requires the ombudsperson to seek the affected person's consent except when it is a child, among other categories.³⁸

An alternative approach has been adopted in Ireland, where the Ombudsman for Children is restricted from moving forward with a complaint filed by a child on his or her own behalf until permission from a parent or legal guardian is granted.³⁹ While this requisite raises immediate concerns about a potential risk in cases where parents or legal guardians may be a source of abuse, the Office of the Ombudsman for Children has interpreted this requirement to allow the child to choose an adult whom they feel comfortable confiding in.⁴⁰

The mandate of the Norwegian Ombudsman for Children allows for anyone to submit a complaint to the Ombudsman, but it will not take on a complaint regarding a specific child without the permission of that child (and, depending on the child's age, his or her guardian) unless other considerations indicate otherwise.⁴¹ Because most complaints received by institutions are filed by adults rather than by children themselves, this type of provision provides an opportunity to support and strengthen the right of children to participate in decisions that affect their lives.

How complaint mechanisms work in practice sheds light on a number of challenges faced by independent human rights institutions for children. A few institutions, primarily in Europe, regularly track data on the nature of the complainant. The percentage of complaints that are filed by children is consistently very small, even where there are few or no restrictions on children filing a complaint. Data from European institutions suggest that the proportion of petitions received directly from children has remained below 10 per cent and in some cases is much lower. This pattern repeats in data from the United States of America. Between 2007 and 2009, for example, the Office of the Family and Children's Ombudsman in Washington State received between 1 per cent and 3 per cent of its complaints from children, out of a total of approximately

³⁸ Art. 21 of the Law on the Ombudsman of 10 September 2003 (The former Yugoslav Republic of Macedonia).

³⁹ Sec. 10 (c) (d) of the Ombudsman for Children Act, 2002 (Ireland).

⁴⁰ Information provided by the Office of the Irish Ombudsman for Children, 8 February 2010.

⁴¹ Sec. 2 Act No. 5 of 6 March 1981 Relating to the Ombudsman for Children (with changes from 17 July 1998), (Norway).

1,000 complaints per year. More than 70 per cent of complainants were parents or relatives, with foster parents or community professionals making up the balance.

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 accessing an institution's services, and thus serve as a useful measure of effectiveness in reaching target groups. Monitoring patterns of rights violations reflected in complaints received is thus a crucial advocacy tool. It also allows analysis of trends over time. It is therefore important that data on the individual and the nature of his or her complaint are properly recorded and disaggregated. The ombudsperson for children of the Republic of Srpska (Bosnia and Herzegovina), for example, provides extensive disaggregated data on complaints – by complainant, rights violated, age and gender of the victim, and institution concerned – and compares the data with those of previous years.⁴²

How are complaints filed?

While information regarding complainants constitutes a test of institutional accessibility to those in need of its services, in particular children and marginalized groups, a number of factors influence this accessibility: how a complaint can be filed; where an institution is physically located; and how effectively an institution informs children and adults of their rights and of how to contact the office.

Procedures for filing a complaint vary but are, overall, significantly more flexible than most judicial or administrative proceedings. 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, but most strive to offer child-friendly ways to file complaints.

In most instances, the office can be contacted by any means – letter, phone, email or in person. Many run websites and free telephone helplines, providing advice and information about making a complaint. Increasingly, especially in Europe,⁴³ institutions offer the option of filing complaints online, often providing forms in child-friendly format. The websites of many broad-based institutions⁴⁴ also feature online complaint forms.

⁴² Ombudsman for Children of Republic of Srpska (2011). *Annual Report for the Year 2010, 20–27*. Available at: <http://www.djeca.rs.ba/uploaded/AR%202010..pdf>.

⁴³ Institutions in Austria, Belgium, Estonia, Ireland, the Netherlands, Poland and the United Kingdom.

⁴⁴ Institutions in Latvia, South Africa, Thailand and Zambia.

To give some examples of how complaints are made, between 2008 and 2009 two thirds of the complaints received by the Office of the Children’s Advocate in Jamaica were made by phone; the remaining complaints were submitted by walk-ins, in writing or during meetings and public education sessions.⁴⁵ In the Republika Srpska, more than a third of complaints are filed in person, a quarter are made by phone and another quarter by mail, with the remainder arriving by email, fax or via the media.⁴⁶

In settings where institutions were initially established at the national level with subsequent outreach through regional sub-offices it is not unusual to observe a significant increase in the number of complaints filed.⁴⁷ Activities and awareness-raising related to children’s rights can also inform people of the complaint mechanism.

Responding to complaints

Independent institutions’ complaint mechanisms are largely of a quasi-judicial nature. When institutions receive individual complaints they do not issue binding decisions but facilitate a mediation or conciliation process between the relevant parties in order to address the problem. On receipt of a complaint, an independent human rights institution for children can undertake an investigation into the situation to assess and address the child rights violation. Depending on the situation, it may decide to refer the case to court. An institution’s ability to address a complaint adequately depends on the investigative powers stipulated in its mandate and how responsive relevant actors are to its recommendations.

It is essential for independent human rights institutions for children to have a strong mandate to hear and respond to individual complaints. One important tool is the power of subpoena, through which institutions can compel the production of evidence or summon witnesses to testify; failure to comply is associated with civil or criminal sanctions. Investigations can be extensive and can involve accessing documentation and calling on witnesses, particularly in situations where children in care are abused and maltreated. Of the states that have an independent children’s rights institution, more than half have equipped their institutions with such powers. In other cases, tools for compliance primarily include a request for disciplinary sanctions and special reports to parliament; this implies reliance on goodwill rather than enforceable means. In El Salvador and Peru, for example, independent institutions publish in their annual

⁴⁵ Office of the Children’s Advocate [2009]. *Office of the Children’s Advocate Annual Report 2008–2009*, Kingston: Office of the Children’s Advocate, 31.

⁴⁶ Ombudsman for Children of Republic of Srpska (2011), *op. cit.*, 24.

⁴⁷ See for example Uganda Human Rights Commission [2003]. *6th Annual Report (2003)*, Kampala: UHRC, 2.

reports to parliament the names of public officials who have failed to provide requested information.

Institutions must be able to ensure that all complaints are handled in the most ethical and child-sensitive manner. Careful consideration needs to be given to the appropriate remedy of an alleged violation, which will depend on the nature of the violation and the specific vulnerabilities of the child. In the office of the French Défenseur des Enfants, which was active as a stand-alone institution until May 2011, a multidisciplinary committee that included a jurist, social worker, psychologist and former judge assessed each complaint and determined how it should be handled in the child's best interests.⁴⁸

One rationale for the flexible procedures mandated for many independent human rights institutions for children is the need for handling complaints in a timely way, an essential aspect of being child-friendly. 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. Children and youth are constantly growing and changing, so processes need to be timely and move at a faster rate than those that respond to adult concerns."⁴⁹

A 'reasonable' time for dealing with complaints may depend on the nature of the complaint: some may require urgent action if a child is in immediate danger or a decision has irreversible effects, while others may be less urgent, but should nevertheless be tackled swiftly. The Defensoría de los Habitantes in Costa Rica, for example, has set up a special department for cases requiring immediate attention, where complaints involving a serious, imminent or irreparable violation are meant to be resolved within 72 hours. The Defensoría typically uses informal means, such as phone calls and visits, and reports that most cases are solved within a day,⁵⁰ a testament of the importance of using soft powers and influence to address difficult cases. The Queensland Commission for Children and Young People and Child Guardian reports that 99 per cent of the complaints it receives are assessed within a month of receipt, and 82 per cent of cases are handled within the year.⁵¹ The Commission attributes its expediency to productive partnerships with key government agencies, interest groups and other relevant actors.⁵²

⁴⁸ Hodgkin and Newell (2010), op. cit., 24.

⁴⁹ Representative for Children and Youth and BC Ombudsperson (2010). *Joint Special Report: Hearing the voices of children and youth – A child-centred approach to complaint resolution*, RCY and BC Ombudsperson, 3.

⁵⁰ Defensoría de los Habitantes de la República de Costa Rica [2009]. *Annual Report 2008–2009*, 126.

⁵¹ Commission for Children and Young People and Child Guardian (2010). *Annual Report 09–10*, Brisbane, Queensland: CCYPCG, 16, 27–28. Available at: <http://www.ccypcg.qld.gov.au/resources/publications/annual/annual10.html>.

⁵² *Ibid.*, 27–28.

Attention to timeliness of response is also crucial when complaints pertain to children who may be at or near age-related judicial or statutory boundaries such as children in contact with the justice system or children in institutions; in these cases, lengthy processes may deprive children of the full range of remedies and procedures they are entitled to at a given age. However, some mandates allow for a certain degree of flexibility. For example, the Office of the Child and Youth Advocate in New Brunswick (Canada) can consider cases relating to a child or youth if the matter occurred while the person was still a child or youth and is filed before the person's 20th birthday.⁵³

Handling individual complaints in a child-friendly manner also means ensuring that the complainant, whether adult or child, is kept informed of the status of the complaint regularly.⁵⁴ Depending on its mandate, an independent human rights institution for children may also communicate with a parent or designated adult about a case.

Where the complaint mechanism may be inappropriate for the problem at hand, the mandate of the independent human rights institution for children often allows for referral of the case to a pertinent judicial or administrative system. It is a common practice for most institutions to direct complaints to other competent bodies with the relevant mandate. Conversely, most institutions are restricted from taking up a case while it is still pending or being processed before another body.

In about a quarter of the countries reviewed, independent human rights institutions for children have the mandate to take a case to court or otherwise refer it to the judiciary – in particular when a child is in danger and a judicial decision is needed. A dozen independent human rights institutions for children, almost all located in common-law countries, have the ability to provide legal representation themselves and can take cases of alleged child rights violations to court. Child advocates who have a specific mandate to protect the rights of children in state care are typically afforded this means of address. In Jamaica, this is a core function of the Office of the Child Advocate.⁵⁵ In other places (e.g., Croatia and France), an institution may refer a case brought to its attention to the public ministry or prosecutor, in particular in situations of maltreatment.⁵⁶ According to the CRC Committee, independent institutions should have the ability to undertake mediation and conciliation processes, where appropriate; they should also have the power to take cases to court in the name of the

⁵³ Sec. 13 (1) (a) of Chapter C-2.7, the Child and Youth Advocate Act, 26 June 2007 (New Brunswick, Canada).

⁵⁴ Representative for Children and Youth and BC Ombudsperson (2010), *op. cit.*, 28.

⁵⁵ Art. 4 (3) of The Child Care and Protection Act, 2004 (Jamaica).

⁵⁶ Hodgkin and Newell (2010), *op. cit.*, 13.

institution, or to intervene in court cases to inform the court about the human rights issues involved in a case.

A significant aspect of effective remedy is an ability to prompt appropriate redress for a violation. With independent institutions generally issuing non-binding recommendations, compliance relies on a range of factors, including strong cooperation with relevant agencies and institutions. In a limited number of cases, usually among institutions with a primarily public mandate, legislation requires agency responsiveness or cooperation with a rights institution's findings and the institution itself has the mandate to impose sanctions for non-compliance.

Strategic litigation, or threat of litigation, is a powerful tool. The Commissioner for Children and Young People in Northern Ireland (United Kingdom), for example, can bring cases before the courts on behalf of complainants or in its own name; it has used this function to call for the judicial review of legislation likely to have a negative impact on children's rights under the CRC.

Another mechanism of redress open to a number of institutions is the ability to contest the validity of a legal or administrative act before an administrative or constitutional court. This prerogative is generally available to institutions operating in countries marked by a history of abuse of powers by the executive branch and reflects the desire to offer citizens extensive rights protection and access to remedies. This is a characteristic of integrated institutions covering a broad range of human rights issues established in the context of democratic transitions in Eastern Europe, the Iberian Peninsula and Latin America.

In most cases, however, the system relies on goodwill emanating largely from the environment and governance context in which the institution operates. While the Commission on Human Rights and Good Governance in the United Republic of Tanzania, for example, has the power to undertake legal proceedings if its recommendations are not implemented,⁵⁷ use of these powers has not yet been needed.⁵⁸ Through monitoring efforts in Logar province, the Child Rights Unit of the Afghanistan Independent Human Rights Commission took up a case of a young girl who had been raped by the head of the Department of Justice. Investigation findings were shared with Afghanistan's Office of the Attorney-General, the Ministry of Interior, the Ministry of Justice and the Supreme Court, resulting in the arrest of the perpetrator.⁵⁹ On the other end of the outcome spectrum, a 2010 review of the complaint mechanism of the Nepalese National

⁵⁷ Art. 28 (3) of the Commission for Human Rights and Good Governance Act, 2001 (No. 7) (United Republic of Tanzania).

⁵⁸ Mallya, E. T. (2009). 'Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: Tanzania's Commission for Human Rights and Good Governance', *EISA Research Report*, No. 40, Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 23.

⁵⁹ Afghanistan Independent Human Rights Commission [2010]. *Annual Report: January 1– December 31 2009*, Kabul: AIHRC, 51.

Human Rights Commission found that the lack of implementation of the Commission's recommendations was due to the prevailing culture of impunity in the country.⁶⁰

In Peru, the Defensoría del Pueblo has created a specific tool to assess compliance with its recommendations, the “*defensometro*”. This instrument evaluates the response received from public bodies to the institutions' requests so that the Defensoría can measure and rank compliance by various entities and compare performance among entities and over time. It allows the office to identify low-complying bodies and engage in a dialogue with them.⁶¹

Where high-profile cases of serious child abuse have occurred, significant media attention and public concern can also bring about agency compliance and policy reform. Public pressure in the wake of media reports of deaths among children in the care systems, and statements from several high-profile personalities voicing their concern, initiated a comprehensive review of the child protection system in Canada.⁶² Particularly where the media is involved, it is important to protect a child's privacy.

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

The complaint mechanism not only operates as a remedy for specific cases of rights violations affecting an individual child or a group of children but also serves to reveal broader, systemic problems in the realization of 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.

As stated by the Irish Ombudsman for Children,

...the complaints and investigations function is used as a catalyst to promote positive change and the implementation of models of

⁶⁰ National Human Rights Commission of Nepal (2010). *Summary Report of NHRC Recommendations upon Complaints in a Decade (2000–2010)*, Lalitpur, Nepal: NHRC.

⁶¹ Defensoría del Pueblo (2011). *Decimocuarto Informe Anual de la Defensoría del Pueblo al Congreso de la Republica. Enero–Diciembre 2010*. Lima: Defensoría del Pueblo, 191–192.

⁶² See, for example, Hughes, T. (2006). *BC Children and Youth Review: An independent review of British Columbia's child protection system*. Available at: http://www.mcf.gov.bc.ca/bcchildprotection/pdf/BC_Children_and_Youth_Review_Report_FINAL_April_4.pdf.

good practice beyond the individual case under investigation. It therefore allows the Office to have an impact at both the micro-level with regards to individual cases and at macro-level by solving systemic difficulties.⁶³

Even when independent institutions do not have a mandate to handle complaints, receiving them can nonetheless keep an office informed of pertinent issues and challenges.⁶⁴

While increasing numbers of complaints can indicate an institution's growing effectiveness at raising public awareness about children's rights and the work of the office, handling a heavy caseload of complaints can, paradoxically, challenge an office's capacity to respond effectively to individual complaints and to advancing a wider child rights agenda. Devoting extensive time and resources to handling complaints can lead to the perception and sometimes even the reality that an institution is more reactive than proactive – a challenge for an office whose mandate is both to promote respect for rights and prevent rights violations, and to respond to violations once they have occurred. In order to prevent frustration among members of the public (who may expect the office to solve all problems), an institution needs to balance its different roles and undertake public education about the opportunities – and the limits – of its mandate.

There can be hidden consequences to success. In Croatia, for example, the Ombudsperson for Children reports receiving an increasing number of phone calls where no violations of children's rights have taken place, but the complainant is dissatisfied with the work of other institutions that should be handling their grievance. Following up on these calls is time-consuming and often produces little result.⁶⁵

Because high volumes of complaints and communications 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 institution's overall strategic agenda – again, to further a proactive approach rather than remain primarily reactive. Some triage of cases may be 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

⁶³ Ombudsman for Children's Office (2007). *Respecting Children: Annual report of the Ombudsman for Children's Office April 2005–December 2006*, Dublin: OCO, 15.

⁶⁴ Waage, T. (2008). 'The Development of Independent National Human Rights Institutions for Children in Europe', paper presented at the Seminar on the Development of Independent Human Rights Institutions for Children, Stockholm, Sweden, 18 February 2008.

⁶⁵ Bezinovi'c, P. (2009). 'Self-Evaluation of the Office of the Ombudsperson for Children'. In Ombudsperson for Children, *Evaluation of the Institution of the Ombudsperson for Children*, Zagreb: Ombudsperson for Children, 67.

to receive the kinds of cases it wants to progress.⁶⁶ 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 overlooking emerging issues.

While complaint mechanisms may offer an effective remedy to some complainants, they can in some instances be insufficient for obtaining appropriate redress for child victims. Shortcomings in, or dissatisfaction with, the complaints mechanism are hard to measure because most institutions do not follow up on cases once they have been closed by their office. It is difficult, for example, to determine how many cases are taken to court following consideration or a decision reached by an independent institution.

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.⁶⁷ These elements require significant capacities of skills, settings and resources, which can be lacking in some environments. Evaluation of the child sensitivity of complaint mechanisms, with the significant involvement of children, has been limited, but has the potential to provide important insight. In 2010, for example, the Representative for Children and Youth and the general Ombudsperson Office in British Columbia (Canada) jointly conducted a thorough review of a child-centred approach to complaint resolution and made recommendations for improving the current system.⁶⁸

Some institutions have been effective in strengthening the child sensitivity of their complaint mechanisms 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.

⁶⁶ Murray (2007), *op. cit.*, 208.

⁶⁷ Joint Report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative on violence against children, submitted to the UN General Assembly pursuant to Human Rights Council Resolution 13/20, A/HRC/16/56, 7 March 2011, para. 41.

⁶⁸ Representative for Children and Youth and BC Ombudsperson (2010), *op. cit.*

10

Independent Human Rights Institutions for Children in the National Institutional Landscape

Effective national systems which protect and promote good governance, the rule of law, and the realization of human rights are important for sustainable human development. Among the components of such systems are governments which accept primary responsibility for the promotion and protection of human rights and the functioning of independent National Human Rights Institutions (NHRIs) which conform with the Paris Principles.

Helen Clark and Navanethem Pillay, Foreword to the UNDP-OHCHR
Toolkit for Collaboration with National Human Rights Institutions

Independent human rights institutions for children evolve in – and influence – a national landscape that helps determine their effectiveness. They do not exist in a vacuum,¹ but are part of a constellation of other actors whose roles, mandates and strengths vary in each country or territory. The work of the independent institution is complementary to the various institutions that make up a governance system – such as the executive, the parliament, the courts, civil society, or observatories on childhood. The limitations and deficiencies of these other bodies – or systemic weaknesses within a country – can undermine the effectiveness of the independent institution. Good governance is therefore a key determinant of an institutions’s ability to fulfil its mandate. By the same token, a key question for independent child rights institutions is how they add value to the landscape they inhabit.

Many kinds of child-related and child-sensitive bodies and monitoring activities have been established since the adoption of the Convention on the Rights of the Child (CRC). These include children’s rights units within governments, ministers for children, interministerial committees on children, parliamentary

¹ Murray, R. (2007). ‘National Human Rights Institutions: Criteria and factors for assessing their effectiveness’, *Netherlands Quarterly of Human Rights*, 25 (2):215.

committees, coalitions of non-governmental organizations (NGOs) on children's rights, children's ombudspersons and children's rights commissioners. All have been established in order to promote and protect children's rights.² Such deeply rooted institutions as the judiciary also address child rights violations and can provide remedies.

While ombudspersons, NGOs, parliamentary committees, courts, observers and coordinating mechanisms might seem similar in some respects in their support for the realization of children's rights, they actually perform very different – though complementary and necessary – functions. Because an independent human rights institution for children is first and foremost a facilitator of processes, its success relies on its ability to collaborate with these other bodies while remaining at arm's length. The shape of an institution's operating environment and the quality of its interactions with this environment are key to its sustainability and effectiveness.

Table 10.1 captures the key elements that can make up the national institutional landscape in which independent human rights institutions for children operate.

Government coordinating mechanisms

While the implementation of the CRC requires effective and visible coordination between government and civil society,³ the primary duty holder for its implementation is the state, for whom coordination is a central function. In General Comment No. 5, the UN Committee on the Rights of the Child (CRC Committee) states:

The purpose of coordination is to ensure respect for all of the Convention's principles and standards for all children within the State jurisdiction; to ensure that the obligations inherent in ratification of or accession to the Convention are not only recognized by those large departments which have a substantial impact on children – education, health or welfare and so on – but right across Government, including for example departments concerned with finance, planning, employment and defence, and at all levels.⁴

² UN Committee on the Rights of the Child (2003). General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November, para. 9.

³ Ibid., para. 27. See also United Nations Children's Fund (2006). *The General Measures of the Convention on the Rights of the Child: The process in Europe and Central Asia*, Florence: UNICEF Innocenti Research Centre.

⁴ UN Committee on the Rights of the Child (2003). General Comment No. 5, op. cit., para. 37.

Table 10.1 The key elements of the landscape in which independent human rights institutions for children operate

	Independent human rights institutions for children	Coordinating mechanisms	Parliamentary committees	NGOs	Courts	Observatories
Legal basis	Public	Public	Public	Private	Public	Private and public
Independent from government	Yes	No	Yes	Yes	Yes	Often
Funding	Mainly public with some exceptions	Public	Public	Private and sometimes public	Public	Private and public
Accountability	Government, parliament and public	Government	Parliament	Private and donor	n/a	Private and public
Accessibility to children	More child friendly	Less child friendly	Less child friendly	Depends	Less child friendly	Less child friendly
Works on law reform	Recommends	Can propose	Proposes and enacts	Often recommends	Interprets, may invalidate	Often recommends
Collects data	Often	Some	Some	Some	n/a	Yes
Raises awareness and carries out training	Often	Some	Some	Often	n/a	Often
Develops and implements policies and programmes	Advises and monitors	Yes	Advises and monitors	Often	n/a	Some
Receives individual complaints	Often	Some	Rarely	Some	Yes	Some

Coordinating mechanisms are also important because they hold other bodies responsible for implementing new laws.⁵ A common model of coordination is interagency and intersectoral coordination, which can help implementing bodies avoid duplication, fill gaps, share information and undertake joint action.

There is a broad array of institutional arrangements for the coordination of child rights activities. In sub-Saharan Africa, for example, coordinating committees and commissions are common. For instance, the Kenyan National Council for Children's Services was created in 2002 and supervises and controls the planning, financing and coordination of child rights and welfare activities and advises

⁵ United Nations Children's Fund (2007). *Law Reform and Implementation of the Convention on the Rights of the Child*, Florence: UNICEF Innocenti Research Centre, 110.

the Government.⁶ High councils are typically present in northern Africa and the Middle East; one example is the Higher Council for Childhood in Lebanon, which ensures coordination among governmental, non-governmental and international actors.⁷

Ministries covering children's rights and those dealing with family affairs, gender equality and community development are also a common model found across regions – and they have sometimes incorporated child-specific structures like councils. Some countries have a special commissioner charged with coordinating efforts related to child rights. Others have two coordinating mechanisms, one to coordinate central government efforts and the other to coordinate the activities of regional and central government bodies. In some countries, participation in coordinating bodies is limited to government departments and agencies. In others, governmental agencies, NGOs and civil society organizations work together within one body.

Coordinating mechanisms have a number of things in common with independent human rights institutions for children. While some coordinating mechanisms exclusively focus on coordination, others monitor, conduct research, prepare national plans and strategies, evaluate legislation and the need for law reform, set policy and promote awareness of children's rights.⁸ They sometimes include representatives of civil society organizations. Some coordinating mechanisms can receive individual complaints from children.

The fundamental difference between governmental coordinating mechanisms and independent human rights institutions for children, however, is the lack of independence from the government in the case of the former. Independence is an essential and distinguishing quality of child rights institutions. Coordinating mechanisms are not independent – they are government bodies that implement government policy. The CRC Committee continues to underline the difference between self-monitoring, in which a government assesses its own action, and independent monitoring, which requires an external, independent mechanism.⁹

Independent human rights institutions for children and government coordinating mechanisms can benefit significantly from each other. Coordinating mechanisms set the government's priorities and strategies with respect to children's rights, in some instances through a national plan of action. This plan can

⁶ *Consideration of Reports submitted by States Parties under Article 44 of the Convention, Kenya, CRC/C/KEN/2*, 4 July 2006, para. 13.

⁷ *Third Periodic Reports of States Parties due in 2003, Lebanon, CRC/C/129/Add. 7*, 25 October 2005, para. 20.

⁸ United Nations Children's Fund (2006), *op. cit.*, 30 and 31.

⁹ UN Committee on the Rights of the Child (2003). General Comment No. 5, *op. cit.*, para. 46.

provide benchmarks against which the independent institution monitors the government's action.

Issues raised by an independent institution, in particular through its direct knowledge of children's lives, can help coordination mechanisms establish priorities. The independent institution can also draw attention to emerging challenges for children that need to be addressed, and they can help foster holistic and creative problem-solving.

Parliament

National parliaments have four crucial roles related to the realization of children's rights: law-making, oversight, budgeting and representation.¹⁰ Parliamentarians play an important role in ensuring ratification and implementation of international instruments affecting children. They can help define national plans of action, draft child-related legislation and assist in fulfilling national reporting obligations. Through their budgetary function, parliaments can monitor budgets from a child rights perspective and support allocation of resources for children. As people's representatives, parliamentarians can further monitor policy implementation by the executive branch and its ability to meet the needs of everyone under the state's jurisdiction. Parliamentary oversight is a common tool for doing this and can be defined as "the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation".¹¹ Tools include analysis of information, inquiries, debates, questions to the government and votes of confidence.¹²

Parliamentary committees are one vehicle for conducting parliamentary oversight. They review draft legislation, oversee government activities and interact with the public, in particular through hearings. Formal committees can usually request testimony from government officials and undertake inquiries. Mauritania, Turkey and Zambia are among a number of countries that have recently established parliamentary committees with a special focus on children's issues.¹³ They review the impact of all policy, law and budgets from a child rights perspective and propose or initiate needed changes.

Inevitably, independent human rights institutions for children and child rights parliamentary committees perform several similar functions. They both play a major role in implementing international standards and monitoring the

¹⁰ This section builds on: Yamamoto, H. (2007). *Tools for Parliamentary Oversight: A comparative study of 88 national parliaments*, Geneva: Inter-Parliamentary Union; and United Nations Children's Fund (2009). *Guide to Working with Parliaments*, New York: UNICEF.

¹¹ Yamamoto (2007), op. cit., 9.

¹² Ibid.

¹³ United Nations Children's Fund (2009), op. cit., 10.

government's actions. They oversee children's well-being and advocate legislation to advance children's rights, and raise decision-makers' awareness of children's rights. Parliamentary committees may also in some instances receive citizens' petitions against a government department.

However, they are also bodies of a very different nature. Parliamentary committees are composed of parliamentarians who are elected by the people based on their political affiliation. Their decisions result from the confrontation of various political views, and are often based on party lines and a concern for re-election. The creation of parliamentary committees is founded on parliament's decision on the organization of its own work and their main role is to prepare the decisions of the plenary assembly. They are therefore fully part of the legislative branch and exercise their functions within the framework of the mandates assigned to the legislative branch by the constitution. Independent human rights institutions for children, on the other hand, are fully independent, with a mandate usually set by law, and they are not seeking re-election by their constituency. Furthermore, their role is to influence, propose and recommend, while parliaments actually enact laws.

Parliaments and independent human rights institutions for children can enhance one another's effectiveness. Parliaments are usually crucial to the establishment, oversight and strengthening of independent institutions. In turn, independent institutions for children help parliament foster a realization of children's rights. As part of their mandate, independent institutions may monitor parliament's activities. At the same time, parliament typically has an oversight function vis-à-vis the independent human rights institution for children, as an accountability mechanism.¹⁴

The importance of the interaction between institutions and parliaments is emphasized by the CRC Committee, which states that independent institutions must be able to report "directly, independently and separately" on the situation of children's rights to the public and the parliament – and the latter must hold a debate dedicated to examining compliance of the government with the CRC as well as the work of the ombudsperson.¹⁵

The majority of institutions reviewed here submit an annual report of 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 other publications often identify areas that need attention and advocate new or

¹⁴ See Chapter 2: Independence.

¹⁵ UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, para. 18.

improved legislation, and are thus an important source of information and knowledge for parliamentarians.

Ombudspersons often informally interact with and lobby key parliamentarians to press for legislative and other measures to advance the realization of children's rights. Virtually all institutions have the mandate to make proposals for law reform. Some have a legal mandate that explicitly specifies that they can review draft legislation with a view to enhancing the final text and its compliance with the CRC and children's best interests, but in practice many institutions do this. The systematic involvement of independent institutions in parliamentary work is an important pathway to ensuring high-quality legislation in line with international standards.

Non-governmental organizations

Civil society is often understood as a space between the individual household, public authorities and the private sector, organized to act towards a common goal or interest.¹⁶ NGOs are an essential inhabitant of this space, and are usually regulated by legislation.

In principle, NGOs and independent human rights institutions for children are both independent from government. They promote and protect children's rights through a number of activities, for instance by issuing reports on child rights issues, monitoring government and others' actions, advocating child-friendly legislation, policy and practice, and raising awareness. Both types of bodies can carry out child rights training for relevant actors and develop implementing programmes. In addition, both submit alternative reports to the CRC Committee. They may monitor each other's work and make recommendations for strengthening it.¹⁷

However, NGOs are not publicly mandated – they are privately organized and not part of the public structure – and therefore unaccountable to government or parliament. While they may be consulted and give advice on policy and law reform proposals, they are not officially part of the legislative process, whereas independent child rights institutions typically are, whether through their own mandate to review and comment on legislation or through parliamentary mandate to consult these bodies.

Financial support for NGOs comes from various sources; most are either largely self-financing or rely on private donations, with some public funding. Unlike

¹⁶ For further discussion of the definitions of civil society, see: Vučković Šahović, N. (2010). 'The Role of Civil Society in Implementing the General Measures of the Convention on the Rights of the Child', *Innocenti Working Paper* 2010-18, Florence: UNICEF Innocenti Research Centre, 3.

¹⁷ *Ibid.*, 53.

human rights institutions, in many countries NGOs provide services for children, in particular where state delivery of social services is weak. While NGOs may conduct research and investigations, in principle they do not have access to information other than that made available to the public, and cannot request – much less compel – public officials or any other person to testify, capacities that are often found in human rights institutions.

The CRC Committee has emphasized the important role of NGOs in the implementation of the CRC and in collaborating with independent human rights institutions for children. In particular in General Comment No.2 it asserts that:

Non-governmental organizations play a vital role in promoting human rights and children’s rights. The role of NHRIs [national human rights institutions], with their legislative base and specific powers, is complementary. It is essential that institutions work closely with NGOs and that Governments respect the independence of both NHRIs and NGOs.¹⁸

The work of NGOs complements and supports the activities of independent human rights institutions for children in numerous ways. In many places, in line with the Paris Principles, representatives of NGOs are members of human rights commissions and therefore in a position to influence its priorities.¹⁹ NGOs play an important role in monitoring, promoting and developing activities, for example, through petitions, inquiries and early warnings.²⁰ Human rights NGOs have knowledge and expertise that can benefit national human rights institutions. Research undertaken by NGOs is used by institutions, which helps eliminate duplication of effort. NGOs can play a significant role in monitoring the independence and overall functioning of independent institutions, as is the case with the Asian NGOs Network on National Human Rights Institutions (ANNI), which issues a detailed report on this topic annually. NGOs can also offer strong support to an independent institution when it is threatened or needs strengthening, as has occurred in several places, for example, England (United Kingdom) and France in 2010.

NGOs have played a critical role in the process of establishing independent human rights institutions for children. In Sweden, for example, NGOs established an ombudsman mechanism that paved the way for the creation of the public independent institution. NGOs can raise public awareness of the existence of an independent mechanism for children’s rights. Sometimes individual complaints

¹⁸ Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 26.

¹⁹ Vučković Šahović (2010), op. cit., 39.

²⁰ Office of the High Commissioner for Human Rights (2008). *Working with the United Nations Human Rights Programme: A handbook for civil society*, New York and Geneva: OHCHR, 46.

received by independent institutions are channelled through NGOs that have a more extensive field presence, as is often the case in Indonesia,²¹ Jordan and Mexico.

Independent human rights institutions for children have the potential to support the work of NGOs. Because they have direct access to decision-makers, the independent institutions can reiterate NGO recommendations, enhancing their influence. In countries where NGOs need to consolidate their work as a coalition, the independent institution can foster collaboration by setting common goals and supporting joint campaigns. The Greek Ombudsman for Children's Rights, for example, set up an NGO network in 2009 for monitoring implementation of the CRC and facilitating cooperation between civil society and the state.²² Institutions can provide oversight for NGO action and services with a view to ensuring respect of the best interests of the child.

Courts

Legal action is a primary remedy for redressing child rights violations. Yet to ensure children's access to justice, courts need to offer child-sensitive procedures. One of the most important similarities between courts and independent human rights institutions for children is that they can both handle individual cases (very few independent human rights institutions for children do not have this competency). Like the courts, many institutions can compel witness testimony and the production of evidence.²³ Both are independent from government and dependent on public legislation and funding.

Yet courts and independent human rights institutions for children have very different mandates and approaches. Judgements issued by courts are legally binding and enforceable. Court proceedings are often lengthy, complex and costly, and hence often not accessible to all, in particular children. In many countries, children are prevented from directly accessing the judicial system because parents' or legal guardians' permission is required. Filing a complaint with an independent human rights institution for children, on the other hand, is free and does not require a lawyer or entail specific formalities.

Institutions usually accept complaints made directly by children, in person or through a simple letter, a phone call or a text message. Mediation provided by independent institutions may help resolve the issue in a fast and flexible way at an early stage, avoiding escalation of a dispute. However, decisions made

21 International Council on Human Rights Policy (2004). *Performance and Legitimacy: National human rights institutions*, 2nd edition, Geneva: International Council on Human Rights Policy, 99.

22 The Greek Ombudsman [2009]. *Annual Report 2009*, Athens: The Greek Ombudsman, 54.

23 International Council on Human Rights Policy (2004), *op. cit.*, 91.

through mediation are based on agreement and not always binding. This does not imply these decisions are ineffective: decisions made by independent human rights institutions for children often help resolve difficult situations and bring violations and bad practices to light, thus stimulating positive action. In this respect, the ability to publicize outcomes and counter non-compliance with recommendations or requests can have a significant impact.²⁴

An extremely important difference between courts and independent human rights institutions for children is the substantive grounds for their decisions. Courts are ruled by the principle of legality, with a duty to apply the law. Independent institutions work on the principle of equity, meaning that they may consider a case in which no law has been violated, but where rights violations or other inequities exist. Criteria can centre on the best interests of the child. An independent institution can also address violations of economic, social and cultural rights that may not be admissible in the national courts. Moreover, where the CRC is not fully incorporated into domestic law, and provided the institution's mandate so allows, the independent human rights institution for children can form decisions or recommendations based on the Convention rather than national law.

In a number of countries, courts, in particular high-level courts, have the power to invalidate or dismiss legislative provisions because of their incompatibility with the CRC and can oblige the legislature to amend the law in question.²⁵ Independent human rights institutions for children, on the other hand, can criticize laws and advocate specific legislation but do not have the power to invalidate the law.

In some instances, courts can offer a complementary procedure (with legally enforceable decisions) to the mediation mechanism offered by independent human rights institutions. The CRC Committee recommends that independent institutions "should have the power to support children taking cases to court, including the power (a) to take cases concerning children's issues in the name of the [institution] and (b) to intervene in court cases to inform the court about the human rights issues involved in the case".²⁶ Some independent institutions can take a case involving a child to court, including a regional court. Others even have the power to refer a question to a high-level or supreme court and to submit legal opinions to a tribunal for consideration (*amicus curiae*).²⁷

24 Franck, S. (2008). 'Challenges Facing Investment Disputes: Reconsidering dispute resolution in international investment agreements'. *Legal Studies Research Paper Series*, No. 1427590, Oxford University Press, 162.

25 United Nations Children's Fund (2007), op. cit., 105 and 106.

26 UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 14.

27 Chapter 9: Complaint Mechanisms.

Observatories

The role of observatories on childhood is to monitor children's rights in order to provide evidence-based information to support and inform policy-making. They usually collect and analyse data on the situation of childhood within their jurisdiction. They also promote sharing of information and knowledge. Observatories are a broad category, differing in their form and legal status. In some countries, such as Egypt and Spain, they are public institutions; in others they have NGO status as is the case in Ecuador, El Salvador and Morocco; elsewhere they are associated with a university, as is the Observatoire des Droits de l'Enfant de la Région Océan Indien, which is hosted by the University of Mauritius.

Like independent human rights institutions, observatories raise awareness about insufficient realization of children's rights, typically by collecting and analysing data, and issuing studies highlighting gaps. They do not usually have a strong advocacy function. In some instances, observatories receive complaints (often through a hotline) related to children at risk or who are subject to violence, neglect and maltreatment. They do not generally provide a remedy mechanism and do not offer mediation services. They either pass on information to the relevant social services, or may support a child in taking a case to court.

11

Practical Question: How Is an Independent Human Rights Institution for Children Established?

The establishment process is a crucial phase during which the main characteristics of a new independent human rights institution for children are defined. There is no blueprint for this, although it is essential to create and build consensus around an institution. This means that local historical, political, legal, institutional, social, economic and cultural realities will all influence how the process unfolds. While each context may be unique, the overall objective is a common one: setting up an independent, effective and sustainable institution that can monitor, promote and protect children's rights.

The establishment process comprises the dynamics and actions leading to the creation of a functioning institution. It usually starts with actors at the national level in the government, parliament or civil society recommending or advocating the creation of an independent institution for children's rights or a child-specialized office in a broader human rights institution. Typically, the drafting and adoption of legislation follow this. The process ends with the appointment of the ombudsperson or head of office and the operational set-up of the institution.

A number of elements seem to have informed successful establishment processes. While the UN Committee on the Rights of the Child (CRC Committee) considers it an obligation for States parties to the Convention on the Rights of the Child (CRC) to establish an independent human rights institution for children, the country must be ready to do so, because such an institution cannot be imposed by outside actors. The establishment process needs to be participatory¹ and nationally led. Involvement of parliamentarians is key.

The prospect of a new independent monitoring body can raise anxiety. It usually takes time to educate public and civil society stakeholders about the role of the institution and to build momentum around the importance of independent monitoring for children's rights. Discussion and stakeholder education are also extremely important to the success of the process.² As a result, establishment

¹ The CRC Committee directly addresses the establishment phase and stresses the importance of having a participatory process in its General Comment No. 2. See: UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, para. 10.

² Sedletzki, V. (2009). 'The Establishment Process for a Separate Child Ombudsman in Turkey: A case study', *Innocenti Working Paper* 2009-24, Florence: UNICEF Innocenti Research Centre, 36.

processes often take several years – for some institutions the process has lasted a decade or more. While sustaining momentum over a long period can be difficult, working towards the goal of institutional establishment can help forge national coalitions to progress children’s rights.

Examples of establishment processes

Documented experiences of establishing institutions show that a combination of actors and factors come into play leading to the creation of an independent institution. A number of countries are currently engaged in the process of establishing an institution. While some have only started discussions, others are at the point of drafting and negotiating the legislative basis for the new institution.

There is no obvious typology of establishment processes. Significant factors include the way national actors have driven the process domestically; the respective roles of the government, the legislative branch and civil society in initiating and advancing the process; and the degree of engagement of international actors.

The following examples, which are drawn from different places with varying circumstances, illustrate the dynamics often at play and highlight the main features peculiar to each.

Norway

In Norway, the establishment of the children’s ombudsperson was largely government-driven, although consultations were held with civil society organizations and final discussions occurred within parliament, leading to a parliamentary vote to create the institution.

The idea of creating an ombudsperson for children first emerged from the academic world in 1969, in a paper by a Norwegian professor of law. The rationale was to provide children with an official voice to defend their interests. In the mid-1970s a member of the Women’s Organization of Norway’s Labour Party took up the idea, securing its insertion into the Organization’s programme on the position of children in contemporary society.

Between 1975 and 1979, the Labour Government appointed various committees to review and discuss the proposal. The International Year of the Child in 1979 gave the state an incentive to review its child-related policies. Debates in the committees progressively shaped the mandate. Non-governmental organizations (NGOs) also played a role, expressing a diversity of often conflicting views – especially in relation to possible effects on parental authority. Concerns that the

new Ombudsman for Children might interfere with the private sphere meant that family conflicts remained outside the realm of the Ombudsman.

In August 1980 the Minister of Consumer Affairs and Government Administration proposed a bill to create an Ombudsman for Children to Parliament, which was adopted in February 1981. The debate in parliament was highly polarized, primarily because of diverse understandings of children's rights. Members of parliament eventually voted along party lines (as required by their parties) and the bill was adopted by a small majority.³

United Kingdom

In the United Kingdom, the establishment of children's commissioners in England, Northern Ireland, Scotland and Wales benefited from the collective support of children's organizations, which carried out sustained and intensive advocacy over several years. Changes in the political system also played an important role. The wider devolution of political powers to Northern Ireland, Scotland and Wales commencing in 1998 created fresh advocacy opportunities at these levels, which were decisive in driving establishment processes forward.⁴

Of the United Kingdom's four children's commissioners, the first to be established was that of Wales in 2001. Children's organizations in Wales led the campaign for the establishment of a children's commissioner from 1991, and their efforts received significant impetus following an inquiry into serious abuse of children in care. The inquiry recommended the creation of a commissioner in its report published in 2000. From there the Welsh Assembly took up leadership of the process, organizing consultations and seeking United Kingdom government agreement.⁵

In Northern Ireland, civil society advocacy to establish a children's commissioner accelerated in the 1990s resulting in a series of legislative and policy initiatives aimed at prioritizing children's issues. In 2001, Northern Ireland's First Minister took up the recommendation of the 2000 Inquiry into Residential and Secure Accommodation for Children to create a Children's Commissioner, particularly for those in care. Civil society continued to be strongly engaged in development of the independent institution via an NGO forum set up by the Government. An extensive public consultation process also involved the Northern Ireland Assembly. Despite the suspension of the Assembly because of political gridlock over Northern Ireland's power-sharing arrangements, the United Kingdom Government ensured adoption of the bill in 2003.⁶

3 Flekkøy, M. G. (1991). *A Voice for Children: Speaking out as their ombudsman*, London: Jessica Kinsley Publishers, 47–49.

4 McElduff, E. et al. (2003). 'Update on Progress in the Development of Children's Commissioners in the UK', *Child Care in Practice*, 9 (1):84.

5 *Ibid.*, 84.

6 *Ibid.*, 85.

In Scotland, advocacy by civil society organizations began in the early 1990s. In 2002 the new Scottish Parliament took up the establishment process, setting up an inquiry into the need for a children's commissioner, which quickly resulted in the adoption of a bill in 2003.

In England, the Children's Rights Alliance for England, a coalition of 180 organizations including charities, public authorities and professional associations, launched an advocacy campaign in the 1980s. Although efforts were intensified in the 1990s,⁷ it was the results of an inquiry into children's heart surgery in a healthcare facility published in 2001 that set off the process in earnest, with the Government as its main leader.⁸ The Children's Commissioner in England was created in 2005 and placed under the control of the Secretary of State for Education. This relationship with the executive raised issues about its independence,⁹ and in 2010 a review of the office¹⁰ prompted reforms to address these concerns.¹¹

West Africa

Efforts to establish independent human rights institutions for children in francophone countries in West Africa show how the balance between national engagement and the role of international actors is a delicate matter.

In 2007, following international efforts to raise awareness of child rights issues among political leaders, UNICEF and the Organisation Internationale de la Francophonie collaborated to encourage the establishment of institutions in three countries: Burkina Faso, Mali and Senegal. In June 2009 a workshop brought together major national actors (government officials, judges, civil society representatives and existing human rights institutions) from all three countries in Bamako, Mali.¹² This sensitized participants to the benefits of independent human rights institutions for children, and specific strategies for establishing an institution in each country were agreed.

However, there was limited follow-up after the workshop. There are several reasons for this, including an extensive food crisis across the region, which created new pressing priorities for governments. Perhaps more significantly, there

⁷ The Children's Rights Alliance report, *Making the Case for a Children's Rights Commissioner for England* includes a list of minimum institutional requirements based on the Paris Principles. See: Children's Rights Alliance for England (2003). *Making the Case for a Children's Rights Commissioner for England*, London: CRAE.

⁸ McElduff et al. (2003), op. cit., 88.

⁹ Dunford, J. (2010). *Review of the Office of the Children's Commissioner (England)*, CM 7981.

¹⁰ Ibid.

¹¹ Under way as of early 2013.

¹² Organisation Internationale de la Francophonie (2009). *Rapport de l'atelier sur l'Établissement d'Institutions Indépendantes de Défense des Droits de l'Enfant: Approche effective pour trois pays d'Afrique francophone*, OIF and UNICEF-West and Central Africa.

was also an absence of clear national leadership – and even ownership – of the idea of independent institutions at the domestic level. Another contributory factor was a pre-existing landscape of weak formal public institutions (especially human right institutions).¹³

The one notable exception is Senegal, where a child protection unit in the President’s Office moved the process forward. Changes in political leadership in 2012 may have slowed progress, but there are indications of renewed political commitment to the issue.¹⁴

Turkey

In Turkey, the institutional establishment process to create a children’s ombudsperson has taken place against a backdrop of institutional changes linked to the accession process for joining the European Union. The debate in Turkey has had a particular national flavour to it, as it took place in the context of a broader discussion about establishing a traditional ombudsperson, an idea that met with significant national political and judicial resistance.¹⁵ A legal – and political – battle over the constitutionality of the ombudsperson law meant that six years passed between the adoption of the legislative text and its final approval in 2012 following constitutional reform.

In the same period, the Government of Turkey, UNICEF and the European Union, together with other key actors such as Turkey’s Bar Association, joined forces to initiate discussions around the creation of an ombudsperson for children. They organized a large conference in 2008 to sensitize a wide range of stakeholders to the value of such an institution for independent monitoring of children’s rights and access to a complaint mechanism in case of rights violations.

As of early 2013 this debate had not yet led to the creation of a children’s ombudsperson, although it did contribute to the establishment in 2008 of a child rights monitoring committee within the Turkish Parliament.¹⁶ The concrete impact of the parliamentary committee will depend on its ability to advance child

13 While the Human Rights Council in Senegal has an A ranking with the International Coordinating Committee (ICC) of National Institutions for the Promotion and Protection of Human Rights (which is under close review), the Mali National Human Rights Commission has a B ranking and in Burkina Faso the National Human Rights Commission’s accreditation has lapsed for failure to submit adequate documentation. See: Chart of the Status of National Institutions Accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, as of May 2012.

14 At the time of writing, drafting of a new bill to establish a children’s ombudsman office was under way. Information provided by staff of the child protection unit, September 2012.

15 Sedletzki (2009), op. cit.

16 This committee has members drawn from across the political spectrum and supports the Turkish Parliament’s role in advancing children’s rights; it also serves as a bridge between Parliament and major external actors, including the child protection governmental agency, children and civil society.

rights in parliamentary work, possibly creating the conditions necessary for the establishment of an independent human rights institution for children.

Morocco

In Morocco, the Conseil Consultatif des Droits de l'Homme has spearheaded efforts to establish an independent human rights institution for children. The Conseil has received significant financial and technical support from international actors, primarily UNICEF and the Organisation Internationale de la Francophonie, but has remained the driving force in promoting and facilitating discussions and advancing a strategy for achieving its goal.

The CRC Committee's 2003 Concluding Observations provided the starting point for discussions about the creation of an independent institution in Morocco. However, these discussions did not advance far until the Conseil Consultatif des Droits de l'Homme convened a conference in 2009, bringing together international experts and a wide range of national stakeholders to focus on the creation of an independent mechanism. The Conseil, in collaboration with UNICEF and the Organisation Internationale de la Francophonie, also prepared a study on possible options for a child rights mechanism, which included consultations with children through focus groups. In 2010 a workshop discussed preliminary findings,¹⁷ leading the next year to the recruitment to the Conseil of a staff person specializing in child rights. While the staff position was funded by UNICEF during its first year, by 2012 it was incorporated into the institution's organogram and budget.

Although the recruitment of one staff member demonstrates a positive evolution, it will need to be consolidated with additional steps. These include law reform and the development of a child rights department to ensure that attention to child rights is sustainable and influences the Conseil's approaches. Although the establishment process is still ongoing, the level of national engagement in Morocco is significant.

What lessons can be drawn from past experiences of establishment processes?

Although each process is unique, this review suggests that successful establishment processes combine a number of common factors. While the country context at any given time plays a critical role, the ability of stakeholders to translate a window of opportunity into concrete action is decisive.

¹⁷ Ayoubi Idrissi, H. and V. Sedletzki (2011). 'La mise en place d'un mécanisme de recours et de suivi des droits de l'enfant au Maroc', *Innocenti Working Paper* 2010-21, Florence: UNICEF Innocenti Research Centre.

Establishment processes for broad-based independent human rights institutions and child-specific institutions usually have different dynamics. Broad-based institutions themselves have emerged in a wide array of political systems,¹⁸ but in general have evolved in response to one of three political circumstances: during a period of transition and democratization, sometimes post-conflict; in the wake of international concern and pressure over a nation's human rights record; and in established democratic systems seeking to strengthen their institutions.¹⁹ Their creation frequently corresponds to a defining moment in the development of the institutional system of the country, often sealed by constitutional reform.

In contrast, the creation of child rights institutions – whether as a stand-alone ombudsperson or as part of a broad-based office – typically stems from child-specific concerns coupled with a prevailing willingness to advance children's rights. An environment will therefore be conducive to establishing such an institution at a moment when children's issues have made it onto the national political agenda, sometimes in the context of the CRC reporting process or because of heightened public awareness of child rights violations.

Everywhere, the engagement of the CRC Committee has been the single greatest driver of the move to establish independent human rights institutions for children. Beyond its General Comments No. 2 and No. 5, which address independent human rights institutions and the CRC's general measures of implementation respectively, the CRC Committee's main advocacy tool has been country-specific Concluding Observations, in which it has repeatedly expressed concern over the absence of an independent mechanism with a specific mandate to monitor progress in implementing the CRC and to address individual complaints on behalf of or from children. The CRC Committee has consistently recommended establishing or strengthening independent human rights institutions for children in accordance with the Paris Principles and General Comment No. 2.

In all regions, the process of setting up an institution (including in the cases detailed above, with the exception of Norway) has systematically used a recommendation from the CRC Committee as a reference point. In Viet Nam, for example, following the CRC Committee's recommendation,²⁰ the National Assembly's Committee on Culture, Education, Youth and Children, supported by UNICEF, initiated a consultation on a child rights monitoring system and the

¹⁸ Pegram, T. (2010). 'Diffusion across Political Systems: The global spread of national human rights institutions', *Human Rights Quarterly*, 32 (3):752.

¹⁹ International Council on Human Rights Policy (2004). *Performance and Legitimacy: National human rights institutions*, 2nd edition, Geneva: International Council on Human Rights Policy, 58–59; Reif, L.C. (2000). 'Building Democratic Institutions: The role of national human rights institutions in good governance and human rights protection', *Harvard Human Rights Law Journal*, 13 (Spring):13–16; Pegram (2010), op. cit., 745–747.

²⁰ Concluding Observations of the CRC Committee for Vietnam, CRC/C/15/Add.200, 18 March 2003, para. 13.

creation of an ombudsperson for children. Similarly, in the United Republic of Tanzania the Commission for Human Rights and Good Governance explicitly set up its Children’s Desk in 2006 in order to comply with the CRC Committee’s General Comment No. 2 and its Concluding Observations.²¹

Specific concerns over the situation of children and young people and child rights violations, often prompted by high-profile events such as the death, abuse or exploitation of children, are a major trigger for the establishment of child rights institutions. Such incidents reveal in a very vivid way the need for monitoring and remedies to address and prevent rights violations. Frequently, the awareness of child rights violations also underscores the need to give children a voice.

It was inquiries into the maltreatment, abuse and death of children under the responsibility of child welfare agencies and institutions that prompted the establishment of children’s advocates or commissioners in the United Kingdom and in various other countries including Australia, Canada, New Zealand and the United States of America.²² The need to protect children against violence and exploitation was also a catalyst for initial discussions about the creation of child rights institutions in Mali and Senegal.²³

Although there may be many triggers for establishing an institution, they can only translate into a living institution if other factors come into play to drive the process forward. More than merely a technical phase, the establishment process is the period during which the contract between the institution and all actors is negotiated and agreed. This helps ensure that the independence of the institution will be valued and respected and its primary mission to act in the best interests of the child is understood.²⁴ Wide-ranging discussions involving key actors help inform many sectors of society, and also provide a forum for airing and addressing concerns. Such a broad airing of plans and ideas can help all those involved reach a consensus.²⁵

A nationally-driven establishment process, even if it is supported internationally, is crucial. National leadership of establishment processes – and corresponding national institutional ownership – is the cornerstone upon which successful institutions are built. Although international actors can play an important role

21 In 2001, the CRC Committee encouraged the “establishment of a focal point on children within the Commission for Human Rights and Good Governance to monitor children’s rights”. Concluding Observations of the CRC Committee on the United Republic of Tanzania, CRC/C/15/Add.156, 9 July 2001, para. 17. See also: Commission for Human Rights and Good Governance (2009). *Children’s Desk: Report for the CRC Committee Members and Rapporteurs for the Optional Protocols*, Dar es Salaam: CHRAGG, 3.

22 See Part II: Regional Overviews, Chapter 20: Australia, Canada, New Zealand and the United States of America.

23 Bengaly, A. (2008). *Analyse de situation en vue de la création d’un Défenseur des Enfants au Mali*, provisional report, United Nations Children’s Fund, 30; Organisation Internationale de la Francophonie (2009), op. cit., 20.

24 Sedletzki (2009), op. cit., 1.

25 Ibid., 29.

in establishing a new independent institution, when the impetus for such an institution is exclusively international in origin, national stakeholders may see the new institution as an imposed, imported model. There is some evidence to suggest that broad-based human rights institutions created in response to international demands ultimately have weak protection mandates.²⁶ The perception of international origin can make it difficult for an institution to garner the financial resources and domestic political respect needed to carry out its mandate.

The leadership and dedication of one or more influential individuals who use their position to champion the cause, build alliances and drive the project forward over time is frequently crucial. Such individuals can motivate others – including other institutions and organizations – to take up the cause. These people may be members of parliament; political activists, as in Norway; ministers, as in Northern Ireland (United Kingdom); or members of a human rights institution, as in Morocco. They may be prominent civil society actors, such as the founders of the Children’s Rights Alliance for England, the organization that led the campaign for a children’s commissioner in England (United Kingdom).

Beyond leadership, successful establishment processes have generally come from a confluence of efforts and interests entertained by multiple stakeholders. An influential individual must be backed by an organization or institution to ensure the sustainability and legitimacy of the process. While campaigning for an independent institution is crucial to creating the right conditions for its establishment, ultimately the proposal must be considered by those with the decision-making power to make it a reality. Government is a critical actor in moving the decision-making process forward; the involvement of parliament helps ensure a strong, independent mandate and builds political consensus.

Above all, an establishment process that is consultative, inclusive and transparent ensures that an institution can operate independently, because it helps to create the foundation of a sound legal framework and structure. Such a process is also an important means to educate national partners about the importance of institutional independence.

Who is involved in establishing an institution?

In practice, successful establishment processes for independent human rights institutions for children engage a wide array of stakeholders, the precise mix being dependent on each national circumstance: children and young people, national and international child rights experts, the institutions that would

²⁶ Cardenas, S. (2001). ‘Adaptive States: The proliferation of national human rights institutions’, *Carr Center for Human Rights Policy Working Papers*, T-01-04, Cambridge, MA: Carr Center for Human Rights Policy, 3.

fall under the monitoring and complaint handling mandate, representatives of children from different ethnic and religious origins, NGOs, civil society organizations, government departments, the judiciary, academia, the media and other relevant institutions or organizations.

In all regions, parliaments and in particular parliamentary committees have played a critical role in establishment processes. The parliament approves the legal mandate, in many instances appoints the ombudsperson or participates in the selection process, oversees the institution's functioning and helps implement its recommendations. In Turkey and Viet Nam, parliamentary committees are currently engaged in the establishment of independent child rights monitoring mechanisms, with the support of UNICEF. Because a key parliamentary function is the oversight of the executive branch, the leadership of parliament helps ensure a strong mandate for the institution. For example, the Northern Ireland Assembly took a leading role in the establishment of the children's commissioner in Northern Ireland (United Kingdom), and the institution was awarded broad powers.

In several places, existing independent human rights institutions have played a significant role in driving the process of creating an independent child rights institution, and in particular integrated children's departments, for example, in Morocco. In South Africa, where the founding legislation of the Human Rights Commission includes a mandate on children's rights, the Commission led the consultation process for the creation of a focal point for children in 2000.²⁷

Existing independent institutions have also supported the establishment of stand-alone child rights institutions. In Australia, for instance, the Human Rights Commission has advocated for the establishment of a children's commissioner at the national level,²⁸ which was set up in 2012. In Canada, provincial children's advocates are encouraging the creation of a federal children's commissioner, highlighting gaps in the existing system.

Everywhere, NGOs have acted as strong advocates – and sometimes instigators – for the establishment of independent institutions. Other elements of civil society, including academics, professional organizations, community and religious leaders, youth groups and parents' associations have also been part of the process, especially where consultations have been extensive, for example, in Norway, England (United Kingdom) and Turkey.

²⁷ South African Human Rights Commission (2000). *Towards the Development of a Focal Point for Children in the SAHRC*, SAHRC.

²⁸ Australian Human Rights Commission (2009). 'An Australian Children's Commissioner', discussion paper, 9.

In a few countries, NGOs have set up ombudsperson-like services that have subsequently inspired the legal creation of an ombudsperson for children, as in Finland and Sweden.²⁹

Civil society also monitors the establishment process to ensure that the new institution complies with international standards. In 2009, the NGO working group on the CRC in Italy raised concerns over some provisions of the draft law on a national ombudsperson for children with relevant parliamentary committees, and these were addressed in the final legislation.³⁰

The ultimate role of civil society, however, largely depends on the political tradition of the country. In the United Kingdom, a highly-organized civil society was behind the establishment process, while in Norway civil society contributed to the debate on the shape of the new institution. Overall, successful experiences point to the importance of strong coalitions of organizations weighing in throughout the process. In Turkey, where the development of the non-governmental sector is still unfolding, the engagement of civil society organizations in establishing an independent child rights institution has been more limited.

The CRC Committee recommends that children should be given the opportunity to express their views on what form a child rights institution should take, what it should do and how they think it can best reach them.³¹ Yet, while children are the independent institution's first 'clients', they have only been consulted in a few cases, although the practice is expanding. In Morocco, a group of children and adolescents aged 8–15 years from various walks of life were consulted on their expectations for the new institution and the issues it should address.³² Existing participatory bodies, including local children's councils, can be strategic partners in this aspect of the process. In Turkey, the parliamentary committee on children's rights regularly interacts with youth in provincial child rights committees.³³

Where they are involved, international actors – foreign governments and donors, private foundations, international NGOs, international and regional

²⁹ Save the Children established a children's ombudsman office in Sweden in the 1970s, while in Finland the Mannerheim League for Child Welfare established a Children's Ombudsman Office in 1981. See United Nations Children's Fund (1997). 'Ombudwork for Children', *Innocenti Digest*, No. 1, Florence: UNICEF Innocenti Research Centre, 6; United Nations Children's Fund (2001). 'Independent Institutions Protecting Children's Rights', *Innocenti Digest*, No.8, Florence: UNICEF Innocenti Research Centre, 4.

³⁰ Gruppo di Lavoro per la Convenzione sui Diritti dell'Infanzia e dell'Adolescenza (2009). 'Discussione AC2008 per istituzione del Garante nazionale per l'infanzia', letter to the President of the Commissione Affari Costituzionali and the President, of the Commissione Affari Sociali, 22 April 2009. Available at: http://www.gruppoCRC.net/IMG/pdf/Gruppo_CRC_garante_sitoCRC.pdf.

³¹ Committee on the Rights of the Child (2002). General Comment No. 2, *op. cit.*, para. 16.

³² Ayoubi Idrissi and Sedletzki (2011). *op. cit.*

³³ United Nations Children's Fund (2010). 'Turkey's parliamentary child rights committee sets new goals', press release, 7 October 2010.

inter-governmental organizations and networks of ombudspersons for children – have been most successful when they have supported existing national momentum, for example, as in Afghanistan, Albania, Morocco, Nepal, Nicaragua and Turkey.³⁴ In these countries, international actors have provided financial support and technical expertise, facilitated processes, and helped national stakeholders learn from the experience of others. Various international organizations have developed generic guiding tools to inform establishment processes.³⁵

Foreign independent institutions, individually or through regional networks,³⁶ have been instrumental in educating national actors by sharing first-hand experiences. Representatives from institutions in Greece and Ireland presented their work at a conference on establishing an ombudsperson for children in Turkey. Delegations from Malawi and the United Republic of Tanzania undertook study visits to Mauritius, where the Ombudsman for Children is often seen as a model for institutions in Africa.³⁷ In late 2008, a delegation from the National Assembly in Viet Nam visited Belgium and the Netherlands to learn from their child rights monitoring mechanisms.

Building consensus

Despite the numerous signatories to the CRC, increasing global awareness of child rights and the growing movement to set up independent human rights institutions for children, many worries, concerns and objections often arise when a country initiates the process of establishing an institution.

In Norway, in the early 1980s a number of people spoke out against the establishment of an independent human rights institution for children. Objections – that the ombudsperson for children was a threat to parental authority, that the institution might become an excuse for other groups responsible for children to diminish or relinquish their responsibilities, and that funds allocated for the institution should instead be used to strengthen other existing efforts or services for children – were addressed and are now no longer heard in Norway.³⁸ However, the same arguments arise today in other countries.

³⁴ Miljeteig, P. (2005). *Children's Ombudsman: Save the Children Norway's experiences with supporting and cooperating with independent institutions protecting children's rights*, Oslo: Save the Children Norway.

³⁵ See for example: Office of the High Commissioner for Human Rights (2010). 'National Human Rights Institutions: History, principles, roles and responsibilities', *Professional Training Series*, No. 4 (Rev. 1), New York and Geneva: United Nations; United Nations Development Programme and Office of the High Commissioner for Human Rights (2010). *UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions*, New York: UNDP and Geneva: OHCHR; and Miljeteig, P. (2006). *Children's Ombudsman: Training and resource manual*, Oslo: Save the Children Norway.

³⁶ To promote the establishment of independent children's rights institutions in countries worldwide and to offer support to such initiatives is a primary objective of the European Network of Ombudspersons for Children (ENOC). See Art. 2 of the European Network of Ombudspersons for Children Statutes, as approved in May 2006, Dublin.

³⁷ Organisation Internationale de la Francophonie (2009), op. cit., 13.

³⁸ Flekkøy (1991), op. cit., 185.

Opposition to creating an independent human rights institution for children can even come from other institutions working on human rights, who may perceive the future children's institution as a threat or competitor in the context of limited resources.³⁹ In all contexts, arguments against the establishment of an institution may be based on political ideology. Looking back on the experience of the creation of her office, for example, Norway's first Ombudsman has reflected that discussions in the parliament and the press "made it perfectly clear that Norway would not have established an Ombudsman for Children (at least not at that time) with a different political majority".⁴⁰ The arguments of political opposition might in some cases prevent a bill from being tabled and delay progress.

Yet debate of the issues allows informed discussion with a wide array of actors. Over time it not only allows concerns and objections to be raised, but also brings opportunities to dispel or mitigate them. Issues related to children's rights often transcend political parties; they have the potential to bring together many different actors who are willing to put children's interests above political differences.⁴¹

Informed discussion around the establishment of an independent human rights institution for children is well served by disseminating research and information. In-depth studies on the institutional, political and child rights context can help focus all those involved on the best interests of the child. For this reason, studies have been conducted in Morocco⁴² and West Africa⁴³ while the Children's Rights Alliance for England (United Kingdom) has developed material presenting data and arguments for a children's rights commissioner.⁴⁴ An early focus on positive arguments – in essence, shaping the debate – furthers constructive reflection.

Getting going

The set-up phase is the last stage of the establishment process. This organizational period focuses on the operational establishment of an institution so that its structure and functioning ensure long-term independence, accessibility, effectiveness and sustainability.

This period also provides the opportunity for the institution to start building a culture of independence and a reputation of commitment and dedication

³⁹ Sedletzki (2009), *op. cit.*, 28.

⁴⁰ Flekkøy (1991), *op. cit.*, 50–51.

⁴¹ Sedletzki (2009), *op. cit.*, 28.

⁴² Ayoubi Idrissi and Sedletzki (2011), *op. cit.*

⁴³ Steward, R. and V. Sedletzki (2008). 'Les institutions indépendantes des droits de l'homme pour les enfants en Afrique Francophone: La situation au Mali, au Burkina Faso et au Sénégal', *Innocenti Working Paper* 2008-07, Dakar: UNICEF Regional Office for West and Central Africa and Florence: UNICEF Innocenti Research Centre.

⁴⁴ Children's Rights Alliance for England (2003), *op. cit.*

to defending the interests of children and young people.⁴⁵ The time between the enactment of founding legislation and the operational functioning of the new institution can vary greatly from country to country, often because of political factors.

The set-up period tackles a mix of technical, organizational and logistical issues. The Paris Principles underscore the need for national institutions to have “an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding”.⁴⁶ Likewise, adequate infrastructure, funding, staff and premises are necessary to ensure the independence and effective functioning of institutions.⁴⁷ For example, within the first six months of its establishment, the immediate needs of the Afghanistan Independent Human Rights Commission were to find appropriate office space; recruit qualified staff and build institutional capacity; develop rules and regulations for the Commission’s functioning; set up satellite offices; and review the action plan and strategic planning⁴⁸ – a common set of challenges shared by new institutions.

Some practical set-up issues are governed by the new institution’s founding legislation, but others are left to its own discretion. Setting up a child rights office within a broad-based human rights institution usually requires fewer resources and less time because the infrastructure is already in place – so it can appear to be easier. However, challenges faced by the broad-based office (e.g., low capacity, inadequate funding and staffing) may carry over to the child rights arm.⁴⁹

Difficulties and delays in appointing the ombudsperson or chief of the office during the set-up stage can endanger the entire establishment process. This has been the case in at least two children’s rights institutions. In 2001, the Dominican Republic adopted a law establishing an ombudsperson (*defensor del pueblo*) and an assistant ombudsperson for children and youth (*defensor adjunto para la niñez y la juventud*). Although the institution gained constitutional recognition in 2010 in the new Constitution,⁵⁰ as of mid-2012, both positions remained unfilled.⁵¹ Similarly, in Argentina the law establishing the post of children’s ombudsperson was adopted in 2005.⁵² In June 2010, the CRC Committee expressed concerns

⁴⁵ Ombudsman for Children’s Office [2005]. *Annual Report 2005*, Dublin: Ombudsman for Children’s Office, 1.

⁴⁶ Principles relating to the Status of National Institutions (the Paris Principles), adopted by UN General Assembly Resolution A/RES/48/134 of 20 December 1993, para. 3.

⁴⁷ Committee on the Rights of the Child (2002), General Comment No. 2, op. cit., para. 10.

⁴⁸ Afghanistan Independent Human Rights Commission [2003]. *Annual Report 2002–2003*, Kabul: AIHRC, 9.

⁴⁹ See also Chapter 6, Practical Question: What Structure Should an Institution Take?

⁵⁰ Arts. 190–192 of the Constitution of the Dominican Republic, proclaimed on 26 January 2010.

⁵¹ Committee on Economic Social and Cultural Rights, Concluding Observations, Dominican Republic, E/C.12/DOM/CO/3, 26 November 2010, para. 9.

⁵² Art. 47 of Ley de Protección Integral de los Derechos de las Niñas, Niños y Adolescentes, Ley 26061, 28 September 2005 (Argentina).

about the delays in the appointment of the ombudsperson for boys, girls and adolescents (*defensor de derechos de niños, niñas y adolescentes*) by the Argentine Parliament and recommended that the State expedite this appointment and provide the institution with the necessary human, technical and financial resources.⁵³ Yet by mid-2012, the institution had not yet been set up because the Parliament had not acted to appoint the ombudsperson and follow up implementation of the legislation.

Several institutions around the world have made efforts to involve children and adolescents in the set-up stage. The New South Wales Commission for Children and Young People (Australia), for example, listened to the views of children and young people before setting up its office.⁵⁴ In New Zealand, a colourful mural provided by schoolchildren was part of the initial strategy of the Commissioner for Children to make the building of its office child- and parent-friendly.⁵⁵ Involving children in the set-up of an institution designed to protect their rights can help tailor the institution to children's needs and make it more accessible to them.

⁵³ Concluding Observations of the CRC Committee on Argentina, CRC/C/ARG/CO/3-4, 11 June 2010, paras. 19–20.

⁵⁴ NSW Commission for Children and Young People (2000). *Feedback 2000*, Surry Hills, NSW: CCYP, 2; NSW Commission for Children and Young People (2000). *Annual Report 1999–2000*, Surry Hills, NSW: CCYP, 31.

⁵⁵ Barrington, J. (2004). *A Voice for Children: The Office of the Commissioner for Children in New Zealand 1984–2003*, Wellington, New Zealand: Dunmore Press for the Office of the Commissioner for Children, 24.

12

International Networking and Advocacy

A disaggregated world order would be a world latticed by countless government networks. These would include horizontal and vertical networks; networks for collecting and sharing information of all kinds, for policy coordination, for enforcement cooperation, for technical assistance and training, perhaps ultimately for rule making. They would be bilateral, plurilateral, regional, or global. Taken together, they would provide the skeleton or infrastructure for global governance.

Anne-Marie Slaughter, *A New World Order*

Many institutions look beyond their national borders and reach out to peers for support in carrying out their mandate. Such networking has become a vital source of sustenance for independent institutions around the globe.

A number of networks exist, most of which are organized along geographic lines, gathering institutions from the same region or sub-region. Examples include the Central American and Panama Network of Children's Defenders and the Asia Pacific Association of Children's Commissioners. Some networks include sub-national institutions while others only accept those that operate 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 Children and Adolescent Network of the Ibero-American Federation of Ombudsman (FIO) and the francophone networks of ombudspersons and human rights commissions. Some, like the International Coordinating Committee of National Human Rights Institutions (ICC) created in 1993, gather broad-based human rights institutions. Others, like the European Network of Ombudspersons for Children (ENOC) established in 1997, bring together child rights institutions.

Generally, networks of independent institutions 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 (OHCHR) and UNICEF.

Both the Committee on the Rights of the Child (CRC Committee) and the Paris Principles recognize the importance to independent institutions of international networking and collaboration with regional and global mechanisms.¹ The CRC Committee’s General Comment No. 2, for example, highlights the benefits of learning from each other’s experience, strengthening each other’s positions, and helping each other address common issues relating to the fulfilment of human rights nationally, regionally and globally.²

International networking among independent human rights institutions for children is in many ways a response to these institutions’ unique space at the national level, independent from government and civil society. The trend towards networking is also part of a wider phenomenon – the proliferation of networks linking government officials and structures with similar functions across countries. These networks draw their influence from technical expertise and persuasion, and coexist with states’ traditional diplomatic tools.³ Table 12.1 lists existing networks of ombudspersons and human rights institutions.

Table 12.1 Networks of ombudspersons and human rights institutions

Network	Membership criteria	Inclusion of children’s rights	Date of creation
Broad-based human rights institutions			
Global networks			
International Coordinating Committee of National Human Rights Institutions (ICC)	Compliance with Paris Principles Voting members, non-voting members	Occasional	1993
International Ombudsman Institute (IOI)	Public ombudsperson institution Criteria as set out in Art. 6 of the IOI by-laws, 2009 Institutional, associate, individual, honorary life and library members	No specific focus	1978
Regional networks (connected to the ICC)			
European Group of National Human Rights Institutions		No specific focus	1994
Network of African National Human Rights Institutions (NANHRI)	African region Compliance with Paris Principles Full and associate members, observers	Occasional	1996

¹ Principles relating to the Status of National Institutions (the Paris Principles), adopted by UN General Assembly Resolution A/RES/48/134 of 20 December 1993, para. 3 (e); UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, paras. 27–29.

² UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 29.

³ Slaughter, A. M. (2004). *A New World Order*, Princeton, NJ: Princeton University Press, 1.

Table 12.1 Continued

Network	Membership criteria	Inclusion of children's rights	Date of creation
Asia Pacific Forum of National Human Rights Institutions	Asia Pacific region Compliance with Paris Principles Full, candidate and associate members	Occasional	1996
Network of National Institutions for the Promotion and Protection of Human Rights of the American Continent	Americas Compliance with Paris Principles Full members, observers	Focus area in 2008–2010 workplan	2000
Other regional and sub-regional networks			
Consejo Centroamericano de Procuradores de Derechos Humanos (CCPDH)	Human rights institutions in Central America	Focus area Sub-network on children's rights (see below)	1994
Consejo Andino de Defensores del Pueblo (CADP)	National human rights institutions set up in the Andean region	No specific focus	1998
Caribbean Ombudsman Association (CAROA)	Ombudsman in the Caribbean Voting, individual, associate and honorary members	No specific focus	2000
The Economic Community of West African States (ECOWAS) Network of National Human Rights Institutions	National human rights institutions in the Economic Community of West African States (ECOWAS) Member States	No specific focus	2006
Association of Southeast Asian Nations (ASEAN) National Human Rights Institutions Forum	National human rights institutions in ASEAN Member States Charter in drafting process	Occasional	2007
African Ombudsman Association (AOMA)	Recognized ombudsperson office in African country	No specific focus	1995
Asian Ombudsman Association (AOA)	Ombudsman established by law or constitution Criteria as set out in Rule 4 of the AOA by-laws Full, associate, honorary life, and individual members	No specific focus	1996
Networks based on linguistic and cultural commonalities			
Federación Iberoamericana del Ombusman (FIO)	Institutions at national, state, provincial or regional level Meet the basic profile of the ombudsperson Sufficient power to promote human rights Constitutional or legal basis by legislative body	Sub-network on children's rights (see below)	1995

Continued overleaf

Table 12.1 Continued

Network	Membership criteria	Inclusion of children's rights	Date of creation
Association des Ombudsman et Médiateurs Francophones (AOMF)	Francophone member country or territory (or associate member) Criteria as set out in Art. 7 of the AOMF statutes, 2009 Voting, associate and honorary members	AOMF Bamako Declaration refers to the importance of children's rights and the need to give greater attention to their situation	1998
Association Francophone des Commissions Nationales de Promotion et de Protection des Droits de l'Homme (AFCNDH)	Francophone Member State (with possibility for invitation of additional members) Compliance with Paris Principles and Bamako Principles Voting and associate members, observers	Occasional	2002
Commonwealth Forum of National Human Rights Institutions	Commonwealth countries	Occasional	2007
Child rights institutions			
European Network of Ombudspersons for Children (ENOC)	Council of Europe Member States Integrated or separate Compliance with Paris Principles and ENOC standards Legislative mandate Function of protecting and promoting children's rights established through legislation Identifiable person or persons concerned exclusively with the protection and promotion of children's rights	Specific focus	1997
Global Network of Independent Human Rights Institutions for Children	Representatives of regional networks Individual institutions from regions without regional networks	Specific focus	2002
Asia Pacific Association of Children's Commissioners (APACC)	Alliance of children's commissioners from New Zealand and Australia	Specific focus	
South East Europe Children's Rights Ombudspersons Network (CRONSEE)	Southern and Eastern Europe Participation in the network's annual conference	Specific focus	2006
Red de Niñez y Adolescencia de la FIO	Child rights offices of members of FIO (see above)	Specific focus	2011
Defensorías, Comisionados y Procuradores de la Niñez y Adolescencia de Centroamerica y Panama	Children's rights offices of each country	Specific focus	2002

The value of networking

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. With a very specific set of challenges and because they need to keep some distance from the institutions and organizations they monitor, ombudspersons for children may find it difficult to access advice and support from within their own countries.

Networks can act as peer support groups for individual institutions, thereby contributing to their effectiveness.⁴ They provide forums where sound, creative practices can be shared and future initiatives inspired. Meetings typically feature sessions in which national experiences are presented. Every annual meeting of ENOC, for example, begins with a three-minute presentation by each member of its activities over the past year. Members are also invited to submit a written report detailing their mandate and activities. In the same spirit, the objective of a meeting of Central American ombudspersons for children and adolescents held in 2009 was to provide a “space for exchange of experiences and good practices”.⁵ These discussions bring a sense of belonging to a group of peers motivated by a similar mandate and facing comparable challenges. For this reason, sharing experiences is often the initial stage in the creation of a network and the first step towards increased cooperation.

One important outgrowth of networking is a convergence of institutional practices. For example, child participation is an area in which a body of common practices has developed among independent human rights institutions for children. An increasing number of institutions have set up advisory councils comprised of children to inform their activities, many using similar models.⁶ In Europe, these developments have prompted ENOC to create a European Network of Young Advisors composed of members of youth advisory panels.⁷ The project has in turn encouraged more institutions to set up youth advisory councils and panels.⁸ Other common practices, from issue-related focus groups of children to bus tours to raise awareness of an institution, are emerging across Europe and beyond.

⁴ For more information about international networking of public bodies in general, see Slaughter (2004), *op. cit.*

⁵ Background papers and agenda, *Encuentro Interamericano de Defensores de Niñez y Adolescencia* [Inter-American meeting of Ombudspersons for Children and Adolescents] organized by the Instituto Interamericano del Niño, la Niña y Adolescente, Panama, 7–8 December 2009.

⁶ See Chapter 7: Child Participation.

⁷ European Network of Ombudspersons for Children (2010). ‘Report on the ENOC Annual Activities for the Period 2009–2010’, presented at the 14th ENOC Annual Meeting, Strasbourg, France, 7–9 October 2010, 2–3.

⁸ *Ibid.*, 3.

Discussing areas of common concern and embracing joint strategies can lead institutions to shift the focus of their work. In 2008, the Central American network of Procuradores por los Derechos de la Infancia defined four areas of work related to children's rights: corporal and humiliating punishment; child trafficking; child labour; and public policies for adolescents.⁹ Subsequently, similar strategies and investigations related to these areas have been taken up by national institutions. Convergence of practices in a number of regions stems from the need to address issues with cross-border implications, for example, the rights of children on the move.

Networks also provide a forum for sharing experience and guidance on the establishment of new institutions. They have likely played a significant role in the spread of the ombudsperson for children model by creating convergence while leaving a space for "informed divergence"¹⁰ that reflects national realities.

One of the stated objectives of ENOC, for example, is to promote and support the establishment of independent institutions in countries worldwide.¹¹ The Asia Pacific Forum of National Human Rights Institutions has offered advice on draft legislation for a human rights commission in Bangladesh to advance compliance with the Paris Principles.¹² A workshop in 2009 organized by UNICEF and the Organisation Internationale de la Francophonie on establishing independent child rights institutions in three West African countries, which included the participation of the chairs of the francophone networks of ombudspersons and national human rights commissions, provides a further example of the role of networking in establishment processes.¹³

In addition to facilitating the exchange of knowledge, networks enable independent institutions to enjoy support from their peers. Such support has several dimensions, formal and informal. Among other benefits, networking helps create conditions for "generating reasoned solutions to complex problems".¹⁴ These solutions are typically of higher quality because they are based on cumulated expertise and consensus on beliefs, and have been reached through

⁹ Consejo Centromericano de Procuradores de Derechos Humanos [2008]. *Plan Operativo Anual Para el Periodo 2007–2008*, Red de Defensores de la Niñez, Adolescencia y Juventud.

¹⁰ Slaughter (2004), op. cit., 171–172.

¹¹ Art. 2.3 of the European Network of Ombudspersons for Children Statutes, as approved in May 2006, Dublin. See also Chapter 11, Practical Question: How is an Independent Human Rights Institution for Children Established.

¹² Byrnes, A., A. Durbach and C. Renshaw (2008). 'Joining the Club: The Asia Pacific Forum of National Human Rights Institutions, the Paris Principles and the advancement of human rights protection in the region', paper prepared for the 5th Asian Law Institute Conference, Singapore, 22–23 May, 17.

¹³ Organisation Internationale de la Francophonie (2009). 'Rapport de l'Atelier sur l'Établissement d'Institutions Indépendantes de Défense des Droits de l'Enfant: Approche effectives pour trois pays d'Afrique francophone', Bamako, Mali: 22–23 June 2009, UNICEF-OIF.

¹⁴ Slaughter (2004), op. cit., 199.

constructive dialogue rather than bargaining.¹⁵ Engagement helps consolidate networks and give members a sense of shared goals.

Formal networking mechanisms typically involve official interaction or decision-making by the network as a whole. Networks can take public, common positions on sensitive topics. This can add legitimacy and political support to individual institutions taking a stance on issues at the national level. For example, the position of ENOC on the implementation of a European Union directive on the return of illegal third-country nationals, developed in 2008, was adopted by individual institutions to give greater weight to their advocacy efforts with their own governments and parliaments.¹⁶

Networks also offer visibility and support when an institution is threatened. They can operate as an alert system, mobilizing the group to advocate on behalf of its members. This strategy has been used several times within the European region. For example, when in 2009 the French Government decided to merge the *défenseur des enfants* into a broad-based institution, the child rights arm received advocacy support from individual members of the network as well as from the group as a whole. Despite these efforts, however, the merger took place.¹⁷

A network can help an individual institution access tools and advice to build its capacity, both directly through training and technical assistance, and indirectly through collaboration and advice.¹⁸ In this way networks help address the problem of limited financial and human resources, often a particular challenge for recently-created institutions and for institutions located in countries where national capacities are more limited.

For example, newly-created institutions or institutions not yet meeting membership criteria can be invited to attend network meetings as observers.¹⁹ After the war in 2008, the office of the Child's and Woman's Rights Centre of the Public Defender in Georgia called for support in addressing post-conflict needs at the annual meeting of ENOC, of which it is a member.²⁰ In response, the Ombudsman for Children in Norway offered 10 teachers from Georgia training

¹⁵ Ibid., 199–200.

¹⁶ European Network of Ombudspersons for Children (2008). 'Statement on the E.U. "Return" Directive of 18.6.2008', 30 July 2008. Available at: <http://www.crin.org/enoc/resources/infoDetail.asp?ID=18038>; European Network of Ombudspersons for Children (2008). 'Report of the ENOC Annual Meeting, Dublin, Ireland, 3–5 September 2008', Strasbourg: ENOC, 6. See also comments made by the Norwegian Ombudsman for Children in the annual report for 2010 (see Barneombudet [2010]. *Annual Report 2010*, Oslo: Barneombudet, 9).

¹⁷ Official letter of European Network of Ombudspersons for Children, dated 16 September 2009.

¹⁸ Slaughter (2004), *op. cit.*, 185.

¹⁹ See, for example, participant lists for the annual meetings of the European Network of Ombudspersons for Children held in 2008 and 2009 (available at: <http://www.crin.org/enoc/meetings/>).

²⁰ Child's and Woman's Rights Centre (2008). 'Aftermaths of War for Children: Georgia', paper circulated at the 12th ENOC Annual Meeting, Dublin, Ireland, 3–5 September 2008.

in post-traumatic stress with psychologists and these teachers in turn trained their peers.²¹

Regular meetings promote interaction, knowledge of each other's activities, trust and solidarity. All these elements are important features of networks as spaces for socialization.²² By nurturing interpersonal relationships and a sense of belonging, networks foster collaboration among individual institutions outside official settings. The importance of the feeling of belonging and support cannot be underestimated and is frequently described by network members in their debates and bilateral interviews as highly significant. Networks help individual ombudspersons get through difficult times. Interpersonal relationships play an essential role in this process.

Networks also tend to foster compliance with international standards among individual institutions. They do this largely through membership criteria and peer monitoring. For example, membership of the ICC comes after an elaborate accreditation procedure assessing compliance with the Paris Principles.²³ Likewise, full membership in ENOC is based on fulfilment of a number of criteria.²⁴

Beyond the formal membership application and review process, discussion of an institution's admission to or exclusion from a network can in itself have a significant influence on the shape and mandate of that institution. For example, discussions held with the Asia Pacific Forum before the admission of the Indonesian National Human Rights Commission helped it move from its initial establishment by presidential decree to become an institution with a legislative basis.²⁵ In the same vein, in 2009 threats by the ICC to downgrade the status of the Human Rights Commission in Malaysia led the Government to expedite legislative reform to address the ICC's concerns about the body, the day before the ICC was to convene to discuss this issue.²⁶

Selective membership ensures trust and coherence within a network. As a result, networks provide status guarantees for the group as a whole and for

21 Information provided by staff at the Child's and Woman's Rights Centre, Office of the Public Defender in Georgia, 20 May 2010.

22 Slaughter (2004), *op. cit.*, 199.

23 Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Statutes, adopted on 14 September 2004, as amended on 15 April 2008.

24 These criteria include a) the establishment of the institution through parliament-approved legislation, which also guarantees independence; b) the function of protecting and promoting children's rights, established through legislation; c) no provisions that limit the agenda or core functions of the institution in regard to its purpose; d) the inclusion of person(s) working exclusively on the protection and promotion of children's rights; and e) legislation that backs the appointment of ombudspersons, commissioners and/or members of a commission and that sets out the term of the mandate. See Art. 4 of the European Network of Ombudspersons for Children Statutes, as approved in May 2006, Dublin.

25 Byrnes, Durbach and Renshaw (2008), *op. cit.*, 17.

26 Asian NGOs Network on National Human Rights Institutions (2010). *ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia*, ANNI, 98.

individual members. They act as “bearers of reputation”,²⁷ largely because of peer monitoring and accountability. Crucial to this is the ability of networks to follow transparent procedures.

At the same time, because network members are aware of the difficulties faced by their peers, evaluations can take place more equitably.²⁸ The Sub-Committee on Accreditation of the ICC has issued ‘general observations’ on the interpretation of the Paris Principles for accreditation. The Sub-Committee recognizes that in volatile contexts institutions cannot be expected to operate in full compliance with the Paris Principles and it commits to giving due consideration to these difficulties in reviewing the status of institutions working in such circumstances.²⁹

The value of belonging to the group creates an incentive for complying with its rules.³⁰ Therefore, “the power to control admission ... is a powerful weapon”.³¹ To foster compliance and facilitate membership, some networks have established graduated membership. The statutes of ENOC enable it to grant associate status to an institution ‘actively seeking’ to meet membership criteria.³² Similarly, the Asia Pacific Forum of National Human Rights Institutions admits three categories of members (full, candidate and associate) where candidate members commit to “take active steps towards compliance with the Paris Principles within a reasonable period”.³³ Graduated membership also helps institutions identify the steps needed to address deficiencies.³⁴

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. In Europe, this has led to discussions within ENOC about membership criteria, with some members calling for more flexibility.³⁵

27 Slaughter (2004), op. cit., 196.

28 De Beco, G. (2008). ‘Networks of European National Human Rights Institutions’, *European Law Journal* 14, (6):865.

29 General Observations of the ICC Sub-Committee on Accreditation, adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC), June 2009, para. 5.3.

30 Slaughter (2004), op. cit., 201.

31 Ibid., 201.

32 Art. 5. of the European Network of Ombudspersons for Children Statutes, as approved in May 2006, Dublin.

33 Rule 11 of the Constitution of the Asia Pacific Forum of National Human Rights Institutions.

34 Byrnes, Durbach and Renshaw (2008), op. cit., 20.

35 Hodgkin, R. and P. Newell (2010). *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 Survey 2010*, Council of Europe and European Network of Ombudspersons for Children, 39.

A channel for regional and international advocacy

There is evidence that as a result of their networking efforts, independent institutions have become more engaged in political dialogue at the regional and global levels, in particular in standard-setting activities, which are increasingly central elements of their international networking and advocacy work. Not only do they have valuable insights and experiences to share about children's lives and their best interests, but recognition in regional and global instruments helps strengthen independent institutions on their home turf.

Sometimes networks act on their own initiative, by independently identifying an opportunity or a need to influence issues. For example, ENOC has adopted several positions in relation to European Union directives and their impact on children.³⁶ At other times, the contribution of a network is requested – as, for example, during the drafting of the third Optional Protocol to the CRC on an individual complaints procedure. ENOC was part of the advisory panel responsible for drafting the CRC Committee's General Comment No. 12 on the right of the child to be heard.³⁷ Its involvement is also regularly sought in various child rights initiatives undertaken by the European Union and the Council of Europe.³⁸

Strategic network meetings can promote greater recognition of the role of independent institutions. For example, the First Global Meeting of Independent Human Rights Institutions for Children was held on the occasion of the United Nations Special Session on Children in 2002,³⁹ and the Special Session's outcome document, *A World Fit for Children*, urges governments to consider establishing independent ombudspersons for children.⁴⁰

Similarly, the Global Network of Independent Human Rights Institutions for Children met during the World Congress III against the Sexual Exploitation of Children and Adolescents held in Rio de Janeiro, Brazil, in 2008 and held a dialogue with adolescent representatives. Both the outcome document of the Congress and the adolescent declaration explicitly mention the participation

³⁶ European Network of Ombudspersons for Children (2003). 'Childhood and Commercial Pressure: Statement on EU-proposal for a "Directive on unfair business-to-consumer commercial practices" 2003/0134 (COD)', 17 October 2003. Available at: www.crin.org/docs/ENOC_statement_Commercial_pressure.doc; European Network of Ombudspersons for Children (2008). 'Statement on the E.U. "Return" Directive of 18.6.2008', 30 July 2008. Available at: <http://www.crin.org/enoc/resources/infoDetail.asp?ID=18038>. Likewise, ombudspersons for children from G-8 countries have adopted a joint statement calling on leaders to invest in children in times of economic and environmental crisis (see: O8 Summit Ombudsman for Children, outcome document, adopted 26 June 2009, Nuoro, Italy).

³⁷ European Network of Ombudspersons for Children (2009). Report of the ENOC Annual Meeting, Paris, France, 23–25 September 2009, Strasbourg: ENOC, 24.

³⁸ European Network of Ombudspersons for Children (2010), op. cit., 6–9.

³⁹ Report of the First Global Meeting of Independent Human Rights Institutions for Children, New York, USA, 7 May 2002. Available at: http://www.unicef.org/specialsession/docs_new/documents/events_hr_institutions.pdf.

⁴⁰ *A World Fit for Children*, UN General Assembly Resolution A/RES/S-27/2, adopted 11 October 2002, para. 31 (b).

of human rights institutions and ombudspersons and urge states to establish such institutions.⁴¹

Standard-setting processes have increasingly welcomed the direct participation of independent human rights institutions through their networks. Independent institutions were involved in drafting the Convention on the Rights of Persons with Disabilities, which explicitly refers to the implementation and monitoring role of institutions at the national level.⁴² In a similar fashion, independent child rights institutions with a key role in ENOC participated in the drafting process of the third Optional Protocol to the CRC on an individual complaint procedure, the text of which highlights institutions' function with respect to the procedure.⁴³ Independent institutions were also involved in the drafting of the CRC Committee's General Comment No. 12, which recognizes their role as an overarching strategy for the right of the child to be heard.⁴⁴

Most networks of independent human rights institutions for children have close connections to regional or global intergovernmental organizations, and sometimes network membership is based on these other affiliations. In West Africa, for example, the connection between ECOWAS and the ECOWAS Network of National Human Rights Institutions is recognized in the Protocol on Democracy and Good Governance,⁴⁵ which provides for the establishment of the network. Human rights institutions are further required to submit reports on rights violations within their respective countries to ECOWAS through the ECOWAS Network of National Human Rights Institutions.⁴⁶

International organizations, including the OHCHR, the United Nations Development Programme, the Council of Europe, the European Union, UNICEF and others, support networks by funding some of their activities, offering premises and acting as technical secretariats. UNICEF's The Americas and Caribbean Regional Office, for example, supports the Ibero-American Childhood and Adolescence Network, while the Secretariat of ENOC is located on Council of Europe premises (although it maintains an independent status).

⁴¹ The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents, adopted 28 November 2008, para. 63; Adolescent Declaration to End Sexual Exploitation, adopted 28 November 2008.

⁴² United Nations Convention on the Rights of Persons with Disabilities, adopted by UN General Assembly Resolution A/RES/61/106 of 13 December 2006, Art. 33. See also Guernsey, K., M. Nicoli and A. Ninio (2007). *Convention on the Rights of Persons with Disabilities: Its implementation and relevance for the World Bank*, Washington DC: The World Bank.

⁴³ Human Rights Council Working Group (2010). Proposal for a draft optional protocol prepared by the Chairperson-Rapporteur of the Open-ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to Provide a Communications Procedure, document A/HRC/WG.7/2/2, Geneva: United Nations, Preamble and Art. 3.

⁴⁴ UN Committee on the Rights of the Child (2009). General Comment No. 12: The right of the child to be heard, CRC/C/GC/12, 20 July, para. 49.

⁴⁵ Protocol on Democracy and Good Governance: Supplementary to the Protocol relating to the mechanism for conflict prevention, management, resolution, peacekeeping and security, Protocol A/SP1/12/01, adopted 21 December 2001, Art. 35.

⁴⁶ Ibid.

International organizations, including non-governmental organizations (NGOs), often have access to resources that can be used to support networks' activities. For example, when network members lack the funds needed for travel to be actively involved in networking, funding from international organizations can help. Networks may also receive financial support to undertake studies and create websites and other communication tools. Save the Children provided extensive financial and technical support for the development and consolidation of the South East Europe Children's Rights Ombudspersons Network.⁴⁷

International organizations also support advocacy efforts aimed at giving independent institutions a voice in various debates. The role of the OHCHR as the Secretariat of the ICC has been instrumental in ensuring that institutions accredited by the network are allowed to participate in debates hosted by the Commission on Human Rights and Human Rights Council.

Similarly, facilitation of the Global Network of Independent Human Rights Institutions for Children by UNICEF's Office of Research enabled participating institutions to hold meetings during the United Nations Special Session on Children. The value of the involvement of international organizations lies in their neutrality and respect for institutions' independence, while at the same time making available expertise, logistical assistance and resources.

This support cuts both ways. Networks of independent institutions can also help international organizations fulfil their own mandates. International organizations with the mandate to promote human rights and democratization have always sought to strengthen independent human rights institutions, and have used their reports as a critical source of information.⁴⁸ Supporting networks facilitates this process; it helps institutions themselves become leaders in strengthening other institutions.

The question of the status of child-focused rights institutions within the United Nations system and in other intergovernmental settings merits increased attention from relevant actors, in particular all-encompassing human rights institutions, in order to enhance their ability to contribute to relevant forums. Broad-based human rights institutions are afforded a formal status and the ability to participate in United Nations debates through their accreditation with the ICC. However, the ICC only accredits one institution per country. For example, although they can make a written submission for the Universal Periodic Review, as can civil society actors, stand-alone child rights institutions cannot directly participate in discussions. They are consequently unable to be vocal in official

⁴⁷ Save the Children (2011). *The South East Europe Children's Rights Ombudsperson's Network: Regional synergy for protection of child rights*, Child Rights Governance Initiative, Save the Children.

⁴⁸ See Chapter 1. Independent Human Rights Institutions for Children: Standards and Frameworks.

child rights debates and at major United Nations events such as the Special Session on Children. Involving ombudspersons for children in global child rights processes is essential to ensure the best outcomes for children.

Limits and challenges of networking

While networking offers significant advantages for independent child rights institutions both separately and as a group, it can also be challenging. Networking is costly and time-consuming, which can both become obstacles, especially if an institution belongs to more than one network. In offices with limited numbers of staff, responding to network needs can be difficult. The financial costs of participating in network activities (e.g., for travel, membership fees, etc.) can be a burden for institutions with a limited budget.

Networking must be seen as worth the investment to make sense for organizations. For this reason, regular assessments of network functioning can identify gaps and strengths and provide feedback on how the network is serving individual institutions and fitting into regional and global child rights advocacy. Unfortunately, available information on networks examined in this review suggests they have rarely undertaken this type of evaluation.

Network decisions are typically based on a desire to preserve coherence, while respecting individual institutions' space. So within a network flexibility is important, as their discussions and decisions are simply the backdrop to their primary quality of institutional independence. Individual members need to be able to take a lesser role and opt out of certain activities and positions as they see fit. This usually happens informally, with some institutions being more active than others. Expansion of networks in number and scope only magnifies this need for flexibility.

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. While in formal terms members typically have equal rights to vote and participate, in practice richer institutions are likely to be better positioned to take on key responsibilities such as chairmanship, representative functions and coordination of (and input to) joint positions. Furthermore, apart from networks based on a common language, network activities are often conducted in English. This can limit the participation of institutions where the head of office or staff lack the language skills to be fully involved in debates – this may have practical implications for the coherence of the group when some network members do not feel adequately represented.

Offsetting this risk involves providing space for institutions with more limited capacities to participate in key network functions and to influence decisions. In some cases, network statutes require geographic balance in executive bodies. For example, the composition of the Bureau of the ICC provides for an equal number of seats allocated for each regional group and for rotating the chair and secretary regionally.⁴⁹ Similarly, the statutes of the Association des Ombudsmans et Médiateurs de la Francophonie require a regional balance in the composition of the executive board of the network.⁵⁰

Networks may also provide for the representation of various types of institutions within their executive bodies, as is the case in the Federación Iberoamericana de Ombudsman (FIO), whose executive committee must include three representatives of institutions operating at the sub-national level and where one of the five vice-chairpersons must come from a sub-national institution.⁵¹ Notably, the statutes also require a gender balance in the selection of the chair and vice-chairs.⁵²

Another way to promote the substantive involvement of all institutions is by creating sub-regional networks. By providing smaller groupings and connecting institutions bound by closer similarities, sub-regional networks help institutions that face difficulties actively participating in broader networks find a role and a voice. For this very reason, children's ombudspersons from south-eastern European countries set up a sub-regional network in 2006. The network was created to support institutions facing similar challenges in a context of poverty and post-conflict political, social and economic transition, which is the experience of several countries in the sub-region. Central American *procuradores de derechos humanos* formed a sub-regional network in 1994,⁵³ which since 2002 has included a thematic network on children's rights.

A downside is that sub-national networks may lead to the fragmentation of advocacy efforts and increase the burden of networking activities for individual institutions. They are, however, a response to the multiplication of independent institutions and the corresponding growth of membership in larger networks,

⁴⁹ Arts. 31.4 and 45 of the Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights Statutes, adopted on 14 September 2004, as amended on 15 April 2008.

⁵⁰ Art. 10 of the Statutes of the Association des Ombudsmans et Médiateurs de la Francophonie, as modified on 13 December 2007.

⁵¹ Arts. 13 and 15 of the Statutes of the Federación Iberoamericana de Defensores del Pueblo, Procuradores, Proveedores, Roanadores, Comisionados y Presidentes de Comisiones Públicas de Derechos Humanos, o Federación Iberoamericana de Ombudsman (FIO), adopted on 20–21 November 2008.

⁵² *Ibid.*, Art. 15.

⁵³ Acta de Antigua Guatemala, Fundación del Consejo Centroamericano de Procuradores de Derechos Humanos [Foundation Act], 30 April 1994.

offering individual institutions, particularly those from smaller or transition countries, an opportunity to find their space more easily.⁵⁴

Within networks of broad-based institutions, work on children's issues can be lost in a sea of other issues. Under such circumstances, stand-alone children's rights institutions may not be allowed to participate or might have a limited representation. Thematic sub-groups focusing on children are one way to ensure the visibility of children's rights within networks of broad-based institutions, as is the case in Central America and is being explored by the FIO. Here child-focused sub-groups enable staff in charge of children's rights to meet and develop strategies suited to their needs and interests. They can build on existing networks and take advantage of their structures.

⁵⁴ For example, the European Network of Ombudspersons for Children had 10 members when it was created in 1997 and had grown to 39 members by 2013. See: http://crin.org/docs/FileManager/enoc/members_contact_list_website_2011.pdf.

Engaging with International Monitoring Mechanisms

National human rights institutions and UN human rights Treaty Bodies are natural partners in the protection and promotion of human rights.

Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

Relationships between independent human rights institutions for children and international monitoring mechanisms such as treaty bodies (committees of experts that review compliance with certain human rights treaties) are mutually beneficial. The role of independent human rights institutions as national monitoring bodies makes them a natural contributor to these international mechanisms.

The proliferation and strengthening of national human rights institutions in all regions since the mid-2000s has brought about improved and extended dialogue.¹ The Inter-Committee of Human Rights Treaty Bodies (which gathers all United Nations treaty monitoring bodies and representatives of national human rights institutions) is an important forum for this expanded interaction.² Dialogue has encompassed promoting the involvement of independent institutions in reporting processes³ and following up implementation of treaty body recommendations at the national level.⁴

¹ The UN Secretary-General has commented: “In light of the important role played by national human rights institutions (NHRIs) in encouraging States to report, as well as in monitoring the implementation of concluding observations, the establishment of well-functioning and independent NHRIs was encouraged.” See: *Strengthening the United Nations: An agenda for further change*, report of the UN Secretary-General, A/57/387, 9 September 2002. See also: Report of the Third Inter-Committee Meeting of Human Rights Treaty Bodies (21–22 June 2004), A/59/254, 11 August 2004, para. 12; Report of the Fourth Inter-Committee Meeting of Human Rights Treaty Bodies (20–22 June 2005), A/60/278, 19 August 2005, paras. 28–32; Report of the Fifth Inter-Committee Meeting of Human Rights Treaty Bodies, A/61/385, 25 September 2006, para. 12; Report of the Sixth Inter-Committee Meeting of Human Rights Treaty Bodies, A/61/385, 13 August 2007, paras. 37–39.

² Report of the Fourth Inter-Committee Meeting of Human Rights Treaty Bodies (20–22 June 2005), A/60/278, 19 August 2005, para. 28.

³ A meeting held in 2006 of representatives of human rights institutions and treaty bodies resulted in the drafting of a set of procedural recommendations to be followed by treaty bodies with respect to reporting, petitions and enquiry, follow-up, thematic engagement and protection capacity. See: Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies (Berlin, Germany, 23–24 November 2006), HRI/MC/2007/3, 7 February 2007. See also: Report and Recommendations of Sub-Committee on Accreditation, Geneva, Switzerland, 22–26 October 2007, Annex 3, para. 6.1 [General Observation: Interaction with the International Human Rights System, developed by the Sub-Committee on Accreditation at its October 2007 session and submitted at the 20th Session of the International Coordinating Committee]; and Müller, A. and F. Seidensticker (2007). *The role of national human rights institutions in the United Nations treaty body process*, Berlin: German Institute for Human Rights.

⁴ Examples of engagement on this issue include the Workshop on Implementation of International Recommendations by NHRIs, Cartagena de Indias, Colombia, 16–19 April 2007 and the Workshop on National Human Rights Institutions and Treaty Bodies Geneva, Switzerland, 26–28 November 2007.

The most strategic relationship for independent institutions is that with the Committee on the Rights of the Child (CRC Committee), but relationships with 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 those with 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 record 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 Universal Periodic Review of the Human Rights Council provides an important channel for independent institutions to voice their concerns. Several child rights institutions have begun to use opportunities to contribute their views to the Periodic Review, 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 working in collaboration with the general ombudsperson, as in Croatia; or by presenting a separate report, as in Ireland and the United Kingdom.

The value of interactions between national human rights institutions and treaty bodies is captured well by the report of a 2007 workshop, held in Geneva and organized by the Office of the High Commissioner for Human Rights (OHCHR). 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 on 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.⁵

The engagement of institutions with international mechanisms requires a thorough understanding of entry points in monitoring processes, the availability

⁵ Conclusions of the Workshop on National Human Rights Institutions and Treaty Bodies, Geneva, Switzerland, 26–28 November 2007, para. 3.

of resources to make a contribution, and – for children’s rights institutions – access and visibility.

International monitoring mechanisms

The Committee on the Rights of the Child

The CRC Committee is the international independent body established by the Convention on the Rights of the Child (CRC) to monitor progress in its implementation. Independent human rights institutions for children not only draw life from the Convention, but benefit from the CRC Committee’s support. The CRC Committee provides institutions with legitimacy and guidance. It functions as an avenue for voicing concerns and cultivating child participation through the reporting process. Independent institutions, in turn, channel the voice and experience of children to the CRC Committee and on to the state. The result for both institutions and the CRC Committee is enhanced capacity to fulfil their respective mandates. The engagement of independent institutions with the CRC Committee exemplifies the type of relationship, contribution and benefits that can be developed with other international monitoring bodies.

The Convention on the Rights of the Child reporting process

In compliance with Article 44 of the CRC, States parties periodically (every five years) submit reports on implementation to the CRC Committee. The CRC Committee may also invite “specialized agencies, UNICEF and other competent bodies it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates”.⁶ The term ‘other competent bodies’ includes non-governmental organizations (NGOs) and independent human rights institutions.⁷

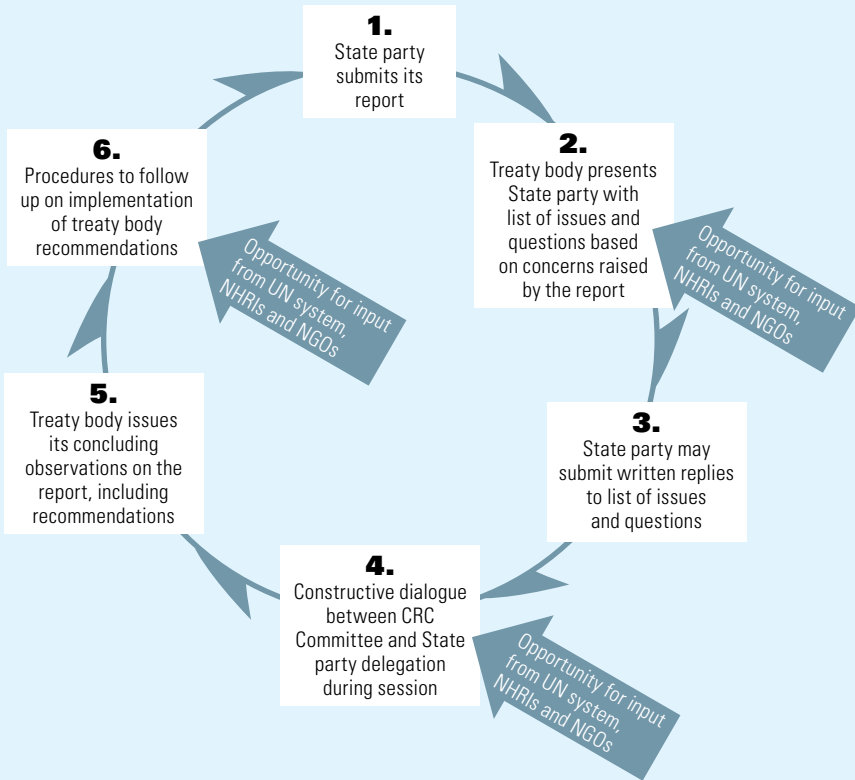
Thanks to their direct interaction with national actors, including children, independent institutions can provide an insider’s view on the situation of childhood and child rights in their countries. Moreover, whereas CRC reporting takes place only every five years, the engagement of independent institutions in the process means that rights monitoring is ongoing. Strong institutions are a great support to the CRC Committee as it carries out its mandate. For this reason, interactions between the CRC Committee and independent institutions have been continuously strengthened.

⁶ United Nations Convention on the Rights of the Child, adopted by UN General Assembly Resolution 44/25 of 20 November 1989, Art. 45 (a).

⁷ Guidelines for the Participation of Partners (NGOs and individual experts) in the Pre-sessional Working Group of the UN Committee on the Rights of the Child, CRC/C/90, Annex VIII, para. 1.

There are several entry points to the CRC reporting process for independent human rights institutions for children and other non-state actors: during the preparatory phase, during pre-sessional working group meetings and during public sessions (see Figure 13.1).

Figure 13.1 The reporting cycle for human rights treaties



The cycle begins one year after entry into force of the treaty (two years for Convention on the Rights of the Child (CRC) and International Covenant on Economic, Social and Cultural Rights (ICESCR)) and repeats according to the periodicity: every two years for the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), every four years for the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and every five years for CRC, ICESCR and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).

Source: Office of the High Commissioner for Human Rights⁸

The preparatory phase

Independent human rights institutions contribute to the preparatory phase of the reporting process in many different ways (while preserving their independence).

⁸ See: <http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>.

Institutions often remind the State party of its reporting obligations and encourage submission of the State party official report in a timely manner. For example, in its Statement of Intent 2007/08, the New Zealand Children's Commissioner reminded the New Zealand Government that the next periodic report was due to be presented to the CRC Committee in 2008.⁹ Similarly, in Bolivia in 2006 the Defensoría del Pueblo expressly asked the Bolivian Government to submit overdue reports to treaty bodies, in particular to the CRC Committee.¹⁰

Many institutions in different regions have submitted separate reports to the CRC Committee on their own initiative or at the CRC Committee's request. For example, the Procurador de los Derechos Humanos in Guatemala submitted a communication on the implementation of the two optional protocols to the CRC for the Pre-sessional Working Group meeting held in February 2007, at the CRC Committee's request.¹¹ Ombudspersons for children in, among other countries, France,¹² Greece,¹³ Ireland,¹⁴ New Zealand,¹⁵ Norway¹⁶ and Sweden¹⁷ – as well as the Children's Desk of the Commission for Human Rights and Good Governance in the United Republic of Tanzania¹⁸ and the Defensoria de los Habitantes in Costa Rica¹⁹ – have all submitted supplementary reports to the CRC Committee. In countries where no national institution exists, children's ombudspersons at the sub-national level have made joint submissions, as in the cases of institutions from Austria,²⁰ Belgium²¹ and Canada.²²

⁹ Office of the Children's Commissioner (2007). 'Statement of Intent 2007/08', presented to the House of Representatives by the Children's Commissioner pursuant to section 149 of the Crown Entities Act 2004, 24.

¹⁰ Defensoría del Pueblo de la República de Bolivia (2006). 'IX Informe al Congreso Nacional' [report to the National Congress], 2006, 87–88.

¹¹ Procurador de los Derechos Humanos (2007). *Informe Anual Circunstanciado, Tomo I: Situación de los derechos humanos en Guatemala*, Procurador de los Derechos Humanos, 169.

¹² Report of the Defenseur des Enfants to the United Nations Committee on the Rights of the Child on the Application of the International Convention on the Rights of the Child, 2009.

¹³ Parallel report of the Greek Ombudsman to the UN Committee on the Rights of the Child, May 2012.

¹⁴ Report to the UN Committee on Ireland's First Report under the Optional Protocol (October 2007); Report to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland's Second Report to the Committee (2006).

¹⁵ Report of the New Zealand Children's Commissioner to the United Nations Committee on the Rights of the Child (2010); Report to the United Nations Committee on the Rights of the Child (2003).

¹⁶ The Ombudsman for Children's Supplementary Report to the Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict (2007); The Ombudsman for Children in Norway Supplementary Report to the UN Committee on the Rights of the Child (2009).

¹⁷ The Children's Ombudsman's opinion concerning the Swedish Government Report of 2002 to the CRC Committee.

¹⁸ Commission for Human Rights and Good Governance (2009). *Children's Desk Report for CRC Committee Members and Rapporteurs for the Optional Protocols: 5th August 2009*, Dar es Salaam: CHRAGG.

¹⁹ Defensoría de los Habitantes de la República (2007). *Informe Anual de Labores 2006–2007*, San José, Costa Rica: Defensoría de los Habitantes de la República

²⁰ Report of the Austrian Ombuds-Offices for Children and Youths (Kinder- und Jugendanwaltschaften) to the United Nations on the Convention on the Rights of the Child, April 2012.

²¹ Report of the Children's Rights Commissioners of the Flemish and the French Communities regarding the third and fourth reports from Belgium, pre-sessional, January–February 2010.

²² Canadian Council of Child and Youth Advocates (2011). *Aboriginal Children: Canada Must Do Better – Today and tomorrow*, Special report submitted to the UN Committee on the Rights of the Child, Canadian Council of Child and Youth Advocates.

Here a significant difference exists in the approach of the Paris Principles and the CRC Committee's General Comment No. 2: the former calls on human rights institutions to feed into reporting by contributing to state reports,²³ while the latter stresses the need for institutions to report independently on conditions in their countries, in keeping with their independent monitoring function.²⁴ While contributing to the official report can be a way to influence its content, alternative reports offer an independent perspective and provide an opportunity for direct interaction with the CRC Committee.

One important function of independent human rights institutions for children in the reporting process is consultation with children and adolescents in order to bring their views on the realization of their rights to the CRC Committee. This helps compensate for the CRC Committee's limited direct access to children. In one notable example, in January 2005 the Danish National Council for Children not only submitted an alternative report to the CRC Committee, but also presented a child and youth report entitled *Children's Vision*, which reflected discussions held during two conferences with 80 children aged 13–16 years.²⁵

The Pre-sessional Working Group

After the preparatory phase, the next opportunity for independent institutions to participate in the reporting process is during the meetings of the Pre-sessional Working Group, whose main objective is to review State party reports and identify the key questions to discuss with representatives of the reporting State party during the subsequent public debate. These meetings are closed to the public and there are no formal records.²⁶ However, available information indicates that institutions submitting an alternative report usually participate in the pre-sessional dialogue. One barrier to institutions' participation in these sessions is the travel costs involved, a particular problem for those from non-European countries.

While NGOs often have a collective hearing with the CRC Committee, children's ombudspersons usually have a separate dialogue that encompasses discussion with the CRC Committee on main issues of concern in relation to children's rights and reactions to the official state report. This is also an opportunity for independent institutions to talk about the challenges they face at the national

²³ Principles relating to the Status of National Institutions (the Paris Principles), adopted by UN General Assembly Resolution A/RES/48/134 of 20 December 1993, para. 3 (d).

²⁴ UN Committee on the Rights of the Child (2002). General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November, para. 20.

²⁵ Børnerådet (2005). *Børnesyn: Supplerende rapport til Danmark's 3. periodiske rapport til FN's Komité om Barnets Rettigheder* [Children's Vision: Supplementary report to Denmark's third periodic report to the UN Committee on the Rights of the Child], Copenhagen: Børnerådet. Available at: http://www.brd.dk/files/Brd.dk%20Filbibliotek/PDF%20FILER/boernekonvention_dokumenter/BRD_Children_s_Vision_report_ENG.pdf.

²⁶ For additional information, see: Overview of the Reporting Procedures, CRC/C/33, 24 October 1994, paras. 7–13.

level. In turn, these are often reflected in the concluding observations issued by the CRC Committee.

The public session

Lastly, in the public session, State party reports are discussed in open and public meetings. The CRC Committee often recommends that a varied, representative delegation of state representatives who are directly involved in the implementation of the CRC attend these sessions. In order to protect their independence, representatives of independent institutions should not be part of the official government delegation,²⁷ but they can attend the public session as observers. Some independent institutions have done this, including the Procuraduría para la Defensa de los Derechos Humanos (El Salvador) and the Croatian Office of the Ombudsperson for Children who sent representatives in 2004,²⁸ and the Irish Ombudsperson²⁹ and the Maldives Human Rights Commission³⁰ who sent representatives in 2006 and 2009, respectively.

Follow-up and implementation of treaty body concluding observations

Concluding observations and the comments issued by treaty bodies serve as guiding tools to assist the effective implementation of human rights instruments. They offer invaluable guidance and leverage for independent institutions in prioritizing and advocating for child rights issues. The CRC Committee's General Comment No. 5 underlines the crucial role of independent institutions in "helping to ensure widespread debate" on concluding observations.³¹

In 2006, an International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies issued a number of proposals for a common approach to independent institutions' engagement with treaty bodies. These have since helped frame the contribution of human rights institutions in the implementation of concluding observations. Proposals ranged from advising on (and monitoring) action taken by the state to disseminate and implement concluding observations, to engaging members of parliament, ministries, other public authorities, as well as NGOs and other relevant stakeholders in civil society, in following up on the recommendations issued by treaty bodies.³²

²⁷ UN Committee on the Rights of the Child (2002). General Comment No. 2, op. cit., para. 21.

²⁸ Concluding Observations of the CRC Committee on Croatia, CRC/C/15/Add.243, 3 November 2004, para. 13.

²⁹ Ombudsman for Children's Office (2007). *Respecting Children: Annual report of the Ombudsman for Children's Office April 2005–December 2006*, Dublin: OCO, 15.

³⁰ United Nations Children's Fund Country Office [2009]. *Annual Report 2009*.

³¹ UN Committee on the Rights of the Child (2003). General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, para. 73.

³² Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies (Berlin, Germany, 23–24 November 2006), HRI/MC/2007/3, 7 February 2007.

Independent institutions for children's rights have been active in these areas in many countries. In some places, independent human rights institutions for children have helped raise awareness among government officials of the concluding observations. In 2008, for example, the New Zealand Children's Commissioner referred to the role of the CRC Committee including the concluding observations in its briefing for the incoming Minister for Social Development and Employment.³³ In Mauritius, the Office of the Ombudsperson for Children has supported the creation of a Compliance Committee gathering all government departments to monitor progress towards implementing the CRC Committee's recommendations.³⁴

A number of institutions mention concluding observations in their annual reports and analyse how they are being implemented. For example, the Defensoría de los Habitantes in Costa Rica included extracts of the CRC Committee's Concluding Observations for 2007 in its 2006/07 annual report and has continued to refer to these in subsequent annual reports.³⁵ Likewise, the Procuraduría para la Defensa de los Derechos Humanos in El Salvador repeatedly referred to the 2004 Concluding Observations in its second report on the situation of children's rights which it published in 2007.³⁶

Some institutions disseminate the CRC Committee's concluding observations in a child-friendly format and try to raise public awareness of them. They organize follow-up meetings or debriefings for children who participated in the reporting process. They galvanize other stakeholders, including NGOs and child-centred organizations, to follow up recommendations, and they develop quantitative and qualitative indicators to identify obstacles to their implementation. Independent institutions also use the concluding observations as a tool for prioritizing issues.

While the reporting process is the primary space for collaboration between the CRC Committee and independent institutions there are other places for interaction too, including participating in the CRC Committee's annual Day of General Discussion,³⁷ contributing to draft general comments,³⁸ and holding informal meetings with the CRC Committee.

³³ Office of the Children's Commissioner (2008). 'Briefing for Incoming Minister'. Available at: http://www.occ.org.nz/_data/assets/pdf_file/0010/5797/OCC_BIM_2008.pdf.

³⁴ Information provided by the Office of the Ombudsperson for Children in Mauritius, 10 March 2010.

³⁵ Defensoría de los Habitantes de la República (2007). *Informe Anual de Labores 2006–2007*, San José, Costa Rica: Defensoría de los Habitantes de la República, 434. See also: Defensoría de los Habitantes de la República (2011). *Informe Anual de Labores 2010–2011*, San José, Costa Rica: Defensoría de los Habitantes de la República.

³⁶ Procuraduría para la Defensa de los Derechos Humanos (2007). *Segundo Informe sobre los Derechos de la Niñez en El Salvador*, PDDH.

³⁷ Report of the Fortieth Session of the CRC Committee (Geneva, Switzerland, 12–30 September 2005), CRC/C/153, 17 March 2006, Annex II; Report of the 43rd Session of the CRC Committee (Geneva, Switzerland, 11–29 September 2006), CRC/C/43/3, 16 July 2007, Annex III. See also: Comisión de Derechos Humanos del Distrito Federal (2011). 'Desarrollo infantil en prisión: El caso de la Ciudad de México', Submission to the 2011 Day of General Discussion on the Children of Incarcerated Parents, September 2011; and Scotland's Commissioner for Children and Young People (2011). 'Submission from Scotland's Commissioner for Children and Young People', Submission to the 2011 Day of General Discussion on the Children of Incarcerated Parents, September 2011.

³⁸ See, for example, the submission by the ICC Working Group on Business and Human Rights regarding the Annotated Outline of the General Comment by the United Nations Committee on the Rights of the Child on Child Rights and the Business Sector, 30 April 2012.

The impact of involvement with the Committee on the Rights of the Child

The involvement of independent human rights institutions in the work of the CRC Committee can have positive returns for individual institutions. Interaction with the CRC Committee can enhance institutional legitimacy and credibility nationally, support reforms aimed at strengthening their independence and effectiveness, and help advocate for change.

In addition to systematically promoting the establishment of independent human rights institutions for children in states that do not have them, in states where they do exist, the CRC Committee regularly issues concluding observations aimed at strengthening their effectiveness. These recommendations often echo concerns about the resources allocated to institutions, their structure, and their ability to offer a child-sensitive complaint mechanism for child rights violations. Figure 13.2 depicts the kinds of observations offered most frequently by the CRC Committee from 2000 to 2010 in relation to human rights institutions for children.

Independent human rights institutions for children can benefit greatly from following up concluding observations, which have the political and moral weight of the CRC Committee as the treaty body of the CRC behind them. The observations are an authoritative tool that can provide international credibility and legitimacy as national institutions seek to address specific violations of children's rights.³⁹

Institutions and other child rights advocates in a number of countries have used these observations to promote structural and legislative reform and to prompt increased investment in support of the efficacy of the independent institution. Following a Concluding Observation on the adverse impact on its independence of the use of seconded civil servants, the Ombudsperson for Children's Office in Mauritius began to recruit its investigators and some of its support staff from its own budget.⁴⁰ Ireland's Ombudsman for Children refers to recommendations made by the CRC Committee and other international monitoring bodies to support its advocacy efforts to strengthen the institution's mandate through law reform.⁴¹

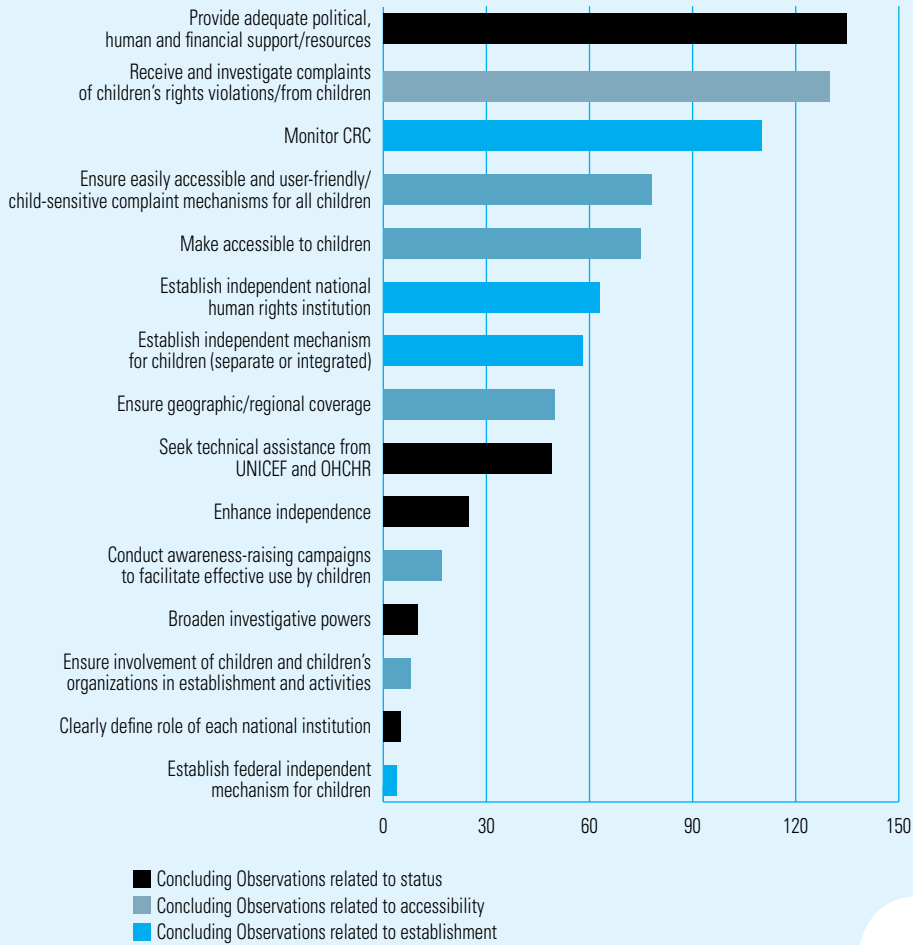
In 2008, the French Défenseure des Enfants recommended in her alternative report to the CRC Committee that legislative reform be adopted that would

³⁹ Filmer-Wilson, E. (2008). 'Final Summary of E-Discussion: The role of UN agencies and UN country teams in supporting national human rights institutions (Mar. 2008)', prepared 27 March 2008, 4. Available at: www.unhcr.org/web2/free_resources/.../E-mail-Final-Summary.doc.

⁴⁰ Information provided by the Office of the Ombudsperson for Children in Mauritius, 10 March 2010.

⁴¹ Ombudsman for Children's Office (2012). *A Report by the Ombudsman for Children on the Operation of the Ombudsman for Children Act, 2002*, Dublin: OCO, 12.

Figure 13.2 CRC Committee concluding observations on independent monitoring (2000–2010)



make it compulsory to consult her office before adopting any new legislation that would have an impact on children.⁴² In its Concluding Observations to France on independent monitoring, the CRC Committee explicitly recommended that independent institutions be consulted on draft legislation.⁴³ 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

⁴² Défenseure des Enfants (2008). *Rapport de la Défenseure des Enfants au Comité des Droits de l'Enfant des Nations Unies*, Défenseure des Enfants, 8.

⁴³ Concluding Observations of the CRC Committee on France, CRC/C/FRA/CO/4, 11 June 2009, para. 17.

for the ongoing follow-up of recommendations by the CRC Committee and other United Nations treaty bodies together with civil society.⁴⁴

The reporting process is an additional channel for independent institutions for children to express concerns and advocate changes in child rights policies at the national level. For example, in 2006 the Children’s Rights Commissioner for the Flemish Community brought to the attention of the CRC Committee questions that the Flemish Parliament had previously failed to answer. The treaty body then asked the Flemish Government for answers during the next public session.⁴⁵

In some of its concluding observations, the CRC Committee has occasionally explicitly mentioned sharing the same concerns raised by independent human rights institutions for children in its concluding observations, for example, concerns about minors in prison and the protection of children at risk in France,⁴⁶ and concerns about violence against children and sexual abuse within families in Finland.⁴⁷

Looking to the future: The Convention on the Rights of the Child communications procedure

The third Optional Protocol to the CRC on a communications procedure, adopted in December 2011 by the United Nations General Assembly, allows the CRC Committee to receive and review communications on cases alleging violations of the rights of individual children or groups of children, and to conduct inquiries, including country visits, into allegations of grave and systematic violations of children’s rights.

The Optional Protocol itself explicitly recognizes the role of independent human rights institutions for children in providing remedies for child rights violations at the national level.⁴⁸ Given this, independent institutions are likely to be primary domestic players that support access to the new international communications procedure. They are in a good position to provide a preliminary assessment of eligibility for consideration under the Optional Protocol, and to refer and support potential complainants through the process. They can provide documentation to the CRC Committee on specific cases or about the national child rights landscape. They are also expected to monitor states’ compliance with the recommendations made by the CRC Committee for admitted cases under the Optional Protocol.

⁴⁴ Defensoria del Pueblo [2011]. *Informe Anual 2011*, Panama: Defensoria del Pueblo, 92.

⁴⁵ European Network of Ombudspersons for Children (2006). *Report of the Tenth Annual Meeting: Athens, Greece, 26–28 September 2006*, ENOC, 14.

⁴⁶ Concluding Observations of the CRC Committee on France, CRC/C/15/Add.240, 30 June 2004, para. 38.

⁴⁷ Concluding Observations of the CRC Committee on Finland, CRC/C/15/Add.272, 20 October 2005, para. 31.

⁴⁸ Optional Protocol to the United Nations Convention on the Rights of the Child on a communications procedure, adopted by UN General Assembly Resolution A/RES/66/138 of 19 December 2011, preamble.

Independent human rights institutions can play a fundamental role in informing children and their communities about the existence of this international remedy and can also work to reach children whose rights are most likely to be violated, so that they have the opportunity to seek redress through this procedure.

14

Conclusions and Recommendations

Child rights institutions, despite their relatively short history, have achieved some notable successes. Examples include the early adoption of the institutional concept and strong proliferation in Europe and Latin America; pioneering work in comprehensive child rights policies and legislative reform in Latin America and the Caribbean; active involvement of non-governmental organizations (NGOs) in watching over the concept in Asia; the constitutional anchor afforded most institutions in sub-Saharan Africa; the blossoming of discussions to create 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 understand children's situations and can act independently to defend their rights. Yet while the numbers of such institutions have increased since the 1990s, they also face challenges to their independence, insufficient funding, lack of response to their recommendations, and in some cases even threats to their existence.

One of the most common questions asked by those seeking guidance setting up – or working to strengthen (or defend) – independent institutions is what form the institution should take. On the basis of this review, the short answer is that no one form fits all. 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 level of 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 processes – political and social – that confer legitimacy and broad ownership.

The two challenges most keenly felt by child rights institutions that are integrated into broad-based human rights institutions are the risk of work for children being squeezed by other organizational priorities, and the likelihood that adult-orientated organizational mechanisms and procedures do not encourage child accessibility. It is important that structures and leadership contribute to sustaining the influence and visibility of the children's unit, and one way of doing this is to give the unit an explicit legislative status, a ring-fenced budget defined as part of national allocations, and to bestow its leadership a recognized senior status within the institution.

There is one non-negotiable for all independent institutions for children – a mandate rooted in the Convention on the Rights of the Child (CRC). There are also several factors that must be taken into account (and constantly re-asserted) if an institution is to enjoy public support and trust. These include effectiveness and independence, which, of course, reinforce each other.

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

As this report has described, independence is a product not just of mandate, but also of financing and institutional leadership. The wider political context and the engagement of media and civil society influence both the perception and reality of independence. The processes involved in establishing an institution – in essence the degree to which this involves broad discussion and debate involving a representative cross-section of political and social interest groups – and the transparency of senior staff appointment processes all contribute to institutional independence. Financing is also critical: 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, most particularly for children’s institutions integrated into broad-based human rights institutions. Despite significant progress, it remains an area requiring further attention across the board. While participation is an issue wider than receiving complaints, one of the findings of this review is that few complaints are brought to institutions by children themselves. Although there are many reasons for this, the finding strongly suggests that many complaints procedures remain insufficiently child-friendly.

The following are general recommendations to enhance the work of child rights institutions and better enable them to monitor and protect child rights:

1. *Independence.* All actors, including children’s ombudspersons themselves, should seek to build and guard the independence of human rights institutions for children. A primary condition of independence is adequate legislation that explicitly sets forth the independence of the institution, provides for open

and transparent appointment processes, contains guarantees for allocation of resources from the national budget, and grants the institution adequate investigatory powers to access the places, documents and testimonies needed to perform its monitoring role (including with private entities) freely.

2. *Promoting a holistic view of the child.* Institutions should promote and implement in their daily activities a holistic view of the child, where the indivisibility of child rights translates into a concrete vision for policy intervention that unites actors, settings and sectors in the creation of an environment that fosters the development and well-being of the whole child. This involves the ability to analyse the experiences and situation of children, linking multiple issues in one vision, and incorporating a focus on children's interactions with their environment and how they thrive within it. It further requires bringing various – sometimes not immediately obvious – stakeholders together to realize children's rights.
3. *Inclusion and equity.* Institutions should continually strive to address the rights of all children, including those less accessible such as children in remote locations, in closed settings, or who are socially excluded by virtue of their economic situation, ethnicity, gender or some other factor. Inclusion requires proactive measures ranging from widening of geographic accessibility, the creation of procedures that encourage excluded children to come forward, and the constant renewal of outreach to those at risk of exclusion.
4. *Child participation.* Institutions should cultivate child participation, using methods adapted to age and maturity. Not only is this an issue of principle – children have the right to be heard – but listening to children is an important means of enhancing institutional effectiveness. Children have unique insights into their situation. Broad-based human rights institutions should be particularly vigilant about ensuring they provide a space for children's views, because experience shows that their broader institutional basis may be less conducive to achieving it.
5. *Funding.* Governments, parliaments and institutions themselves should strive to consolidate a national funding stream for institutions' child rights work, preferably one drawn from the national budget approved by the legislature. Consistent and sufficient funding for independent human rights institutions for children is crucial not only to their basic functioning but also to their independence and the sustainability of their work.
6. *Information management.* Independent institutions should collect, analyse and report disaggregated complaint data to the fullest extent possible, and use it to monitor their performance and accessibility, and to communicate their role.

7. *Networking and sharing of experiences.* Work at the regional and international level should promote the exchange of information and experiences, especially in regions where networking among institutions is currently limited. Networks should codify and quantify key data that illustrate the health of independent human rights institutions for children.
8. *Implementation of recommendations.* Due regard needs to be given to implementing recommendations made by independent human rights institutions for children, even though these recommendations may not be binding. Thorough discussion of institutions' findings and proposals – in government, parliament and society (including the media) – are essential to institutional long-term sustainability and effectiveness. An institution whose recommendations are rarely discussed or followed will lose its credibility with other public bodies and the public.
9. *Ongoing adaptation, monitoring and evaluation.* Being effective needs constant attention. Institutions should report their achievements, demonstrating concrete outcomes and documenting best practices in their functional areas. Institutions should constantly review their performance and make necessary adaptations. They should set strategic goals and standards for achievement that are continually monitored, and regularly take stock of strengths and weaknesses with external partners. Parliamentary oversight is a critical tool in this respect.

Realization of the above recommendations requires specific actions on the part of key actors, as set out below.

Governments should:

- Respect the independence of the human rights institution for children and refrain from action that may impair institutional independence or the perception of independence.
- Facilitate the institution's ability to carry out its mandate, especially investigations. Instruct relevant services at all levels to cooperate fully with the independent institution and hold accountable those that do not do so.
- Ensure an open and transparent appointment process for the post of head of an institution or office, in which vacancies are widely advertised and consultations are held with children from various walks of life and a wide range of civil society organizations, in particular child rights NGOs and professional associations. Parliamentarians from different political parties should also be consulted. The sole objective must be to select competent and

respected persons with the leadership skills, legitimacy and commitment to children's rights necessary to defend children's best interests.

- Follow up the institution's recommendations by taking adequate measures to remedy child rights violations or otherwise address problems.
- Ensure that financial resources are sustainable and adequate for the institution to plan its work in the medium to long term. Refrain from allocating funds in a way that compromises the institution's ability to fulfil its mandate. Preference should be given to providing resources directly from the national budget rather than through a specific ministry or department.
- Follow up the concluding observations of the Committee on the Rights of the Child (CRC Committee) in relation to independent monitoring by making recommended adjustments in line with governmental competencies.

Parliaments should:

- Ensure that the legislative mandate of the independent human rights institution for children contains a clear reference to the CRC and the role of the institution in representing children's best interests. Where children's offices are integrated into a broad-based human rights institution, adopt legislative provisions providing for its existence and mandate, either within the law on the human rights institution or in child-specific legislation such as a children's code.
- Ensure that the legislative mandate of the institution explicitly requires the institution to be accessible to all children, including the most excluded and marginalized, and promotes child participation in the work of the institution and in the broader society.
- Ensure that the legislative mandate of the institution provides for broad investigatory powers to visit places where children are, request documentation and call on witnesses – with adequate sanctions and remedies for non-compliance.
- Provide adequate and sustainable financial resources as a specific line item in the national budget approved by the parliament.
- Ensure an open and transparent appointment process for the post of head of an institution or office, in which vacancies are widely advertised and consultations are held with children from various walks of life and a wide range of civil society organizations, in particular child rights NGOs and professional associations.

- Seek the advice of the institution before adopting legislation that has a direct or indirect effect on the realization of children’s rights.
- Follow up the institution’s recommendations, in particular those relating to gaps in legislation, advice on draft legislation and systemic issues.
- Provide adequate oversight to the institution by thoroughly reviewing and discussing its annual and other reports. Conduct comprehensive evaluations of the office at regular intervals and be accountable for implementing recommendations that may emerge. Where child rights offices are integrated into a broad-based human rights institution, hold a separate parliamentary debate at least once a year on children’s rights.
- Follow up the concluding observations of the CRC Committee in relation to independent monitoring by making recommended adjustments in line with parliamentary competencies.

Independent human rights institutions for children should:

- Develop ways to ensure increased awareness among children – and particularly those most at risk of rights violations – of the work of the institution and ensure access to all children to the institution. Communicate the institutional mandate in the media; use strategies to gain direct access to children, for example, by having a presence in schools, including child rights in school curricula, and being accessible on the internet and social media. Use approaches tailored to specific groups, for example, children who do not speak the majority or official language, or who have a disability.
- Strengthen child participation channels, in particular by institutionalizing permanent consultative groups, carrying out regular interviews with children (especially the most marginalized and excluded) and using web-based and other tools to organize consultations on specific issues.
- If part of a broad-based human rights institution, ensure the sustainability and influence of the child-related office by giving its head a high status within the institution; select a competent and recognized personality for the position; allocate sufficient resources; and pay due regard to child rights concerns within the institution as a whole.
- Strengthen and promote a holistic vision of the child in daily activities, including research, sensitization campaigns and policy recommendations, by explicitly nurturing cross-sectoral approaches and a focus on the child’s environment.

- Foster coordination with other specialized offices or institutions that focus on issues relevant to children (e.g., women’s rights, rights of ethnic minorities and indigenous peoples, rights of people with disabilities and traditional ombudspersons).
- Develop relationships with a wide range of actors including the government, parliament, local authorities, children and children’s organizations, other NGOs, professional organizations, the private sector, academia, the media and the United Nations system.
- Ensure that complaint data are adequately disaggregated in order to assess the accessibility of the institution to relevant persons and groups – in particular by nature of complainant (i.e., age, gender, socio-economic background), geographic location, rights area of concern, and public or other bodies implicated. Where the mandate allows, engage in strategic litigation of specific cases.
- Promote implementation of recommendations, including through reporting, outreach to the media and partnership with civil society organizations.
- Establish a clear strategic plan for the medium term that highlights the office’s priorities, goals and strategies – and publicize it. Regularly monitor results and identify challenges, and communicate concrete achievements and outcomes.
- Engage in regional and international networking opportunities where possible. Create regional and sub-regional networks in areas where they are not yet in place.
- Submit a supplementary report to the CRC Committee that discusses critical areas where CRC implementation is lagging behind and conveys children’s views on the realization of their rights.
- Follow up the concluding observations of the CRC Committee in relation to independent monitoring by making recommended adjustments in line with in-house competencies.

Non-governmental organizations should:

- Initiate and support the establishment of an independent human rights institution for children.
- Support and partner the institution in order to advance the child rights agenda.
- Share relevant data and research with the institution.

- Support children and other actors in submitting complaints to the independent institution.
- Monitor the independence and effectiveness of the institution in fulfilling its mandate and make proposals for strengthening it.
- Promote follow-up of the CRC Committee's concluding observations, in particular on independent monitoring, and report to the CRC Committee on the institution's strengths and challenges.
- Provide adequate technical and financial assistance, keeping in mind the need for long-term sustainability and national ownership (applies to international NGOs in particular).

International and regional organizations should:

- Adopt or strengthen relevant policy documents related to the role of independent human rights institutions.
- Provide technical assistance for establishing and strengthening independent human rights institutions for children; raise awareness of the role of these institutions, advise on their legislative mandate, and build supportive capacities within the country.
- Provide adequate financial assistance, with due regard to the need for long-term sustainability of child rights work and national ownership.
- Support the establishment and consolidation of regional and international networks of independent institutions for children's rights by offering them technical, financial and logistical backing.
- Support the participation of independent human rights institutions for children in relevant international and regional bodies and debates that have a direct or indirect impact on children's rights; foster the recognition of these institutions as important independent actors.

The Committee on the Rights of the Child should:

- Provide country-specific recommendations aimed at strengthening independent human rights institutions for children.
- Build the capacities of independent human rights institutions for children to participate effectively in the CRC Committee reporting process, in the first instance by issuing a specific guidance note on this subject.

- Facilitate the participation of independent human rights institutions for children, particularly those from developing countries, in the meetings of the Pre-sessional Working Group.
- Consult independent institutions and identify ways in which they can contribute to communicating with the CRC Committee on rights violations under the Convention, contained in the Third Optional Protocol to the CRC.

Donors should:

- Support the establishment and ongoing work of child rights offices in developing countries by providing predictable funding that strengthens national ownership of the institution, respects its independence, and promotes its sustainability.
- Encourage networking and the exchange of good practices by supporting research, analysis, conferences and meetings on and with independent human rights institutions for children.

Academia and the research community should:

- Conduct research on independent human rights institutions for children. Areas where more research is needed include: public perceptions of institutions' role; community-based child ombudspersons and the impact of independent human rights institutions for children at the local level; documentation of cases where an institution has successfully withstood serious threats to its existence; and the functioning of child rights offices within broad-based independent human rights institutions in developing countries.
- Support independent human rights institutions for children in carrying out research and building evidence and knowledge on critical child rights issues.
- Include independent human rights institutions for children in curricula on children's rights as well as courses for professionals working for and with children, including teachers, medical doctors, social workers, lawyers, judges and police officers.

PART II
REGIONAL OVERVIEWS





Introduction

The first ombudsperson for children was established in Norway in 1981. Since then, accelerating after the adoption of the Convention on the Rights of the Child (CRC) in 1989, many more independent human rights institutions for children have been created. In 1997, when the first Innocenti Research Centre publication on child ombudspersons was issued,¹ fewer than 20 countries had an independent human rights institution with an identifiable department for children's rights working at the national level. By mid-2012, this number had risen to 73 and the total rises to around 200 if sub-national level independent institutions working for children are included (see Introduction: page xvii).²

Following a brief overview of the international development of independent institutions for children, Part II of this report considers their work by region. The chapters that follow lay out a detailed story of their regional development, discussing opportunities and challenges evident in each regional context. Regions are defined according to several criteria with a view to ensuring analytical coherence. These criteria, which are explained at the beginning of each chapter, include geographic location, existence of a regional organization, and significant commonalities in their historical, political and socio-economic circumstances.

A global overview

Independent human rights institutions, whether focusing primarily on adults or on children, broadly fall into two main types: human rights commissions and ombuds institutions. In general terms, human rights commissions are traditionally associated with the promotion and protection of human rights, through advice, educational activities and investigations. They also handle individual complaints on human rights violations. They are often collective bodies.

In contrast, ombuds institutions traditionally work on administrative matters and deal with the protection of citizens against the abuse of public administration, primarily through individual complaints. These institutions are usually identified with the individual acting as the head of office, the ombudsperson.

1 United Nations Children's Fund (1997). 'Ombudwork for Children', *Innocenti Digest*, No. 1, Florence: UNICEF Innocenti Research Centre.

2 Note that there are 50 institutions in the Russian Federation alone. See also Annex: Indicative Directory of Independent Human Rights Institutions for Children.

The boundaries between the two categories have become increasingly blurred, particularly with respect to children's rights. Institutions have recognized the synergy between examination of individual complaints, public administration, human rights and policy advocacy. They have combined these functions into what have been identified as 'hybrid' institutions,³ where an ombudsperson mainly addresses human rights issues rather than administrative wrongs.

This hybrid model initially emerged in Portugal and Spain in the 1970s in the context of these countries' democratization processes, and was later adopted in the 1980s and 1990s in Latin America and Central and Eastern Europe, before finally reaching Asia and Africa in the 1990s and 2000s.

Notably, it is around this same period that the first independent human rights institutions focusing on children were established. Children's rights institutions often inherited the multiple competencies of the hybrid model. Yet, in relation to children's rights, competencies are more than a matter of structure and powers. The position of independent human rights institutions for children as a nexus linking the experiences of childhood, societal and cultural factors, and the decisions of leaders and other officials is crucial to their ability to influence policy and practice for the realization of children's rights.

In Europe, independent child rights institutions were initially created in northern and central Europe. The willingness of countries in western and southern Europe to strengthen their institutional framework for children's rights, combined with democratic transitions in eastern Europe, paved the way for the establishment of independent human rights institutions for children across most of the European region. Likewise, in Latin America where *defensorías del pueblo* (people's defenders) and *procuradorías* (public advocates) were created in the early 1990s, the dedication of special offices to children's rights has proliferated. This evolution reached the Caribbean with the creation of the Office of the Child Advocate in Jamaica in 2006. In federal states such as Australia and Canada, where a few provinces or states had child advocates in the early 1990s, the hybrid model has since been adopted by most federated entities.

Institutions have also been established in regions where they were non-existent in the mid-1990s, for example, in Asia where the Philippine Commission on Human Rights created a Child Rights Centre, and a National Commission for Protection of Child Rights in India, were both created in 2007.

A comparable phenomenon is observed in Africa. Mauritius established an ombudsperson for children in 2003, the South African Human Rights Commission

³ Reif, L.C. (2000). 'Building Democratic Institutions: The role of national human rights institutions in good governance and human rights protection', *Harvard Human Rights Law Journal*, 13 (Spring):1–69.

appointed a coordinator on children's issues in 2006, and in the United Republic of Tanzania and in Zambia children's departments were opened within the national human rights commissions in 2006 and 2009, respectively. While the process has been slower in the Middle East and North Africa region, the Consultative Human Rights Council in Morocco has moved to hire specialized staff to work on children's issues, a first in the region.⁴

Not only have a growing number of countries established independent institutions, but increased attention has also been given to strengthening existing institutions by evaluating them, reforming their legislative basis, and working towards the creation of either local or national offices. Evaluations of independent human rights institutions for children have been carried out in Belgium, Croatia, Norway and Sweden, among others. Laws governing institutional mandates have been revised in a large number of countries.⁵ There is also a trend towards establishing local branches in centralized countries such as Croatia and national-level offices in countries with federal or decentralized systems (e.g., Australia, Italy and the Russian Federation).

Yet, while the concept of the independent child rights institution has gained a foothold in regions and countries across the globe and some institutions have flourished, reform processes in several countries aimed at strengthening institutions have coexisted with threats to their independence and effectiveness, challenging existing institutions and highlighting their fragility.

A region-by-region overview

In sub-Saharan Africa (see Chapter 15), the first independent children's rights institutions were created in the mid-2000s, primarily as integrated offices within existing human rights commissions, mainly in eastern and southern Africa. The adoption of the African Charter on the Rights and Welfare of the Child has proved an important catalyst, triggering the creation of independent institutions built on overall regional progress in advancing child rights in law.

Chapter 16 reviews the wide diversity of sub-regional and national institutional arrangements that characterizes central Asia and the Pacific. Independent human rights institutions for children in South Asia have been particularly active. In other sub-regions, with some exceptions like the Philippine Human Rights Commission, broad-based human rights institutions have not yet established an

⁴ Information provided by UNICEF Country Office staff in Morocco, August 2012.

⁵ According to a survey of human rights institutions for children conducted as part of this review, about half of all institutions in Europe, as well as those in Australia, Canada and New Zealand have had their legislation revised. That proportion is smaller in Latin America and the Caribbean (about a quarter), although the enactment of integral child protection legislation after the establishment of independent human rights institutions has given a specific role to several child-focused institutions in this region.

identifiable child rights department, and while some tackle children's issues, they are yet to become a priority for their work.

The ombudsperson for children model first developed in Europe, initially as a specialized institution. Chapter 17 charts how independent human rights institutions for children have since evolved throughout the region during the 1990s and 2000s, including in the context of transition in Central and Eastern Europe. Both specialized and integrated bodies now exist. They are supported by a strong regional network, the European Network of Ombudspersons for Children (ENOC), which in turn, builds on the commitment of well-established regional organizations, namely the Council of Europe and the European Union. In spite of their long history, in several countries the existence and focus of various independent child rights institutions has been questioned.

In Latin America and the Caribbean (Chapter 18), independent human rights institutions for children have been created in the context of concomitant democratization processes and adoption of the CRC – and development in the 1990s of a child rights approach to law and policy. Child rights institutions in the region are all integrated into broad-based human rights institutions, except for the Office of the Child Advocate in Jamaica, which is built on the common-law model. While these institutions face numerous challenges, in particular in terms of resources, they provide for a rich array of experiences and have recently developed their own child-focused regional network.

Chapter 19 reviews institutions in the Middle East and North Africa region where although some independent human rights institutions have on occasion tackled child rights issues, they do not feature identifiable child rights departments. Various countries are however in the process of discussing the establishment of an independent monitoring institution for child rights, often in the context of ongoing transitions.

Although not forming a geographic region per se, Australia, Canada, New Zealand and the United States of America are considered as one grouping in Chapter 20, given their numerous similarities in terms of legal tradition, economic and social conditions, and political context – as well as in the structure and mandate of independent children's rights institutions, often called child commissioner or child advocate. In these countries child advocates have generally initially been established to monitor the child protection system for marginalized children, and have subsequently developed a more holistic child rights approach to their work. Often present at the state or provincial level in federal countries, they have devoted significant attention to direct contact with children and to strengthening their accessibility.

Sub-Saharan Africa



Origins of independent human rights institutions for children in the region

In sub-Saharan Africa the main model for the development of independent human rights institutions for children has been the integration of children's rights issues into the remit of institutions working more broadly on human rights. This has taken place as these institutions respond to national commitments to the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child.

Human rights institutions in the region have varying degrees of independence and effectiveness and there have been differing levels of attention to children's

rights. The only child-specific independent institution in the region is the Ombudsperson for Children's Office in Mauritius, which was established in 2003 alongside a pre-existing general ombudsman and National Human Rights Commission. Since 2005, several independent human rights institutions, mainly located in eastern and southern African countries,¹ have created child rights departments. Some countries in other parts of the continent have also been exploring this possibility,² but the majority model is for child rights work to be undertaken within institutional structures with a less clear-cut child focus.

The growth of human rights institutions in sub-Saharan Africa stems from the combination of domestic and international pressure for democratization in the aftermath of the Cold War and the entry into force of the African Charter on Human and People's Rights in 1986.³ In a continent hitherto dominated by single-party, authoritarian or repressive regimes, democratization processes allowed the development of human rights discourse as a basis for policy-making and the establishment of human rights institutions in the 1990s and early 2000s. The creation of institutions was supported by regional human rights instruments as well as global standards.

The African Charter on Human and Peoples' Rights⁴ explicitly requires States parties to "allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed" by the Charter.⁵ Following the entry into force of the African Charter in 1986, the first human rights commission was created in Togo in 1987 and national human rights institutions were soon being set up throughout the region. By the end of 2012, 29 independent human rights institutions had been created in sub-Saharan Africa.⁶ The majority of countries with institutions have either a human rights commission, an ombudsperson of an administrative nature, or in many places both.

Children's rights received increased attention after the entry into force of the African Charter on the Rights and Welfare of the Child⁷ in 1999. As one author

1 Ethiopia (2005), South Africa (2006), United Republic of Tanzania (2006) and Zambia (2009).

2 Organisation Internationale de la Francophonie (2009). 'Rapport de l'atelier sur l'Etablissement d'Institutions Indépendantes de Défense des Droits de l'Enfant: Approche effectives pour trois pays d'Afrique francophone', Bamako, Mali, 22–23 June 2009, UNICEF-OIF.

3 Human Rights Watch (2001). *Protectors or Pretenders? Government human rights commissions in Africa*, New York: Human Rights Watch.

4 African Charter on Human and Peoples' Rights (Banjul Charter), Organization of African Unity document, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), adopted 27 June 1981, entered into force 21 October 1986.

5 *Ibid.*, Art. 26.

6 See ICC Directory of National Human Rights Institutions. Available at: <http://nhri.ohchr.org/EN/Contact/NHRIs/Pages/Africa.aspx>.

7 African Charter on the Rights and Welfare of the Child, Organization of African Unity document, CAB/LEG/24.9/49 (1990), entered into force 29 November 1999.

highlighted in 2008, “The past decade has undeniably seen the traditional invisibility of the African child dissipate, in favour of rights-based approaches and a more prominent societal role being accorded to children who, in most African countries, constitute fully 50 per cent of the population.”⁸ The African Charter on the Rights and Welfare of the Child obligates States parties to adopt “such legislative or other measures as may be necessary to give effect to the provisions” of the Charter,⁹ a provision largely similar to Article 4 of the CRC. One of the functions of the African Charter’s monitoring body, the African Committee on the Rights and Welfare of the Child, is to “encourage national and local institutions concerned with the rights and welfare of the child”.¹⁰

As a result, many countries have harmonized their national laws with the CRC and the African Charter on the Rights and Welfare of the Child, or are in the process of doing so.¹¹ Significantly, more than 30 constitutions in sub-Saharan African countries, several of them recently promulgated, contain a reference to children’s rights.¹² These legislative changes have been described as a “continent wide revolution”.¹³

The combination of these developments at the national and regional levels and the recommendation by the Committee on the Rights of the Child (CRC Committee) that independent human rights institutions for children be established have focused attention on the role of human rights institutions in the promotion and protection of children’s rights.

Protection of children from violence appears to be a strong catalyst for creating child rights institutions or offices in the region. A 2009 study conducted in Mali for the establishment of a children’s ombudsperson explicitly put this process in the context of forms of violence and exploitation that affect the country’s children.¹⁴ In Senegal, political momentum to consider the creation of an independent institution flowed from public outrage at several cases of child mistreatment and exploitation that were publicized by the media.¹⁵

8 Sloth-Nielsen, J. (2008). ‘Children’s Rights and the Law in African Context: An introduction’. In Sloth-Nielsen, J., ed. *Children’s Rights in Africa: A legal perspective*, Farnham: Ashgate, 6.

9 African Charter on the Rights and Welfare of the Child, Organization of African Unity document, CAB/LEG/24.9/49 (1990), entered into force 29 November 1999, Art. 1.

10 *Ibid.*, Art. 42 (a) i.

11 The African Child Policy Forum [2008]. *The African Report on Child Wellbeing: 2008*, Addis Ababa: The African Child Policy Forum, 95.

12 Sloth-Nielsen, J. (2008). ‘Domestication of Children’s Rights in National Legal Systems in the African Context: Progress and prospects’. In Sloth-Nielsen, ed. (2008), *op. cit.*, 57.

13 *Ibid.*, 65.

14 Bengaly, A. (2008). *Analyse de situation en vue de la création d’un Défenseur des Enfants au Mali*, United Nations Children’s Fund.

15 Organisation Internationale de la Francophonie (2009), *op. cit.*

The mission, attributes and mode of functioning of institutions that currently operate in the region vary significantly, as does their degree of independence and effectiveness.¹⁶ Attention to children’s rights can be hindered by challenges faced by the broader institution – limited political influence, shortages of resources and limited capacities – all influenced by the wider political and social context in which the institution exists. The African Child Policy Forum, an influential child rights think-tank in the region, has observed that African human rights institutions for children are politically, technically and financially weak.¹⁷ Generally speaking, the most active independent institutions in the area of children’s rights in the region are those whose mandate is in line with international standards and which have been granted an ‘A status’ (indicating compliance with the Paris Principles) by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), which is in charge of reviewing and accrediting national human rights institutions.

The main characteristics of independent human rights institutions for children in the region

Legal basis

Because they were established in the context of democratic transitions, many national human rights institutions and ombudspersons in sub-Saharan Africa have constitutional status.¹⁸ Most institutions have a mandate enshrined in legislation, although a few were established by decree. The legal mandate of independent human rights institutions in the region is usually based on the Paris Principles and includes provisions related to vulnerable groups.

Several laws establishing national human rights institutions contain a reference to children, providing the basis for inclusion of child-focused departments committees or members in these bodies. The mandate of the Malawi Human Rights Commission, for example, specifies that it should promote the human rights of vulnerable groups, including children. Consequently, the Malawi Commission has a Child Rights Committee with a comprehensive mandate, as well as a Child Rights Unit. The latter assists the Commission’s secretariat, which is responsible for supporting the daily work of the Commission.

In Ethiopia, the 2000 legislative act establishing the Office of the Ombudsman explicitly provides for an Ombudsman for Women and Children, who is responsible for dealing

¹⁶ Human Rights Watch (2001), op. cit.

¹⁷ The African Child Policy Forum (2008), op. cit., 95.

¹⁸ This is the case in Ethiopia, Ghana, Malawi, Namibia, Niger, Rwanda, South Africa, Togo, Uganda, the United Republic of Tanzania and Zambia.

with complaints related to maladministration.¹⁹ In 2000 the Parliament also established the Ethiopian Human Rights Commission, which has a broad human rights mandate related to education, protection, monitoring and research. The law also provides for a commissioner for women's and children's affairs.²⁰

Laws establishing national human rights institutions in Guinea and Sierra Leone provide for specialized committees, including in both cases one focusing on women's and children's rights.²¹ However, anecdotal information suggests that these committees are not active. In Chad, the mandate of the National Human Rights Commission includes a reference to children's rights.

In the majority of cases, however, the existence of a child rights department within the independent institution does not appear to be based on a mention of children or child rights in the institution's legislation. Several institutions in the region carry out activities in this area without a specific legislative base, as described below.

Institutional structure

Most child rights institutions in sub-Saharan Africa are integrated into a broad-based human rights institution. In several places (Ethiopia, Malawi, Nigeria and Zambia) a specific commissioner or committee is in charge of dealing with children's rights. Even though no specific legislative base requires it, several institutions (e.g., in South Africa and the United Republic of Tanzania) have created specific units working on children's rights. In Nigeria, the National Human Rights Commission appointed a Special Rapporteur on Child Rights.²² The South African Human Rights Commission created a coordinator for children's rights as part of its special programmes for vulnerable populations in 2006. The Commission has been particularly active, undertaking a wide range of activities to promote and protect children's rights.

In 2006, a Children's Desk was established within the Tanzanian Commission for Human Rights and Good Governance. The three local branches of the Commission have special offices to deal with children's issues. In 2009, the Children's Desk presented a separate report to the CRC Committee that explained its mandate, main activities and challenges.²³ Zambia's Human Rights

¹⁹ Parliament Proclamation No. 211-2000, Institution of the Ombudsman Establishment, 4 July 2000. The Ombudsman for Women and Children was appointed in 2005, following the appointment of the Chief Ombudsman in 2004.

²⁰ Art. 8.1.c, Parliament Proclamation No. 210-2000, Ethiopian Human Rights Commission Establishment Proclamation, 4 July 2000. The first Commissioner for Children's and Women's Rights was nominated in 2005.

²¹ Spliid, U. (2009). *The Compliance of the Constituent Documents of West African and Central African National Human Rights Institutions with the Paris Principles: A descriptive analysis*, Copenhagen: The Danish Institute for Human Rights.

²² Concluding Observations of the CRC Committee on Nigeria, CRC/C/15/Add. 257, 13 April 2005.

²³ Commission for Human Rights and Good Governance (2009). *Children's Desk Report for CRC Committee Members and Rapporteurs for the Optional Protocols*, Dar es Salaam: CHRAGG.

Commission officially launched the Office of the Commissioner for Children's Rights in 2009. National human rights institutions in Mauritania and the Niger also have child rights units.²⁴ On the other hand, the Ghana Commission of Human Rights and Administrative Justice abolished its child rights department in 2006,²⁵ highlighting the potentially fragile nature of these arrangements.

Unfortunately, the appointment of a commissioner or committee is not always matched by a corresponding unit within the secretariat of the independent institution, which weakens the commissioner's ability to perform his or her role.

A research report on the Malawi Human Rights Commission highlighted that "the departments and the thematic areas of the commission do not correspond, thereby virtually nullifying the thematic committees".²⁶ While external funding (from UNICEF) for the children's rights unit may have offset this problem with respect to children's rights, it does illuminate why in some countries the existence of a committee on a specific theme has not translated into significant activity. The National Human Rights Commission in Togo, for example, decided to make women and children's rights a priority, but by its own confession, has shifted its focus when other issues have come up.²⁷

An additional challenge for independent child rights monitoring in sub-Saharan Africa lies in the fact that a number of human rights institutions in the region are neither fully functional nor truly independent – and therefore have not been granted an 'A status' by the ICC.

The Ombudsperson for Children's Office in Mauritius, the only stand-alone institution in the region, has a mandate²⁸ explicitly inspired by the Norwegian Ombudsman for Children and grounded in the implementation of the CRC.²⁹ The CRC Committee has praised its "valuable work in the area of investigations and awareness-raising".³⁰ As a specialized institution, the office enjoys a comprehensive legislative mandate with extensive powers.

²⁴ Concluding Observations of the CRC Committee on Mauritania, CRC/C/MRT/CO/2, 17 June 2009; Concluding Observations of the CRC Committee on Niger, CRC/C/NER/CO/2, 18 June 2009.

²⁵ Concluding Observations of the CRC Committee on Ghana, CRC/C/GHA/CO/2, 17 March 2006.

²⁶ Patel, N. (2009). 'Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: The Malawi Human Rights Commission and the Office of the Ombudsman', EISA Research Report, No. 46, Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 35. Available at: <http://www.eisa.org.za/PDF/r46.pdf>.

²⁷ In its report for 2007, the National Human Rights Commission in Togo states: "The impetus taken by the Commission for several years has waned in 2007 if we strictly consider the fact that it has not been able to take initiatives clearly targeting these groups. Therefore, due to the challenge the organization of legislative elections represented, the success of which in terms of transparency and equity was determinant for social stability and for the establishment of a situation conducive to the effectiveness of human rights, the Commission has chosen to invest in the guarantee of respect for human rights in the course of this process." See: National Human Rights Commission (2007). *Annual Report 2007*. Available at: <http://cndh-togo.org/cndh-togo/>.

²⁸ Ombudsperson for Children Act, No.41 of 2003 (Mauritius).

²⁹ Ombudsperson for Children's Office [2004]. *Annual Report 2004*, Beau-Bassin: Ombudsperson for Children's Office.

³⁰ Concluding Observations of the CRC on Mauritius, CRC/C/MUS/CO/2, 17 March 2006, para. 16.

With respect to the geographic reach of their organizations, while many institutions have worked to open decentralized offices, accessibility – particularly to children – remains limited. In Tanzania, the Commission for Human Rights and Good Governance has branches in only three out of the country's 21 regions, with the result that it is little known to the public.³¹ The CRC Committee has pointed this out, along with the need to ensure that the Commission “be readily accessible for all children at the local and regional levels”.³² In some places (e.g., South Africa and Uganda) regional offices have been opened throughout the country, making these institutions more accessible to the public. In Uganda, where conflict has affected the northern area for many years, the Uganda Human Rights Commission established regional offices in the conflict zone in order to receive human rights complaints and bring human rights services closer to conflict-affected communities.³³ However, as for all independent institutions, the Commission's direct accessibility to children remains a challenge.³⁴

The CRC Committee has repeatedly commented on the lack of a child-specific approach by independent human rights institutions in the region. It has occasionally praised the establishment of a human rights institution but regrets the absence of a mechanism dealing specifically with children's rights.³⁵ Even when an institution has a unit specialized in children's rights, the CRC Committee has expressed concern about its accessibility to children, as is the experience of Mauritania (2009) and the Niger (2009).³⁶ The CRC Committee has also expressed concern at the limited number of cases the Nigerian Special Rapporteur on Child Rights has taken on involving children,³⁷ and the general lack of information about its activities.

31 Mallya, E. T. (2009). 'Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: Tanzania's Commission for Human Rights and Good Governance', *EISA Research Report*, No. 40, 3. Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 3.

32 Concluding Observations of the CRC Committee on the United Republic of Tanzania, *CRC/C/OPAC/TZA/CO/1*, 10 October 2008.

33 'Experiences of the Uganda Human Rights Commission in Fulfilling its Mandate', presentation by Margaret Sekaggya, Chairperson, Uganda Human Rights Commission to the Conference for Commonwealth National Human Rights Institutions, London, UK, 26–27 February 2007.

34 Concluding Observations of the CRC Committee on Uganda, *CRC/C/OPSC/UGA/CO/1*, 16 October 2008.

35 Concluding Observations of the CRC Committee on Cameroon, *CRC/C/CMR/CO/2*, 29 January 2010; Concluding Observations of the CRC Committee on Chad, *CRC/C/TCD/CO/2*, 12 February 2009; Concluding Observations of the CRC Committee on Kenya, *CRC/C/KEN/CO/2*, 19 June 2007; Concluding Observations of the CRC Committee on Liberia, *CRC/C/15/ Add. 236*, 1 July 2004; Concluding Observations of the CRC Committee on Sierra Leone, *CRC/C/SLE/CO/2*, 20 June 2008.

36 Concluding Observations of the CRC Committee on Mauritania, *CRC/C/MRT/CO/2*, 17 June 2009; Concluding Observations of the CRC Committee on Niger, *CRC/C/NER/CO/2*, 18 June 2009.

37 Concluding Observations of the CRC Committee on Nigeria, *CRC/C/15/Add. 257* of 13 April 2005 and *CRC/C/NGA/CO/3-4*, 21 June 2010, para. 14.

Appointment process

The majority of human rights commissions in sub-Saharan Africa are composed of a large number of members from various sectors of society whose mandates generally range from two to five years. With only a few exceptions, commissioners are appointed by the executive branch, sometimes in consultation with, or at the suggestion of, professional bodies and other civil society organizations. The human rights commissions in Gabon, Mauritania and Togo are obligated by their statutes to include a representative of a child rights organization,³⁸ but this provision has not translated into a strong focus on children's rights within these commissions.

Appointment processes in the region typically involve many actors but are heavily influenced by the government. Throughout the region, the close link between independent institutions and the executive branch affects institutional independence when making appointments and in budget and reporting matters.³⁹

Budget and resources

Detailed information on funding of the region's child rights institutions is scarce, but what information is available strongly points to a general picture of insufficient resources. As is the case in other regions, the CRC Committee systematically recommends the provision of adequate support and resources for the functioning of institutions and their child rights department, as relevant.

One significant issue in relation to resources – echoing concerns raised about the appointment process – is the fact that funding is not a line-item in the national budget but is instead often part of the budget of the executive branch. The Malawi Human Rights Commission is funded through the government (executive-controlled) budget, making it vulnerable to cuts by the executive branch when it exposes human rights violations on the part of the government.⁴⁰ In Zambia, the budget of the Human Rights Commission is submitted to the Ministry of Finance, which presents and defends it before the Parliament.⁴¹

One way independent institutions have developed their capacity to fulfil their mandate is by partnering various other actors who can provide funding and

³⁸ Spliid (2009), op. cit.

³⁹ There are examples of this dynamic in Burkina Faso, Malawi and the United Republic of Tanzania. According to one researcher, despite its formal independence, the fact that the Tanzanian Commission for Human Rights and Good Governance monitors the branch responsible for its appointment casts doubts on its impartiality (Mallya (2009), op. cit., 22). See also Patel (2009), op. cit., 35; and Concluding Observations of the CRC Committee on Burkina Faso, CRC/C/BFA/CO/3-4, 9 February 2010, para. 14.

⁴⁰ Patel (2009), op. cit., 14.

⁴¹ Chewe-Chanda, A. (2009). 'Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: The Commission for Investigations and the Permanent Human Rights Commission in Zambia', *EISA Research Report*, No. 43, Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 31.

technical capacity. Specifically, monetary support along with technical assistance from international child rights organizations seems to be an important driver of children's rights monitoring in this region. Despite the obvious benefits of funding and assistance, this raises questions about the sustainability of child rights work. For example, in Zambia the Human Rights Commission signed a partnership with Save the Children in 2007 as a first step towards establishing the Office of the Commissioner for Children's Rights.⁴² In order to avoid depending on a single donor – and running the risk of a shift in the donor's priorities – the Office itself envisaged relying on more than one partner to ensure continuous support for its activities.⁴³

Another concern in the region is that the establishment of institutions may be perceived as solely donor-driven and hinder national ownership. For example, in Malawi a study carried out in 2009 showed that one commissioner considered the establishment of a children's rights unit to be solely motivated by UNICEF funding.⁴⁴

A number of human rights institutions in the region collaborate with other organizations to plan specific events and studies. Others, for example, those in South Africa and Uganda, use or commission research carried out by civil society organizations and universities to support their advocacy work. Although this approach compensates to some extent for limited in-house resources and capacities, it does entail relying on external data collection and evidence gathering – which can affect the credibility of independent institutions.

Competencies

Legislation and policy

Several institutions use law and policy reform processes to advocate for legislation in line with the CRC, provide advice on child-related legislation, and encourage institutional reform. This is the case in South Africa and the United Republic of Tanzania, where commissions have promoted consultations and commented on legislative reforms related to child rights. The South African Human Rights Commission in particular took a strong stance against corporal punishment during the debate on the reform of the Children's Bill, although the Commission's proposal was not ultimately retained.⁴⁵ The Ombudsperson for Children's Office in Mauritius has the mandate to make legislative proposals; it systematically reviews the child-related legal framework in its annual reports in order to highlight loopholes. With

⁴² Human Rights Commission (2009). 'Support to the Office of the Commissioner for Children's Rights, concept note.

⁴³ Ibid.

⁴⁴ Patel (2009), op. cit., 35.

⁴⁵ South African Human Rights Commission [2009]. *Annual Report 2009*, SAHRC, 51.

respect to institutional reform, the human rights commission in Rwanda took a lead role in the creation of an observatory on children's rights, which was established in June 2008.⁴⁶

The explicit mention of the ability to review laws in an institution's mandate is important, because it strengthens the position of the institution vis-à-vis the authorities responsible for drafting the laws.⁴⁷

Complaints and investigations

Most independent institutions in the region have the mandate to receive individual complaints and several handle child-rights-related complaints. The Ombudsperson for Children's Office in Mauritius, for example, reviews approximately 400 individual complaints every year on a wide range of issues. The National Human Rights Commission in Nigeria reports on complaints of child abuse and child abandonment, which represent roughly 5 per cent of the total number of complaints it receives each year.⁴⁸

The challenges of maintaining a balance between handling individual complaints and pursuing strategic thematic issues is well illustrated by the experience of the Uganda Human Rights Commission, which has reported that complaints related to child neglect and child support represented 20 per cent of all those received in 2010.⁴⁹ While this proportion seems high, it may reflect the fact that people facing financial difficulties use the Commission's complaint mechanism to seek child support in cases of divorce and separation. This work takes significant time and resources away from the Commission when other mechanisms might be more suitable. Moreover, these complaints keep the Commission from dealing with grave rights violations (e.g., violations of the right to protection from torture and cruel, inhumane and degrading punishment), which made up 28 per cent of the complaints received by the Commission over the same time period.⁵⁰

More information is needed on whether the creation of a children's office within a broad human rights commission has an influence on the number of individual child-related complaints received. Across the region, data on child-submitted complaints are also lacking. However, CRC Committee concluding observations repeatedly point to the lack of accessible, child-sensitive complaint mechanisms in the region.

⁴⁶ La Commission Nationale des Droits de la Personne (2009). *Rapport Annuel 2008*, Kigali: CNDP, 20.

⁴⁷ Spliid (2009), op. cit., 17.

⁴⁸ See: Statutory Report of the National Human Rights Commission for the year 2007. Available at: <http://www.nigeriarights.gov.ng/resources/index/25>.

⁴⁹ Uganda Human Rights Commission (2010). *13th Annual Report (2010)*, Kampala: UHRC, 11.

⁵⁰ *Ibid.*, 11–12.

The investigative powers of the region's institutions vary significantly. Some institutions (in Ethiopia, Ghana, Mauritius, Sierra Leone, South Africa, Tanzania, Uganda and Zambia) have broad powers to hear witnesses, access facilities and request information, but in Tanzania and Zambia the president can halt an investigation.⁵¹ In some places, institutions can also take cases to court. Most institutions tend to favour amicable solutions and have balanced strong powers with the need to mediate and influence. The South African Human Rights Commission has never used its powers of search and seizure to handle individual complaints and has made limited use of its litigation and subpoena powers, which has occasionally drawn criticism.⁵² However, when the Commission has made use of these powers with the executive and legislative branch it has sometimes struggled to receive a timely response,⁵³ resulting in possible damage to the credibility of the Commission.

Child rights institutions in the region often undertake visits to detention facilities. Many also conduct interviews and publicly report their findings on compliance with international standards. The Children's Desk of the Commission for Human Rights and Good Governance in the United Republic of Tanzania is among several institutions to have done this.⁵⁴ In 2012 the Ethiopian Human Rights Commission reported the outcome of an investigation of the situation in 119 federal and regional detention units in the country. The investigation highlights the situation of juvenile offenders and makes recommendations for addressing shortcomings. According to the report, some of the issues highlighted in the course of the monitoring activities were resolved thanks to authorities' cooperation, in particular with respect to the separation of children from adults.⁵⁵ While the Uganda Human Rights Commission has also been very active in this area,⁵⁶ it has been unable to undertake unannounced visits to various facilities and agencies,⁵⁷ which is essential to effective monitoring.

Research and reporting

A number of independent institutions in sub-Saharan Africa carry out research on specific child rights issues whether or not they have a mandate or organizational structure focused on children. The 2006 annual report of the ombudsman in Namibia, for example, contains an extensive analysis of child labour issues,

⁵¹ Chewe-Chanda (2009), *op. cit.*, 27; Mallya (2009), *op. cit.*, 9.

⁵² Chewe-Chanda (2009), *op. cit.*, 25–27.

⁵³ *Ibid.*, 29–30.

⁵⁴ Commission for Human Rights and Good Governance (2009), *op. cit.*

⁵⁵ The Ethiopian Human Rights Commission (2012). *Human Rights Protection Monitoring in Ethiopian Prisons: Primary report*, Addis Ababa: The Ethiopian Human Rights Commission.

⁵⁶ Uganda Human Rights Commission (2008). *11th Annual Report (2008)*, Kampala: UHRC

⁵⁷ CRC Concluding Observations of the CRC Committee on Uganda, CRC/C/OPSC/UGA/CO/1, 16 October 2008, para. 15 and CRC/C/OPAC/UGA/CO/1, 17 October 2008, para. 14.

including recommendations for measures to improve conditions for young workers, and refers to children's rights in such areas as health and education.⁵⁸ The Uganda Human Rights Commission devotes significant attention to children's rights and includes a section on this topic in its annual report. In its monitoring of the conflict that affected northern Uganda, it paid particular attention to child rights violations, including the forced recruitment of child soldiers.⁵⁹ The Commission also undertook an in-depth study of child neglect in Uganda and issued a comprehensive set of recommendations to address it.⁶⁰ It works with the Office of the High Commissioner for Human Rights (OHCHR) and UNICEF on the monitoring and reporting of serious child rights violations in the context of armed conflict. The annual report of the Ombudsperson for Children's Office in Mauritius contains a comprehensive chapter on the prevention of violence against children, addressing its multiple dimensions and the settings in which it takes place, and reflecting the approach of the United Nations Study on Violence Against Children.⁶¹

Some institutions publish reports on specific child rights issues, though these tend to be far less common than the more general annual reports. Recent examples include child prostitution in Ghana or access to education for children with disabilities in Kenya. While these reports largely concentrate on specific topics, they often take a rights-based, systemic approach to whatever child rights issue is being discussed.

Education, promoting rights and raising awareness

Promoting respect for and awareness of child rights remains limited throughout the region, although internationally it is usually a strong aspect of independent institutions' mandates. Various reports make a direct link between this shortcoming and institutions' lack of resources.⁶² Where institutions have managed to carry out human rights education and sensitization activities, it has often been in partnership with other actors. For example, the Uganda Human Rights Commission assisted by the Uganda People's Defence Force conducts training courses and workshops on human rights, including children's rights, for the army, security agencies, police force, intelligence officers, local council leaders and others.⁶³ Other institutions develop partnerships with civil

⁵⁸ Office of the Ombudsman in Namibia (2006). *Annual Report*, Windhoek: Office of the Ombudsman in Namibia, 12–13.

⁵⁹ Uganda Human Rights Commission (2004). *7th Annual Report (2004)*, Kampala: UHRC; Uganda Human Rights Commission (2005). *8th Annual Report (2005)*, Kampala: UHRC.

⁶⁰ Uganda Human Rights Commission (2007). *10th Annual Report (2007)*, Kampala: UHRC, 71–80.

⁶¹ Ombudsperson for Children's Office [2008]. *Annual Report: September 2007–2008*, Beau-Bassin: Ombudsperson for Children's Office, 20–40.

⁶² For example, Patel (2009), op. cit., 18; Mallya (2009), op. cit., 18; Chewe-Chanda (2009), op. cit., 37.

⁶³ Initial reports of State parties on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict due in 2004, Uganda, CRC/C/OPAC/UGA/1, 17 July 2008, para. 62.

society organizations that in turn promote respect for human rights and make constituents aware of the existence of independent human rights institutions.⁶⁴

Child participation

Child participation in the work of independent rights institutions remains problematic throughout the region. By their own admission, African states have recognized that “meaningful participation of children in affairs of state, society, community and family is extremely rare”.⁶⁵

Yet this review shows that several institutions do carry out projects involving child participation, including having direct dialogue with children. In Rwanda, in 2006 the National Human Rights Commission organized a participation event with the High Council the purpose of which was to listen to children and their wishes for ‘A Rwanda Fit for Children’ and to hear their proposals for addressing violence against children.⁶⁶ The Ethiopian Institution of the Ombudsman played a key role in the 2006 establishment of a children’s parliament in the Southern Nations, Nationalities and Peoples’ Region of Ethiopia, a model that was later expanded across the country. The goal was to provide a platform for children for interaction and to create opportunities for them to meet and express their views to help them develop self-confidence, self-awareness and self-esteem.⁶⁷

Institutions that have conducted investigations in detention centres, for example in Uganda and the United Republic of Tanzania, have directly asked children for their views on the conditions of their detention and have brought their grievances to the attention of the relevant authorities. The Ombudsperson for Children’s Office in Mauritius has paid particular attention to child participation, both in its own work and in society in general.⁶⁸ Since 2004, the Office has worked with a network of adolescents aged 12–18 years called Budi’s Friends. These young people receive training on issues including child abuse and violence and participate in debates in the media. They act as a link between their peers and the ombudsperson’s Office. The Office has also advocated for children’s participation in the family, emphasizing the importance of dialogue and positive parenting. It further promotes children’s right to participate in public

⁶⁴ Mallya (2009), op. cit., 29.

⁶⁵ African Union (2007). *Call for Accelerated Action on the Implementation of the Plan of Action Towards Africa Fit for Children (2008–2012)*, outcome document of the Second Pan-African Forum on Children: Mid-term Review, Cairo, Egypt, 29 October – 2 November 2007, PANAF/FORUM/CHD/MIN/2(II), para. 28.

⁶⁶ La Commission Nationale des Droits de la Personne (2007). *Rapport Annuel 2006*, Kigali: CNDP.

⁶⁷ Combined fourth and fifth periodic reports of the Federal Democratic Republic of Ethiopia to the United Nations Committee on the Rights of the Child (2006–2011), April 2012.

⁶⁸ Ombudsperson for Children’s Office [2006]. *Annual Report 2005–2006*, Beau-Bassin: Ombudsperson for Children’s Office, 85–90.

debate, public demonstrations and the media – while also warning against risks of manipulation.⁶⁹

While some child rights offices make specific efforts to promote child participation generally in society, these activities remain largely ad hoc. Except for the Ombudsperson for Children Act of 2003 which gives the Children’s Office in Mauritius an explicit role in promoting the right of children to express their views, the legal basis for most child rights institutions in the region, as well as child rights legislation in general, is limited in this regard. Although the principle of child participation is increasingly recognized in new African child rights laws, it is still largely associated with formal criminal and civil proceedings.⁷⁰ This is an area where the region’s child rights institutions could make a significant contribution.

Networking

Institutions with a broad human rights mandate in sub-Saharan Africa are generally part of a network, but child rights institutions do not have a regional network of their own.

Some networks operate across the continent, such as the African Ombudsman Association (focused on administrative ombudsman offices) and the Network of African National Human Rights Institutions. The latter liaises with the OHCHR and participates in the work of the African Commission on Human Rights, although available information suggests that its focus on children is limited.

Other networks operate along linguistic lines. These include, for human rights institutions, the Commonwealth Forum of National Human Rights Institutions, and the Association Francophone des Commissions Nationales de Promotion et de Protection des Droits de l’Homme (AFCNDH), and for ombudsman-type institutions, the Association des Ombudsman Médiateurs de la Francophonie (AOMF). However, the francophone networks, under the umbrella of the Organisation Internationale de la Francophonie (OIF), carried out a series of studies and activities on children’s rights in relation to the twentieth anniversary of the CRC in 2009.⁷¹ They also support the creation of independent institutions for children’s rights, including ongoing campaigns to establish such institutions

⁶⁹ Ibid., 85–90.

⁷⁰ Sloth-Nielsen, J. et al. (2008). *Child-friendly Laws in African Context: Good and promising practices*, African Child Policy Forum, 51.

⁷¹ Marie, J.-L. (2009). *Les Institutions nationales des droits de l’Homme de l’espace francophone et leur rôle dans la promotion et la protection des droits de l’enfant*, Association Francophone des Commissions Nationales des Droits de l’Homme; Association des Ombudsmans Médiateurs de la Francophonie (2009). *Etude sur l’état de l’enfance et de la jeunesse francophone et sur les mécanismes et institutions de défenseur des enfants dans les pays de la francophonie représentés au sein de l’AOMF*, Bureau de l’Ombudsman et Défenseur des Enfants et de la Jeunesse du Nouveau-Brunswick, Canada.

in several West African countries.⁷² While important, these efforts are young and their sustainability uncertain.

Some individual institutions, particularly the Ombudsperson for Children's Office in Mauritius, have become influential voices at the regional and international levels. Yet independent human rights institutions in Africa as a group do not yet appear to have found a distinct voice on children's rights in regional and international settings.

Looking forward: Challenges and opportunities

Child rights institutions in sub-Saharan Africa face significant challenges in carrying out their mandate. They often operate in contexts in which governance, democratic institutions and social services are weak. Such an environment has a large impact on institutional effectiveness because it affects both an institution's structure and the responsiveness of the system that it was established to help strengthen. This in turn has a negative impact on an institution's ability to monitor, protect and promote children's rights.

While many institutions in the region enjoy an 'A status' with the ICC, indicating compliance with the Paris Principles, independence remains a concern for many. Independent institutions are frequently appointed and financed through the executive branch, making them vulnerable to political interference, exposing them to sanctions and casting doubt on their impartiality. The CRC Committee has recommended many times that the independence of institutions be strengthened.⁷³ One way to address this issue would be to make independent institutions accountable to parliament, but this would require the legislative branch to invest serious work in the smooth functioning of these institutions.

A related obstacle lies in the failure of state bodies to follow up on recommendations, which undermines the effectiveness and credibility of institutions. This problem is explicitly raised by the CRC Committee in its examination of Malawi's second Periodic Report, which suggests that recommendations made by the Human Rights Commission are not followed up in an adequate and timely manner.⁷⁴ The Tanzanian Children's Desk has also reported that lack of cooperation from government institutions affects its

⁷² Organisation Internationale de la Francophonie (2009), op. cit.

⁷³ Of the institutional arrangements in Burkina Faso, for example, the CRC Committee has observed that: "The Committee is however concerned that the source and level of funding of the National Human Rights Commission, the nomination/ appointment and revocation processes of its member as well as its relations with the executive are likely to affect its independence and effective functioning." Concluding Observations of the CRC Committee on Burkina Faso, CRC/C/BFA/CO/3-4, 29 January 2010, para. 14. See also: Concluding Observations of the CRC Committee on Cameroon, CRC/C/CMR/CO/2, 29 January 2010, para. 15 and Concluding Observations of the CRC Committee on Togo, CRC/C/15/Add.255, 31 March 2005, para. 12.

⁷⁴ Concluding Observations of the CRC Committee on Malawi, CRC/C/MWI/CO/2, 27 March 2009, para. 14.

efficiency.⁷⁵ In March 2009, the South African Human Rights Commission twice postponed public hearings on economic and social rights because of the lack of response from state bodies.⁷⁶ As noted earlier, while commissions may be equipped with binding powers such as the ability to issue subpoenas, they are reluctant to use them out of concern over antagonizing relevant government bodies. They favour 'softer' mechanisms that build on influence that is itself undercut by lack of political will to further the realization of children's rights.

Some independent institutions have addressed this issue by reporting on follow-up to their recommendations. The Uganda Human Rights Commission's annual reports contain a section examining the government's response to its previous recommendations. While these used to be analysed thematically, a new approach initiated in the 2008 annual report consisted of classifying recommendations based on the level of compliance (fully, partly or not complied with).⁷⁷ For each recommendation, the status of implementation is thoroughly reviewed and additional advice is provided. This ensures that recommendations are not forgotten from one report to the next and provides an accountability mechanism for both successes and failures. The method relies mainly on public communication and assumes that the Ugandan Government is sensitive to the Commission's report.

Limited resources are a significant challenge for independent institutions in the region. A shortfall of funds strongly affects institutional accessibility, including their ability to make their role widely known and to function at the local level.⁷⁸ The CRC Committee has repeatedly raised this issue in its concluding observations to both broad-based institutions and specialized child rights offices and departments.⁷⁹ The Ombudsperson for Children's Office in Mauritius is in many ways a positive regional example, which can provide lessons for other institutions in sub-Saharan Africa – and in other regions as well. Its success is most likely due to certain key factors, including its specialized child rights mandate along with its extensive powers. The Office has also benefited from support at the sub-regional level in the Indian Ocean, where promotion of children's rights has received much attention. Last but not least, the personality

⁷⁵ Commission for Human Rights and Good Governance (2009), op. cit., 12.

⁷⁶ Musuva, C. (2009). 'Promoting the Effectiveness of Democracy Protection Institutions in Southern Africa: South Africa's Public Protector and Human Rights Commission', *EISA Research Report*, No. 41, Johannesburg: Electoral Institute for Sustainable Democracy in Africa 30.

⁷⁷ Uganda Human Rights Commission [2008], op. cit., 134.

⁷⁸ The Tanzanian Children's Desk has noted that lack of public awareness of the existence of children's desks at central and local level affects its efficiency (Commission for Human Rights and Good Governance (2009), op. cit., 12).

⁷⁹ Concluding Observations of the CRC Committee on Malawi, CRC/C/MWI/CO/2, 27 March 2009; Concluding Observations of the CRC Committee on Mauritius, CRC/C/MUS/CO/2, 17 March 2006; Concluding Observations of the CRC Committee on Nigeria, CRC/C/15/Add. 257 of 13 April 2005; Concluding Observations of the CRC Committee on Niger, CRC/C/NER/CO/2, 18 June 2009.

of the ombudsperson has helped shape a respected office. The Office has built extensive knowledge in the area of children's rights.

Following a trend towards law reform to further the implementation of the CRC, it is anticipated that new institutions or offices focusing on children's rights will be established in the region. In Namibia, for example, the draft Child Care and Protection Act provides for the creation of a Children's Ombudsman in charge of handling individual complaints and monitoring implementation of the CRC.⁸⁰ Burkina Faso, Mali and Senegal are actively considering the creation of independent child rights institutions.⁸¹

With independent human rights institutions for children in the region still financed largely by international donors, enhanced engagement by national governments in child rights institutions will be crucial to strengthening national ownership of these institutions and ensuring their long-term sustainability. As one researcher has pointed out:

While it is clear that many governments in sub-Saharan Africa are starved of resources, especially financial resources, it is necessary to pay closer attention and provide adequate resources for institutions such as those which work for human rights and good governance because when they become effective their impact on good governance is considerable. Put another way, when good governance is attained, resources are likely to be managed more effectively, making the prospects for socio-economic development far brighter. Thus, institutions that work for and protect democracy should top the list of priorities of a country.⁸²

⁸⁰ Draft Child Care and Protection Bill, Ministry of Gender Equality and Child Welfare 2009, Part II. Not yet adopted as of early 2013.

⁸¹ Organisation Internationale de la Francophonie (2009), *op. cit.*

⁸² Mallya (2009), *op. cit.*, 33.



Origins of independent human rights institutions for children in the region

Most of the region's institutions were established in the 1990s and the early 2000s¹ during which time a large number of Asian countries set up broad-based national human rights institutions, many of them complying with the Paris Principles,² except for those in Central Asia. However, since 2005³ Asian countries have shown growing interest in setting up specialized offices for children's rights, either within existing institutions or as stand-alone institutions.

¹ National human rights commissions were established in Myanmar in 2011 and in Pakistan in 2012.

² As of mid-2012, 10 institutions in the region (exclusively in South Asia and East Asia) have been given an 'A status' by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC): the Afghanistan Independent Human Rights Commission, the National Human Rights Commission (India), the National Human Rights Commission of Indonesia (Komnas HAM), the National Human Rights Commission of the Republic of Korea, the Human Rights Commission of Malaysia (SUHAKAM), the National Human Rights Commission of Mongolia, the National Human Rights Commission of Nepal, the Commission on Human Rights of the Philippines, the Provedoria for Human Rights and Justice (Timor-Leste) and the National Human Rights Commission (Thailand).

³ One exception is the Philippines, where the Child Rights Centre was established in 1994.

Although there exists a diversity of institutional arrangements across the region, independent human rights institutions for children in Asia and the Pacific share a number of common features. In particular, international standards and the international organizations that promote them have played a significant role in shaping many institutions within the region.⁴ Also important is the role of the regional network of independent human rights institutions, the Asia Pacific Forum of National Human Rights Institutions (Asia Pacific Forum) which has supported exchange of experiences.⁵

Independent institutions in Asia, as in sub-Saharan Africa and Latin America, have often been established in the context of transitions from repressive or authoritarian regimes to democratic systems. Like in Africa, independent institutions in Asia often feature a strong involvement of the executive branch, in particular in the appointment process, along with limited prosecutorial and investigative powers. With few exceptions, child rights offices are not grounded in legislation and are therefore primarily established within existing structures as a new institutional arrangement. In some places (e.g., Indonesia, Sri Lanka and Timor-Leste), specialized child protection commissions exist but they are not independent.⁶

Even where not explicitly mandated to do so, independent institutions in Asia and the Pacific have engaged in children's rights issues, with influence that varies by country.

In South Asia⁷ most countries have established independent human rights institutions for children, either as stand-alone commissions (India) or as child rights departments (Afghanistan, Nepal and Pakistan). Attention to child rights on the part of the South Asian Association for Regional Cooperation⁸ is a reflection of the upturn in interest in these issues in South Asian countries' policy-making. International actors, including UNICEF and Save the Children Norway, have also played a significant role in the region by promoting, advising on and financially supporting child rights units.

In East Asia a number of countries have national human rights institutions, but only in Mongolia and the Philippines is there an identifiable child rights office or commissioner. However, institutions in other countries do carry out work on children's rights as part of their mandate. In Japan, ombudspersons for children were established at the city level following a series of child suicides and high-profile cases of bullying,⁹ but as of early 2013, a national human rights institution had not yet been established.

4 Cardenas, S. (2002). 'National Human Rights Commissions in Asia'. In Montgomery, J. D. and N. Glazer, eds. *Sovereignty under Challenge: How governments respond*, New Brunswick: Transaction Publishers, 58–59.

5 Such as the India National Human Rights Commission influencing establishment processes in Bangladesh, the Maldives, Nepal and Sri Lanka. See Renshaw, C. and K. Fitzpatrick (2011). 'National Human Rights Institutions in the Asia Pacific region: Change agents under conditions of uncertainty'. In Goodman, R. and T. Pogram, eds. *Human Rights, State Compliance, and Social Change: Assessing national human rights institutions*. Cambridge University Press, 155.

6 They therefore do not fall within the scope of this study.

7 Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

8 The Association has explicitly made women and children a priority of its social portfolio and has proclaimed 2001–2010 the decade on rights of the child. It adopted two conventions on children's issues in 2002: the Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia and the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.

9 Ombudsperson for Children of Kawanishi City (2009). 'The Role and the Function of the Ombudspersons in Kawanishi, Japan', background note submitted on the occasion of the O8 Summit, Nuoro, Italy, June 2009. See also: Uchida, T. (2010). 'Local Ombudsperson for Children in Japan', note to authors, Tokyo University, 24 June 2010.

In Central Asia¹⁰ independent human rights institutions have emerged along the lines of the ombudsman model. In the three countries where they have been set up – Kazakhstan, Kyrgyzstan, Tajikistan – independent institutions enjoy only a ‘B’ ranking from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) (indicating limited compliance with the Paris Principles). Strengthening democratic institutions is an ongoing process in Central Asian countries and ombudsman offices across the region have varying degrees of independence.¹¹

In the main, the Pacific Island States have not followed the general trend towards establishing child rights institutions (for discussion of Australia and New Zealand, see Chapter 20). Notably, the Pacific area is characterized by a comparatively low rate of ratification of core international human rights treaties, except for the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination against Women (CEDAW).¹² Even in Fiji, the only country in the sub-region with an independent human rights institution (created in 1997), many difficulties have arisen from the inability to fully enforce treaties.¹³ A number of Pacific Island countries, including Nauru, Papua New Guinea, Samoa and the Solomon Islands, are currently looking at setting up independent human rights institutions.¹⁴

The main characteristics of independent human rights institutions for children in the region

Legal basis

The overwhelming majority of independent broad-based human rights institutions in Asia have a legislative mandate. A few, in Afghanistan, the Maldives, Nepal and the Philippines, are inscribed in the national Constitution.

¹⁰ The Central Asian countries include Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

¹¹ The Committee on the Rights of the Child has expressed concern over the apparent lack of compliance with international standards in some Central Asian institutions (see: Concluding Observations of the CRC Committee on Kazakhstan, CRC/C/KAZ/CO/3, 19 June 2007, para. 16; Concluding Observations of the CRC Committee on Turkmenistan, CRC/C/TKM/CO/1, 2 June 2006, para. 11; Concluding Observations of the CRC Committee on Uzbekistan, CRC/C/UZB/CO/2, 2 June 2006, para. 11). In others, it has commented on a institutional child-sensitive mechanisms (see: Concluding Observations of the CRC Committee on Kyrgyzstan, CRC/C/15/Add. 244, 3 November 2004, paras. 14–15; Concluding Observations of the CRC Committee on Tajikistan, CRC/C/TJK/CO/2, 5 February 2010, paras. 12–13).

¹² Office of the High Commissioner for Human Rights, Regional Office for the Pacific and Pacific Islands Forum Secretariat (2009). ‘Ratification of International Human Rights Treaties: Added value for the Pacific Region’, discussion paper. OHCHR and Pacific Islands Forum Secretariat, 1 July 2009.

¹³ Following regime change in 2006, the ICC found that the Fijian Human Rights Commission’s validation of the military government suggested its independence had been compromised. The Commission subsequently resigned from the ICC. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2007). ‘Report and Recommendations of the ICC Sub-Committee on Accreditation’, 19th Session, Geneva, Switzerland, 22 March 2007. See also Renshaw, C., A. Byrnes and A. Durbach (2008). ‘Implementing Human Rights in the Pacific through the Work of National Human Rights Institutions: The experience of Fiji’, *University of New South Wales Faculty of Law Research Series*, Paper No. 66, 1. Available at: <http://law.bepress.com/cgi/viewcontent.cgi?article=1141&context=unswlwrps-frps08>.

¹⁴ Renshaw, C., Byrnes, A. and Durbach A. (2010). ‘Human Rights Protection in the Pacific: The emerging role of national human rights institutions in the region’, *New Zealand Journal of Public and International Law*, 81 (1):120–122. See also Asia Pacific Forum (2012). ‘Samoa Taking Strides Toward its Rights Body’, press release, 15 June 2012.

However, throughout the region, few institutions have their work on child rights grounded in specific legislative provisions. Generally, child rights structures within national human rights institutions are not specifically called for in legislation and their creation appears to be an internal decision of the broad-based institution. Two exceptions are the Indian National Commission on Protection of Child Rights and the Afghanistan Independent Human Rights Commission.¹⁵ International donors often support these child rights bodies, both financially and politically.

In the Philippines, the Child Rights Centre of the Commission on Human Rights was initially created in 1994 through a memorandum by the president.¹⁶ Subsequently, in 2005, the Juvenile Justice and Welfare Act mandated the Child Rights Centre to monitor government action and “ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights”,¹⁷ a development similar to that of several Latin American countries. Nonetheless, in 2009 the Committee on the Rights of the Child (CRC Committee) highlighted the need to provide the Child Rights Centre with an adequate legal basis for its activities.¹⁸

Institutional structure

The overwhelming majority of independent human rights institutions for children in Asia are integrated into a broad-based human rights institution. A number of these institutions have created specialized departments for children’s rights, some of them with significant autonomy and a strong agenda.

In South Asia, the Afghanistan Independent Human Rights Commission is equipped with a Child Rights Unit and a Child Rights Monitoring Team.¹⁹ In Nepal, a Child Rights Desk was created within the National Human Rights Commission in 2005; in addition, one staff member of the Commission is specialized in child rights.²⁰ At the beginning of 2010, the ombudsman’s office in Pakistan set up the Children Complaints Office to handle complaints from and about children and to promote the implementation of the CRC in the country, with a focus on the right of children to express their views.²¹ The Human Rights Commission in Sri Lanka does not have a specific child rights office but is active in this area.

India is the only country in the region with a stand-alone independent human rights institution for children. The creation of the National Commission for Protection of Child

¹⁵ Art. 26 of the Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission, Law No. 3471 of 14 May 2005.

¹⁶ Written replies by the Government of the Philippines to the List of Issues prepared by the Committee on the Rights of the Child, CRC/C/PHL/Q/3-4/Add.1, paras. 18–21.

¹⁷ Section 11, Juvenile Justice and Welfare Act No. 9344 of 25 July 2005 (the Philippines).

¹⁸ Concluding Observations of the CRC Committee on Philippines, CRC/C/PHL/CO/3-4, 22 October 2009, para. 17.

¹⁹ Afghanistan Independent Human Rights Commission [2009]. *Annual Report: 1 January–31 December 2009*, Kabul: AIHRC, 14.

²⁰ National Human Rights Commission (2009). *Status of Child Rights in Nepal: Annual Report 2008*, Kathmandu: NHRC, 41.

²¹ Wafaqi Mohtasib (Ombudsman) of Pakistan (2013) ‘About the REACH Project’ [web page]. Available at: <http://www.mohtasib.gov.pk/gop/index.php?q=aHR0cDovLzE5Mj4xNjguNzAuMTM2L3dhZmFxaWVvaC9mcm1EZXRhaWxzLmFzcHg%2Fb3B0PW1pc2NsaW5rcyZpZD0yMQ%3D%3D>.

Rights in 2007²² took place within the country's institutional tradition of specialized bodies. The Commission was created alongside a pre-existing broad-based National Human Rights Commission and various specialized human rights institutions, including the National Commission for Women and the National Commission for Minorities. Nevertheless, the National Human Rights Commission continues to be involved in several aspects of children's rights work,²³ and has collaborated with the child-focused Commission on a number of issues.²⁴

In East Asia, only the Philippine Commission on Human Rights has a specialized child rights department, but some human rights commissions have established committees to deal with children's issues. This is the case in Thailand,²⁵ while in Mongolia the National Human Rights Commission has one commissioner focusing on children's rights.²⁶

In Central Asia, Kyrgyzstan is the only country with a separate department for dealing with children's rights housed within the Office of the Ombudsman;²⁷ reports from the Office of the National Ombudsman in Kazakhstan show that it has been active in the area of child rights.²⁸

A number of institutions have a local presence. The Philippine Commission on Human Rights has 15 regional branches with delegates from the national Child Rights Centre.²⁹ Similarly, in Pakistan in 2009, in addition to a federal child complaint mechanism established with the Wafaqi Mohtasib (the federal ombudsman), child complaint offices were created in three provincial ombudsman offices.³⁰ In India, the law establishing the National Commission for Protection of Child Rights created parallel state commissions with similar mandates³¹ and these have been progressively set up throughout the country. While the law does not provide for a coordination mechanism between the state commissions and the national one, coordination does take place informally.

The mandates of Japan's 11 children's ombudsperson's offices are based on city ordinances and take a child-rights approach. They feature traditional functions, including an individual

22 Two years after adoption of the Commission for Protection of Child Rights Act in 2005 (No. 4 of 2006; published in the *Gazette of India* on 20 January 2006).

23 The National Human Rights Commission in India has continuously focused on children's rights issues since its establishment in 1993, in particular, child labour, child marriage, trafficking, sexual violence, female foeticide and infanticide, health and juvenile justice. See: Bhakhry, S. (2006). *Children in India and their Rights*, New Delhi: National Human Rights Commission, 53–60.

24 Information provided by the chair of the National Commission for Protection of Child Rights.

25 Written replies by the Government of Thailand concerning the list of issues, CRC/C/THA/Q/2/Add.1, 29 December 2005, 27; Concluding Observations of the CRC Committee on Thailand, CRC/C/THA/CO/2, 17 March 2006, para. 16.

26 Concluding Observations of the CRC Committee on Mongolia, CRC/C/15/Add. 264, 21 September 2005.

27 Concluding Observations of the CRC Committee on Kyrgyzstan, CRC/C/15/Add. 244, 3 November 2004.

28 Commissioner for Human Rights (2010). *2009 Activity Report of the Commissioner for Human Rights in the Republic of Kazakhstan*, Astana: Commissioner for Human Rights (National Ombudsman); Commissioner for Human Rights (2011). *2010 Activity Report of the Commissioner for Human Rights in the Republic of Kazakhstan*, Astana: Commissioner for Human Rights (National Ombudsman).

29 Third and Fourth Periodic Report of the Philippines to the CRC Committee, CRC/C/PHL/3-4, 20 March 2009, para. 37.

30 Balochistan, Punjab and Sindh. See Simonsen, N. (2011). *International Study on Best Practices in Monitoring Child Rights*, UNICEF, Pakistan, Head Office of Wafaqi Mohtasib (Ombudsman's Secretariat) and Child Complaint Office, 2011.

31 Commission for Protection of Child Rights Act, 2005, No. 4 of 2006. Published in the *Gazette of India* on January 20, 2006.

complaint and mediation mechanism, as well as child rights advocacy for the improvement of policies and practices within their respective jurisdictions.³²

Appointment process

The executive branch largely controls the appointment process for ombudspersons and commissioners throughout the region, in contrast to the recommended practice of involving parliament as a way to ensure an open and transparent debate. Exceptions include Thailand, where the Senate elects members of the National Human Rights Commission,³³ and the Maldives and Mongolia, where parliament is involved in the selection process.³⁴

A civil society organization has stated that appointment processes in the region are often affected by a lack of transparency and insufficient consultation with a wide range of actors, including civil society organizations.³⁵ In an interesting departure from usual practice, the renewal of the National Commission for Human Rights (Komnas HAM) membership in Indonesia in 2007 featured an open process with 178 candidates. The selection process involved two public hearings where the general public, including victims' groups, was able to assess applicants.³⁶

Another key issue affecting some institutions in the region is the delay in the appointment of members of human rights commissions by the government, which has prevented some human rights institutions from carrying out their mandate for considerable periods of time.³⁷

Budget and resources

Availability of resources to fund Asia's child rights institutions is a serious concern. In the Philippines, for example, in 2009 the budget of the Child Rights Centre represented 0.3 per cent of the budget of the national Commission on Human Rights.³⁸ In nearly all its Concluding Observations to States parties in the region, the CRC Committee has recommended that the national human rights institution be allocated sufficient financial resources.³⁹ While most of these recommendations relate to the budget of the institution

³² Uchida (2010), *op. cit.*

³³ Art. 8 of the National Human Rights Commission Act B.E. 2542 (1999) (Thailand).

³⁴ Art. 5 (a) of the Maldives Human Rights Commission Act, Act No. 6 of 2006; Art. 5. of the National Human Rights Commission of Mongolia Act of 2000.

³⁵ Asian NGO Network on National Human Rights Institutions (2009). *2009 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia*, Bangkok: ASIA-FORUM, 12–16. See also: ICC Sub-Committee on Accreditation (2010). *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, Geneva, 26–30 March 2012.

³⁶ Asian NGO Network on National Human Rights Institutions (2008). *2008 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia*, Bangkok: ASIA-FORUM, 86.

³⁷ According to ANNI, this has been the case in Bangladesh, Malaysia and Sri Lanka. Asian NGO Network on National Human Rights Institutions (2010). *2010 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia*, Bangkok: ASIA-FORUM, 14.

³⁸ Written replies by the Government of the Philippines to the List of Issues prepared by the CRC Committee, CRC/C/PHL/Q/3-4/Add.1, paras. 18–21.

³⁹ See for example: Concluding Observations of the CRC Committee on Bangladesh, CRC/C/BGD/CO/4, 26 June 2009; Concluding Observations of the CRC Committee on the Maldives, CRC/C/OPSC/MDV/CO/1, 4 March 2009; Concluding Observations of the CRC Committee on the Philippines, CRC/C/PHL/CO/3-4, 22 October 2009; and Concluding Observations of the CRC Committee on Uzbekistan, CRC/C/UZB/CO/2, 2 June 2006.

as a whole, in the Philippines the need for increased resources is expressly connected to the Child Rights Centre.⁴⁰

It is significant that in Asia child rights offices and departments rely heavily on international donors for support, as do some of the human rights institutions as a whole. For several years, the Afghanistan Independent Human Rights Commission was entirely financed by international donors. In 2010, the Government of Afghanistan started to provide funding,⁴¹ after requests from the Chairperson of the Commission.⁴² In some places, for example, Pakistan, UNICEF has played a crucial role in setting up the child rights institution or office – and in funding it. In Nepal, the activities of the Child Rights Desk of the National Human Rights Commission – child rights promotion and protection, monitoring, investigations, seminars, publications and the salaries of consultants – are funded by Save the Children Norway.⁴³

There are many consequences of this funding situation. Lack of ownership of the institution by public actors may explain the limited implementation of institutional recommendations. Furthermore, attention to children's rights becomes largely project-based and of limited duration, with some projects having to stop when funding ends. The National Human Rights Commission in Nepal has explicitly raised this issue:

Many of the programs launched by organizations in the field of child welfare are short term ones and they begin with the donors' funding and end as soon as such funding is disconnected and this will have effects on the children. Lack of long-term funds and human resources has created difficulties to launch programs as per expectations.⁴⁴

Competencies

The mandates of independent human rights institutions in the region usually follow the guidance of the Paris Principles. Yet, while institutions frequently have broad competencies to monitor, promote and protect human rights, their effectiveness depends on their willingness and ability to use these powers in practice, as well as the readiness of others to comply with their findings and recommendations.

Legislation and policy

In Asia, advising on legislative reform to bring the legal system into compliance with international human rights standards is generally part of most institutions' mandates.

⁴⁰ Concluding Observations of the CRC Committee on the Philippines, CRC/C/PHL/CO/3-4, 22 October 2009, para. 17.

⁴¹ Afghanistan Independent Human Rights Commission [2011]. *Annual Report 1389 (2010/2011)*, Kabul: AIHRC, 1.

⁴² In his introduction to the 2008 annual report, the AIHRC Chairperson states, "The government of Afghanistan has failed to allocate any budget for the operation of the AIHRC in seven years." See: Afghanistan Independent Human Rights Commission [2008]. *Annual Report: 1 January to 31 December 2008*, Kabul: AIHRC, 6.

⁴³ National Human Rights Commission (2009), op cit., 46.

⁴⁴ Ibid., 50.

In practice, however, child rights offices have only rarely advised on laws and policies related to children.

An example of an institution that has been active in this area is the National Commission for Protection of Child Rights in India, which routinely reviews all draft legislation related to children. It has commented on various bills on disabilities, mining and offences against children and also set up a committee to draft a bill on sexual violence against children.⁴⁵ It also reviewed the implementation of the Child Labour (Prohibition and Regulation) Act of 1986 and pointed out loopholes in this law.⁴⁶

Other institutions in the region have been engaged in this aspect of child rights work, but on a one-off basis. In 2005 the National Commission for Human Rights (Komisi Nasional Hak Asasi Manusia or Komnas HAM) in Indonesia analysed proposed law reforms related to citizenship from a child rights perspective and recommended several changes regarding children whose fathers are not Indonesian.⁴⁷ The revised law on nationality adopted in 2006 addresses this concern.⁴⁸ Similarly, the Child Rights Desk of the National Human Rights Commission in Nepal took part in consultations related to inclusion of children's rights in the new Constitution,⁴⁹ and the interim Constitution of Nepal of 2007 contains a section on the rights of the child. The Human Rights Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia; SUHAKAM) provided significant input and engaged with a wide range of stakeholders during the development and passage of the Anti-Trafficking in Persons Act (2007).⁵⁰ However, it is more than likely that the anti-trafficking legislation was passed because the country had been downgraded in the United States Trafficking in Persons Report, than because of advocacy efforts by SUHAKAM and other civil society organizations.⁵¹

The actual influence of child rights institutions in these various efforts is difficult to evaluate, given the array of actors and factors at play in each case, but it is clear that human rights institutions certainly played their part in convening and supporting debates.

Complaints and investigations

Institutions throughout the region typically have the ability to investigate violations of human rights. They can usually do so following a complaint, or on their own initiative.

⁴⁵ Information provided by chairperson of the National Commission for Protection of Child Rights, India.

⁴⁶ National Commission for Protection of Child Rights in India (n.d.). Abolition of Child Labour in India: Strategies for the Eleventh Five Year Plan, 20. Available at: http://www.ncpcr.gov.in/Reports/Abolition_of_Child_Labour_in_India_Strategies_for_11th_5_Year_Plan_Submitted_to_Planning_Commission.pdf.

⁴⁷ National Commission for Human Rights [2006]. *Annual Report of the National Commission for Human Rights 2006*, Jakarta: National Commission for Human Rights (Komnas HAM), 31.

⁴⁸ Art. 4 of the Law on Citizenship, No. 12, 2006 (Indonesia).

⁴⁹ National Human Rights Commission (2009), op cit., 44.

⁵⁰ Asian NGO Network on National Human Rights Institutions (2008), op. cit., 105–106; Asian NGO Network on National Human Rights Institutions (2010), op. cit., 112.

⁵¹ Asian NGO Network on National Human Rights Institutions (2010), op. cit., 113. In 2010, the country was upgraded in light of its more recent efforts to address the issue of human trafficking. See: Office to Monitor and Combat Trafficking in Persons (2010). *Trafficking in Persons Report 2010: Gabon*, Office to Monitor and Combat Trafficking in Persons, US Department of State. Available at: <http://www.state.gov/g/tip/rls/tiprpt/2010/142760.htm>.

Activities in this area range from investigations into situations of exploitation and abuse to monitoring facilities where children spend time.

In India, the National Commission for Protection of Child Rights regularly investigates the situation of children engaged in child labour as domestic workers, in farms, cotton fields, factories and other settings. It undertakes field visits and builds on research carried out by non-governmental organizations (NGOs), news and police reports; the Commission then issues conclusions and recommendations. It can also ask public officials to attend hearings. In many instances the Commission continues to monitor the implementation of its recommendations after a specific investigation. The National Commission for Human Rights in Indonesia has reported on the situation of children of Indonesian migrants working in Malaysia who are often victims of rights violations, including denial of access to education.⁵²

In conflicts and other unstable situations, investigation of human rights violations is especially problematic. Despite the obvious security challenges, some institutions in the region have nevertheless been able to continue their inquiries. In 2008, the Nepalese National Human Rights Commission carried out investigations into cases of grave child rights violations by the police, security forces and non-state actors.⁵³ In Afghanistan, the Child Rights Field Monitoring Team of the Independent Human Rights Commission has conducted numerous visits and direct interviews with children, identifying several cases requiring follow-up.⁵⁴

One area of work where institutions in the region have been most active is in monitoring detention centres, schools and orphanages. The Human Rights Commission of Sri Lanka, for example, undertakes monthly visits – announced and unannounced – to children’s homes and detention centres,⁵⁵ while the Philippine Commission on Human Rights carries out more than 600 visits a year to jails.⁵⁶ Nonetheless, some institutions face limitations in their ability to carry out investigations and monitor locations where children spend time, prompting requests for reform of their legislative mandates.

Generally, independent institutions’ powers include the option of requesting any relevant information from any person or body, as well as compelling officials to testify. However, specific sanctions are not provided in case of non-compliance with requests, and as a result institutions find it difficult to enforce their powers. An additional issue is the restriction in many countries placed on investigations in certain circumstances, including not extending to military forces. For example, in 2009 the Komnas HAM in

⁵² National Commission for Human Rights [2006], op. cit., 20.

⁵³ National Human Rights Commission (2009), op. cit., 42.

⁵⁴ Afghanistan Independent Human Rights Commission [2008], op. cit., 35.

⁵⁵ Human Rights Commission of Sri Lanka [2007]. *Annual Report 2006 & 2007*, Colombo: Human Rights Commission of Sri Lanka, 4.

⁵⁶ Asian NGO Network on National Human Rights Institutions (2008), op. cit., 142; Asian NGO Network on National Human Rights Institutions (2009), op. cit., 172.

Indonesia requested an amendment to its mandate to obtain additional investigative powers, including the ability to summon people suspected of human rights violations.⁵⁷ As of early 2013, the outcome of this request was still pending. Likewise, a bill to strengthen the prosecutorial and monitoring powers of the Commission on Human Rights in the Philippines was proposed in 2011.⁵⁸

Another difficulty relates to access to facilities institutions are in charge of monitoring. For example, the SUHAKAM in Malaysia must seek permission before inspecting these sites.⁵⁹ Although permission is usually – but not always – granted, having to ask for it means that the visit is in effect announced.⁶⁰

Most general human rights institutions in the region can receive individual complaints, including complaints submitted by children. Where information is available, it appears that a very limited proportion of complaints in institutions with integrated child rights offices relate to children’s rights, as is also the case in other regions. In Mongolia, the National Human Rights Commission reported that in 2007 only one out of the 254 complaints it received was related to children’s rights.⁶¹ While the annual report of the Human Rights Commissioner in Kazakhstan provides detailed information and analysis on complaints related to child rights violations, the proportion that pertains to children is extremely low, standing at 31 out of 906 altogether in 2008. Many of these 31 complaints concerned the education system, while others dealt with state benefits and the non-enforcement of court rulings on alimony for children. None of the 31 complaints came from a child, but the fact that complaints were disaggregated by complainant attests to the office’s awareness that children should have direct access to the complaint procedure.

Overall, human rights institutions’ annual reports usually provide little information on the number and nature of individual complaints received that are related to children’s rights. The CRC Committee has repeatedly expressed concern about the lack of visibility of complaint mechanisms in the region, and about children’s lack of access to them. In 2005 the CRC Committee recommended “expanding the mandate of the Child Rights Desk in Nepal’s National Human Rights Commission to include individual cases and complaints from children”, and reinforcing “awareness-raising efforts to facilitate the effective use by children of the complaint mechanisms”.⁶² Regarding Kyrgyzstan, in 2004 the CRC Committee recommended that the human rights office “empower the department of children’s rights within the Office of the Ombudsman to deal with complaints from children and do so in a child-sensitive

⁵⁷ Asian NGO Network on National Human Rights Institutions (2010), op. cit., 84.

⁵⁸ Manila Bulletin Publishing Corporation (2011). ‘Bill seeks to empower CHR’, Manila Bulletin, 17 May 2011.

⁵⁹ Section 4 (2) of the Human Rights Commission of Malaysia Act, Act 597 of 1999.

⁶⁰ Asian NGO Network on National Human Rights Institutions (2010), op. cit., 118.

⁶¹ National Human Rights Commission of Mongolia (2008). *Report on Human Rights and Freedoms in Mongolia 2007*, Ulaanbaatar City: National Human Rights Commission of Mongolia, 104.

⁶² Concluding Observations of the CRC Committee on Nepal, CRC/C/15/Add. 261, 21 September 2005, para. 25.

and expeditious manner”.⁶³ In Thailand, while noting the ability of the National Human Rights Commission and Parliamentary Ombudsman to investigate child-related complaints, the CRC Committee in 2006 underlined limitations regarding “accessibility and availability of these mechanisms to all children in the country”.⁶⁴

Research shows that institutions’ ability to respond to complaints has been affected by a lack of cooperation on the part of relevant authorities, limitations in institutional mandates, and a lack of resources.⁶⁵ The Chair of the Commission of Human Rights of the Philippines has reported that over the period 2000–2008, the Commission accumulated a backlog of 12,000 unaddressed cases, a situation that has since prompted the development of a new case management system.⁶⁶

Education, promoting rights and raising awareness

Raising awareness of and educating people about human rights is generally included in the mandate of national human rights institutions. The promotion of children’s rights, in particular through sensitization activities, has been conducted by some institutions in the region.

Activities in this area usually involve training, distribution of educational materials and radio and TV campaigns. The Afghanistan Independent Human Rights Commission has organized teacher-to-teacher training on children’s rights,⁶⁷ in addition to child-to-child training (see below). It has also broadcast radio and TV programmes about human rights – with a focus on women’s and children’s rights – where listeners were able to call in and ask questions.⁶⁸

The Human Rights Commission of Sri Lanka has organized workshops for state officials on children’s rights as part of a project on children in state homes, but the initiative was supported by project-based funding that came to an end in 2006.⁶⁹ The Sri Lankan Commission has also published child rights handbooks aimed at students and has been advocating for a human rights unit to be installed in every school.⁷⁰ In 2006 Komnas HAM, the human rights commission in Indonesia, broadcast a 25-minute animated film for schoolchildren on the importance of respecting differences and avoiding violence in the community.⁷¹ More information is needed on the extent and effectiveness of these activities, especially given the low level of child rights complaints submitted.

⁶³ Concluding Observations of the CRC Committee on Thailand, CRC/C/THA/CO/2, 17 March 2006, para. 16.

⁶⁴ CRC COB on Thailand, CRC/C/THA/CO/2 of 17 March 2006, para. 16.

⁶⁵ Asian NGO Network on National Human Rights Institutions (2009), op. cit., 16–19.

⁶⁶ Rosales, L. A. (2012). ‘An Overview of CHR Work Over the Past Nineteen Months (September 2011 to April 2012)’, speech delivered during the ANNI Activity, 23 April 2012. Available at: http://www.chr.gov.ph/MAIN%20PAGES/speeches/lapr_spch042312_19MosCHR.htm.

⁶⁷ Afghanistan Independent Human Rights Commission [2008], op. cit., 20.

⁶⁸ *Ibid.*, 19.

⁶⁹ Human Rights Commission of Sri Lanka [2007], op. cit., 9.

⁷⁰ *Ibid.*, 8.

⁷¹ National Commission for Human Rights [2006], op. cit., 52.

Child participation

Relatively few child rights institutions in Asia have made significant efforts to have direct interactions with children or to promote their views. Those that have are mostly located in South Asia and feature specific, highly identifiable child rights offices.

Here again, the Afghanistan Independent Human Rights Commission is an active institution that has undertaken several activities involving direct contact and consultation with children. In 2008, for example, the Commission organized 'child-to-child' workshops to train more than 2,700 children on various child rights topics so they could in turn train their peers.⁷² These efforts are all the more significant because the country's security situation is extremely precarious.

Its strong field presence, in particular thanks to its Child Field Monitoring Team, enables the Commission to conduct interviews with large numbers of children.⁷³ Reports published by the Commission suggest that consultation with children and child participation have been incorporated into its methods of work with children. Furthermore, using the wealth of individual testimonies and stories gathered over time, the Afghan Commission has gained valuable insight into the nature and pattern of child rights violations across the country.

Possibly as a result of the adoption of the CRC Committee's General Comment No. 2 and its concluding observations, mandates of more recently established institutions in the region seem better equipped to address the importance of children's involvement in their work, paving the way for more permanent consultation mechanisms and practices. While the act establishing the Indian National Commission for Protection of Child Rights does not provide for child participation, the rules of operations issued by the Government in relation to the daily functioning of the Commission explicitly state that the Commission's work should be informed by children and promote, respect and seriously consider the views of children.⁷⁴ The Commission regularly conducts public hearings in and around the country where it listens to children's views, in addition to the views of a wide range of other people. For example, the Commission held a public hearing on trafficking in which rescued girls spoke about their experience as domestic workers and the mistreatment they suffered.⁷⁵ The Commission also set up a working group to examine concerns related to children's participation in TV shows and advertisements.⁷⁶

⁷² Afghanistan Independent Human Rights Commission [2008], op. cit., 27.

⁷³ See for example Afghanistan Independent Human Rights Commission [2006]. *An Overview on the Situation of Child Labour in Afghanistan: Research report (2005–2006)*, Kabul: AIHRC Afghanistan Independent Human Rights Commission (2007). *Report on General Situation of Children in Afghanistan*, Kabul: AIHRC Afghanistan Independent Human Rights Commission (2009). *Fair Access of Children to Education in Afghanistan*, Kabul: AIHRC.

⁷⁴ The National Commission for Protection of Child Rights Rules, 2006, paras. 17 (d), (e).

⁷⁵ National Commission for Protection of Child Rights (2007). 'Jharkhand's Trafficked Daughters', *Infocus*, December 2007 issue.

⁷⁶ National Commission for Protection of Child Rights (2008). 'Safety for Children under TV Spotlight', *Infocus*, October 2008 issue.

The stated objective of Pakistan's Children Complaints Office, created in 2009 as a specialized office of the National Ombudsman, is to "provide a platform for addressing child rights issues through research, advocacy and engagement with children and other stakeholders on children's rights",⁷⁷ an important guideline as the institution develops its activities.

Elsewhere in the region, where they exist, institutional activities involving children are often ad hoc, and child participation is neither set out in law, nor institutionalized in practice.

Networking

National human rights institutions in Asia and the Pacific come together in the Asia Pacific Forum, which has promoted the development of national human rights institutions since 1996. As in other regions, membership in the Forum is based on compliance with the Paris Principles.⁷⁸ Through their membership of the Forum, human rights institutions in the region are able to identify good practices and common challenges as well as establish ongoing dialogue with international human rights bodies.

At a seminar held in 1999 on the occasion of the tenth anniversary of the CRC, the Asia Pacific Forum committed to strengthening its children's rights work and adopted a series of recommendations to that end.⁷⁹ However, little information is available on the action and follow-up to these commitments, and as of early 2013, children's rights have yet to be mentioned as a priority area for the network,⁸⁰ although they are included in a range of human rights issues tackled by the network.

One sub-set of human rights commissions in the region – those in Indonesia, Malaysia, the Philippines and Thailand – signed a Declaration of Cooperation in 2007 on the promotion and protection of human rights in South East Asia. They identified five areas of cooperation: implementation of economic, social, and cultural rights; enhancement of human rights education; protection of the human rights of migrant workers; terrorism and human rights; and the human rights aspects of trafficking.⁸¹ The latter focuses primarily on the situation of women and children.

The Asian Ombudsman Association was established in 1996 as an independent forum for ombudsperson institutions in Asia, with one key objective being to promote the

⁷⁷ Wafaqi Mohtasib (Ombudsman) of Pakistan (n.d.), *op. cit.*

⁷⁸ As of end 2010, the Asia Pacific Forum comprised national human rights institutions from Afghanistan, Australia, India, Indonesia, Jordan, the Republic of Korea, Malaysia, Mongolia, Nepal, New Zealand, Occupied Palestinian Territories, the Philippines, Qatar, Thailand and Timor-Leste.

⁷⁹ Asia Pacific Forum (1999). 'Role of National Human Rights Institutions in the Protection and Promotion of the Human Rights of Children', final report of a meeting of the Asia Pacific Forum, Manila, the Philippines, 9–10 September 1999. Available at: <http://www.nhri.net/pdf/APF%20Conclusions%201999.pdf>.

⁸⁰ Asia Pacific Forum (2013). 'Human Rights Issues' [web page]. Available at: <http://www.asiapacificforum.net/support/issues>.

⁸¹ Declaration of Cooperation signed by the National Commission for Human Rights of Indonesia, the Human Rights Commission of Malaysia, the Commission on Human Rights of the Philippines and the National Human Rights Commission of Thailand on 28 June 2007.

establishment and development of such institutions in the region. The Association also encourages research, collects and disseminates information and organizes educational programmes and conferences.⁸² It does not have a specific focus on children's rights.

One interesting and unique development in the region was the creation in 2006 of the Asian NGO Network on National Human Rights Institutions (ANNI). Each year, this coalition of NGOs assesses the functioning of national human rights institutions in the region and issues a comprehensive report. Its main goal is to help "establish and develop accountable, independent, effective, and transparent NHRIs [national human rights institutions] in Asia".⁸³ The Asian NGO Network submits parallel reports to the ICC and participates in the debates of the Asia Pacific Forum; on occasion it writes directly to individual institutions to draw their attention to specific cases. It represents a significant monitoring and accountability tool for the functioning of human rights institutions and could concentrate further on children's and women's issues in the future.

In 2009, the Association of Southeast Asian Nations (ASEAN)⁸⁴ established its Intergovernmental Commission on Human Rights (AICHR), whose mandate and functions include "to consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights".⁸⁵ This has paved the way for cooperation with national human rights institutions and opportunities for networking among institutions. Similarly, the concomitant creation in 2009 of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children⁸⁶ may open opportunities for developing and harmonizing child rights laws, policies and institutions within and among Member States.

Looking forward: Challenges and opportunities

Inevitably, institutions in the Asia and Pacific Region face challenges to their effectiveness as independent human rights institutions and their ability to deal with children's rights. However, because child rights offices are most often integrated into broader institutions and are relatively new, information related to the specific difficulties faced by these offices is hard to come by.

The Asian NGO Network on National Human Rights Institutions has reported what it identifies as a general decline in the independence of national human rights institutions in Asia, with laws establishing institutions making them partially dependent on the government, in particular in their appointment processes and budgets. What is more,

⁸² Information retrieved from <http://asianombudsman.com/index.php>.

⁸³ Asian NGO Network on National Human Rights Institutions (2009), *op. cit.*, 7.

⁸⁴ Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

⁸⁵ Terms of reference of ASEAN Intergovernmental Commission on Human Rights, adopted at the 42nd ASEAN Ministerial Meeting, July 2009, para. 4.9.

⁸⁶ Terms of reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), February 2010. Available at: http://www.asean.org/images/2012/Social_cultural/ACW/TOR-ACWC.pdf.

it points out that a large number of institutions focus on the promotion rather than protection of human rights. A general lack of cooperation between human rights institutions and NGOs is a third area of concern.⁸⁷ These concerns are actually common to a number of human rights institutions across all regions.

The CRC Committee has underlined institutions' lack of independence on several occasions, in particular in its concluding observations on Bangladesh, Indonesia, the Maldives, Turkmenistan and Uzbekistan.⁸⁸ Regarding Indonesia, the CRC Committee pointed to "the insufficient guarantees of independence and impartiality of the National Commission on Human Rights, which ... might also impair the work of the National Commission for Child Protection".⁸⁹ The CRC Committee thus recommended strengthening "the independence, objectivity, effectiveness and public accountability of the National Commission for Human Rights (Komnas HAM), the National Commission for Child Protection and the National Commission on the Elimination of the Worst Forms of Child Labour".⁹⁰ Concerns over independence were addressed through law reform in 2006.⁹¹

In many places, the absence of efforts to follow up recommendations is a major concern. In 2008 the National Human Rights Commission in Nepal denounced gaps in the implementation of its recommendations.⁹² That same year, the chairperson of SUHAKAM decried the fact that its work and recommendations were never debated in parliament.⁹³ In some places, a key factor has been institutions' lack of engagement with traditional branches of power, which has impaired their ability to influence policies and practices.⁹⁴

Some institutions have additional challenges. The Afghanistan Independent Human Rights Commission has highlighted the difficulties faced by an independent human rights body operating in an unstable setting. Although much has been achieved by this Commission, staff have been intimidated, threatened, and even kidnapped and killed. "Weak presence of the rule of law, a persistent culture of impunity and the abuse of power by government officials, along with a weak judicial system" have also

⁸⁷ Asian NGO Network on National Human Rights Institutions (2009), op. cit., 9.

⁸⁸ Concluding Observations of the CRC Committee on Bangladesh, CRC/C/BGD/CO/4, 26 June 2009, para. 18; Concluding Observations of the CRC Committee on Indonesia, CRC/C/15/Add. 223, 26 February 2004, para. 20; Concluding Observations of the CRC Committee on the Maldives, CRC/C/MDV/CO/3, 13 July 2007, para. 18; Concluding Observations of the CRC Committee on Turkmenistan, CRC/C/TKM/CO/1, 2 June 2006, para. 11; Concluding Observations of the CRC Committee on Uzbekistan, CRC/C/UZB/CO/2, 2 June 2006, para. 11.

⁸⁹ Concluding Observations of the CRC Committee on Indonesia, CRC/C/15/Add.223, 26 February 2004, para. 20.

⁹⁰ *Ibid.*, para 21.

⁹¹ The Protection of Human Rights (Amendment) Act, No. 43 of 2006 (Indonesia).

⁹² In its annual report for 2008, the National Human Rights Commission in Nepal states: "Several recommendations issued by the commission and the orders of the courts to the government regarding compensation to the relatives of those killed, injured or tortured during the conflict and provision of education to such children have not been completely implemented. This has raised questions on the effectiveness of the commission and also affected the performance of the commission." See: National Human Rights Commission (2009), op. cit., 49.

⁹³ The chairperson of the Malaysian human rights institution, SUHAKAM, has observed that "Year after year, our reports to Parliament detailing our activities and recommendations are never debated in Parliament, much less acted upon by the relevant ministries." ('SUHAKAM treads an arduous path', *New Straits Times*, 3 August 2008, quoted in Asian NGO Network on National Human Rights Institutions (2009), op. cit., 95.)

⁹⁴ Asian NGO Network on National Human Rights Institutions (2008), op. cit., 8, 83; Asian NGO Network on National Human Rights Institutions (2009), op. cit., 146.

been major obstacles, according to the Commission.⁹⁵ The Commission's follow-up of human rights cases is further hindered by "delays in setting up meetings, insulting the AIHRC [Afghanistan Independent Human Rights Commission] staff members, and reluctance in accepting the AIHRC as a National Human Rights Institution".⁹⁶

Throughout the region efforts have been made to integrate child rights work into existing institutions as well as to create new independent monitoring bodies specializing in children's rights. But the concrete impact of these efforts has been slow to emerge. The integration of child rights work is likely to continue in coming years. Several countries (the Maldives, Uzbekistan and Viet Nam) are currently considering establishing child rights institutions. Six Pacific Island States have also engaged in legislative reform processes to further implement the CRC and strengthen their national systems. As part of this reform the need to establish ombudspersons systems has been underlined.⁹⁷ However, it is essential that an appropriate legislative base and long-term funding, with contributions and commitment from the state, be ensured for all these institutions to guarantee the further development and sustainability of child-sensitive mechanisms.

While South Asian institutions have made specific efforts to engage children, for the most part child participation needs to be strengthened throughout the region. Low numbers of child-rights-related complaints and limited information on activities to promote child participation in the work of these institutions suggest that more must be done to recognize children as full actors in the realization of their own rights.

At the regional level, coordination among national human rights institutions in the specific area of child rights has not yet materialized. The engagement of the regional network, the Asia Pacific Forum, an influential actor in the region in strengthening existing human rights institutions and establishing new ones, will be critical for helping institutions share experiences of their child rights work and benefit from technical advice.

Given their increasing engagement in children's rights and the existence of the South Asian Association for Regional Cooperation as a framework, child rights institutions in South Asia could benefit from sub-regional networking. The ASEAN Commission on Women's and Children's Rights also has the potential to provide independent institutions with a forum for cooperating on child rights – possibly creating a wider movement to help strengthen institutions' work in this area, and help independent institutions speak out and act on child rights with a more unified voice.

⁹⁵ Afghanistan Independent Human Rights Commission [2008], *op. cit.*, 63–64.

⁹⁶ *Ibid.*, 63–64.

⁹⁷ United Nations Children's Fund Pacific Office, *Legislative Reform and the Convention on the Rights of the Child in the Pacific*, Sub-regional Meeting 2008, Port Vila, Vanuatu.

17

Europe



Origins of independent human rights institutions for children in the region

As of early 2013, 41 countries in Europe¹ had an independent institution specializing in children’s rights, either a stand-alone institution or an identifiable department within a broad-based human rights institution focusing on children’s rights. The pathway to such a widespread network of child rights institutions in the region was pioneered by Norway (see Figure 17.1). In 1981 – eight years before the ratification of the Convention on the Rights of the Child (CRC) – Norway became the first country in the world to establish such an institution through legislation.

With the Norwegian institution serving as a model, more and more independent human rights institutions for children were created in the region – initially in countries with long traditions of democratic rule, where the notion of individuals

¹ For the purposes of this review, Europe is defined as the 47 member States of the Council of Europe.

as rights-holders was already well embedded socio-politically, before spreading through all parts of Europe. Despite first coming to life in western Europe, within a very short time frame, these institutions began to emerge in southern and eastern parts of the continent.

The shape and mandate of Europe's institutions reflects the varying traditions and trajectories of the different countries. Institutions in long-standing western European democracies typically feature autonomous children's ombudspersons appointed by the executive branch which have developed extensive practices based on child rights approaches, including child participation. Within that group, some variations exist. Common-law countries in the region, as well as Austria, have set up children's commissioners with a strong child protection mandate, including representing children in the care system, while children's ombudspersons in the Nordic countries focus on policy advocacy and are not mandated to receive individual complaints.

In countries that have gone through democratization processes, for example Greece, Portugal, Spain and the former communist countries of Eastern Europe, independent children's rights institutions are generally integrated into a broad-based human rights institution established in the context of political transition, as in Latin America.

Particularly in Eastern Europe, where previously children had not typically been recognized as rights-holders independently of their parents, democratization and market deregulation has led to an evolution in legal regimes with regard to children.² The adoption of the CRC in 1989 coincided with a period of political change in the region, transition processes and corresponding institution building. In these countries, the human rights institution is usually enshrined in the constitution, its head appointed by parliament (sometimes with a qualified majority). These institutions typically enjoy extensive powers, including the ability to petition constitutional courts.

As in other regions, the adoption of the CRC and the recommendations of the Committee on the Rights of the Child (CRC Committee) have played a pivotal role in institutional establishment. The Council of Europe, a primary democratization and human rights organization in Europe, has also had significant influence on this movement³ and continues to help strengthen existing institutions.

² In the former Soviet Union, for example, the rights of children were understood as integral to the protection of motherhood and thus took the form of rights and privileges granted to the mother, rather than recognizing children as independent rights-bearers. See: Kravchuk, N. (2009). 'Children in Post-Communist Russia: Some aspects of the child's right to protection', *International Journal of Children's Rights*, 17: 611–622.

³ Recommendation 1121 (1990) on the rights of children, adopted by the Parliamentary Assembly of the Council of Europe, 1 February 1990, para. 13 (A) (ii).

Table 17.1 Timeline of establishment of independent human rights institutions for children in Europe*

Time period	Countries / areas
1980–84	Norway
1985–89	Veneto (Italy)
1990–94	Austria, Belgium, Denmark, Sweden
1995–99	Iceland, Spain, The former Yugoslav Republic of Macedonia
2000–04	Albania, Croatia, France, Georgia, Greece, Ireland, Kosovo, Lithuania, Luxembourg, Malta, Northern Ireland (UK), Poland, Russian Federation (sub-national), Scotland (UK), Slovenia, Vojvodina (Serbia), Wales (UK)
2005–09	Azerbaijan, Bosnia and Herzegovina, Cyprus, England (UK), Finland, Hungary, Latvia, Liechtenstein, Moldova, Montenegro, Portugal, Russian Federation (national), Serbia (national)
2010–...	Estonia, Italy (national), the Netherlands, Ukraine

* In countries with sub-national independent human rights institutions for children, the point on the timeline denotes the year of establishment of the country's first office. For integrated institutions, the year reflects the moment when a children's commissioner or project unit for children was established.

In 1996, the Council in its Parliamentary Assembly Recommendation 1286 on a European strategy for children provided additional advice on the establishment of child rights institutions, calling on states to implement the CRC fully at national and local levels, using the best interests of the child as a guide. It also recommended the appointment of a commissioner (ombudsman) for children or another independent structure accessible to the public to improve children's lives.⁴ Since that time, the Parliamentary Assembly has issued further recommendations and resolutions urging member States to set up such institutions.⁵

An additional motivation for some states in this region has been the prospect of entry into the European Union, where compliance with human rights standards is a key criterion for membership. For example, the 2004 annual report of the Protector of Rights and Freedoms in Montenegro notes that the establishment of its office "was motivated primarily by the need to ensure efficient and qualitative institutional protection of human rights and freedoms ... to bring Montenegrin legislation into line with the legislation of the European Union and international standards in the area of human rights and freedoms".⁶

⁴ Recommendation 1286 (1996) on a European strategy for children, adopted by the Parliamentary Assembly of the Council of Europe, 24 January 1999

⁵ Resolution 1099 (1996) on the sexual exploitation of children, adopted by the Parliamentary Assembly of the Council of Europe, 25 September 1996, para. 11 (i); Recommendation 1460 (2000) on setting up a European ombudsman for children, adopted by the Parliamentary Assembly of the Council of Europe, 7 April 2000, paras. 7 & 8; Recommendation 1551 (2002) on building a twenty-first century society with and for children: follow-up to the European strategy for children (Recommendation 1286 (1996)), adopted by the Standing Committee on behalf of the Parliamentary Assembly of the Council of Europe, 26 March 2002; Recommendation 1615 (2003) on the institution of ombudsman, adopted by the Standing Committee on behalf of the Parliamentary Assembly of the Council of Europe, 8 September 2003. Note that this final recommendation does not mention children's rights specifically, but does elaborate further on the importance of the institution of ombudsmen within national systems for the protection of human rights and promotion of the rule of law in a general sense.

⁶ Protector of Human Rights and Freedoms (2005). *Annual Report 2004*, Podgorica: Organization for Security and Co-operation in Europe, Mission to Serbia and Montenegro, 9. See also: Szabó, M. [2010]. 'The Philosophy of a Hungarian Ombudsman', Budapest: Office of the Parliamentary Commissioners, 17–28.

The main characteristics of independent human rights institutions for children in the region

Legal basis

The legal basis for institutions in Europe largely conforms to the CRC Committee's General Comment No. 2 and the Paris Principles. Mandates allow for a range of functions including research and reporting, the review of legislation and policy, the investigation and handling of individual complaints and the promotion of children's rights. Nearly all of the region's institutions were created by an act of parliament. An exception is Austria, where the legal basis for the child rights institution in each of the country's nine Länder – and their mandates – is founded in federal youth welfare legislation.

In Europe it is unusual for specialized children's ombudspersons to feature in national constitutions, unlike broad-based human rights institutions with a child rights department, which are often constitutionally enshrined because they were established at a critical historical point in time.⁷ Most stand-alone independent human rights institutions for children in the region were established well after their respective national constitutions, and the amendment processes are typically extremely involved – and also require a perception of necessity on the part of lawmakers and the general public.⁸

Direct reference to the CRC is made in many of the laws establishing the ombudspersons. There is often a general reference to the implementation of international law or standards. Some institutions, including those in Norway, Upper Austria and Styria (Austria), have seen their legislation amended to include a direct reference to the CRC, a requirement of the CRC Committee's General Comment No. 2 and the standards set by the European Network of Ombudspersons for Children to ensure a comprehensive child rights – rather than solely child protection – approach.

The region's institutions are usually required to produce and submit a report to parliament or government officials annually or on a regular basis, an

⁷ A notable exception is Poland, where the Ombudsperson for Children is explicitly mentioned in Art. 72 of the Constitution.

⁸ Some question the necessity of establishment at the constitutional level. One commentator has observed: "Although I support proposals for a more precise formulation of the relevant constitutional provisions ... I am convinced that the institution of Ombudsperson for Children can function successfully and develop even without these constitutional amendments. They would, it is true, strengthen the position of the institution, which has truly confirmed its effectiveness in practice and it is certainly necessary to support them if a decision is rendered on a more thorough refinement ... of the Constitution ... but this situation does not seem likely ... for political reasons. On the other hand, the foundations of the institution in international law (the Convention on the Rights of the Child and other relevant international documents) with the correct interpretation of constitutional provisions, we believe, provide a sufficient legal basis for this important institution, which has been confirmed in daily life." (See: Smerdel, B. (2009). 'The Constitutional Position and Prospects for the Development of the Institution of the Ombudsperson for Children'. In Felgo, M., ed. *Evaluation of the Institution of Ombudsperson for Children*, Zagreb: Republika Hrvatska, 29–30.

accountability mechanism to ensure that they are fulfilling their mandate. Annual reports, which are also generally made available to the public, can contain much substantive material on the issues affecting children.

Institutional structure

Around half of the child rights institutions that exist in the region are stand-alone. The rest have integrated a child rights mandate into that of their general human rights institutions. With a few exceptions,⁹ this latter model is primarily a specificity of high-income, long-standing democracies, and is also typical of countries that share a similar socio-political history, like Canada and New Zealand. The notion of an ombudsman for children as a separate institution – and the identification of children as a group with rights that needed special protection – became widely accepted in western Europe as institutions were created.

In Norway, for example, children were recognized in the law as early as 1685, when they attained the status of legal subjects in connection with christening.¹⁰ After greater attention and concern were placed on children as a separate and vulnerable group in and of themselves in the 1960s, the creation of a separate ombudsman for children became an extension of a legal and political tradition already in existence. When the idea of a children's ombudsperson was taken up by Norwegian ministers during the International Year of the Child in 1979, the notion of an ombudsman to safeguard the rights of individuals against the misuse of state power had already been integrated into the political landscape of several countries in the region. On establishment, the Norwegian Ombudsman for Children was given a mandate to promote the interests of children vis-à-vis public and private authorities and to monitor the unfolding conditions of childhood in the country. In Ireland, the establishment of the Ombudsperson for Children in 2002 was the result in part of pressure from children's rights advocates to create a separate institution.

In Greece, Portugal and Spain and most eastern European countries, child rights structures are integrated into general offices. Of the four institutions in Spain, one (Andalucía) is stand-alone and three (the Basque region, Catalonia and Galicia) are integrated into general ombudsman offices.¹¹ In Portugal, within the

⁹ Croatia, Lithuania, Poland, the Russian Federation and Ukraine.

¹⁰ Legislation indicating that public authority might supersede parental authority can also be found as early as 1630. See: Flekkøy, M. G. (1991). *A Voice for Children: Speaking out as their ombudsman*. London: Jessica Kingsley Publishers, 31.

¹¹ In 1979, a year after the Spanish Constitution created the position of Defensor del Pueblo at the national level, the Autonomous Region of Catalonia established a similar position of general ombudsman for the region (Síndic de Greuges de Catalunya), which then became enshrined in law in 1984. In 1989, this law was amended to create the position of ombudsperson for children (Adjunto para Defensa de Niños y Adolescentes) within the general ombudsman's office, and eight years later the first ombudsperson for children was appointed (Law 14/1984, of 20 March, of the 'Síndic de Greuges', as amended by Law 12/1989, of 14 December. See also: Síndic de Greuges de Catalunya (2013). 'Historia' [web page]. Available at: <http://www.sindic.cat/es/page.asp?id=122>.

general Portuguese Ombudsman's Office (Provedor de Justiça), there is a specific work unit concerned with the rights of the child that also considers complaints pertaining to the elderly, disabled and women.¹²

Serbian institutions have a similar history in that in 2002 the Parliament created a Provincial Ombudsman for the Autonomous Province of Vojvodina with a general mandate to safeguard human rights and freedoms as guaranteed under the Constitution and international human rights law.¹³ In 2004, a Deputy Ombudsman for the Protection of Children's Rights was appointed to serve as one of five ombudsmen in the general office.¹⁴

There are also general ombudspersons in the region whose work on children's rights is not specifically called for in founding legislation. This is the case of the Office of the Human Rights Defender of the Republic of Armenia, the Commissioner for Human Rights of the Republic of Azerbaijan and the Public Defender of the Czech Republic. In Hungary, the Parliamentary Commissioner for Civil Rights has a general mandate to protect the rights of citizens and to monitor state institutions.¹⁵ Here, while there is no mention of children's rights within the mandate itself, the Commissioner has taken on cases of alleged infringements of children's rights and is an associate member of the European Network of Ombudspersons for Children.¹⁶

Many federal and decentralized states across Europe, including Austria, Belgium, Bosnia and Herzegovina, Italy, the Russian Federation, Serbia, Spain and the United Kingdom, have established child rights institutions at the sub-national level.¹⁷ In Austria, Child and Youth Advocates (Kinder- und Jugendanwaltschaften; KiJAs) were established solely at the level of the Länder, initially to monitor children in contact with the welfare system, but their role later evolved to include comprehensive monitoring of CRC implementation.¹⁸ While no ombuds institution exists at the national level in Austria, the KiJAs interact regularly through a network. In the United Kingdom, the creation of children's commissioners in England, Northern Ireland, Scotland and Wales followed the

¹² Provedor de Justiça [2008]. 'Brief Summary in English of the Report to the Assembly of the Republic – 2008'. Available at: <http://www.provedor-jus.pt/?idc=16&idi=1453>.

¹³ Act on the authority of Autonomous Province of Vojvodina, Gazette RS No. 6/2002, 7 February 2002 ('Omnibus Act').

¹⁴ The duties of the deputy include monitoring the implementation of international standards on the rights of children, monitoring regulations and legislation related to the rights of children, reporting on the status of children's rights, receiving complaints on rights violations and raising public awareness of the rights of children.

¹⁵ Act LIX of 1993 of the Parliamentary Commissioner for Civil Rights (Ombudsman) (Hungary).

¹⁶ Office of the Parliamentary Commissioners (2008). *Annual Report on the Activities of the Parliamentary Commissioner and the Deputy Commissioner for Civil Rights in 2007 (Abbreviated Version)*, Budapest: Office of the Parliamentary Commissioners; Office of the Parliamentary Commissioners (2007). *Annual Report on the Activities of the Parliamentary Commissioner and the Deputy Commissioner for Civil Rights in 2006 (Abbreviated Version)*, Budapest: Office of the Parliamentary Commissioners.

¹⁷ For more details, see Chapter 8, Practical Question: How do Independent Human Rights Institutions for Children Get to Where Children Are?'

¹⁸ Third and fourth Periodic Reports of States parties due 2009, Austria, CRC/C/AUT/3-4, 16 November 2011, para. 286.

devolution of political powers in the country.¹⁹ The Children's Commissioner of England has responsibility for national-level child rights issues.²⁰ The four commissioners, together with the Ombudsman for Children in Ireland, have formed a network to liaise on their action.²¹

In the Russian Federation and in Italy, child rights institutions were established initially at the regional level, with national institutions emerging in 2009 in the case of the former and in 2011 in the case of the latter.

Appointment process

The appointment process is a crucial determinant of the independence of the ombuds institution. While the process has played out in various ways in Europe, it is to a certain extent dependent on whether the institution is stand-alone or integrated.

In approximately half of Europe's stand-alone institutions for which information is available, the head of the office is appointed by the executive branch or government. A few examples serve to illustrate how even these processes can vary. In England (UK), the Secretary of State appoints the Children's Commissioner.²² The Scottish Commissioner for Children and Young People is appointed by the Queen on the nomination of the Scottish Parliament and is disqualified from eligibility if she or he has served as a member of the Scottish Parliament, the House of Commons, or the European Parliament within the previous year.²³ In Greece, the deputy ombudsmen (one of whom is for children) are appointed by the Minister of Interior, on the recommendation of the Ombudsman.²⁴ In contrast, in nearly all of the integrated institutions in the region, parliament is the main decision-making body, a feature inherited from democratic transition processes.

Budget and resources

Annual budgets of institutions in Europe are usually determined by parliaments as a part of the state budget. This is understood to be a better guarantee of independence from the government of the day than direct allocation from

¹⁹ McElduff, E. et al. (2003). 'Update on Progress in the Development of Children's Commissioners in the UK', *Child Care in Practice*, 9 (1):84. For more details, see Chapter 11, Practical Question: How is an Independent Human Rights Institution for Children Established?

²⁰ Children's Act 2004 (United Kingdom). See also: Ruggiero, R. (2008). 'Ombudsman for Children in Federal and Regional States', doctoral thesis, Università degli Studi del Molise, 151.

²¹ British and Irish Network of Ombudsmen and Children's Commissioners (BINOCC). See also: Ruggiero (2008), *op. cit.*, 189–190.

²² Art. 3 (1), Schedule 1 Children's Commissioner of the Children Act 2004 (United Kingdom).

²³ Art. 2 of the Commissioner for Children and Young People (Scotland) Act 2003.

²⁴ Art. 2 of Law No. 3094, 22 January 2003, The Ombudsman and other provisions, The President of the Hellenic Republic, Greece.

a ministry's budget. However, in some places, resources are allocated by the government, as is the case in Austria, Belgium (the French community), England (UK), Finland, Iceland, Ireland, Luxembourg, Northern Ireland (UK) and Wales (UK). Interestingly, in these places the ombudsperson is appointed by the executive branch. In Ireland, the CRC Committee has specifically recommended that resources come directly from the Parliament.²⁵

Ensuring reliable, consistent funding is a challenge, particularly in countries that have multiple offices. Uneven funding diminishes all children's chances of accessing the protection and attention they need. Reasons for differences in levels of funding vary from one institution to the next but typically include differences in political will and available resources, and the role and willingness of federal governments to compensate for regional disparities.

Regional organizations have provided some financial support for child rights institutions in the region, particularly in southern and eastern Europe. The Organisation for Security and Co-operation in Europe helps finance the operational costs for the Protector of Human Rights and Freedoms in Montenegro, for example, and has also funded meetings and collaborative events to support cooperation among institutions in southern and eastern Europe.²⁶ Save the Children Norway has also provided support in this sub-region, helping set up the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE) in 2006.²⁷ The ombudspersons for children in the Russian Federation operate as a part of a broader network of Child Friendly Cities, an initiative launched in 2007 and coordinated in partnership with UNICEF. The Council of Europe and the European Union have also provided support for the region's institutions and have collaborated with the European Network of Ombudspersons for Children.

Competencies

The mandates of child rights institutions in the region are typically grounded in the guidance of the Paris Principles. In practice, most institutions initiate and comment on law reform, and while most handle individual complaints, those in Scandinavian countries typically are not mandated to do so. Most institutions in the region have jurisdiction over both public and private bodies, but a number are still restricted from investigating matters pertaining to military or security activities.

²⁵ Concluding Observations of the CRC Committee on Ireland, CRC/C/IRL/CO/2, 29 September 2006, para.15.

²⁶ Protector of Human Rights and Freedoms (2005), *op. cit.*

²⁷ Save the Children (2011). *The South East Europe Children's Rights Ombudsperson's Network: Regional synergy for protection of child rights*, Child Rights Governance Initiative, Save the Children.

Legislation and policy

The core mandates for ombudspersons for children in Europe typically cover several general areas. In one third of countries, offices are explicitly mandated to assess proposed legislation from a child rights perspective, although in practice, most institutions do initiate and comment on law reform. Where the ombudspersons have become well established and respected within their societies they are consulted regularly by legislators and others when a new law is being formed. Many institutions regularly participate in parliamentary and expert meetings and issue formal opinions on a wide range of legislative proposals with direct and indirect impact on children, often with tangible impact. The recommendations made in 2007 and 2010 by the Ombuds-committee for the Rights of the Child in Luxembourg on law reform to protect children from sexual abuse, for example, were taken on board by the parliamentary committee responsible for drafting the law in 2010.²⁸ The Ombudsman in Latvia initiated a process to review provisions of the civil procedure law that has been taken on by the Ministry of Justice,²⁹ while the Ombudsman for Children in Poland successfully advocated for law reform in 2009 on the provision of day care for children under three years and on maternity and paternity leave for adoptive parents.³⁰

Some child rights institutions are designed to play a more general advocacy role, and they therefore place a much greater emphasis on their involvement in legislation and policy issues than on handling individual complaints and investigations. This can be seen in several Scandinavian countries, where handling complaints is not a part of the institutions' mandates. In Finland, for example, the Ombudsman's duties are to "monitor legislation and societal decision-making and assess their impact on the welfare of children", as well as to promote "in different ways the implementation of the Convention on the Rights of the Child", among other things.

Individual complaints and investigations

Handling individual complaints is a central task for almost all institutions in the region, regardless of whether or not their mandates explicitly provide for it. The institutions work to ensure that the public knows that they exist and how to contact them with concerns.

Generally speaking, institutions receive on average between several hundred and several thousand complaints per year. Disparities in the number of complaints

²⁸ Ombuds-comité fir d'Rechter vum Kand [2010]. *Rapport 2010 au Gouvernement et à la Chambres des députés*, Luxembourg: ORK, 10.

²⁹ Ombudsman (2011). *Report on Children's Rights (2011)*, Riga: Ombudsman, Republic of Latvia, 49.

³⁰ Ombudsman for Children in Poland (2011). 'The Crèche Law Signed', press release, 23 February 2011; Ombudsperson for Children's statement to the Minister of Labour and Social Policy, ZBIA/500/9-1/2009/KC, 13 January 2009.

reported depend on various factors, including data collection methods used by institutions, size of the jurisdiction, proactivity of the office and availability of other remedies. One significant factor appears to be the number of years an institution has been operating, suggesting the importance of awareness of an institution as well as the public perception that it is an effective mechanism – two things that build over time. For 2010–2011,³¹ ombudspersons created around the year 2000 reported a number of complaints ranging from around 1,000 cases and above,³² while newer offices – those established in 2008 and after – reported on average under 300.³³

Aside from differences in numbers of complaints, available data reveal several features that are common to the region related to the issues raised and the nature of the complainant. For instance, institutional data suggest that the overwhelming majority of complaints are submitted by parents, with children consistently submitting less than 10 per cent of complaints.

While issues raised vary from office to office and depend on context and mandate, the primary child rights concerns addressed by most independent institutions in the region relate to family life, parental responsibility and maintenance of family relations in contexts of high divorce rates. The other major subject of complaints is the right to education. The reason may be that education is a universal, child-specific public service, therefore affecting a high number of children, and where the public perceives a direct connection between deficiencies in access to education and the competencies of the children’s ombudsperson.

Most mandates of European institutions give ombudspersons jurisdiction over both public and private bodies that deal with children in some way. Historically, this reflects how the public and private spheres – particularly the state’s role in regulating private life – have changed over time. In Norway, there was great concern when the ombudsman law was passed that it would weaken the position of parents and parental authority; when the proposal finally went through, the ombudsman’s responsibility in relation to conflicts within the family was omitted.³⁴ This was likely a reflection of popular thinking at the time, which

³¹ Accounting years vary, with some institutions reporting figures for calendar year 2010, while others use April to March or September to August administrative years.

³² Reported number of child-related complaints received in a 12-month period by selected institutions that have been in existence for at least 10 years are as follows: 888 (Flemish community, Belgium); 1,100 (French community, Belgium); 1,059 (Croatia); 1,250 (France); 1,200 (Ireland); 1,617 (Lithuania); 964 (Andalucia, Spain). See: ‘UPDATES: Summaries of ENOC members’ annual activities,’ presented to the 15th ENOC Annual Meeting, Warsaw, Poland, 14–16 September 2011 (available at: <http://www.crin.org/enoc/meetings/index.asp>) and annual reports of the above-mentioned institutions.

³³ Reported number of child-related complaints received in a 12-month period by selected institutions that have been in existence for less than 5 years are as follows: 94 (Bosnia and Herzegovina); 186 (Cyprus); 93 (Montenegro); 306 (Republic of Moldova). See: ‘UPDATES: Summaries of ENOC members’ annual activities,’ presented to the 15th ENOC Annual Meeting, Warsaw, Poland, 14–16 September 2011. Available at: <http://www.crin.org/enoc/meetings/index.asp>.

³⁴ Flekkøy (1991), *op. cit.*, 48–49.

tended to limit the state's jurisdiction over what had traditionally been considered private matters.

Some institutions in Europe have constraints specified in their founding laws on how – and by whom – formal complaints can be filed. Because those filed directly by children are a small fraction of the total number of complaints received in all offices, many institutions have worked hard to make their complaint procedures child-friendly and easily accessible. Many offices allow complaints to be filed in person and in writing, and in many places children can contact an institution directly via its website.

In Croatia, handling individual complaints is a core function of the Ombudsman for Children although legislation does not explicitly grant this power. It does, however, provide for a range of functions and powers that enables the Ombudsman's office to investigate and address violations of children's rights. The office has the power to inspect premises that care for children, file reports of their investigations that the receiving body is obligated to respond to, report cases of violence and abuse of a child to the Public Prosecutor, and seek assistance from experts on child development and rights. In 2007 the Ombudsman for Children opened offices outside the capital and the number of complaints filed greatly increased – an indication of the importance of geographic accessibility and growing trust in the ombudsperson on the part of children and the public.³⁵

Institutions in the region vary widely in their status as quasi-judicial mechanisms and in the circumstances under which they can interact directly with the courts. Generally speaking, ombudspersons in Europe are prevented from handling complaints or undertaking investigations that are in the midst of legal proceedings. The Irish Children's Ombudsman, for example, cannot investigate any action taken by or on behalf of a public body, school or voluntary hospital in cases where civil legal proceedings have been initiated or are ongoing,³⁶ marking a clear separation between the institution of ombudsman and the judicial system.

On the other hand, in Northern Ireland (UK), the Commissioner's mandate to safeguard the rights of the child includes the power to bring or intervene in proceedings (other than criminal proceedings) that involve the law or practice concerning the rights or welfare of children or young persons, as well as act as *amicus curiae* in such proceedings.³⁷ In these cases, the legal assistance of the Commissioner must involve raising a question of principle, or providing

³⁵ Šahović, N. V. (2009). 'The Compliance of the Ombudsperson for Children Act with International Standards and, in particular, the Convention on the Rights of the Child and Recommendations and Opinions of the UN Committee on the Rights of the Child,' In Felgo, M., ed. *Evaluation of the Institution of the Ombudsperson for Children*, Zagreb: Republika Hrvatska, 16.

³⁶ §11 (1) (a) (i) of Ombudsman for Children Act, 2002 (Ireland). See also §11 (1) (a) (ii) and (Sec 11 (1) (e) (i) (iii) of the same act.

³⁷ §14 (1) (a) (b) of The Commissioner for Children and Young People (Northern Ireland) Order 2003, No. 439 (N.I. 11).

assistance only where there is no other person or likely body to provide such assistance to the child and where it would be unreasonable for the child to deal with such a case unassisted.³⁸ Some of the issues that the Commissioner has brought before the courts in recent years include challenging the lawfulness of physical punishment of children; the right of children to be protected from inhuman and degrading treatment; the right of children to have their views heard in all decisions affecting them; and judicial review of the use of the taser in Northern Ireland.³⁹ The Commissioner has found that strategic case law has noticeably enhanced awareness of, and reliance on, the CRC in the courts in Northern Ireland, and as a result, on public bodies.

Research and reporting

The mandate to carry out research and produce public reports helps ombudspersons adequately respond to violations of children's rights. The research mandates of some institutions in Europe are an extension of their ability to carry out investigations regarding violations of rights. For example, the Northern Ireland Commissioner for Children and Young People has the mandate to undertake, commission or provide financial or other assistance for research activities, compile information on children's rights and best interests, provide advice or information, and publish the outcome of research, activities, investigations, or any advice provided by the Commissioner.⁴⁰

This mandate enables institutions to highlight specific issues related to the most marginalized children in society. In 2012, for example, the Public Defender of the Czech Republic issued findings of its investigation into the schooling of Romani children (which showed that this group was overwhelmingly represented in special schools) and provided evidence of the discrimination they experience.⁴¹ An investigation by the Children's Commissioner for England (UK) has shed light on the treatment of unaccompanied asylum seeking children arriving in the United Kingdom from France who were returned expeditiously and without due consideration of their best interests, because of an agreement between the two countries' border authorities. As a result of the Commissioner's action, the UK border authorities decided to stop the practice.⁴²

³⁸ §15 (1) (2) (3) of The Commissioner for Children and Young People (Northern Ireland) Order 2003, No. 439 (N.I. 11).

³⁹ JRL's application [2011] NIQB 5 In the matter of an application by JRL for judicial review and in the matter of a decision of the Chief Constable of the Police Service of Northern Ireland to introduce tasers for use by the Police Service of Northern Ireland and in a matter of the decision of the Northern Ireland Policing Board taken on 2 October 2008.

⁴⁰ The Commissioner for Children and Young People (Northern Ireland) Order 2003, No. 439 (N.I. 11).

⁴¹ Public Defender (Czech Republic) (2012). 'Research Confirms Indirect Discrimination against Romany Pupils', press release, 7 June 2012.

⁴² Matthews, A. (2012). *Landing in Dover: The immigration process undergone by unaccompanied children arriving in Kent*, Office of the Children's Commissioner for England, 69.

A crucial aspect of ombudspersons' mandated investigative and research functions is the obligation of state governments (as well as public and private institutions that work with children in some capacity) to respond to requests and comply with recommendations. In Northern Ireland, when the Commissioner for Children and Young People makes recommendations the relevant authority is required to respond within three months. The Commissioner can also make public note of any response he or she considers inadequate.⁴³

In Croatia, state administrative bodies, local and regional administrative units, corporations and individuals are obliged to respond to the inquiries of the Ombudsman for Children at his or her request within 15 days. If they fail to do so, the Ombudsman can report to the body overseeing their work, and if there is still no follow-up, the Ombudsman can inform the government.⁴⁴ This helps the Ombudsman to carry out his duties effectively. Such powers are not given to most other ombudspersons in the region.⁴⁵

While the Ombudsman for Children in Croatia has strong powers to investigate activities that may be considered 'secret' by the state,⁴⁶ several institutions are restricted from carrying out investigations related to activities of the military, the police and other entities whose actions are considered matters of secrecy or security. In Hungary, the ombudsman's law contains a number of restrictions which prohibit access to classified documents relating to the Hungarian Army, services of national security, the police, the Customs and Finance Guard and the Public Prosecutor's office.⁴⁷ While the Hungarian Ombudsman is able to apply for access to such documents, the restriction has the potential to compromise the independence of investigations.

While neither the Paris Principles nor the CRC Committee's General Comment No. 2 refer directly to the question of access to documents or places deemed secret by the State party, the CRC Committee has expressed concern over such restrictions. For example, in its Concluding Observations for Ireland under the

⁴³ Arts. 18 & 19 of The Commissioner for Children and Young People (Northern Ireland) Order 2003.

⁴⁴ Art. 11 of The Law on the Ombudsman for Children, Croatia.

⁴⁵ In Finland and Norway, for instance, there is no mention of obligations for authorities to respond to requests for information from the ombudsman. See: Law on the Ombudsman for Children 21.12.2004/122 (Finland) and Act No. 5 of 6 March 1981, Relating to the Ombudsman for Children (with changes from 17 July 1998) (Norway). In Sweden the administrative authorities, municipalities and city councils "shall report to the Ombudsman the measures taken in their own operations to implement the rights of children", but there is no mention of a time frame in which they must do so or recourse if they fail to do so. See: §5 of the Children's Ombudsman Act (Sweden). The Controller for Protection of the Rights of the Child in Lithuania has the right to "demand and receive information" from public authorities and private entities relating to the protection of the rights of the child, but there is no clearly stated recourse should these rights fail to be fulfilled. See Art. 13 of the Law on the Controller for Protection of the Rights of the Child of the Republic of Lithuania, 25 May 2000, No. VIII-1708.

⁴⁶ Art. 12 of the Law on the Ombudsman for Children (Croatia) states: "All state administrative bodies, local and regional administrative units and corporation and natural persons have the obligation to provide the Ombudsman for Children the accessibility and insight into all data, information and files concerned with the rights and protection of children, disregarding their level of secrecy."

⁴⁷ Act CXI of 2011 on the Commissioner for Fundamental Rights (Hungary).

Optional Protocol on the Involvement of Children in Armed Conflict, the CRC Committee “regrets that the Ombudsman is precluded from investigating: any matter concerning the organization, structure and deployment of the Defense Forces; an action that concerns the administration of military prisons or places of detention; and action which relates to or affects security or a military information”. The CRC Committee recommended, albeit to no avail, that legislation be amended so that actions of the Defence Forces vis-à-vis children under the age of 18 years would come under the purview of the Office of the Ombudsman for Children.⁴⁸

Education, promoting rights and raising awareness

Making children aware of their rights is an important function of child rights institutions and is a precursor to the realization of children’s right to participate. Many new and innovative strategies have been employed by institutions in Europe to promote respect for and raise awareness of children’s rights, with many of the activities directed at children themselves.

To inform children of their rights guaranteed under the CRC, ombudspersons for children in the region have used a wide array of communication strategies. These include creating child-friendly websites, posters, leaflets, newspapers, radio and television programmes, children’s books and other publications. The Norwegian Ombudsman, for example, has obtained a free telephone number that is listed in the first pages of all telephone directories under ‘important numbers’. The Ombudsman in Hungary has created a special website for children that includes a version for children with disabilities. Numerous institutions across Europe use social media accounts and tools such as Facebook and Twitter, where they can be in direct contact with children.⁴⁹ The Greek Ombudsman sends child-friendly educational materials to schools across the country and holds ‘dialogue days’ with children in various cities.⁵⁰ In Andalusia (Spain), Ireland, the Netherlands and the United Kingdom, for example, ombudspersons for children have posted videos on YouTube to spread information about their work and children’s rights in general.

While outreach to children has been a priority, European ombudspersons have also worked to inform adults about their work, including parents, school staff and administrators, and representatives of non-governmental organizations

⁴⁸ Concluding Observations of the CRC Committee on Ireland, 14 February 2008, CRC/C/OPAC/IRL/CO/1, paras. 8 & 9.

⁴⁹ Includes various offices in Austria and the United Kingdom, and ombudsperson offices in Estonia, Georgia, Ireland, the Netherlands and Norway, among others.

⁵⁰ The Children’s Ombudsman (2012). ‘Activities’ [webpage]. Available at: <http://www.0-18.gr/adults/activities>.

(NGOs) and government.⁵¹ Because the vast majority of people who contact the ombudspersons or file complaints are parents or other adult caregivers, it is important for them to understand child rights in general as well as the competencies and functions of the office.

Despite these efforts, there is concern – reflected in many of the annual reports prepared by ombudspersons’ offices throughout the region – that there is still work to be done to help children become aware of their rights.

Child participation

Children’s ombudspersons in Europe have increasingly recognized child participation as a fundamental aspect of their work. This is reflected in the wide array of methods used to engage children in the work of the offices and in efforts to promote child participation in processes that affect their lives.⁵²

The emphasis on participation shows to what extent ombudspersons view child participation as integral to the success of their offices. The Children’s Commissioner for Wales, for example, stated that “part of the role of the Children’s Commissioner is to make sure that the views and opinions of children and young people are sought on what issues affect their lives. They should also help us in deciding on our priorities and have an influence on how the office works.”⁵³ The role of child participation in informing and supporting the direction of the ombudsperson’s work is also perceived as integral to the fulfilment of article 12 of the CRC on a broader level.

Ombudspersons throughout Europe have created formal structures which enable children to participate in an advisory capacity in the work of their offices. Examples are provided by the French and Irish ombudspersons, who in recent years have combined informal broad-based means of child participation with more formal and focused youth leadership structures in their work (see Figure 17.1). While these strategies are not always used together, they are complementary and can enhance an office’s ability to engage children.

⁵¹ For example, the Ombudsman for Children in Iceland co-hosted a symposium, together with a national parents’ organization and a consumer affairs spokesman, in order to discuss the need to limit marketing campaigns that target children. See: Sigurðardóttir, M. M. (2007). ‘Report of the Ombudsman for Children in Iceland’, presented at the 11th ENOC Annual Meeting, Barcelona, Spain, 19–21 September 2007. Available at: <http://www.crin.org/enoc/meetings/index.asp>.

⁵² Additional analysis and examples are given in Chapter 7: Child participation.

⁵³ Children’s Commissioner for Wales [2007]. *Annual Review 2006–07*, Children’s Commissioner for Wales, 18.

Figure 17.1 France and Ireland
Children's participation in the work of the ombuds offices⁵⁴

Ombudsman for Children's Office Ireland

Big Ballot Initiative

In 2007, more than 75,000 students and 500 schools participated in a referendum-style event where children expressed their views on issues of concern in their lives. Results were presented on Universal Children's Day at a special event at City Hall in Dublin.

Youth Advisory Panel

An integral aspect of the Office's work, the Youth Advisory Panel is made up of 25 young people from urban and rural areas throughout Ireland, whose circumstances and experiences broadly reflect the diversity of Irish society. They work on various projects with the staff of the Office and were active participants in the Big Ballot Initiative. They are also involved in recruiting staff, including in the appointment of the Ombudsman for Children.

Défenseur des Enfants France

The Big National Consultation: Giving young people a say

The Consultation included eight thematic forums in eight regions of France where children (aged 11–17) expressed their views on issues such as education, health, the legal system, family, discrimination, expression and participation, violence, and the internet and privacy. The office of the Défenseur presented the results at a national event held in Paris to mark the twentieth anniversary of the CRC.

Consultative Committee

Twenty young people (aged 12–18) are asked for their opinions on themes of concern to them. They meet together two or three times a year with staff of the office of the Défenseur, and their views help determine the priorities of the office. They also participate in writing and designing communication materials for children.

Child participation, as a formal aspect of the work of ombudspersons, is evident in many offices in the region. In some cases, for example Cyprus⁵⁵ and Ireland,⁵⁶ child participation is included in the mandate of the office. Even where child participation is not mandated, it has become an important avenue of work for many ombudspersons.

Outreach to children is often a necessary step to more meaningful input and participation from youth. The Ombudsman for Children in Finland regularly echoes the opinion of children, including the most excluded in society, in its

⁵⁴ Ombudsman for Children's Office [2008]. *Annual Report 2008*, Dublin: OCA; Défenseure des Enfants (2007). *Jeunes Ambassadeurs du Défenseur des Enfants*.

⁵⁵ Art. 13 (1) (g) of the Commissioner for the of Protection of Children's Rights Law, Republic of Cyprus, 2007.

⁵⁶ §7 (2) of the Ombudsman for Children Act, 2002 (Ireland).

special reports on their situation, such as reports on Saami, and Roma children, and children with a hearing impairment.⁵⁷

In addition to integrating child participation within their work, many institutions in Europe promote the right of children to participate in institutions and processes that have a direct impact on their lives. Support for child participation has been provided by both the European Network of Ombudspersons for Children (ENOC)⁵⁸ and the Council of Europe. Following the participation of the Youth Advisory Panel of the Irish Ombudsman for Children's Office in its annual meeting in 2008,⁵⁹ the European Network of Ombudspersons for Children issued a series of recommendations on youth participation that included "fully involving children and young people in all stages of the development of participation work and in follow up work".⁶⁰ Child participation is also a core priority area for the Council of Europe, featuring in its most recent mid-term strategies (2009–2011⁶¹ and 2012–2015⁶²) and as a part of its 'Building a Europe for and with Children' programme.

These initiatives combined have led to the creation of the European Network of Young Advisers, composed of representatives of youth consultative bodies set up by the ombudspersons' offices for children. The main objectives of this network are the active involvement of young people and children in the work of ENOC, and giving children the opportunity to be heard at the European level.⁶³ In addition to regular online interaction, in 2010 youth advisers began holding annual meetings concurrently with ENOC.⁶⁴

The challenges that child rights institutions face in generating participation from youth vary from country to country. Particularly where societies have a history of either suppressing or controlling participation, the notion of child

⁵⁷ Rasmus, M. (2008). *"Being Saami is a Gift": The welfare of Saami children and the realization of their rights in the Finnish Saami region*. Originally published in Finnish; English summary available at: <http://www.lapsiasia.fi/julkaisut/julkaisu/-/view/1566843>; Junkala, P. and S. Tawah (2009). *More Similar than Different: The welfare of Roma children and youth and the realization of their rights in Finland*. Originally published in Finnish; English summary available at: http://www.lapsiasia.fi/c/document_library/get_file?folderId=535182&name=DLFE-9954.pdf; Ombudsman for Children in Finland (2012). *"Hey, Look At Me!": Interaction and well-being in the lives of deaf and hard-of-hearing children*. Originally published in Finnish; English summary available at: http://www.lapsiasia.fi/en/current/press_releases/press_release/-/view/1806356.

⁵⁸ See for example, European Network of Ombudspersons for Children (2003). 'Statement on Communication with Children', policy paper, 17 November 2003.

⁵⁹ 12th ENOC Annual Meeting, Dublin, Ireland, 3–5 September 2008. Agenda available at: http://www.crin.org/docs/FileManager/enoc/2008_dublin_enoc_annual_meeting_agenda.pdf.

⁶⁰ European Network of Ombudspersons for Children (2008). Report of the 12th ENOC Annual Meeting, Dublin, Ireland, 3–5 September 2008. Available at: <http://www.crin.org/enoc/meetings/index.asp>.

⁶¹ Council of Europe [2011]. Building a Europe for and with Children: 2009–2011 strategy, Council of Europe. Available at: http://www.coe.int/t/dg3/children/news/200911Strategy_en.asp.

⁶² Council of Europe (2012). Strategy for the Rights of the Child (2012–2015), CM(2011)171 adopted on 15 February 2012. Available at: http://www.coe.int/t/dg3/children/MonacoStrategy_en.pdf.

⁶³ European Network of Ombudspersons for Children (2010). Report of the 14th ENOC Annual Meeting, Strasbourg, France, 7–9 October 2010, 17. Available at: <http://www.crin.org/enoc/meetings/index.asp>.

⁶⁴ *Ibid.*, 17.

participation can invoke negative responses. The Parliamentary Commissioner for Civil Rights in Hungary, for example, states that there is a strong need to foster youth participation, but that “finding the appropriate way is aggravated by the heritage of forced youth organizations of the former communist system”.⁶⁵ He suggests that in addition to fostering youth participation within the independent institution itself, an additional role of the ombudsman could be to support youth in developing new forms of organizations over which they can feel ownership.⁶⁶

Networking

The European Network of Ombudspersons for Children

The work of European child rights institutions is strengthened and supported by formal and informal networks. Formed in 1997, the European Network of Ombudspersons for Children (ENOC) is composed of independent children’s rights institutions whose mandate is to promote and protect the rights of children as expressed in the CRC.⁶⁷ In addition to strategic implementation of the CRC, this network supports 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 children’s rights institutions within Europe and worldwide. Within Council of Europe member States, independent children’s rights institutions that meet specific criteria are eligible for full ENOC membership, while those expected to reach them within a short time are admitted as associate members.⁶⁸ By mid-2013, ENOC membership included 42 institutions from 34 countries.⁶⁹

The network has succeeded in engaging in high-level dialogues on regional and international policy concerning children. It has been highly involved in a number of other European Union and Council of Europe activities (see below), and participated in an open-ended working group that led to the establishment of the individual complaint procedure for the CRC.⁷⁰ It also has its own working group devoted to the issue of children’s access to national and international justice.⁷¹ In addition, the network has taken a stance on region-wide matters such as the

⁶⁵ Szabó [2010], op. cit., 27.

⁶⁶ Ibid., 17.

⁶⁷ Art. 1 of the European Network of Ombudspersons for Children Statutes, as approved in May 2006, Dublin.

⁶⁸ Ibid.

⁶⁹ See website of the European Network of Ombudspersons for Children, available at: <http://www.crin.org/enoc/about/index.asp>.

⁷⁰ Optional Protocol to the United Nations Convention on the Rights of the Child on a communications procedure, adopted by UN General Assembly Resolution A/RES/66/138 of 19 December 2011.

⁷¹ European Network of Ombudspersons for Children (2009). ‘Complaints Mechanism: Ombudspersons submission’, written statement, 16 December 2009. Available at: <http://www.crin.org/enoc/resources/infodetail.asp?id=21435>.

European Union ‘Return Directive’, which concerns the detention and forced deportation of unaccompanied children.⁷²

The Children’s Rights Ombudspersons’ Network in South and Eastern Europe

In 2005, the idea to create a sub-regional network for ombudspersons for children in south-eastern Europe emerged. While some of these ombudspersons were already members of or had otherwise participated in ENOC, they identified a need to have a space to address the concerns and issues particular to their own sub-region. The result was the creation of the Children’s Rights Ombudspersons’ Network in South and Eastern Europe (CRONSEE) in 2006.

The network aims to improve children’s position in the region in a context where common struggles can be addressed jointly, for example, the vulnerability of children in border regions. Particularly in countries of the former Yugoslavia, CRONSEE has sought to offer legal assistance and clarify children’s legal status in light of their rights.⁷³

With less stringent membership requirements than ENOC, the newer network provides opportunities for existing, newly-founded and future ombudspersons’ institutions in the sub-region to share capacity-building strategies and work together to address regional challenges to the realization of children’s rights. In addition to sharing best practices, CRONSEE also seeks to build a more coordinated response to cross-border children’s rights violations.⁷⁴

The network has grown steadily since its inception, with nine national and sub-national ombudspersons participating in the first annual conference in Serbia. Attendees came from Bosnia and Herzegovina, Croatia, Montenegro, Serbia, Slovenia and The former Yugoslav Republic of Macedonia. Two additional members – the Greek Ombudsman and the Albanian People’s Advocate – attended the 2007 annual meeting, at which topics such as healthy nutrition and lifestyles; poverty as an impediment to healthy lifestyles; and monitoring violence among children through education, healthcare and welfare systems were discussed. The 2008 conference looked at the theme of children’s homes in light of welfare reform. The network has played an important role in helping ombudspersons’ institutions from south and eastern Europe join ENOC.

The presence in Europe of two regional networks, ENOC and CRONSEE, is indicative of the significant differences in the daily experiences of children –

⁷² European Network of Ombudspersons for Children (2008). ‘ENOC: Concerned over EU Return Directive’, written statement, 18 June 2008. Available at: <http://www.crin.org/enoc/resources/infoDetail.asp?ID=18038&flag=report>.

⁷³ Save the Children (2011), op. cit.

⁷⁴ Ibid.

and of their ombudspersons – that exists in various parts of the region. As a result of these deep differences – in particular inequalities in power, wealth and income distribution between institutions, especially between western and eastern European countries – collaboration among institutions has sometimes been challenging.

For example, positions of responsibility at ENOC have long been held primarily by members from western Europe, whose offices are usually better staffed and whose staff are typically proficient in English. The election of members from eastern Europe to leadership positions in ENOC in 2009 and 2010 is a welcome sign that efforts are being made to have a balanced representation of members from all parts of Europe.

Beyond the formal networks in the region, there is also a vast array of informal networking and collaboration among institutions. In 2009, the Ombudsman for Children in Finland spoke at a conference organized by the Estonian Union for Child Welfare to launch an initiative to establish an Ombudsman for Children in Estonia.⁷⁵ On establishment of an ombudsman in Montenegro in 2009, representatives from the offices of the Slovenian ombudsman and the ombudsman of the Veneto Region in Italy visited Montenegro to help train its employees. Staff from the Montenegro office later conducted study visits to the ombudsman institutions in Bosnia and Herzegovina, Greece and Slovenia. The Kosovo ombudsman also travelled to Montenegro to share experiences and during that visit met internally displaced persons from Kosovo who were residing in Montenegro to discuss their concerns.⁷⁶ These few examples highlight how collaboration – whether formal or informal – has become a normal part of the ombudspersons' functions in the region. Often such collaboration would not be possible without funding by intergovernmental organizations and international NGOs.

Networking and collaboration with regional institutions

Ombudspersons for children in Europe have established strong relationships that have helped them strengthen their work in their own countries and increase their influence at the regional level. As representatives of ENOC, European ombudspersons for children are often invited to participate in meetings and

⁷⁵ Aula, M. K. (2009). 'Twenty Years of Children's Rights in Finland', summary of a presentation by the Ombudsman for Children in Finland given at the conference, The Right to be Heard, Tallinn, Estonia, 6 November 2009. Available at: <http://www.lapsiasia.fi/en/current/speeches/speech/view/1436482>.

⁷⁶ Protector of Human Rights and Freedoms (2005), op. cit.

various regional-level consultation processes; this enables independent human rights institutions for children to use their experience to contribute proactively to the definition of policies and approaches.⁷⁷ For example, the European Platform on Children's Rights has representatives from governments, Council of Europe bodies, civil society, ombudspersons' offices, international organizations, research institutions and international experts.⁷⁸ The Council of Europe has promoted the platform as a flexible consultation mechanism to inform regional and national approaches to child rights policies, and ENOC has been recognized as a key actor.⁷⁹

Representatives of the Council of Europe regularly participate in ENOC's annual meetings and vice versa.⁸⁰ The network has also been an active participant in the European Forum on the Rights of the Child and in many European Union activities related to children's rights. Since 2007, ENOC has had a secretariat based in Strasbourg, France, that helps coordinate common positions among its members and liaise with European Union institutions and the Council of Europe.

Thus far, ENOC – and its member institutions – have benefited greatly from this cooperation. Collaboration has helped shine a light on child rights at the regional level and encourage sound approaches to promoting respect for these rights. Key issues include the rights of unaccompanied and separated children,⁸¹ the prohibition of all forms of corporal punishment,⁸² child participation⁸³ and integrated strategies to address violence against children.⁸⁴

Regional support for the creation of child rights institutions helps explain how such institutions evolved so rapidly in Europe. Backing by effective human rights mechanisms has helped ombudspersons attain greater legitimacy and support from their respective governments and civil societies. At the same time, ombudspersons themselves have played a significant role shaping regional policy,

77 For example, ENOC members participated in a Conference of European Ministers of Justice, held in October 2007, where a resolution on child-friendly justice was adopted.

78 Council of Europe (2009). 'Launching of the Council of Europe's Platform on Children's Rights 2–3 June 2009', concept paper, 26 February 2009.

79 Keynote speech by the Greek Ombudsman, delivered at the launching conference for the Council of Europe's Platform on Children's Rights, Strasbourg, France, 2–3 June 2009.

80 Annual meetings of the European Network of Ombudspersons for Children, participant lists and meeting reports. Available at: <http://www.crin.org/enoc/meetings/index.asp>.

81 European Network of Ombudspersons for Children (2005). Report of the 9th ENOC Annual Meeting, Warsaw, Poland 21–23 September 2005. Available at: <http://www.crin.org/enoc/meetings/>.

82 Council of Europe [2011]. 'Raise Your Hand Against Smacking: A Council of Europe campaign against corporal punishment' [web page]. Available at: http://www.coe.int/t/dg3/children/corporalpunishment/default_en.asp.

83 Hodgkin, R. and P. Newell (2008). *Child Participation and Children's Ombudsman Institutions within the European Union*, preliminary report, Council of Europe and European Network of Ombudspersons for Children.

84 Programme, launching conference for the Council of Europe's Platform on Children's Rights, Strasbourg, France, 2–3 June 2009.

leading by individual example and through a network that has been successful at obtaining a voice at the table of regional policy discussions.⁸⁵

Looking forward: Challenges and opportunities

Three quarters of the member States of the Council of Europe had established an independent human rights institution for children by mid-2013. However, while Europe as a region has been particularly strong in supporting the widespread development of these institutions, there are still many countries that have yet to establish and implement the basic guidelines set out in the CRC Committee's General Comment No. 2 and the Paris Principles.⁸⁶ In most of these countries, a general human rights institution does exist but with neither a clear mandate nor an identifiable department covering children's rights.

Adequate and sustainable funding is a major concern in a number of institutions in Europe, regardless of the income level of the country, and major funding shortages affect human rights institutions in several eastern European countries. In some instances, the lack of resources is structural, as is the case in the Republic of Moldova, where the dearth of funding hampers institutions' ability to carry out basic functions.⁸⁷ In other places, for example, Serbia⁸⁸ and Slovenia,⁸⁹ salaries are too low to retain competent staff. In countries facing acute economic crises, children's ombudspersons have been adversely affected. In Spain, the Defensor del Menor in the community of Madrid ceased to exist in July 2012 following budgetary cuts.⁹⁰ Likewise, the CRC Committee has expressed concern for adequate future allocation of resources to the Greek Ombudsman.⁹¹

The CRC Committee has expressed concern over the levels of funding for child rights institutions in countries as diverse as Cyprus, Finland and

⁸⁵ The European Network of Ombudspersons for Children is described in Recommendation 1460 as "a European network linking the small number of children's mediators already appointed is attempting to respond to the challenges through exchange of information and co-operation" (para. 5). At the 5th Meeting of the Forum for Children and Families in 2003, ENOC's president was noted for raising a question about the added value that a European Ombudsman for Children would bring. This proposal (referenced in Recommendation 1460 of 2000) was later dropped. See: European Committee on Legal Co-operation (2003). *Report about the Forum for Children and Families*, Strasbourg: Comité Européen de Coopération Juridique, 6.

⁸⁶ Those that have not yet done so are Andorra, Armenia, Belarus, the Czech Republic, Germany, Monaco, San Marino, Slovakia, Switzerland and Turkey.

⁸⁷ ICC Sub-Committee on Accreditation (2009). *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, Geneva, 16–18 November 2009.

⁸⁸ ICC Sub-Committee on Accreditation (2010). *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, Geneva, 29 March–1 April 2010.

⁸⁹ Human Rights Ombudsman (2008). 'Human Rights Ombudsman on Officials' Salaries', press release, 17 January 2008.

⁹⁰ Child Rights Information Network (2012). 'The Office of the Defensor del Menor en la Comunidad de Madrid is closed down', press release, 21 June 2012.

⁹¹ Concluding Observations of the CRC Committee on Greece, CRC/C/GRC/CO/2-3, 15 June 2012.

The former Yugoslav Republic of Macedonia.⁹² It has further pointed to the lack of an explicit monitoring function regarding implementation of the CRC within some of the institutional legal bases,⁹³ and the lack of an individual complaint mechanism in some mandates.⁹⁴

Recommendations made by ombudspersons are not consistently implemented, a challenge mentioned by many offices. The CRC Committee has expressed concern at the lack of an enforcement mechanism in Cyprus for the decisions of the Commissioner for Children's Rights.⁹⁵ Where recommendations are taken up or proposals are incorporated into new legislation, there is an ongoing need to monitor and assess their impact on children. In general, the need for impact assessments related to children's rights has yet to be fully explored and implemented consistently in the region.

Additional challenges for institutions in Europe relate to their independence, how child rights are mainstreamed at the national level, and how to ensure that institutions are representative and inclusive of children and youth. The wider governance context, within which such institutions operate, affects their ability to thrive and even survive.

Despite guarantees of independence in their founding laws, the sustainability of some institutions remains a challenge. Within the past few years, there has been discussion of consolidating into broader institutions a few of the long-standing stand-alone institutions – namely those in Croatia, France, Ireland, Scotland (UK) and Sweden.⁹⁶ In light of the specificity of children's rights and due to the mobilization of child rights advocates, institutions have been 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 mention of children's rights in the new legislation, however.

⁹² Concluding Observations of the CRC Committee on Cyprus, CRC/C/CYP/CO/3-4, 15 June 2012; Concluding Observations of the CRC Committee on Finland, CRC/C/FIN/CO 3-4, 20 June 2011; Concluding Observations of the CRC Committee on the former Yugoslav Republic of Macedonia, CRC/MKD/CO/2, 11 June 2010. See also: Concluding Observations of the CRC Committee on Georgia, 23 June 2008, CRC/C/GEO/CO/3, paras. 12 & 13; Concluding Observations of the CRC Committee on Austria, CRC/C/OBSC/AUT/CO/1, 22 October 2008, para. 14; Concluding Observations of the CRC Committee on Croatia, CRC/C/OPAC/HRV/CO/1, 23 October 2007, para. 13.

⁹³ Concluding Observations of the CRC Committee on Austria, CRC/C/OBSC/AUT/CO/1, 22 October 2008, para. 14; Concluding Observations of the CRC Committee on Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006; Concluding Observations of the CRC Committee on Bulgaria, CRC/C/BGR/CO/2, 23 June 2008, paras. 6, 14 & 15.

⁹⁴ Concluding Observations of the CRC Committee on Belgium, CRC/C/15/Add. 178, 13 June 2002, para. 13; Concluding Observations of the CRC Committee on Cyprus, CRC/C/15/Add. 205, 2 July 2003, paras. 13 & 14; Concluding Observations of the CRC Committee on the Czech Republic, CRC/C/15/Add. 201, 18 March 2003, para. 17.

⁹⁵ Concluding Observation of the CRC Committee on Cyprus, CRC/C/CYP/CO/3-4, 15 June 2012.

⁹⁶ Hodgkin, R. and P. Newell (2010). *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 Survey, Council of Europe and European network of Ombudspersons for Children, 40–41. See also Chapter 6, Practical Question: What Structure Should an Institution Take?'

In the Russian Federation, the position of national Child Rights Ombudsperson was created in September 2009.⁹⁷ After 100 days in office, the Ombudsperson expressed strong concern about the deterioration of children's rights and called for the creation of a juvenile justice system in Russia. Less than two weeks later, he was dismissed from his post.⁹⁸ All these examples highlight the precarious nature of the ombudsperson position and the importance of the wider political and governance environment.

In most countries there is a strong need to mainstream children's rights into all areas of policy-making and programming that concern children. In light of this, ombudspersons need to improve and consolidate the impact they have on the work of other institutions in their countries.

Related to this, though, research shows that as some ombudspersons become more successful and visible, they need to be mindful of the importance of finding a balanced positioning within the national context – one that sets the institution's role and legitimacy while recognizing the perimeter of their mandate and the plurality of actors involved in child rights work. The Ombudsperson for Children in Croatia has mentioned this downside of his office's success. Other institutions in the country have also had to go through some readjustment as the independent institution for children developed.⁹⁹

In the area of representation and accountability towards children and communities, a number of institutions have made exciting progress in creating meaningful roles and partnerships with children. There are gaps, however, in the national legislation and policies of ombudspersons that reinforce their need to work in a way that is truly pluralistic and participatory. Nearly 30 per cent of European institutions that responded to the survey that supports this review had as part of their mandates the requirement that their work must be accessible to children. While 30 per cent is promising, the fact that 70 per cent have no such element in their mandate shows that much needs to be done to ensure that European States formally acknowledge the role of these institutions as meaningful voices for children.

Best practices in the area of children's participation highlight opportunities that have been seized by many offices. These could be built on further. Together with

⁹⁷ United Nations Children's Fund Russian Federation Media Centre (2009). 'UNICEF Applauds Creation of the Position of the Child Rights Ombudsperson at the National Level', press release, 1 September 2009. Available at: http://www.unicef.org/russia/media_12877.html; 'Defenders of Children's Rights to Appear in Russian Regions' (2009). *The Moscow Times*, 15 September 2009. Available at: <http://english.ruvr.ru/2009/09/15/1801517.html>.

⁹⁸ 'Alexei Golovan: To resolve children's problems is top' (2009). *The Moscow Times*, 17 December 2009. Available at: <http://english.ruvr.ru/2009/12/17/3073796.html>. 'Children's Ombudsman Fired After 4 Months' (2010). *The Moscow Times*, 14 January 2010. Available at: <http://www.themoscowtimes.com/news/article/childrens-ombudsman-fired-after-4-months/397096.html>.

⁹⁹ Bezinović, P. (2009). 'Self-Evaluation of the Office of the Ombudsperson for Children'. In Felgo, M., ed. *Evaluation of the Institution of the Ombudsperson for Children*, Zagreb: Republika Hrvatska, 16.

policy and awareness-raising work, institutions have worked extensively to promote the participation of children, including those about whom there may be special concerns, whether unaccompanied children, Saami children, Roma children, children who are or have been detained, children with disabilities, or child survivors of violence and abuse. The potential will only grow for these children to take on leadership roles within these institutions and grow in their capacity to advocate for themselves.

Much has been accomplished over the past several decades in the development of independent human rights institutions for children in Europe. Historical, political, economic and social contexts have facilitated institutional growth, as have strong regional human rights mechanisms and the political will to improve the protection and status of children in society. But the same counter-veiling forces and challenges that exist elsewhere in the world are present in Europe too, and institutions must continually adapt and develop to new circumstances and new generations of children.

18

Latin America and the Caribbean



Origins of independent human rights institutions for children in the region

In Latin America and the Caribbean there have effectively been two different regional approaches and traditions to the creation of independent human rights institutions for children.

In Latin America the growth and development of institutions for children strongly benefited from the coming together of strengthened democratic governance and emerging commitment to children's rights in the 1990s. Nearly all countries set up broad-based independent human rights institutions as part of democratic transitions from authoritarian regimes, characterized by internal armed conflict and gross violations of human rights. Meanwhile, the Convention on the Rights of the Child (CRC) paved the way for a radical paradigm shift

towards considering children as citizens with progressive autonomy rather than as minors, and the state as having responsibility to protect children's rights and foster inclusion. This development was made material through widespread legislative reform in most countries, and the creation of special offices dealing with children's rights within broad-based human rights institutions. The process was supported by close ties among human rights institutions at the regional and sub-regional levels.

Broadly speaking, institutions in most Caribbean countries, many of them small island states, have developed in the context of common-law legal traditions. Here the pattern has tended to be for traditional ombudsman offices to be created, charged with monitoring acts by the administration.¹ In the most part these institutions have not made an active engagement with children's rights. One exception is the Office of the Children's Advocate in Jamaica, a stand-alone child rights institution, which was established in 2004 with extensive powers and a strong child protection focus. Another is Guyana, the first Caribbean country to establish an independent human rights institution (in 1966),² originally focused on investigating complaints of racial discrimination.³ It is the only office in the Caribbean with a human rights – rather than a solely administrative – mandate.⁴

Human rights institutions were set up in most states in Latin America in the 1990s, primarily inspired by the Iberian model.⁵ The Provedor de Justiça was established in Portugal in 1975 and the Defensor del Pueblo in Spain in 1978. Both institutions were created during the transition from dictatorship to democracy and have constitutional status. They combine traditional ombudsman functions with a broad mandate for the promotion and protection of human rights. In Portugal the Provedor has an integrated child rights department.

In Colombia, El Salvador, Guatemala, Nicaragua and Peru, institutions were created in the immediate aftermath of conflict, or in the context of ongoing unrest. Several of these institutions were included in peace accords as part of a

1 Commonwealth Secretariat (2007). *Comparative Study on Mandates of National Human Rights Institutions in the Commonwealth*. London: Commonwealth Secretariat, 85–93.

2 The Constitution of Guyana of 1966, revised in 1980.

3 See Laws of Guyana, Chapter 001:01, Arts. 191–196.

4 In Jamaica, the Office of the Public Defender (The Public Defender Act, 1999) replaced the Office of the Parliamentary Ombudsman. The Public Defender also has jurisdiction to investigate circumstances where it is alleged that a person's constitutional rights have been violated.

5 Reif, L. (2000). 'Building Democratic Institutions: The role of national human rights institutions in good governance and human rights protection'. *Harvard Human Rights Journal*, 13 (Spring):28.

broader conflict resolution scheme,⁶ sometimes highly promoted by international actors, like in Nicaragua.⁷ In other countries, including Bolivia (Plurinational State of), Ecuador, Honduras, Mexico, Panama and Venezuela (Bolivarian Republic of), institutions were created as part of democratization processes and institutional strengthening in a context of political instability. In the Southern Cone (comprising Argentina, Chile, Paraguay and Uruguay), independent human rights institutions were established long after periods of military dictatorship, characterized by gross human rights abuses, had ceased.⁸ Costa Rica is one of the few countries in Latin America that has not gone through major political instability or armed conflict. It is also the only country where the human rights institution does not have constitutional status. It too, however, was subject to a lengthy establishment phase – the law creating the Defensoría de los Habitantes was adopted in 1992, more than 10 years after a first attempt was made to create an independent institution.

In the Caribbean, the origins of the majority of independent human rights institutions owe much to former British colonial ties of a number of states and present-day associations with the Commonwealth of Nations,⁹ whose secretariat has played a critical role in providing support for developing and strengthening ombudsman offices in the Caribbean region.¹⁰ Except for Belize and Guyana, the majority of Caribbean countries are islands with small populations.

Haiti also established an ombudsman in 1995, the Office de la Protection du Citoyen, in the wake of democratic transition and the adoption of a revised Constitution (in 1987) which called for its creation.¹¹ The Dominican Republic adopted a law in 2001 providing for the creation of the Defensor del Pueblo. The 2010 Constitution of the Dominican Republic enshrines this new institution¹² but as of early 2013, the office had yet to be established.

⁶ In El Salvador, the creation of the Procuraduría para la Defensa de los Derechos Humanos was a component of the Chapultepec Peace Agreements of 1992. In Guatemala, while the Procurador de los Derechos Humanos had originally been created in the 1985 Constitution, its mandate was significantly strengthened as part of the peace process and the 'global agreement on human rights' of 1994. In Colombia, the creation of the Defensoría del Pueblo was included in the Political Constitution of 1991, based on the Final Peace Agreement of 1990. In Peru, the Defensoría del Pueblo was created by constitutional reform in 1993, following a decade-long internal conflict.

⁷ In Nicaragua, the creation of the institution in 1995 constituted the final step towards the consolidation of peace, democracy and market economy promoted by international actors.

⁸ In Argentina, the Defensoría was established a decade after the end of the dictatorship, while in Paraguay, the institution was included in the 1992 Constitution but the Defensor was not appointed until 2001. In Chile, the creation of an independent human rights institution had been discussed in the 1990s, with the law establishing it adopted in December 2009 and initiation of activities in the second half of 2010. In Uruguay, the law establishing the Institución Nacional de Derechos Humanos was approved in December 2008 and the appointment of the executive council took place in May 2012.

⁹ Reif, L. C. (2004). *The Ombudsman, Good Governance and the International Human Rights System*. Leiden: Martinus Nijhoff. The Commonwealth Caribbean independent states are: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

¹⁰ As illustrated by the regional workshop on strengthening national ombudsmen and human rights institutions held in Antigua and Barbuda in March 1998. The Caribbean Ombudsman Association (CAROA) was created at this meeting.

¹¹ 1987 Constitution of Haiti.

¹² Constitución de la República Dominicana, proclamada el 26 de enero 2010, Title VIII.

Efforts to promote democracy, peace and human rights have been supported by region-wide commitments and strategies, backed by the Organization of American States (OAS) and its highly developed regional human rights system. Since 1997, member States of the OAS have adopted a number of resolutions and documents aimed at strengthening national human rights systems and supporting the work of independent human rights bodies.¹³ Since 2008, human rights bodies in the region have been afforded the right to participate independently in OAS human rights meetings.¹⁴

Concomitantly to democratization processes, Latin American countries have been at the forefront of the ratification and implementation of the CRC. All countries in the region had ratified the Convention by 1993. They adopted extensive measures for its implementation early on and the establishment of child rights offices took place in this context.

While major challenges remain in the effective fulfilment of rights for all children, Latin America has become a worldwide model for comprehensive child rights policy approaches, in particular in the area of legislative reform. Most countries have adopted a strong, rights-based, legislative framework aimed at ensuring the universal realization of children's rights through an 'integral protection' approach.¹⁵ As a result, institutions have moved away from providing centralized services and assistance for children in an 'irregular situation' opting instead to rely on regular, universal systems for providing social services to all.¹⁶ These 'integral' laws also often provide the legal basis for the mandate of independent institutions in the area of children's rights.

The Organization of American States has fostered a common vision for the realization of children's rights in the region; the inter-American system of human rights has played an instrumental role in this area. Specifically, in 2002 the Inter-American Court of Human Rights issued an advisory opinion on the juridical condition and human rights of the child, largely based on the CRC.¹⁷ In September 2009, the Twentieth Pan American Child Congress¹⁸ urged OAS member States to strengthen comprehensive protection systems and public

¹³ Support for International Exchanges of Experience among Ombudsmen, AG/RES.1505 (XXVII-O/97), adopted by the OAS General Assembly, 5 June 1997; Quebec Plan of Action 2001, adopted by the OAS General Assembly, 21 September 2001.

¹⁴ Strengthening the Role of National Institutions for the Promotion and Protection of Human Rights in the Organization of American States, AG/RES. 2421 (XXXVIII-O/08), adopted by the OAS General Assembly, 3 June 2008.

¹⁵ United Nations Children's Fund (2007). *Law Reform and Implementation of the Convention on the Rights of the Child*, Florence: UNICEF Innocenti Research Centre.

¹⁶ Garcia Mendez, E. (1998). 'Child Rights in Latin America: From "irregular situation" to full protection', *Innocenti Essays*, No. 8, UNICEF Innocenti Research Centre, 1998.

¹⁷ Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 of 28 August 2002.

¹⁸ The Pan American Child Congress is an organ of the Inter-American Children's Institute; its objective is to promote the exchange of experiences and knowledge among member states of the inter-American system. Participants are ministers, state secretaries and other high-level government authorities specializing in matters related to childhood and adolescence. For additional information see: <http://www.xxcongresopanamericano.org/english/pan-american-child.congress.html>.

policies for children and promote children's participation in the implementation of programmes that affect their daily lives.¹⁹

Since 1993, there have been periodic Ibero-American conferences of ministers and authorities responsible for children. These have led to the adoption of outcome documents in which states have committed to promoting comprehensive child rights protection systems and investing in children. In the conference held in 2009 in particular, ministers specifically recognized how important it was for states to establish a follow-up and monitoring system to assess the implementation of commitments made in the area of children's rights.²⁰

The main characteristics of independent human rights institutions for children in the region

Legal basis

Because they were often created at a defining moment in the history of the country, and sealed by a new constitution, independent human rights institutions in Latin America have constitutional status – the only exception being that in Costa Rica. In contrast, in the Caribbean, ombudsman institutions are not systematically inscribed in the constitution but are created by law.

In many countries in Latin America, the creation of child rights offices has followed a similar pattern. The large majority of child rights offices were initially created as specialized departments or deputy *defensorías* (defenders or ombudspersons) by an administrative decision by the head of the general human rights institution office. Several of them were later formalized by law. Nicaragua is the only country where the law establishing the broad-based human rights institution explicitly provides for the creation of a child-focused department.²¹ In Honduras and Venezuela, the law makes brief mention of the mandate of the institution with respect to children, as one of several vulnerable groups.²²

With the development of comprehensive child protection laws following the ratification of the CRC, *defensorías* were often envisioned as a useful mechanism to monitor, promote and protect children's rights in a holistic manner. As a result, several of these laws, generally adopted when an institution and its child rights office were already in place, specify the mandate of these institutions in relation

¹⁹ Resolution No. 1 of the Twentieth Pan American Child Congress, CPNNA/RES. 1 (XX-09) 20–22 September 2009; this Congress had the character of a specialized Inter-American conference.

²⁰ XI Ibero-American Conference of Ministers and Authorities responsible for Children and Adolescents, Lisbon, Portugal, 19 June 2009.

²¹ Arts. 18–23, Ley 212, Creadora de la Procuraduría para la Defensa de los Derechos humanos (Nicaragua).

²² Art. 9 (§8), Ley orgánica del Comisionado Nacional de los Derechos Humanos (Honduras); Art. 15 (§17) Ley orgánica de la Defensoría del Pueblo, No. 37.995 of 5 August 2004 (Bolivarian Republic of Venezuela).

to children's rights. The legislation guarantees their existence and sustainability, provides an explicit legal competency related to children, and strengthens their ability to act. Countries with this type of office include Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Peru and Venezuela.²³

One of the most detailed pieces of legislation concerning an integrated child rights office is the Ley de Protección Integral de la Niñez y Adolescencia adopted in 2003 in Guatemala. For its implementation, the law lists "bodies for integral protection", among them, the "*procurador de los derechos humanos a través de la defensoría de la niñez y la adolescencia*". The mandate of the Defensoría is the defence, protection and promotion of children's rights and the effective implementation of the country's domestic laws and international obligations. Two elements are particularly noteworthy. First, the law repeatedly makes reference to the CRC as a guiding standard for carrying out the mandate. Second, the law adds to the list of competencies "other functions or attributions, which, while not explicitly mentioned, are inherent to the Defensoría".²⁴ The law thereby allows for significant expansion in the scope of mandate of the Defensoría and leaves considerable space for the office to be proactive in shaping its mandate.

Child protection laws providing for a separate child rights institution are also very detailed in Argentina and Jamaica. The Argentine law of 2005 is especially comprehensive.²⁵ However, as of early 2013, the institution itself, in the form of a specialized body alongside the Defensoría del Pueblo, has not been set up at the national level, only at the provincial level.²⁶ The Jamaican Child Care and Protection Law of 2004 confers an extensive and detailed mandate on the Office of the Children's Advocate, which it creates for the enforcement of the law. The Office's main functions are to review laws and practices and advise decision-makers, ensure that children know of the Office's existence and that their views are taken into account, help children make complaints to the relevant authority, investigate complaints, and intervene or assist children in legal proceedings. The law also details powers of investigation, as well as appointment processes, terms of office and guarantees.

In all of these countries (Argentina when established, Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Jamaica, Peru and Venezuela), the independent institutions for children are a core element of integral child protection systems. These systems build on a holistic, universal and rights-based approach to child protection. They integrate guiding principles of the CRC and

²³ In these last three cases however, respective child protection laws refer only to local *defensorías*.

²⁴ Art. 92 (j), Ley de Protección Integral de la Niñez y Adolescencia (2003) (Guatemala).

²⁵ Chapter III, Ley de Protección Integral de los Derechos de las Niñas, Niños y Adolescentes, No. 26061 of 2005 (Argentina).

²⁶ To date, the post of Defensor de Derechos de Niños, Niñas y Adolescentes has been created in the provinces of Córdoba (appointed in 2008), Corrientes, Misiones and Neuquén.

emphasize the duty of institutions, including the judiciary, government agencies and independent institutions to ensure that children's rights are realized.²⁷ In the remaining states – Mexico, Panama, Paraguay and to some extent Honduras – child rights offices do not have a specific legislative base.

Institutional structure

Given that the majority of the region's institutions are integrated into broad-based institutions, the position of the child rights department within the wider institution provides an indication of its weight, autonomy and visibility. One indicator of this status is the level of the head of the office. Out of the 13 independent institutions with an integrated child rights office that responded to the survey conducted as part of the present review, six had heads of office with a relatively high-ranking role.²⁸ In two of the remaining seven institutions, in Guatemala and Nicaragua, the head of the child rights department has the title of "ombudsperson for children" (a *procurador* or *procuraduría*)²⁹ and in another five institutions (those in Colombia, El Salvador, Panama, Peru and Venezuela) responsibility for child rights lies with a deputy ombudsperson in charge of children's rights. In the remaining countries, the head of the child rights office is either a director or a chief of the child rights programme, sometimes reporting to a deputy ombudsperson rather than to the ombudsperson directly. This suggests that the child rights office is seen as a technical rather than a political structure.

Several institutions in the region have local branches, in particular those in Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Panama and Venezuela. In Mexico, the federal nature of the state means that each federal entity is equipped with a human rights commission. Likewise, in Argentina, alongside the national Defensoría del Pueblo, there are *defensorías del pueblo* operating at the provincial and municipal levels.³⁰

A specificity of the Latin American region, in particular the Andean sub-region, is the existence of local, community-based *defensorías*, as is the case in Bolivia, Colombia, Ecuador, Peru and Venezuela. These are primarily established by the municipality or the community to promote and protect children's rights within the constituency and report violations to the relevant authorities. They are often staffed with volunteers or members of local organizations. They serve as a critical element of the child protection system at the local level.

²⁷ See Garcia Mendez (1998), op. cit.

²⁸ Colombia, El Salvador, Guatemala, Nicaragua, Peru and Venezuela.

²⁹ The formal titles are Defensoría de la Niñez y a Adolescencia (Ombudsman for Children and Youth) in Guatemala, and Procuradora Especial de la Niñez y la Adolescencia (Special Procurator for Children and Adolescents) in Nicaragua.

³⁰ Since 2007, the Argentine *defensorías* have been members of the Asociación de Defensores del Pueblo de la Republica de Argentina (ADPRA). See: <http://www.adpra.org/estatuto-social>.

Where they exist, these local or community *defensorías* may not be closely connected to the independent institution at the central level. The Committee on the Rights of the Child (CRC Committee) has drawn attention to the need for firm coordination between the national and the local level.³¹ The law in Ecuador explicitly requires the *defensorías comunitarias* to coordinate their action with the national Defensoría del Pueblo.³² However, Bolivian legislation does not provide for a coordination mechanism. In the case of Honduras, the CRC Committee has recommended that “the Ombudsman should coordinate his/her activities with those of the municipal commissioners”.³³ Venezuelan community defenders providing child protection services coexist with local representatives of the child rights office of the Defensoría del Pueblo. It is the role of the Defensoría del Pueblo to monitor community *defensorías*;³⁴ in 2011, for example, the representatives of the child rights office of the Defensoría del Pueblo in local branches inspected the community defenders and issued recommendations to strengthen their effectiveness.³⁵

In the mid-2000s, the CRC Committee repeatedly drew attention to the importance of having a network of local branch offices to cover the entire territory.³⁶ Since 2010, it has further emphasized the role of community defenders – working with the national or regional offices of the *defensoría* – as a way to ensure promotion of child rights and protection and remedy from rights violations in remote areas. In Colombia, it has recommended that the human rights ombudsman and community defenders be provided with sufficient funding to increase their presence in areas affected by armed conflict.³⁷ In the same vein, in Guatemala, the CRC Committee has recommended that the Procurador de los Derechos Humanos create “culturally adapted services in the indigenous communities, or establish community defenders ... working closely with the Ombudsman”.³⁸

31 See for example, the Concluding Observations of the CRC Committee on Venezuela (Bolivarian Republic of), CRC/C/VEN/CO/2, 5 October 2007, para. 17.

32 Art. 208, Código de la Niñez y Adolescencia, Ley No. 100 of 2003 (Ecuador).

33 Concluding Observations of the CRC Committee on Honduras, CRC/C/HND/CO/3, 3 May 2007, para. 18.

34 Art. 170 (e), Ley orgánica para la Protección de Niños, Niñas y Adolescentes of 2007 (Venezuela, Bolivarian Republic of).

35 Defensoría del Pueblo [2011], *Informe Anual 2011*, 158–159. Available at: <http://www.defensoria.gob.ve/dp/index.php/publicaciones>.

36 For example, in 2004, the CRC Committee recommended that the Unidad Especializada de Niñez y Adolescencia [Children’s Delegate] in the Defensoría del Pueblo in Panama be equipped with an “adequate number of local branches”. See: Concluding Observations of the CRC Committee on Panama, CRC/C/15/Add. 233, 30 June 2004, para. 13. See also Concluding Observations of the CRC Committee on Bolivia (Plurinational State of), CRC/C/15/Add.256, 11 February 2005, para. 13, and on Colombia, CRC/C/COL/CO/3, 8 June 2006, para. 18.

37 Concluding Observations of the CRC Committee on Colombia, CRC/C/OPAC/COL/CO/1, 21 June 2010, para. 19.

38 Concluding Observations of the CRC Committee on Guatemala, CRC/C/GTM/CO/3-4, 1 October 2010, para. 24.

Appointment process

Institutions in Latin America are at a potential advantage in that selection processes for the position of ombudsperson tend to be driven by the legislative branch rather than governments – this arrangement generally offers a better guarantee of institutional transparency and independence. In most countries in the region, the head of the national human rights institution is appointed by the parliament, in many instances through use of a qualified (two-third) majority; this helps ensure broad consensus around the selected candidate across political parties. Notably, Bolivian and Nicaraguan laws provide for the involvement of civil society in the appointment process.

However, a transparent and open process also requires that the position of ombudsperson be widely advertised. This is a view endorsed by the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), the body in charge of accrediting institutions according to their compliance with the Paris Principles, in its comments on a number of institutions in the region, including in Colombia, Costa Rica and Peru. Another issue is the risk of deadlock if the qualified parliamentary majority cannot be reached, as has happened in Nicaragua, where the term of the *procurador* had to be extended by presidential decree.³⁹

In the Caribbean, the ombudsman is generally appointed by the representative of the Crown, usually the governor. With a few exceptions, the function of ombudsperson is usually protected by immunities, a guarantee of independence and a sign of the high status of the function.

The heads of the child rights offices that are integrated into broad-based institutions are usually appointed by the heads of the general institution. In the Dominican Republic, the appointment process of deputy ombudspersons, including the Defensor Adjunto para la Niñez y la Juventud, is similar to the appointment process of the Defensor del Pueblo – appointment by the Senate from a short list of three candidates submitted by the Chamber of Deputies.⁴⁰ This confers on the function an additional layer of legitimacy compared to an appointment by the general ombudsperson only. The Governor-General in Jamaica appoints the Children’s Advocate after consultation with the Prime Minister and the Leader of the Opposition.

³⁹ ICC Sub-Committee on Accreditation (2011). Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Geneva, 23–27 May 2011.

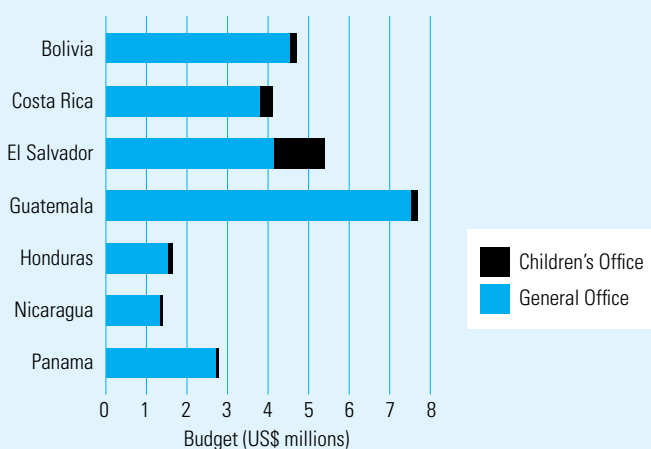
⁴⁰ Arts. 4 & 7, Ley No. 19-01 que instituye el Defensor del Pueblo, 2001; Art. 192 of the Constitution of 2010 (Dominican Republic).

Budget and resources

In the overwhelming majority of countries in the region, funds for the independent human rights institutions are allocated from the national budget and usually enable them to cover running costs. However, many institutions rely on external funding for specific programmes and activities.⁴¹

Assessing the available budget for integrated child rights offices is difficult, partly because some functions like handling of individual complaints are carried out by

Figure 18.1 Amount of funding allocated to child rights offices in selected Latin American countries, 2007–2008



Source: Data provided by respondents to the survey undertaken by UNICEF as part of this review.

other departments in broad-based institutions. In addition, basic administrative expenses such as staff salary, premises and infrastructure are often part of the broad-based institution's overall budget. Moreover, competencies vary from one institution to the next. Workload further depends on the existence of local branches. While keeping these caveats in mind, Figure 18.1 shows that relatively little funding is allocated to child rights offices – the average is about 3 per cent of the total budget of general institutions surveyed.

Detailed information on the origins of funding – extremely relevant to the independence and sustainability of the institutions – is often not readily

⁴¹ One exception is the Bolivian Defensoría del Pueblo, which receives 50 per cent of its funding, including staff salaries, from external sources. See Defensoría del Pueblo in Bolivia (2012). *Sub-Committee on Accreditation Report*, March.

accessible. While most broad-based institutions get their budget from the parliament, in some places additional donors may support the institution as a whole or just specific programmes or functions, such as the child rights office. For example, UNICEF funds the work of child rights offices in Colombia, Guatemala and Jamaica. International donors and other international organizations support independent human rights institutions in Costa Rica, Ecuador, El Salvador, Honduras and Nicaragua.

In spite of strong legal frameworks, this funding situation can hinder the ability of child rights offices to fulfil their mandate. In addition to limited available resources, reliance on donors presents some vulnerabilities if their agenda changes. Various institutions in the region have identified this as a concrete challenge in their funding. The CRC Committee has also in many instances highlighted the lack of resources to allow institutions to carry out their mandate effectively. This issue particularly affects the child rights department within the independent institution. For example, in Paraguay the Departamento de la Niñez y la Adolescencia (Department for Children and Adolescents) was created in 2005 within the Defensoría del Pueblo, but in 2008 was awarded a budget of a mere US\$ 4,500 per year.⁴² In Nicaragua the budget of the Procuradora Especial de la Niñez y la Adolescencia (Special Procurator for Children and Adolescents) was substantially increased in 2008, but during 2007 it was one the lowest in the entire region, and depended entirely on international donors.⁴³ The CRC Committee has expressed concern in several cases, including those of Colombia, Guatemala, Nicaragua and Panama.⁴⁴

Lack of funding was also frequently mentioned as a major obstacle in the survey that supports this review. One child rights office pointed out that the notion of sufficient resources implies not only being able to meet all requests but also the capacity to implement new, wider and more effective approaches for the protection of human rights – the ability to be proactive in furthering the realization of children’s rights. The same institution also commented on the general lack of resources to address the large range of issues, which necessitated a constant prioritization of actions.

While international financial support may reflect recognition of an institution’s work, financial commitment by the state is also critical in ensuring ownership and providing the institution with the ongoing resources it needs to operate.

⁴² Information provided by the former chief of the Departamento de la Niñez y la Adolescencia, Paraguay, July 2008.

⁴³ Information provided by the head of the office of the Procuraduría Especial de la Niñez y la Adolescencia, Nicaragua, July 2008.

⁴⁴ Concluding Observations of the CRC Committee on Colombia, CRC/C/OPAC/COL/CO/1, 21 June 2010, para. 11; Concluding Observations of the CRC Committee on Guatemala, CRC/C/GTM/CO/3-4, 25 October 2010, para. 23; Concluding Observations of the CRC Committee on Nicaragua, CRC/C/NIC/CO/4, 20 October 2010, para. 16; Concluding Observations of the CRC Committee on Panama, CRC/C/PAN/CO/3-4, 21 December 2011, para. 15.

The changing agendas of donors, and possibly lack of continuity in financial support, can also threaten the sustainability as well as the long-term vision and strategy of an institution. The child rights office in Honduras stated in 2008 that it was at risk of disappearing in 2009 because its budget was entirely dependent on international donors.⁴⁵ Furthermore, and importantly, while international cooperation and funding is important, accountability to implement the CRC lies with the state.

Competencies

In line with the Iberian model, institutions in Latin America are hybrid institutions whose mandates encompass the functions of the ombudsman as a redress mechanism for maladministration and a human rights institution for advocacy. This is also the case for the Office of the Children's Advocate in Jamaica. These hybrid institutions are generally well equipped to address the full range of children's rights and link individual cases with policy advocacy.

Because children's rights offices in the region are generally integrated into broad-based institutions, they abide by the mandate of the broader institution. However, recent evolution of children's codes and comprehensive child protection legislation has led to the articulation of specific sets of child-related functions and a legal recognition of their role with respect to children's rights.

Legislation and policy

Most institutions in Latin America as well as the Office of the Children's Advocate in Jamaica have the ability to review legislation, policies and practices and make proposals for change.

The Procuraduría para la Defensa de los Derechos Humanos in El Salvador, for example, issued an opinion on the child protection law, highlighting the complexity of the system and the need for a coordinating mechanism.⁴⁶ However, it subsequently pointed out that since many of its recommendations had not been taken into account, institutional challenges remain for the actual implementation of the law.⁴⁷

The monitoring function of many of the region's child rights institutions has led them to carry out investigations and promote institutional reform. For example, in line with its monitoring mandate under the child protection legislation, the child rights office of the Defensoría de los Habitantes in Costa Rica has carried

⁴⁵ Information provided for this review by staff of the office of the Programa Especial de Derechos Humanos de la Niñez y la Adolescencia, Honduras, August 2008.

⁴⁶ Procuraduría para la Defensa de los Derechos Humanos [2010]. *Annual Report 2009–2010*, 69–70.

⁴⁷ Procuraduría para la Defensa de los Derechos Humanos [2011]. *Annual Report 2010–2011*, 67.

out an investigation into the effectiveness of the national child protection system with a focus on the child protection governmental agency and its local offices, highlighting areas in need of strengthening,⁴⁸ while the Defensoría in Peru has reviewed the situation of residential care institutions for children across the country, including through consultation with children.⁴⁹ Similarly, in Colombia, the Defensoría del Pueblo has released a comprehensive report on the demobilization of children involved with illegal armed groups, which points to the respective responsibilities of a wide array of duty-bearers and the need for better coordination of their action.⁵⁰ There has also been a follow-up study.⁵¹

In some instances, institutions have sought to reinforce national capacities to monitor children's rights. In Panama, in 2011 the Unidad Especializada de Niñez y Adolescencia set up an Observatorio de los Derechos de la Niñez y la Adolescencia with the support of UNICEF to follow-up recommendations of the CRC Committee and other United Nations treaty bodies with civil society.⁵²

Complaints and investigations

All institutions in Latin America and the Caribbean have the ability to handle individual complaints, including complaints submitted by children. However, because the offices do not always disaggregate information by the age of the complainant or by subject matter of the complaint, the extent of complaint work on child rights issues and the accessibility of the complaint mechanism to children are difficult to gauge. Data on complaints submitted by children are essential for assessing institutional accessibility and adequately targeting awareness-raising campaigns. Analysis is complicated by the fact that in many countries other institutions may handle individual complaints and filter a large proportion of the submissions. This is particularly the case when complaint mechanisms have been established at the local level, through local *defensorías* (e.g., in Peru).

Individual complaints do however guide the work of institutions. According to the annual reports of several institutions in the region, the main issues of concern in relation to children and adolescents are the rights to education and health. In Honduras, complaints related to the rights to education and health ranked second

48 Defensoría de los Habitantes de Costa Rica [2011]. *Annual Report 2010–2011*, 69–70.

49 Defensoría del Pueblo (2010). '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 de Pueblo', *Informe Defensorial*, No. 150, Lima: Defensoría del Pueblo.

50 Defensoría del Pueblo (2006). 'Caracterización de los Niños, Niñas y Adolescentes Desvinculados de los Grupos Armados Ilegales: Inserción social y productiva desde un enfoque de derechos humanos', *Informe Defensorial*, Bogotá: Defensoría del Pueblo.

51 Defensoría del Pueblo de Colombia [2010]. *Annual Report 2010*, 167.

52 Defensoría del Pueblo [2011]. *Informe Anual 2011*, 92. Available at: <http://www.defensoriadelpueblo.gob.pa/>.

and third respectively – after personal integrity – among the types of complaints received by the Comisionado Nacional de los Derechos Humanos (National Human Rights Commissioner) in 2009.⁵³ The Defensoría de los Habitantes in Costa Rica reports that during the same year, 56 per cent of complaints received by the Dirección de Niñez y Adolescencia were about the right to education, 30 per cent about the right to health and 14 per cent about the right to protection from violence, abuse and exploitation.⁵⁴ Annual reports mention discrimination in the school system at all levels, based on a host of factors including gender, social condition, family origin or ethnic identity. Pregnant adolescents also have complained that they have been victims of discrimination. Additional complaints are related to the lack of access to the education system or to corporal punishment in schools.

Independent institutions in the region usually have strong investigative powers. Legal and constitutional mandates generally provide for extensive access to documentation and unimpeded access to facilities. In some places (e.g., Honduras and Nicaragua), the law stipulates that the independent institution can request restricted or confidential documents. In most cases, the law specifies that institutions can undertake investigations either based on a complaint or on their own initiative. It further obligates officials, institutions and at times individuals to deal with the request of the institution as a matter of priority. The Venezuelan Constitution states that officials “can be subject to penalties established by law” for failure to cooperate with the Defensoría del Pueblo.⁵⁵ Similarly the Office of the Children’s Advocate in Jamaica “may at any time require any officer or member of a relevant authority or any other person” to furnish information related to a case and may summon them before the Children’s Advocate.⁵⁶ These subpoena powers are an important tool and are also found in children’s advocates or commissioners’ mandates in other common-law countries.

One distinctive feature of independent human rights institutions in Latin America and in some Caribbean countries is their ability to bring a case to court and intervene in judicial proceedings. Concretely, this means that if an institution considers that the rights of individuals have been violated – typically because either due process has not been respected or measures taken are deemed unconstitutional – it can take a case to court. This function is included in the mandate of institutions in Bolivia, Colombia, Costa Rica, Ecuador, Nicaragua, Panama and Venezuela. One important consequence of this is that independent

⁵³ Comisionado Nacional de los Derechos Humanos [2010]. *Informe Anual del Comisionado Nacional de los Derechos Humanos sobre el estado general de los derechos humanos en Honduras y el desempeño de sus funciones: Año 2010*, 63. Available at: <http://www.conadeh.hn/informe2010>.

⁵⁴ Defensoría de los Habitantes [2010]. *Annual Report 2009–2010*, 257.

⁵⁵ Art. 277 of the Constitution of the Bolivarian Republic of Venezuela.

⁵⁶ Art. 17 of the First Schedule, Child Care and Protection Act, Act 11 of 2004 (Jamaica).

institutions can intervene directly with the Inter-American Commission and Court of Human Rights (see below).

Other children's codes and comprehensive legislation focusing on children's rights allow independent human rights institutions or child rights offices to act in very specific areas including child care and juvenile justice. In line with the court-related functions of many institutions in the region, child rights offices are often charged with the responsibility of taking a case involving a child rights violation to court and assist or represent a child in judicial and administrative proceedings. Some *defensorías* (e.g., in Colombia and Ecuador) are also charged with overseeing more specific and private matters related to the right to identity and parental guidance, parental authority, adoption and questions of parentage. These functions are not often found in the mandate of independent institutions in other regions.

Lastly, the identification of the *defensoría* as a complaint and protection mechanism in situations of violence and abuse is recognized in Ecuador and Nicaragua. In several other countries, including Bolivia, Ecuador, Peru and Venezuela, the law mentions *defensorías* at the municipal level, giving them an extensive role in the implementation of child protection systems at the local level and in the monitoring of individual situations.

Education, promoting rights and raising awareness

With a broad human rights mandate, independent human rights institutions in Latin America are generally able to promote and raise awareness on human rights. Promotion involves disseminating information on human rights and developing programmes to that end, including school curricula and training activities. This aspect is generally absent in the mandate of institutions in the Caribbean, however, since most of them follow a classic ombudsman model, concentrating on complaint handling between citizens and the administration.

Some institutions take the initiative to travel to remote areas to raise awareness and promote respect for children's rights. Yet there are great disparities among countries in how often – and how – institutions visit areas that are difficult to access. In their responses to the survey that supports this review, the Procuraduría in Nicaragua reported making 50 such visits in 2007, while institutions in Bolivia, Colombia and Guatemala claimed they made around 15 visits per year. Institutions in El Salvador and Panama made even fewer visits, around 4 or 5 per year. The Defensoría del Pueblo in both Ecuador and Peru reported no visits to remote areas, but in these countries that function is most likely performed by the community *defensorías*, which are typically closer to the people.

Most institutions in the region are able to visit places where children spend their time: schools, detention centres, child-care institutions and health-care facilities. Reaching children where they are is extremely important because children, who have less capacity than adults to reach an institution physically or through other means, are better placed than adults to report rights violations and concerns in their own settings.

Another important element is the way in which children make contact with the office. In most institutions, coming to the office or making a phone call are common ways for children to make contact. The use of the internet, including email and websites, is less commonly mentioned. An overview of institutions' websites shows that most do not have a section addressed to children, but change is underway at least in Nicaragua where the Procuraduría Especial de la Niñez y la Adolescencia has added an interactive, child-friendly section to its own website, which is separate from that of the broad-based institution.⁵⁷

The means used by institutions to inform children of their services and existence vary greatly. The Jamaican law specifically requests the Office of the Children's Advocate to take steps to ensure that "children are made aware of the functions and the location of the Office of the Children's Advocate and the ways in which they may communicate with the Children's Advocate".⁵⁸ Posters and leaflets are very commonly used in the region, possibly because institutions can typically produce these entirely on their own. On the other hand, little use is made of existing, free and universal child-focused mechanisms for communication, such as integration into the school curriculum (this is used only in Ecuador). Children's associations and councils are used by about half of the institutions. The main media – newspapers, TV and radio – are frequently though not systematically used.

In Colombia, the Defensoría Delegada para los Derechos de la Niñez, la Juventud y las Mujeres (Ombudsman for the Rights of Children, Youth and Women) has carried out training programmes in schools related to the prevention of sexual violence against children and on human rights and humanitarian law.⁵⁹ In November 2008 the Defensoría and its partners launched a campaign against the forced recruitment of child soldiers. In El Salvador, the search for and identification of children who disappeared during the period of armed conflict (1980–1992) is still ongoing; the Procuraduría is part of the institutional efforts to trace and reunite these children and adolescents with their families. In

⁵⁷ See: <http://www.nineznicaragua.org.ni>. At the time of writing, the website was still undergoing development.

⁵⁸ Art. 11 (c) i of the First Schedule, Child Care and Protection Act, Act 11 of 2004 (Jamaica).

⁵⁹ Defensoría del Pueblo de Colombia (2007), *Annual Report*. Available at: http://www.defensoria.org.co/red/?_item=0202&_secc=02&ts=1.

Guatemala, the phenomenon of illegal adoptions is a central issue on which the children's Defensoría works continuously.

Child participation

Very few laws providing for the mandate of independent institutions in the area of children's rights make an express reference to child participation. Those that do so are usually quite new and typically provide great detail on the functions of the institution.

In Jamaica, the legislation establishing the Office of the Children's Advocate explicitly mentions child participation in the work of the institution. The Child Care and Protection Act of 2004 requires that the office take steps to ensure that "the views of children and persons having custody, control or care of children, are sought concerning the exercise by the Children's Advocate of his functions under this Part".⁶⁰ Similarly, the Venezuelan child protection law, reformed in 2008, states that one of the missions of the institution is to "create and promote opportunities that stimulate the participation of children and adolescents in community or family decisions that affect them".⁶¹

Despite the dearth of legislation requiring it, many institutions in the region (as in other regions) nonetheless directly involve children in their work or promote child participation in broader society. Children have opportunities to participate in setting offices' priorities, advise on law reforms proposals, and directly submit complaints.

Some institutions have taken steps to engage children in the work of the office. In El Salvador, the Procuraduría has set up a number of Unidades de Difusión Juvenil de Derechos Humanos (juvenile dissemination units for human rights) composed of approximately 300 young volunteers aged 15 to 25 years old, who are based in local offices of the Procuraduría. The purpose and function of these units has evolved as human rights promotion activities have given way to a role monitoring state action.⁶² The Procurador in Guatemala has likewise promoted the organization of *juntas municipales* composed mainly of child and adolescent volunteers; these bodies work directly with the institution. In Nicaragua, the Procuraduría de la Niñez y la Adolescencia created the Council of Adolescent Advisers to discuss law reform proposals and advise on office priorities.

Other institutions work on promoting child participation in rights monitoring, policy-making and awareness-raising. The Bolivian Defensoría has promoted

⁶⁰ Art. 11 (c) ii of the First Schedule, Child Care and Protection Act, Act 11 of 2004 (Jamaica).

⁶¹ Art. 202 (j), Ley Orgánica para la Protección del Niño y del Adolescente (Venezuela, Bolivarian Republic of).

⁶² Procuraduría para la Defensa de los Derechos Humanos [2011], op. cit., 234.

the participation of adolescents in social monitoring of the compliance of the country's institutions with the CRC. It has also supported the creation of 'defence brigades' composed of young volunteers who actively participate with the Defensoría in the preparation of events and activities and then replicate activities in their schools, communities and cultural centres.⁶³ The Procurador in Guatemala promoted a consultation on public policies for childhood that involved 5,000 children and adolescents aged 11–18 years. According to the head of the office for children, this process was effective in advocating that special attention be given to children in the design of Guatemalan public policies.

In Colombia, the Defensoría has developed a national programme for promoting and protecting the human rights of young women and men. The objective is to enhance young people's knowledge of their rights and their capacity to claim them, and also to generate public debate on problems affecting youth. The process has in particular strengthened space for participation in vulnerable areas in several cities, with young people at risk through poverty, low education, unemployment and recruitment by illegal armed groups.⁶⁴

Another aspect of child participation – and more broadly citizen participation – specific to the region is the role played by individuals, children and adolescents as ombudspersons. In many Andean countries, with the exception of Colombia, local student and citizen *defensorías de la niñez* are now recognized by law, formalizing what started out as a participatory movement on behalf of children's rights. This experience may also be understood as a legacy of indigenous cultures that consider situations affecting children to be the concern of the whole community. In the Peruvian case, the Defensoría implements Niño Defensor, a project that seeks the appointment of students as ombudspersons in their own schools and communities.⁶⁵

Despite the rich forms of child participation in the work of the region's independent human rights institutions for children, these efforts have yet to be systematized. Nicaragua is the only country that has set up a more permanent child participation structure (the advisory council of adolescents). In other places, activities although largely effective are more ad hoc.

63 Defensoría del Pueblo (2009). *XII Informe a la Asamblea Legislativa Plurinacional*, 340. Available from: <http://www.defensoria.gob.bo>.

64 Federación Iberoamericana del Ombusman (2005). III Informe sobre derechos de la niñez y adolescencia, FIO, 404.

65 Defensoría del Pueblo [2009]. *Annual Report 2009*, 187–188. Available at: <http://www.defensoria.gob.pe/informes-publicaciones.php>.

Networking

Independent human rights institutions in Latin America and the Caribbean have access to a complex web of networks organized along regional, sub-regional and linguistic lines. These networks have enabled them to share experiences, access learning activities and adopt common positions. Two networks of independent human rights institutions – the Federación Iberoamericana del Ombusman (FIO) and the Consejo Centroamericano de Procuradores de Derechos Humanos (CCPDH) – have organized within their realm networking activities for child rights offices. At the end of 2011, the former became an officially recognized network, paving the way for its sustainability, capacity for strengthening and effectiveness.⁶⁶

The main networks in the region

Human rights institutions in Latin American and the Caribbean are usually members of two main regional networks. One is the Network of National Institutions for the Promotion and Protection of the Human Rights of the American Continent, which unites institutions that are in compliance with the Paris Principles.⁶⁷ Like similar arrangements in other regions, this network is in charge of liaising with the ICC. Networks provide opportunities to discuss issues of common interest in the region, such as the role of businesses in relation to human rights,⁶⁸ and support to individual members facing challenges, as was the case in Panama.⁶⁹

The other main network is the Federación Iberoamericana del Ombusman (FIO), which brings together independent institutions from Latin American countries,⁷⁰ Andorra, Portugal, Puerto Rico and Spain. It was created in 1995 and gathers both national and sub-national independent human rights institutions.⁷¹ The network benefits from support from the University of Alcalà in Spain and the Spanish development cooperation agency. In addition to traditional networking activities,

⁶⁶ The specialist division of the FIO that works on child rights issues is known as the Red de Niñez y Adolescencia de la FIO (Network for Children and Adolescents). See: <http://www.portalfio.org/inicio/index.php/redes-tematicas/red-de-ninez-y-adolescencia.html>.

⁶⁷ Argentina, Bolivia (Plurinational State of), Canada, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela (Bolivarian Republic of).

⁶⁸ Regional seminar on business and human rights, Guatemala, November 2011.

⁶⁹ Initiative Nationale pour le Développement Humain (2012). 'Secretariat of the American Continent Network of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights ICC supports the Defensora del Pueblo of Panama for Police coercion during social demonstration', *Bulletin*, 1 (February).

⁷⁰ The Latin American members of the Federación Iberoamericana del Ombusman (FIO) come from the following countries: Argentina, Bolivia, Plurinational State of, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela, Bolivarian Republic of. The Defensor del Vecino from Uruguay has been a member of FIO since 2008.

⁷¹ At the time of writing, the FIO membership comprised 18 national Ibero-American human rights institutions, 12 defensorías del pueblo from autonomous communities (from Spain), 32 state human rights commissions (from Mexico), and 13 provincial and municipal defensorías del pueblo (from Argentina and Uruguay). Information retrieved from <http://www.portalfio.org>.

including regular meetings and newsletters, it also offers an online training course for staff of independent institutions.

Under the umbrella of FIO, *defensorías de la niñez y adolescencia* from Spanish-speaking countries in Latin America have met regularly since 2004, when they adopted the Madrid Declaration for the rights of boys, girls and adolescents, which explicitly states that the meeting is a first step to creating a space for cooperation among institutions on child rights issues and lists a series of commitments. Since 2004, meetings have taken place in 2007 and 2009, with the goal of establishing a formal, specialized network within FIO⁷² – based on the existing network for women’s rights. In November 2011, it became an official network, which has since developed its own work plan and priorities for action.⁷³

Sub-regional networks

Sub-regional networks are particularly strong as institutions that compose them are often bound by similar historical background, mandates and national issues. The Consejo Andino de Defensores del Pueblo was launched in 1998 and is composed of independent institutions from Andean countries.⁷⁴ The Caribbean Ombudsman Association, also created in 1998, links general ombudsman offices from the Caribbean States.⁷⁵ The Caribbean independent institutions in Antigua and Barbuda, Barbados, Belize, Jamaica, Saint Lucia, and Trinidad and Tobago also belong to the Commonwealth Forum of National Human Rights Institutions.

The Consejo Centroamericano de Procuradores de Derechos Humanos (CCPDH) has provided a forum for *defensorías* from Central American countries since 1994.⁷⁶ They meet regularly and issue common positions on relevant issues of the day. Since 2002, offices for children in Central America have been connected through a network of *procuradores por los derechos de la infancia*. The network has been particularly active in promoting child rights issues.

The strategic plan of the Consejo Centroamericano for 2006–2010 recognized the importance of addressing issues related to children, adolescents and youth as an aspect of its work on special groups.⁷⁷ A review of the Consejo’s activities with respect to children’s issues concluded that its work has been centred on the vulnerability of boys, girls and adolescents, in particular because of inadequate

⁷² Lima Declaration (2007), Encuentro Interamericano de Ombudsman de Niñez, Propuesta de Trabajo para 2010 y Acuerdos (2009).

⁷³ See: <http://www.portalfio.org/inicio/index.php/redes-tematicas/red-de-ninez-y-adolescencia.html>.

⁷⁴ Bolivia (Plurinational State of), Colombia, Ecuador, Panama, Perú and Venezuela (Bolivarian Republic of).

⁷⁵ Antigua and Barbuda, Barbados, Belize, Guyana, Haiti, Jamaica, Saint Lucia, Trinidad and Tobago, the Associated State of Bermuda, the Associate State of Puerto Rico and the Associated State of Curacao.

⁷⁶ Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

⁷⁷ Consejo Centroamericano de Procuradores de Derechos Humanos [n.d.]. *Strategic Plan 2006–2010*.

implementation of public policies for full protection on the one hand, and governments' repressive approach to the complex issue of juvenile justice on the other.⁷⁸ The review also highlighted the Consejo's efforts to show that children's rights should not be taken up in isolation but considered as part of their broader environment. For this reason, the Consejo has since focused on policy advocacy and prevention strategies.

Attention to children's rights in the Consejo nevertheless takes place within the context of work with vulnerable groups – identified as women, children, older people, people with disabilities, migrants and indigenous peoples.⁷⁹ While many of the network's positions on children's rights are proactive, an analysis of its work suggests that its action in this area focuses on children's vulnerability and protection. One area that could be further emphasized by the Consejo is the contribution children can make as full actors, able to engage in and advise on policies and practices.

The consolidation of the region's human rights focused networks is likely to enhance the ability of independent human rights institutions for children to influence regional processes and further build on opportunities offered by the regional human rights system. The challenge is to ensure the ongoing visibility of child rights issues within that context.

Involvement with the inter-American human rights system

Interactions between independent human rights institutions and the inter-American human rights system are in the early stages but progressing. The American Declaration on the Rights and Duties of Man and the American Convention on Human Rights contain specific provisions related to children's rights. Since its establishment in 1960, the Inter-American Commission on Human Rights (IACHR) has addressed children's rights in general reports and in its decisions on petitions and cases it has examined.⁸⁰ In 2009, the Inter-American Commission released a report on corporal punishment and human rights of children and adolescents that was prepared by the Office of the Commission's Rapporteur on the Rights of the Child.⁸¹ The Inter-American Court of Human Rights has decided on various contentious cases that exclusively focus on

⁷⁸ Secretaría Técnica del Consejo Centroamericano de Procuradores de Derechos Humanos (2007). 'Los Pronunciamientos del Consejo Centroamericano de Procuradores de Derechos Humanos en Materia de Niñez y Adolescencia, Instituto Interamericano de Derechos Humanos', September.

⁷⁹ Ibid.

⁸⁰ Inter-American Human Rights Commission (2008). *The Rights of the Child in the Inter-American Human Rights System*, 2nd ed., Doc.34, OAS, para. 63.

⁸¹ Inter-American Human Rights Commission (2009). *Report on Corporal Punishment and Human Rights of Children and Adolescents*, Doc. 14, OAS.

violations of children's rights, including refusal to deliver birth certificates and recruitment of children into military service.⁸²

There are a number of possible opportunities for collaboration between existing inter-American human rights mechanisms and independent human rights institutions, in particular in the area of children's rights. Institutions can submit complaints, communications and petitions with the Inter-American Commission on Human Rights, follow up recommendations, and provide relevant information through hearings, country visits and reports, as well as collaborate with the Rapporteur on the Rights of the Child⁸³ and other rapporteurs. Likewise, with the Inter-American Court of Human Rights, they can provide information and amicus briefs, monitor states' cooperation with the Court and request precautionary measures in case of imminent threats.⁸⁴

Independent human rights institutions have been using some of these tools, but in a limited way. Institutions have filed complaints on various human rights violations (e.g., forced disappearances and the political participation of women) with the Inter-American Commission on Human Rights.⁸⁵ However, as of early 2013, available information suggested that no petitions on children's rights had been filed by independent institutions.

The Consejo Centroamericano de Procuradores de Derechos Humanos has submitted an *amicus curiae* in relation to a consultative opinion on the rights of undocumented migrants. The local Defensoría del Pueblo of the city of Buenos Aires in Argentina submitted a report that was used in a specific case by the court. Reports and declarations supplied by the Procuraduría in El Salvador were also used in court to conclude that there had been systematic forced disappearances of children during the country's conflict.⁸⁶

The consolidation of regional and sub-regional networks – together with the willingness of the Inter-American Commission and Court in Human Rights to increasingly involve national human rights institutions in its work – is likely to expand opportunities for closer collaboration between the regional human rights system and independent institutions.

⁸² Inter-American Human Rights Commission (2008), *op. cit.*, paras. 119–187.

⁸³ See: Organization of American States. 'Rights of the Child' [webpage]. Available at http://www.cidh.oas.org/Ninez/default_eng.htm.

⁸⁴ Anicama, C. (2007). 'Espacios de Participación para las Defensorías/Ombudsmen de la Niñez en el Sistema Interamericano de Derechos Humanos (SIDH)', presented at the meeting of Advocates for Children as part of the XVII Annual Congress of the Latin American Ombudsmen, 20–23 November 2007.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

Looking forward: Challenges and opportunities

The overwhelming majority of states in Latin America and Caribbean have already established an independent human rights institution. Being the product of democratic transitions, independent human rights institutions in Latin America have often had to deal with a complex political heritage but in most countries are now generally perceived – according to recent public opinion surveys⁸⁷ – as trustworthy institutions there to protect citizens against abuses of power. In some cases, however, political instability has affected the independence of the institution, as was the case in Honduras, where the Sub-Committee on Accreditation downgraded the ranking of the Comisionado Nacional de los Derechos Humanos, finding that it had not acted independently following the coup.⁸⁸

A few countries do not have an independent institution at all. The countries that had not established a national independent human rights institution by mid-2013 are the Bahamas, Brazil, Cuba, Dominica, Saint Kitts and Nevis, and Saint Vincent and the Grenadines. Others, mainly island states in the Caribbean, have yet to establish an identifiable child rights office. In Suriname, a draft bill for the establishment of a separate children’s ombudsperson is under discussion.⁸⁹ Several countries have adopted laws providing for the establishment of either child-rights-focused or broad-based institutions but have not yet implemented them, such as Argentina and the Dominican Republic. These processes will require specific attention to ensure their compliance with the CRC Committee’s General Comment No. 2 and their overall child-friendliness.

Child rights offices that are integrated in broad-based institutions benefit from the usually strong mandate, local presence and overall positive political clout *defensorías* enjoy. In several countries, they have a specific mandate set by the children’s code or child protection legislation. Similarly, Jamaica’s Office of the Children’s Advocate has an extensive mandate.

Yet some child rights offices within broad-based institutions still lack an explicit legislative base. Legislative reform processes to adopt or revise comprehensive child rights laws can provide the opportunity to ground clearly identifiable child rights offices in law, as has already taken place in several countries in the region.⁹⁰ These processes should include specific provisions related to the role

⁸⁷ See: ‘Latin American Public Opinion Project’ [webpage]. Available at: <http://www.vanderbilt.edu/lapop/index.php>.

⁸⁸ Sub-Committee on Accreditation (2010). Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Geneva, 25–28 October 2010.

⁸⁹ Human Rights Council (2011). Universal Periodic Review: Highlights, 6 May 2011. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights6May2011pm.aspx>.

⁹⁰ For example, Costa Rica, Colombia, Ecuador, Guatemala.

of independent human rights institutions in the promotion and protection of children's rights.

These advances have to be supported by adequate funding from national budgets. While international cooperation can provide some support, the responsibility for implementing the CRC lies with the State party and implies proper allocation of resources. Allocating a low proportion of resources to child rights offices can be an expression of the limited support they enjoy internally. The implementation of innovative projects may be compromised by lack of sustainable resources, such as the early alert system for child rights violations developed in Colombia.

In many countries in the region, indigenous children and children who are part of minority populations suffer from widespread discrimination. Accessibility to independent human rights institutions for all children remains a challenge, particularly for these children. While many institutions have offices at the local level and undertake field visits to remote areas and places where children spend time, these efforts may still not allow institutions to reach all children. To date, very few institutions have translated their materials into indigenous languages, a step which would not only enable indigenous children to access relevant information but would also send them a message that the institution is for them too, in countries where mistrust of national institutions has historically been commonplace.

Child-friendliness rests not only on access but is also rooted in child participation. Despite the many initiatives in this regard that have been highlighted in this chapter, there needs to be more consistency in how participation is cultivated. It is expected that these efforts will expand and consolidate in the coming years. Exchange of expertise and good practices among institutions will certainly be helpful.

An important issue emerging from several CRC Committee Concluding Observations relates to coordination, either among bodies responsible for the promotion and protection of children's rights at the national level, or between national and local independent institutions. In some places, including Costa Rica, El Salvador and Honduras, the CRC Committee has stressed the lack of national-level coordination among authorities working on children's rights.⁹¹ It has also highlighted the challenges of ensuring visibility for children and of having multiple institutions with similar responsibilities. For example, with respect to Panama, the CRC Committee has noted:

⁹¹ Concluding Observations of the CRC Committee on Costa Rica, CRC/C/15/Add. 266, 21 September 2005, para. 10; Concluding Observations of the CRC Committee on El Salvador, CRC/C/15/Add. 232, 30 June 2004, para. 12; Concluding Observations of the CRC Committee on Colombia, CRC/C/HND/CO/3, 3 May 2007, para. 18.

...children can file individual complaints about a possible violation of their rights with the National Council for Children and Adolescent Rights or the Children's Delegate in the Ombudsperson's Office or the Ministry of Youth, Women, Children and Family Affairs. But the Committee is concerned at the lack of coordination between these bodies, the limited access of children and their families to this service and the effectiveness of these complaint procedures. In addition, the Committee is concerned about the lack of clarity concerning the monitoring role of each of these bodies.⁹²

One distinctive feature of the children's ombudsperson system in several countries in Latin America, in particular in the Andean sub-region, is the existence of community *defensorías* or defenders who make it possible to bring the promotion, protection and monitoring function of independent institutions closer to the people. More research on this specific type of institution would be valuable to assess their role and effectiveness, and the potential for replication in other settings – with relevant adjustments.

Networks of child rights offices currently undergoing a period of consolidation have the potential to become stronger voices for children's rights at regional level while concomitantly strengthening the child rights focus of national institutions. Towards that goal, focus on specific areas of common concern, such as violence against children, could enable child rights offices to demonstrate concretely the value of networking, both among themselves and within the regional system. As the Organization of American States is envisioning a closer collaboration with human rights institutions, child rights offices could take the opportunity to interact with this regional organization by contributing to relevant debates, getting further involved in the work of its human rights mechanisms, and enhancing children's access to these mechanisms.

More deeply engrained interaction with regional networks would also reinforce the independence of institutions, which can sometimes face difficult national circumstances. Membership would ensure representation of the whole region while allowing all institutions to benefit from the support and expertise provided by networks.

⁹² Concluding Observations of the CRC Committee on Panama, CRC/C/15/Add. 233, 30 June 2004, para. 13.

Middle East and North Africa



Origins of independent human rights institutions for children in the region

Contrary to other regions, in the Middle East and North Africa no country has a stand-alone independent child rights institution, and, as of early 2013, none of the existing broad-based institutions had a child-specific unit or department although a few are engaged in some child-specific work. However, discussions have taken place in Morocco, the Occupied Palestinian Territory, Israel and Tunisia about establishing child rights institutions.¹ The political changes across the region since 2011, including

¹ In Morocco, in 2011 the Conseil Consultatif des Droits de l'Homme hired a staff member to work on children's issues. In the Occupied Palestinian Territory, a process to establish a child rights office within the Palestinian Human Rights Commission was initiated in 2012. In Israel, discussions on a bill for a children's commissioner accelerated during 2012. In Tunisia, discussions took place in 2012 concerning the establishment of an independent monitoring mechanism for children's rights.

the potential for far-reaching legislative and institutional reform, may create the momentum for wider institutional development.

Countries in the region² established broad-based national human rights institutions in the 1990s and 2000s, with countries in the Maghreb leading the way.³ Out of the 19 countries covered in this chapter, 14 have such a mechanism.⁴ These institutions were typically set up by an executive act (presidential decree or royal order) in response to international pressures and criticisms and a desire to keep control of human rights issues and the civil society actors that voice them.⁵ The independence of these broad-based institutions has therefore been a major issue.⁶ As a consequence, only a handful of them⁷ enjoy an 'A status' (indicating full compliance with the Paris Principles) with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).⁸ Only institutions in Egypt, Jordan and Qatar have a legislative basis.⁹

Throughout the region, the executive branch usually plays a major role in the nomination, selection and appointment of an institution's members. Others actors can be involved in the selection process, including civil society organizations, political parties and trade unions. Parliamentarians rarely play a significant role.

2 This regional overview relates to the following countries in the Middle East and North Africa: Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Occupied Palestinian Territory, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen.

3 Cardenas, S. and A. Flibbert (2005). 'National Human Rights Institutions in the Middle East', *Middle East Journal*, 59 (3):414.

4 As of early 2013, national human rights institutions had been created in Algeria (Commission Nationale Consultative de Promotion et Protection des Droits de l'Homme), Bahrain (National Human Rights Institution), Djibouti (Commission Nationale des Droits de l'Homme), Egypt (National Council for Human Rights), Iran (Islamic Human Rights Commission), Jordan (National Centre for Human Rights), Morocco (Conseil Consultatif des Droits de l'Homme du Maroc), Oman (National Human Rights Commission), Occupied Palestinian Territory (Independent Commission for Human Rights), Qatar (National Human Rights Committee), Saudi Arabia (Human Rights Commission), South Sudan (Southern Sudan Human Rights Commission), the Sudan (National Human Rights Commission) and Tunisia (Comité Supérieur des Droits de l'Homme et des Libertés Fondamentales).

5 Cardenas and Flibbert (2005), op. cit., 435.

6 Ibid., 411–436.

7 Institutions in Egypt, Jordan, Morocco, the Occupied Palestinian Territory and Qatar.

8 In light of the changes happening in Egypt, the National Council for Human Rights is under special review. See Accreditation status as of May 2012, [http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NIs%20\(30%20May%202012\).pdf](http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NIs%20(30%20May%202012).pdf).

9 Law No. 94 of 2003 promulgating the National Council for Human Rights (Egypt); Interim Law No. 75 of 2002, endorsed by a Royal Decree and Permanent Law No. 51 of September 2006 (National Centre for Human Rights Law) (Jordan); Emiri Decree Law No. 38 of 2002, amended by Law No. 25 of 2006, Law No. 7 of 2008 and Law No. 17 of 2010 (Qatar). Discussions on new legislation are also under way in Tunisia.

Human rights institutions in the region often feature a mix of government representatives and personalities selected from civil society.¹⁰ The question of the voting status of governmental representatives has been raised in various countries of the region, and legal safeguards have been adopted in some places to ensure that these members only have a consultative or advisory role without any right to vote, in line with Paris Principles. However, in many countries in the region civil society faces constraints in defining a role and having influence. Civil society organizations often encounter external challenges in raising and spending funds (partly due to inadequate legal frameworks) and face internal constraints because of their limited capacities and the lack of coordination among themselves and with their constituencies.¹¹

Challenges in establishing truly independent human rights institutions are also reflected in the structure of existing child rights mechanisms in the Middle East and North Africa. Although there are significant differences in institutional structures, countries in the region have mainly established non-independent, government-headed councils on childhood as the primary national mechanism for dealing with children's rights. Such councils include the National Council for Childhood and Motherhood in Egypt and the Higher Council for Childhood in Lebanon. They often have the mandate to coordinate the development and implementation of national childhood policies, and in some instances receive individual complaints. They are generally placed under the ministry in charge of children's issues. Civil society organizations are in some instances involved in these coordinating structures. In Yemen, for example, the Higher Council of Motherhood and Childhood has a governing body comprised of 18 persons, half of them from civil society.

A review of child rights instruments issued by two influential international organizations in the region – the League of Arab States and the Organisation of the Islamic Conference – indicates that as of 2010 child rights mechanisms and bodies were primarily envisaged as governmental structures for coordinating

¹⁰ In Algeria, the Commission Nationale Consultative de promotion et Protection des Droits de l'Homme consists of 58 members of which 24 must be selected from national, professional and civil society organizations. See: Summary Application for Re-Accreditation of the National Advisory Commission for the Promotion and Protection of Human Right of Algeria to the International Coordinating Committee of National Human Rights Institutions, March 2010, 3. In Morocco, the members of the Conseil Consultatif des Droits de l'Homme must be selected from personalities reputed for their objectivity, moral rectitude, intellectual performance and genuine dedication to human rights and for their distinguished contribution to the consolidation of these rights. See Art. 3 of Royal Decree (Dahir) No. 1.00.350 issued on 10 April 2001 concerning the reorganization of the Advisory Council on Human Rights. The composition of the board of the Palestinian Independent Commission for Human Rights reflects the religious and geographic diversity of Palestinian society, and men and women, and persons with disabilities are represented. See: Palestine Independent Commission for Human Rights (2009). 'Application for Re-Accreditation of the Palestine Independent Commission for Human Rights', submitted March 2009, 3.

¹¹ Rishmawi, M. with T. Morris (2007). 'Overview of Civil Society in the Arab World'. *Praxis Paper*, No. 20, International NGO Training and Research Centre, 34.

the implementation of the Convention on the Rights of the Child (CRC).¹² There is no reference to the role of national human rights institutions or the need for independent monitoring bodies for children's rights. Institutions with a strong child rights focus are mainly governmental mechanisms with a combination of implementing, coordinating and monitoring functions.

As a result, decrees and laws establishing national human rights institutions do not specifically refer to children's rights. Available information shows that only a few of them deal with children's rights as part of their day-to-day activities. Those that do pay significant attention to children's rights include the National Centre for Human Rights in Jordan, the Palestinian Independent Commission for Human Rights and the Conseil Consultatif des Droits de l'Homme (the Human Rights Advisory Council) in Morocco.

The Committee on the Rights of the Child (CRC Committee) has praised the competence of Jordan's National Centre for Human Rights (NCHR) in "promoting and monitoring the implementation of the rights of the child and receiving individual complaints from children".¹³ It has also welcomed "human resources dedicated to focus on the rights of the child within the NCHR". The Conseil Consultatif, the Moroccan human rights institution created in 1990, has also been active in the area of children's rights. While the first decade of its existence was focused on addressing and investigating past systematic human rights violations, since 2001 it has increasingly concentrated on current human rights issues, including children's rights. In late 2009, the Conseil in Morocco began a process to establish an independent mechanism to respond to child rights violations and hired a staff member specializing in this area in 2010.

The new focus on children's issues on the part of institutions in Jordan, Morocco and the Occupied Palestinian Territory may constitute an entry point for setting up an integrated office on children's rights. Considering the lack of both an explicit mandate to address children's rights and a specific institutional arrangement to do so, the sustainability of their current work on children's rights relies on the political will of the head of the institution, human capacities and available resources.

¹² In 2004, the third high-level Arab Conference on the Rights of the Child adopted the Arab Action Plan on Childhood (2004–2014), which reiterates the objective to create necessary mechanisms for child rights and develop the existing ones. At the First Islamic Ministerial Conference on the Child in Rabat, Morocco, in 2005, Organisation of the Islamic Conference Member States reaffirmed their commitment to the rights of every child and recognized the need to invest in relevant policies, laws and institutions. Subsequently, the Fourth High-level Arab Conference on the Rights of the Child, Marrakech, 19–21 December 2010, adopted the Marrakech Declaration which promotes the establishment of ombudspersons for children. Countries located in Africa may also be part of the African Union and parties to its human rights instruments. For further information about networking in Africa, see: Chapter 15: Sub-Saharan Africa.

¹³ Concluding Observations of the CRC Committee on Jordan, CRC/C/JOR/CO/3, 29 September 2006, para. 19.

Activities of independent human rights institutions in the region in relation to children's rights

Legislation and policy

Based on their monitoring of children's rights, several institutions in the region have called for specific changes in legislation and policy. In 2008, for example, the Palestinian Independent Commission on Human Rights pointed to the lack of attention in the Public Health Law to the special needs of women throughout their life cycle, including the "physical, sexual, and psychological health of women during adolescence".¹⁴ The National Human Rights Committee in Qatar examined a law on human trafficking adopted in 2011 in order to advise on implementation measures needed to ensure its effectiveness.¹⁵

Complaints and investigations

A number of governmental bodies in the region can receive individual complaints about child rights violations. These include the National Council for Childhood and Motherhood in Egypt, the Higher Council for Childhood in Lebanon, and the Higher Committee for Children in Libya.¹⁶

Two independent human rights institutions (those not placed under government authority) have released information on complaints received that relate to child rights violations. The 2008 annual report of the National Centre for Human Rights in Jordan provides extensive details in this respect.¹⁷ Although the numbers are too small to draw elaborate conclusions – in 2008, out of a total of 244 complaints received, 29 were related to child rights – their very mention suggests that the institution pays attention to the issue of child rights and will continue to monitor trends as more cases are filed. Importantly, the Jordanian institution also reports on violations tracked by the network of civil society organizations it supports. More than 1,200 cases of child rights violations registered via this network in 2008 are clustered into seven groups, with many related to violations of the right to education and the right to protection.¹⁸ Cases were analysed and led to a number of conclusions, in particular on shortcomings in existing child protection policy and practice.

¹⁴ Independent Commission for Human Rights [2008]. *The Status of Human Rights in the Palestinian-controlled Territory: Fourteenth annual report 1 January – 31 December 2008*, Ramallah: ICHR, 118.

¹⁵ National Human Rights Committee [2011]. *Annual Report of the National Human Rights Committee on Human Rights in the State of Qatar in 2011*, NHRC, 13–21.

¹⁶ Concluding Observations of the CRC Committee on Egypt, CRC/C/15/Add. 145, 21 February 2001, para. 17; Concluding Observations of the CRC Committee on Lebanon, CRC/C/15/Add. 169, 21 March 2002, para. 15; and Concluding Observations of the CRC Committee on Libya, CRC/C/15/Add. 209, 4 July 2003, para. 13.

¹⁷ National Centre for Human Rights (2009). *5th Annual Report: State of human rights in the Hashemite Kingdom of Jordan (2008)*, Amman: NCHR, para. 199.

¹⁸ *Ibid.*, para. 199.

Similarly, the Palestinian Independent Commission for Human Rights has published details of individual complaints, including those related to child rights violations. Complaints related to child rights violations totalled 16 in 2006 and 58 in 2007,¹⁹ an increase of comparable magnitude to that found in other areas of human rights work covered by the Commission's mandate. According to the Commission, the increase in the number of complaints received can be attributed to the difficult political situation, the geographic expansion of the activities of the Commission, and increased trust from the public. A reading of these figures must also take into account the existence of other complaint mechanisms related to children's rights violations. A 2006 study found that two thirds of child protection cases were addressed to the Ministry of Social Affairs, and just under a tenth to the Ministry of Education²⁰ – suggesting that relatively few cases actually reach the Commission.

Some traditional ombudspersons also report receiving child-rights-related complaints. For example, as part of its general mandate, the traditional ombudsman office (Diwan-al-Mazhalim) in Morocco has handled some complaints related to the right to education or to documentation such as birth certificates, but acknowledges that it receives very few complaints on children's rights.²¹ Likewise, the Mevaker (state ombudsman) in Israel has received complaints related to the integration of Bedouin children entitled to special education as well as complaints about the Ministry of the Interior's handling of requests for family unification for Bedouins.²² In 2004, the Mevaker reported 127 complaints related to education in schools and kindergartens and 28 concerning the reunification of families among minority groups.²³

These limited data, while perhaps reflecting an overall lack of data about human rights-related complaints, nevertheless suggest that the number of complaints related to children's rights in the region is low. More importantly, while institutions appear to be making efforts to solve cases, there is little evidence that they make broader policy recommendations based on knowledge of complaints on children's rights. Information on the type of complainant, in particular whether children are directly contacting the institution, is typically not available.

¹⁹ Independent Commission for Human Rights [2007]. *The Status of Human Rights in the Palestinian-controlled Territory: Thirteenth annual report, 1 January – 31 December 2007*, Ramallah: ICHR, 293. The total number of complaints received is unclear because of possible overlaps of one complaint in various categories. Data are not available in subsequent reports of the Commission.

²⁰ Institute of Community and Public Health/National Plan of Action Secretariat (2006). *Child Protection in the Occupied Palestinian Territory: Structures, policies and services*. Available at: <http://icph.birzeit.edu/uploads/File/monographs/2006%20Child%20protection%20report.pdf>.

²¹ Information provided by representatives of Diwan-al-Mazhalim, December 2009.

²² Office of the State Comptroller and Ombudsman (2007). *The Ombudsman Annual Report*, No. 34, 9. Available at: <http://www.mevaker.gov.il/serve/site/english/enataz34.asp>.

²³ Office of the State Comptroller and Ombudsman (2004). *The Ombudsman Annual Report*, No. 31, 105. Available at <http://www.mevaker.gov.il/serve/site/english/enataz31.asp>. The total number of complaints is not available as one complaint can be clustered into several categories. No data are included in subsequent reports.

Various national human rights institutions in the region have a mandate to visit prisons and detention facilities. For example, since 2006, the national institution in Tunisia has had the right to visit prisons, detention centres and accommodation or observation centres for children.²⁴ In Jordan, the National Centre for Human Rights is entitled to “visit reform and rehabilitation centers, detention centers and juvenile care homes”.²⁵ In practice, the National Centre has also carried out a number of visits to child-care institutions²⁶ and has made recommendations regarding the treatment of children in detention centres, highlighting the specific vulnerability of girls.²⁷ In its periodical reports on the juvenile system, the National Centre monitors legislation and practice in light of international standards, especially the CRC and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’). In 2007, it recommended the establishment of a specialized judiciary that handles legal procedures to ensure the court system provides a fair trial for juveniles, as well as training on children’s rights for people dealing with children in conflict with the law.²⁸

Visiting detention centres is also a major activity of the Palestinian Independent Commission for Human Rights. However, against a general backdrop of challenges to carrying out its mandate, the Commission has denounced difficulties accessing detention facilities (including through unannounced visits), reporting that such visits were subject to observation and restrictions. It has expressed the concern that these difficulties affect its monitoring role.²⁹

Research and reporting

The National Centre for Human Rights in Jordan devotes part of its annual report to children’s rights. It analyses existing and proposed legislation and makes recommendations for improvement, monitors the implementation of the CRC, identifies priority issues based on reviews of individual complaints, and works with civil society to enhance the visibility and accessibility of the complaint mechanism and raise awareness of the CRC.³⁰ The CRC Committee has indicated one important impediment to the effectiveness of the National Centre for Human Rights, related to limitations in its mandate in matters concerning the police and

²⁴ Third Periodic Report of the States parties due in 2004, Tunisia, CRC/C/TUN/3, 10 November 2008, para. 37.

²⁵ Art. 10 (A) of Permanent Law No. 51 (National Centre for Human Rights Law) of September 2006 (Jordan).

²⁶ National Centre for Human Rights [2006]. *Status Report of Human Rights in the Hashemite Kingdom of Jordan: 2006*, Amman: NCHR, 81.

²⁷ *Ibid.*, 82–85.

²⁸ National Centre for Human Rights, Jordan [2007]. *The Fourth Periodical Report Concerning Juvenile Justice in the Kingdom for the Year 2007*, Amman: NCHR, 22–23.

²⁹ Independent Commission for Human Rights [2007]. *Annual Report 2007*, Ramallah: ICHR, 259.

See also: Independent Commission for Human Rights [2010]. *The Status of Human Rights in the Palestinian-controlled Territory: Sixteenth annual report 1 January – 31 December 2010*, Ramallah: ICHR, 32.

³⁰ National Centre for Human Rights (2009), *op. cit.*, paras. 196–201.

the military. In 2006, the CRC Committee recommended that the monitoring mandate of the institution be expanded.³¹

In its annual report, the Palestinian Independent Commission for Human Rights consistently reviews the effect of the region's humanitarian situation on children. It provides information on the number of children affected by the occupation by reporting on killings and illegal detentions and on the effects of restrictions on the enjoyment of children's right to health and education. It also analyses the number of child victims of internal violence, in particular victims of extra-judicial killings, inter-family fights and security forces operations.³²

The Palestinian Commission also monitors the situation of juveniles deprived of liberty as well as those in care homes. For example, in 2007 it recommended the separation of children from adults in detention centres and specific attention to children's needs.³³ However, the institution's reports do not tackle issues using a holistic child rights approach, particularly in matters of accessibility and participation.

In 2005, the Moroccan human rights institution conducted a thorough analysis of the situation of girls employed as domestic workers, providing an in-depth review of the problem, underlying issues, applicable standards, and recommendations for action to address it.³⁴ It also reviews legislative reform from a child rights perspective and in its annual reports provides detailed assessment of violence against children and child protection issues in general, issuing recommendations to address shortcomings in the system.³⁵ Although more limited in scope, annual reports of the National Human Rights Committee in Qatar often contain a special section on children's rights.³⁶

Education, promoting rights and raising awareness

Several human rights institutions in the region are explicitly mandated to disseminate the culture of human rights and, in some cases, promote human rights education. However, available data provide very few examples of activities or initiatives aimed at promoting, and raising awareness of, children's rights. The lack of resources and capacity within institutions may explain this. In one of the few examples of a focus on children, the National Centre for Human Rights

³¹ Concluding Observations of the CRC Committee on Jordan, CRC/C/JOR/CO/3, 29 September 2006, para. 20.

³² Independent Commission for Human Rights [2008], op. cit.

³³ Independent Commission for Human Rights [2007], op. cit., 39.

³⁴ Conseil Consultatif des Droits de l'Homme [2006]. *Rapport Annuel sur la Situation des Droits de l'Homme au Maroc: Années 2005 et 2006*, Rabat: CCDH, 55–70.

³⁵ Conseil Consultatif des Droits de l'Homme (2004). *Rapport Annuel sur la Situation des Droits de l'Homme au Maroc*, Rabat: CCDH; and Conseil Consultatif des Droits de l'Homme (2003). *Rapport Annuel sur la Situation des Droits de l'Homme au Maroc*, Rabat: CCDH.

³⁶ For example, the National Human Rights Committee in Qatar has urged the adoption of child rights legislation and made recommendations for strengthening service delivery to children. See: National Human Rights Committee [2008]. *NHRC's Sixth Annual Report on Human Rights: 2008*, NHRC; and National Human Rights Committee [2007]. *NHRC's Fifth Annual Report on Human Rights in Qatar: 2007*, NHRC.

in Jordan implemented the project Young Voices: Big Thoughts to make children aware of their rights.³⁷

Partnerships with national and international actors concerned with children's rights could be instrumental in furthering this type of activity in the region. In Morocco, the Conseil Consultatif des Droits de l'Homme signed a convention of partnership and cooperation with the country's Ministry of National and Higher Education, Staff Training and Scientific Research to promote a human rights culture throughout the educational system. The Citizenship Platform for Promoting Human Rights Culture was officially announced in 2007.³⁸ A two-year partnership agreement between the Moroccan Conseil Consultatif and UNICEF, signed in December 2009, also makes provision for the promotion of a culture of children's rights.

Child participation

There is no evidence that institutions in the region implement a consistent child rights approach that takes into account not only children's issues but also child-sensitive processes and the promotion of children's voices. As consistently noted by the CRC Committee, respect for the views of the child and child participation remain a challenge in the region, which underlines the need for changes in attitudes and values in families and society at large.³⁹ As institutions pay increasing attention to children's rights, they may expand their ability to develop creative approaches in this area and promote child participation in broader society.

Networking

The Middle East and North Africa region has no network of human rights institutions of its own, but institutions from Middle Eastern countries can be members of the Asia Pacific Forum⁴⁰ (see Chapter 16: Asia and the Pacific), and institutions in African countries can belong to the Network of African National Human Rights Institutions (see Chapter 15: Sub-Saharan Africa).⁴¹ However, these two networks pay only limited attention to children's rights. Institutions may also qualify for membership of various networks organized along linguistic

³⁷ National Centre for Human Rights [2005]. *Status Report of Human Rights in the Hashemite Kingdom of Jordan (2005)*, Amman: NCHR, 54. See also: Concluding Observations of the CRC Committee on Jordan, CRC/C/JOR/CO/3, 29 September 2006, para. 40.

³⁸ Conseil Consultatif des Droits de l'Homme (2007). *Annual Report on the Status of Human Rights and the Achievements and Future Work of the Council*, Rabat: CCDH, 18–28.

³⁹ International Bureau for Children's Rights (2007). *Making Children's Rights Work in North Africa: Country profiles on Algeria, Egypt, Libya, Morocco and Tunisia*, IBCR, 179.

⁴⁰ Members include Status 'A' institutions in Jordan, Occupied Palestinian Territory and Qatar.

⁴¹ Members include Status 'A' institutions in Egypt and Morocco.

lines, for example, the Arabic Network of Human Rights Institutions, which links those of Arabic-speaking countries. French-speaking networks include the Association Francophone des Commissions Nationales de Promotion et de Protection des Droits de l'Homme (the Francophone Association of National Commissions for the Promotion and Protection of Human Rights) and the Association des Ombudsmen et Médiateurs Francophones (the Association of Francophone Ombudsmen and Mediators) (see Chapter 15: Sub-Saharan Africa).

Looking forward: Challenges and opportunities

The emergence of broad-based independent human rights institutions in the Middle East and North Africa is an ongoing phenomenon, and significant developments may be more possible in the wake of the political changes under way in several countries. As of early 2013, existing institutions faced many external and internal challenges and only a few had achieved compliance with the Paris Principles. Lack of independence, close ties with the executive branch, and the process of appointment are often subjects of concern and have a significant impact on perception and trust.

Available information suggests that national human rights institutions in the region devote few resources to monitoring and promoting children's rights. Given the relatively low number of human rights institutions in the region, and the limited attention given to children's rights within existing ones, challenges highlighted by the CRC Committee often relate to the need to establish new institutions, ensure compliance with the Paris Principles and develop child-sensitive monitoring structures.

In its concluding observations on the countries in the region, the CRC Committee acknowledges and often welcomes the existence of broad-based national human rights institutions, while reiterating their need to comply fully with the Paris Principles.⁴² The CRC Committee has often recommended that State parties explicitly include monitoring of the CRC and the investigation of complaints in the mandate of the existing institutions.⁴³

In the Middle East and North Africa, as in other regions, lack of resources is a significant concern. In addition to a general lack of funding, the management and control of funds that are allocated influences the degree of independence

⁴² Concluding Observations of the CRC Committee on Algeria, CRC/C/15/Add.269, 30 September 2005, para. 16; Concluding Observations of the CRC Committee on Jordan, CRC/C/JOR/CO/3, 29 September 2006, para. 20; Concluding Observations of the CRC Committee on Oman, CRC/C/OPSC/OMN/CO/1, 24 June 2009, para. 19.

⁴³ Concluding Observations of the CRC Committee on Jordan, CRC/C/JOR/CO/3, 29 September 2006, para. 20; Concluding Observations of the CRC Committee on Oman, CRC/C/OPSC/OMN/CO/1, 24 June 2009, para. 19; Concluding Observations of the CRC Committee on Sudan, CRC/C/SDN/CO/3-4, 1 October 2010, para. 16; and Concluding Observations of the CRC Committee on Tunisia, CRC/C/OPAC/TUN/CO/1, 6 February 2009, para. 10 and CRC/C/ TUN/CO/3, 16 June 2010, para. 13.

an institution enjoys in practice. Financial independence or autonomy has been legally guaranteed for some institutions in the region. According to the 2001 Royal Decree, the Moroccan Advisory Council “shall enjoy administrative and financial independence in the management of its administration and budget. To this end, a special budget shall be allocated to the Council to cover operation and fitting expenses. Funds allotted to the Council shall be recorded on the budget of the Royal Palace.”⁴⁴ The law establishing the Egyptian National Council for Human Rights states that the general budget of the state will allocate funds to the Council.⁴⁵

The funding of the Palestine Independent Commission for Human Rights is a particular case in the region and does not reflect common practice. The Commission’s budget is almost exclusively funded by outside sources, including foreign governments, foundations and intergovernmental organizations,⁴⁶ primarily as a result of the internal political context. In 2008, the Commission received only 5 per cent of its budget from the Palestinian Authority.⁴⁷

In several cases the CRC Committee has pointed to a lack of clarity regarding the jurisdiction and functions of several national institutions, leading to possible overlap and a lack of coordination. For example, in 2002 the CRC Committee took note of the multiple channels available for children in Israel to make complaints but expressed concern that responses are not sufficiently coordinated.⁴⁸ In 2003, commenting on the situation in Libya, the CRC Committee noted that two bodies were charged with “monitoring and investigating violations of children’s rights and ensuring respect for human rights in public and private life”⁴⁹ and recommended there should be a clarification of these institutions’ respective roles.⁵⁰

A joint report by UNICEF and the League of Arab States in 2004 concluded: “While it is laudable that Arab countries have established national bodies to promote children’s rights, their independence is not guaranteed, thus reducing their capacity to address difficult issues and respond to complaints from rights-holders.”⁵¹ This report draws attention to the need to ensure independent

44 Art. 14 of Royal Decree (Dahir) No. 1.00.350 issued on 10 April 2001 on the reorganization of the Advisory Council on Human Rights.

45 Art. 12 of Law No. 94 of 2003 promulgating the National Council for Human Rights.

46 Cardenas and Flibbert (2005), *op. cit.*, 423.

47 Information provided by the Independent Commission for Human Rights, Palestinian Occupied Territory. Information for subsequent years is not available.

48 Concluding Observations of the CRC Committee on Jordan on Israel, CRC/C/15/Add. 195, 4 October 2002, para. 16.

49 Concluding Observations of the CRC Committee on Libyan Arab Jamahiriya, CRC/C/15/Add. 209, 4 July 2003, para. 13.

50 *Ibid.*, para. 14.

51 United Nations Children’s Fund/League of Arab States (2003). *Children in the Arab World: Understanding the present, shaping the future*, 103. Available at: http://www.unicef.org.tn/medias/hlm/arab_child.pdf.

monitoring for children’s rights and to create complaint bodies that are child-appropriate, in order to move towards “a culture of rights”.⁵²

Political transformation in the region may provide opportunities for strengthening human rights institutions and may offer entry points for independent child rights monitoring, as part of existing institutions or through separate bodies. Because there is a lack of models for independent human rights institutions for children in the region that could potentially serve to inspire the establishment of additional institutions, exchanging experiences with institutions in other regions is crucial.

⁵² Ibid., 103–104.

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Australia, Canada, New Zealand and the United States of America



Origins of independent human rights institutions for children in the four countries

Independent human rights institutions for children in Australia, Canada, New Zealand and the United States of America have emerged from historical contexts that shaped their work in similar ways. Institutions in these countries are therefore examined in the present review as a specific group.

In Australia, Canada and New Zealand, child-focused institutions coexist with national human rights institutions that have a broad human rights mandate and activities that largely focus on discrimination. In the federal states of Australia, Canada and the United States, institutions were set up at the sub-national level; Australia was later equipped with a national office.

As states that emerged from English colonial rule, the legal tradition of these countries is rooted in common law and they have relatively long-standing histories of democratic governance. All four countries also share a history of policies involving the systematic removal of indigenous children from their

communities and their placement under state care.¹ While many of these policies have formally ended, children belonging to indigenous and other marginalized communities continue to be overrepresented in alternative and institutional care settings, which many of the child rights institutions were set up to monitor.²

Often called ‘children’s commissioners’, ‘child guardians’ or ‘child advocates’, independent human rights institutions for children in this grouping have mandates that focus predominantly on child protection, often with a specific duty to monitor the child welfare system. On many occasions in these countries, reports of maltreatment, abuse and death of children in the care of child welfare agencies have provoked public outrage at their failure to protect children adequately. These cases often prompted comprehensive system reviews that ultimately recommended the establishment of independent child rights institutions to monitor the child protection system and ensure that such tragedies did not recur.

For example, the independent human rights institution for children established in the Canadian province of British Columbia followed a comprehensive review of the child protection system, which highlighted a number of systematic failures that had allowed child abuse and endangerment to go undetected, and called for the creation of an independent monitoring body to ensure greater accountability within child protection agencies and institutions.³ Similarly, the creation of the New Brunswick Child and Youth Advocate in Canada was a direct result of recommendations made by coroners and death review committees, along with the advocacy of various individuals and groups.⁴ In Australia, the establishment of the Northern Territory Children’s Commissioner in 2007 was part of major reforms of the child protection system, aimed at ensuring the care and protection of children, particularly those at risk of harm and exploitation.⁵ Many independent child rights institutions at the state level in the United States also emerged in response to cases of child abuse, neglect and the death of children at the hands of adults and state agencies charged with their care.⁶

¹ Blackstock, C. and N. Trocmé (2005). ‘Community-Based Child Welfare for Aboriginal Children: Supporting resilience through structural change’, *Social Policy Journal of New Zealand*, Issue 24 (March):12–33; Libesman, T. (2004). ‘Child Welfare Approaches to Indigenous Communities: International perspectives’, *Child Abuse Prevention Issues*, 20 (Autumn):1–39.

² Trocmé, N., D. Knoke and C. Blackstock (2004). ‘Pathways to the Overrepresentation of Aboriginal Children in Canada’s Child Welfare System’, *Social Service Review*, December:577–600; Concluding Observations of the Committee on Economic, Social and Cultural Rights on Canada, E/C.12/CAN/CO/4 and E/C.12/CAN/CO/5, 22 May 2006, para. 24; Concluding Observations of the CRC Committee on Australia, CRC/C/15/Add. 268, 20 October 2005, para. 37.

³ Hughes, T. (2006). *BC Children and Youth Review: An independent review of BC’s child protection system*. Available at: http://www.mcf.gov.bc.ca/bcchildprotection/pdf/BC_Children_and_Youth_Review_Report_FINAL_April_4.pdf.

⁴ Office of the Ombudsman (2004). *Annual Report 2003/2004*, Fredericton, New Brunswick: Office of the Ombudsman, 12.

⁵ The Children’s Commissioner [2009]. *Annual Report 2008/2009*, Darwin, Northern Territory: The Children’s Commissioner, 14.

⁶ See for example, Office of the Child Advocate for the Protection of Children [2001]. *Annual Report 2001*, Macon, Georgia: Office of the Child Advocate for the Protection of Children, 1–2; Office of the Child Advocate [2009]. *Annual Report July 1, 2008 – June 30, 2009*, Connecticut: OCA, 1; Office of the Family and Children’s Ombudsman (2009). *2007 & 2008 Annual Report*, Washington State: OFCO, 6.

The establishment of New Zealand's Office of Children's Commissioner illustrates the rationale for setting up monitoring institutions that are independent. The Children and Young Persons Act of 1974 embodied a very technical and 'cautionary' approach to child protection, leading professionals to remove children in difficult circumstances from their families quickly and place them in long-term foster care 'in their best interests'. Lack of cultural understanding and prejudices meant that Maori and Polynesian children were disproportionately affected in this respect.

Amid growing concerns about this policy, the law was revised in 1989 to refocus on the role of families (referred to as the 'all-family' approach) and to strictly limit social workers' interventions. However, this new stance was deemed by many to be inadequate for protecting children at risk. As a result, and within the broader context of the development of children's rights nationally and internationally, the establishment of an Office of the Children's Commissioner was added to the law as a last-minute compromise to strike a balance between the all-family approach as written and the concerns it raised among professionals. Separate legislation was subsequently adopted in 2003 to reinforce the mandate of the office and give it a stronger child rights approach.⁷

Because of the strong initial emphasis on children in state care, custody and other institutional settings, the work of independent human rights institutions for children in the countries in this group often has a focus on particular groups of children who are overrepresented within these systems. In all four countries, Aboriginal children and other marginalized groups face greater challenges to the fulfilment of their rights, a concern noted by the Committee on the Rights of the Child (CRC Committee) and other international human rights treaty bodies.⁸ This concern has significantly marked institutional mandates and activities. As a result, the work of many child rights institutions in this grouping has a strong focus on improving the status of indigenous children and other marginalized groups. However, independent human rights institutions for children are increasingly carrying out activities under a broader child rights framework, seeking to protect and promote children's rights both inside and beyond the child welfare system.

⁷ Barrington, J. (2004). *A Voice for Children: The Office of the Commissioner for Children in New Zealand 1984–2003*, Dunmore Press.

⁸ Concluding Observations of the CRC Committee on Australia, CRC/C/15/Add. 268, 20 October 2005; Concluding Observations of the CRC Committee on Canada, CRC/C/15/Add. 215, 27 October 2003; Concluding Observations of the CRC Committee on New Zealand, CRC/C/15/Add. 216, 27 October 2003; Concluding Observations of the CERD Committee on the United States of America, CERD/C/USA/CO/6, 8 May 2008.

The main characteristics of independent human rights institutions for children in the four countries

Legal basis

The overwhelming majority of independent human rights institutions for children in Australia, Canada, New Zealand and the United States are legislatively mandated. They are also typically established at the sub-national level, with the exception of the Office of the Children’s Commissioner in New Zealand, which has jurisdiction over the country as a whole, and the National Children’s Commissioner in Australia, which since 2012 has coexisted with sub-national autonomous children’s commissioners and guardians.

The legislative mandates of these independent child rights institutions reflect the circumstances of their creation as part of the reform of the child protection system. The broader child protection system was the main subject of the founding legislation for a number of institutions in this group, which were typically created in law as the regulatory body for the child protection system.⁹ More than half of the institutions in Australia, as well as those in the Canadian provinces of Alberta and Manitoba, were created under a child protection act. The Quebec Commission was established through a general human rights act, but has special responsibility in the implementation of the *Loi sur la Protection de la Jeunesse*.¹⁰ Likewise, the Office of the Children’s Commissioner in New Zealand was first established by a child protection and welfare law.¹¹ Although it now acts under separate legislation that has broadened its mandate to encompass the full range of rights under the Convention on the Rights of the Child (CRC), the office has retained specific competencies in relation to the child protection system.¹²

Very few of the founding laws of institutions in this group make explicit reference to the Convention, despite their establishment after its ratification. In Canada, only the Ontario and Yukon offices work under an act specifically mentioning the CRC.¹³ In Australia, the Western Australia Commissioner for Children and Young People Act of 2006 explicitly requires that due regard be paid to the CRC, and the legislation providing for the national commissioner adopted in 2012 also makes specific reference to the Convention.¹⁴ However, the 2003 Children’s Commissioner Act in

⁹ As is the case, for example, in Alberta (Australia) and Manitoba (Canada).

¹⁰ Art. 23 (and following), *Loi sur la protection de la jeunesse* 1979 (Quebec, Canada).

¹¹ Part 9 of the Children, Young Persons and their Families Act 1989, adopted 27 May 1989 (New Zealand).

¹² Art. 13 of the Children’s Commissioner Act, No. 121 of 25 November 2003 (New Zealand).

¹³ Section 2 (3) of the Provincial Advocate for Children and Youth Act, 2007 (Ontario, Canada); Section 17 of the Child and Youth Advocate Act, 2009 (Yukon, Canada); and, when established, the Preamble to the Representative for Children and Youth Act, Bill 40 (Nunavut, Canada). See also: MacLean, R. and R. B. Howe (2009). *Brief Report on Canadian Provincial Children and Youth Advocacy Offices: Highlights of functions and recent activities*, Children’s Rights Centre, Cape Breton University, 3.

¹⁴ Section 46MB of the Australian Human Rights Commission Amendment (National Children’s Commissioner Act), 2012.

New Zealand uses the CRC as its main basis, an important evolution compared with the 1989 legislation.¹⁵ Nevertheless, despite limited mention, the influence of CRC principles is clear in the legislative mandates of several of the institutions in this group. In many cases, the mandate features the 'best interests' principle, as well as the role of children's advocates in promoting children's views. In the United States, the legislation of offices in Connecticut, Michigan and (until recently) New Jersey expressly refers to the 'best interests' principle.¹⁶

Aside from the United States, which is a party to two of the three CRC Optional Protocols but not to the Convention itself, limited mention of the CRC can be attributed to a number of factors. Because children's advocates were typically created as protection mechanisms, their mandates often reflect the assistance perspective of a welfare approach, rather than a more rights-based approach. They also focus on a specific group, vulnerable children or children under the care of child welfare agencies and institutions. Finally, in federal states, foreign policy and the ratification of treaties fall under the scope of federal government. As a consequence, at the state or provincial level, actors may not make an immediate link between their policies and the obligation to implement international treaties.

Institutional structure

The administration of the child welfare system in Australia, Canada and the United States falls within the jurisdiction of provinces, states and territories; thus independent human rights institutions for children were established at these levels. Their level of independence varies significantly, and some are attached to government services.

Canada has 10 child advocate offices working at the provincial or territory level.¹⁷ All offices are independent from the government except for the Alberta Child and Youth Advocate, which is part of the Ministry of Children and Youth Services. In the United States, about 29 states currently have either an ombudsman or an office of the child advocate with a child-specific mandate; other states are in the process of establishing such offices.¹⁸ Some are independent and autonomous,¹⁹ while others are incorporated into state agencies or ministries. Child rights

¹⁵ Children's Commissioner Act, No. 121 of 25 November 2003 (New Zealand).

¹⁶ Section 46a-13/l (4) of Chapter 813a, Part II Office of the Child Advocate (Connecticut, United States of America); Section 5a of the Children's Ombudsman Act, Act 204 of 1994 (Michigan, United States of America); C.52:27EE-73 (a) of Chapter 155, P.L. 2005, approved 12 July 2005 (New Jersey, United States of America).

¹⁷ As of end 2010. In 2009, the Government of the Yukon Territory gave its assent to the Child and Youth Advocate Act, taking the establishment of a children's commissioner one step closer to reality. See: http://www.legassemblies.gov.yk.ca/progressofbills_2009spring.html.

¹⁸ First Periodic Report of States parties due in 2010 on the Implementation of the Optional Protocol on the sale of children, child prostitution and child pornography, United States of America. para. 99. Available at: <http://www.state.gov/documents/organization/136023.pdf>.

¹⁹ Offices in Connecticut, Delaware, Georgia, Massachusetts, Michigan, Missouri, New Jersey, Rhode Island, Tennessee and Washington.

institutions, all of which are independent, have been established in each of Australia's states and territories and subsequently at the federal level.²⁰ New Zealand's Office of the Children's Commissioner has a national jurisdiction, reflecting the country's centralized political system.

Because offices often started out with the specific aim of monitoring the child protection system, they were established largely as stand-alone institutions with a child-specific mandate. In Australia, all offices are stand-alone, except the Australian Capital Territory (ACT) Children and Young People Commissioner, which is part of the Human Rights Commission and the National Children's Commissioner (itself integrated into the Australian Human Rights Commission). In Canada, out of ten offices, two are integrated into broad-based human rights bodies or ombudsman offices with various legal arrangements. The Youth and Senior Services in the Office of the Ombudsman in Nova Scotia does not have specific legislation, while the Quebec Commission des Droits de la Personne et des Droits de la Jeunesse has an explicit child rights mandate provided by a general human rights charter.²¹

Appointment process

Children's commissioners in the countries reviewed here are appointed by three main authorities: parliament, the governor or the government. In Canada, heads of offices in nine provinces and one territory are appointed by the legislative branch. In Australia, many children's advocates are appointed by the Governor, representing the Crown and are therefore independent of the government of the day. In other cases, as in the Australian Capital Territory, the Commissioner is appointed by the executive²² and in Victoria by the Minister for Children.²³ In Australia, the role of parliament in the appointment process appears limited. In New Zealand, the appointment of the Children's Commissioner is made by the Governor following a consultation process involving parliament and the minister of social affairs.

With establishment of many of these offices rooted in concerns for exclusion and discrimination towards indigenous children, the need to appoint office staff from indigenous communities is recognized in some places. Given the high number of Aboriginal children in the state care system in British Columbia (Canada), a report that reviewed the functioning of the youth care system

20 Commission for Children and Young People (2010). 'Roles of Australian Commissioners for Children and Child Guardians'. Available at: <http://www.kids.nsw.gov.au/About-us/Commissioner/Australian-commissioners-and-guardians>.

21 Arts. 57 and 73, Charter of Human Rights and Freedoms, 1 December 2009 (Quebec, Canada).

22 Art. 19A of the Human Rights Commission Act 2005 (Australian Capital Territory, Australia).

23 See: <http://www.ocsc.vic.gov.au/about.htm#establishing>.

(the 'Hughes' review) recommended the appointment of a senior official and several staff from Aboriginal communities.²⁴

Budget and resources

Even though some institutions in this group detail their expenditures, the source of their funding is typically not verifiable in legislation or in the office's annual reports and websites. Some offices provided information on the origin of their resources as part of the survey conducted for this review. These survey data suggest that a number of offices draw their resources directly from the executive branch. For example, the Office of the Children's Commissioner in New Zealand receives all its funding from the government.

In South Australia and Victoria (Australia), office revenues come from the Department of Families and Communities and the Department of Human Services, respectively.²⁵ In Tasmania (Australia), funds come directly from the government,²⁶ but in Western Australia the office is funded primarily by parliamentary appropriation.²⁷

In Canada, most offices are funded by the parliament through the public budget, in particular, those with more recently adopted legislative mandates.²⁸ In Alberta (Canada), while the initial founding legislation – the Youth and Family Enhancement Act²⁹ – provided for the funds of the Office of the Child and Youth Advocate the 2011 law specifies that the Legislative Assembly allocates funds³⁰ – a move which will lead to a significant strengthening of the independence of the office.

Several institutions report that they lack sufficient funding. In Australia, the office of New South Wales Children's Guardian has stated that it could have a greater impact on children if it received more funding. The offices in the Australian Capital Territory and Tasmania face similar problems. In Canada, offices in New Brunswick, Ontario and Saskatchewan report that they suffer from a lack of funding. The CRC Committee itself has pointed to the insufficient resources made

²⁴ Hughes (2006), op. cit., 61.

²⁵ Office of the Child Safety Commissioner (2009). *Annual Report 2008–09*, Melbourne, Victoria: Office of the Child Safety Commissioner, 23.

²⁶ Commissioner for Children (2009). *Annual Report 2009*, Hobart, Tasmania: Commissioner for Children, 23.

²⁷ Commissioner for Children and Young People (2009). *Annual Report 2008–2009*, Western Australia: Commissioner for Children and Young People, 54.

²⁸ For example, in 2007 for British Columbia and Ontario, 2009 for Yukon, and 2011 for Alberta.

²⁹ Art. 3.2 (Section 2.1) of the Youth and Family Enhancement Act of 2000 (Alberta, Canada).

³⁰ Section 16 of the Child and Youth Advocate Act of 2011 (Alberta, Canada).

available to the New Zealand Children’s Commissioner³¹ and to the National Children’s Commissioner in Australia.³²

A related difficulty is limited human resources and inadequate training of staff. The Children’s Commissioner in New Zealand, the offices in the Australian Capital Territory, New South Wales and Tasmania in Australia as well as several offices in Canada, have all reported this problem.

Many independent human rights institutions for children in the United States rely on federal and private funds in addition to state funding in order to carry out their work. Many offices are able to apply for grant funding.

Competencies

In line with their role in ensuring the protection of children at risk or in state care, institutions in this grouping undertake specific functions in relation to their child protection mandate. Increasingly, however, offices are engaging in activities in other areas of child rights, notably policy advocacy and awareness raising. There is a marked variety in approaches to the mandate of offices, even within the same country. While some have extensive powers with few limitations, others face significant restrictions in their ability to be proactive.

Scope

One significant aspect of the mandate of many institutions in this group of countries is their focus on excluded children. Because of the strong child protection component in offices’ mandates, child advocates primarily deal with marginalized children, defined as children in state care, at risk of being in state care or receiving social services. Some offices are mandated to deal exclusively with these children. Other institutions concentrate on marginalized children but also have a general mandate that includes all children. The mandates of some offices explicitly mention the need to pay special attention to indigenous children.

In Australia, with the exception of the Australian Capital Territory, all offices have a specific focus on children in vulnerable situations or who are in contact with the welfare system. Sometimes it is an exclusive mandate, as in the case of institutions in New South Wales, the Northern Territory and South Australia. Other offices (e.g., those in Queensland, Tasmania, Victoria and Western Australia) are in charge of monitoring the situation of all children, but with a special emphasis on the most vulnerable. Interestingly, in New South Wales there are two offices – the mandate of the Children’s Guardian is restricted to children

³¹ Concluding Observations of the CRC Committee on New Zealand, CRC/C/15/Add. 216, 27 October 2003, para. 12.

³² Concluding Observations of the CRC Committee on Australia, CRC/C/AUS/CO/4, 19 June 2012, para. 17.

in alternate care, whereas the Commissioner for Children and Young People promotes the well-being of all children in the state.

In Canada, most offices focus on children with special needs, under state care or who receive provincial government services.³³ The legislation of the Ontario Provincial Advocate for Children and Youth explicitly mentions its role as a voice for First Nations children and youth.³⁴ In Nunavut, the legislation for the Representative for Children and Youth stipulates that when representatives carry out their mandate, they must apply Inuit societal values and may consult with Inuit Elders for advice.³⁵

In the United States, offices generally concentrate on children who are marginalized or at risk. A number of offices are attached to state departments of health, family services or children's affairs and their scope is related to the mandate of that department. In Arkansas and California, for example, a foster care ombudsman reviews complaints related to placements in foster care. In Illinois, the Inspector General for the Department of Children and Family Services monitors violations of laws and procedures by the Department through investigations and review of complaints.

Legislation and policy

Legislative reform and policy advocacy are also important aspects of the work of independent human rights institutions for children in the common-law countries reviewed in this chapter. While dealing with individual cases remains a central activity of child advocates, reports on systemic issues have received significant attention as a means to foster improvement in the child welfare system. These reports provide an opportunity for public and civic engagement in the area of child welfare policy and increase the visibility and accessibility of the institution's services.

In 2009, the Children's Advocate Office in Saskatchewan (Canada) published a detailed report on overcrowding in Saskatoon foster homes; the report urged the immediate creation of additional foster care placements for children in need and was a contributing factor in the government's decision to convene an independent review of the province's child welfare system.³⁶ In the United States, the Office of the Child Advocate in Delaware was actively involved in amending legislation on the termination of parental rights. Under the law adopted in May 2009, parental rights will be terminated if a parent abandons or causes the death

³³ The Child and Family Services Act, C.C.S.M. c. C80, 11 July 1985 (Manitoba, Canada).

³⁴ Section 1 of the Provincial Advocate for Children and Youth Act, 2007 (Ontario, Canada).

³⁵ Nunavut, Bill 40, Representative for Children and Youth Act, 2012, Section 5.

³⁶ Children's Advocate Office (2009). *A Breach of Trust: An investigation into foster home overcrowding in the Saskatoon Service Centre*, Saskatoon: Saskatchewan: Children's Advocate Office.

or near-death of their child. At the same time, the law makes provision for safe abandonment of children and termination of parental rights for children up to 6 years of age when those children are at risk of substantial injury or death.³⁷

The Michigan Children's Ombudsman helped modify the definition of mental injury and child torture and pushed for a minimal professional qualification requirement for those treating sexual offenders.³⁸

Initially established through child protection legislation in 1989, in 2003 the New Zealand Children's Commissioner was endowed with a clear child rights mandate based on the CRC, and thus greater independence and expanded functions. An analysis of these developments concluded: "The transition from the Children, Young Persons and Their Families Act 1989 to the Children's Commissioner Act 2003 highlighted a shift in focus from case-based protection work to a more mature role as proactive protector of children's rights through the application and monitoring of the Convention on the Rights of the Child."³⁹ Since 2003, the Children's Commissioner has commented on a number of draft bills in parliamentary committees, noting the effects on children of a wide range of issues including juvenile justice, alcohol laws and the minimum wage, among others.⁴⁰

In Canada, child advocates traditionally have broad functions and put significant emphasis on policy advocacy and the protection of child rights. Most offices were created either shortly after the adoption of the CRC or more recently on the recommendation of the CRC Committee. Consequently, while most offices have the responsibility to advocate for children who receive government services and/or are in the welfare system, they are also generally able to push for policy change to further the realization of children's rights. This is the case in Saskatchewan, where the Child Advocate has listed eight "Children and Youth First Principles" of its work, building on the CRC.⁴¹

Various offices in the United States also conduct broad advocacy activities. These offices are generally among those operating independently and autonomously in the states of Connecticut, Delaware, Rhode Island and, until 2010, New Jersey (this office was abolished in June 2010). In Delaware, the Child Advocate has a mandate to safeguard the welfare of Delaware's children through educational advocacy, system reform, public awareness, training and the legal representation of children. The Office of the Child Advocate in Rhode Island is in charge of

³⁷ Office of the Child Advocate [2009]. *Annual Report 2008–2009*, Delaware: OCA, 5.

³⁸ Office of the Children's Ombudsman (2009). *Annual Report 2007–2008*, Michigan: OCO, 4.

³⁹ Barrington (2004), op. cit., 109.

⁴⁰ A full list of submissions is available at http://www.occ.org.nz/media_speeches_and_submissions/all_submissions.

⁴¹ MacLean and Howe (2009), op. cit., 3.

protecting the legal rights of children in state care, and also undertakes general policy advocacy.

Complaints and investigations

Most offices can receive individual complaints and undertake investigations. However, some are limited in this aspect of their child rights work by restrictions on the status of the complainant and the situation of the child. Here, too, a great diversity of approaches exists. In Canada, all child advocates can handle individual complaints. In most offices, anyone can file a complaint, but the British Columbia Representative for Children and Youth only handles complaints from the child, the child's parents, foster parents and other family members; professionals working with children cannot file complaints. In contrast, the Quebec Commission accepts complaints from judges and lawyers, in addition to complaints submitted via the regular channels.

In Australia, five out of the nine offices have a mandate to handle individual complaints. The remaining offices refer cases to appropriate institutions and monitor their response. In those offices that handle complaints, certain limitations may apply. For example, the Northern Territory Children's Commissioner can only act on complaints related to services provided to 'protected children'.⁴² The Commissioner in Tasmania does not receive individual complaints and only undertakes investigations if requested to do so by the Minister of Human Services.⁴³

As in other world regions, there is little information on the profile of complainants and numbers of complaints received by institutions in these four countries. However, survey data, coupled with information extracted from institutions' annual reports, suggest there are significant differences among offices, even considering varying population levels in institutions' catchment areas. The largest numbers of complaints were received in Queensland (Australia) and in Alberta and Ontario (Canada) – around 2,500–3,600 complaints a year for each institution.⁴⁴ In contrast, as few as 14 complaints were handled by the Commission in the Australian Capital Territory while the Children's Commissioner in the Northern Territory (Australia) received just 34 individual complaints during the first six months of 2009.⁴⁵ The Office of the Children's Commissioner in New Zealand receives around 850 complaints a year.

⁴² Chapter 5 of the Care and Protection of Children Act, 2007 (Northern Territory, Australia).

⁴³ Art. 79. of the Children, Young Persons and Their Families Act 1997 (No. 28 of 1997) (Tasmania, Australia).

⁴⁴ Commission for Children and Young People and Child Guardian (2009). *Annual Report 2008–2009*, Queensland: Commission for Children and Young People and Child Guardian, 24.

⁴⁵ The Children's Commissioner [2009], *op. cit.*, 24.

The relatively high number of complaints received by the Queensland Commissioner may reflect the office's proactive outreach strategy, whereby staff visit all children in alternate care and detention centres monthly, providing a personalized support and complaints programme.⁴⁶

Some independent human rights institutions for children in Australia, Canada, New Zealand and the United States have the power of subpoena, with the ability to compel release of documents and witness testimony. These powers are critical in the fulfilment of the child advocate's mandate because they allow for unlimited access to all information relevant to a case. However, there is great diversity in the obligation of state agencies to comply with such requests for information; even when subpoena powers are included in a mandate they are not always enforceable. Many offices have pushed for a modification of their legislation to gain subpoena powers – with mixed success.

In Canada, most offices have subpoena powers. In the case of the Newfoundland and Labrador Child and Youth Advocate these were acquired as a result of active lobbying by the office.⁴⁷ In Ontario, the Office of the Provincial Advocate for Children and Youth had not been granted subpoena powers as of early 2013, despite significant efforts to amend its legislation. This illustrates the reluctance of some governments to give offices full powers to monitor the welfare system independently – and the corresponding difficulty they have accessing information necessary for in-depth reviews. As the Ontario office states: "We are aware of the obligations of Government to protect personal information, however access to information provides our Office with the tools to keep children and youth safe. The more information our Advocates have access to, the more meaningfully they can advance the rights of young people."⁴⁸

In 2010, the British Columbia Representative for Children and Youth (Canada) filed a lawsuit against the provincial government to gain access to cabinet documents. The Children's Representative argued that she was denied access to those files most necessary to fulfil her tasks. Before the lawsuit was filed, the government had asked her to sign an agreement that would entitle her to view the documents, but gave final control over their use to the government. The Representative for Children and Youth stated that she was "legally entitled to the

⁴⁶ Information provided by the Commissioner for Children and Young People and Child Guardian, Queensland, Australia, 15 April 2010.

⁴⁷ Several key informants declined to give evidence to investigations conducted by the Newfoundland and Labrador Child and Youth Advocate. Following significant awareness-raising efforts by the office, the provincial legislature amended the Child and Youth Advocate Act in 2008 to include subpoena powers for the Advocate. See: Office of the Child and Youth Advocate [2008]. *Annual Report 2007–2008*, Newfoundland and Labrador: Office of the Child and Youth Advocate, 10; MacLean and Howe (2009), *op. cit.*, 3 and 6.

⁴⁸ Office of the Provincial Advocate for Children and Youth (2008). *90 Deaths Ninety Voices Silenced: Annual report 2007–2008*, Ontario: Office of the Provincial Advocate for Children and Youth, 7.

documents, and needed them to complete her audit". The British Columbia court eventually ordered the documents be handed over.⁴⁹

In the United States, the Michigan Children's Ombudsman's can request a subpoena from the court and petition for enforcement of the subpoena.⁵⁰ Similarly, the New Zealand Children's Commissioner Act of 2003 obligates the recipient of a request for information by the Commissioner to comply with that request; failure to do so without an appropriate reason is an offence and liable to a fine.⁵¹

Because they focus on children in contact with the state system, subpoena powers are an essential part of an institution's toolbox, conferring both status and the means to enforce its mandate. Relevant information concerning a case or an investigation is often held by a state agency or institution, so its cooperation is critical. Subpoenas are effective because they are binding and legally enforceable, and having subpoena powers is a measure of the power a legislature is willing to grant a child rights institution.

Many institutions in countries in this group have a mandate to investigate serious injuries and deaths of children. In many cases, an institution convenes a committee of experts from various other institutions to review child deaths. Analysis of data and specific cases enables independent human rights institutions for children to identify patterns and advise on prevention strategies. Investigative mandates vary; some are narrowly focused on children in state care, while others encompass a wide array of issues ranging from the functioning of the welfare services to safety issues that affect all children. Interestingly, many of these investigations identify common findings across national and state jurisdictions. These include poor communication, failure to place the child at the centre of decision-making and the lack of suitable referral services.⁵²

Several offices in Australia have an explicit mandate to investigate child deaths and/or serious injuries. The Child Death Case Review Committee of the Queensland Commission for Children and Young People and Child Guardian investigates the deaths of children who were known to the child protection services within the three years preceding their deaths.⁵³ The Victorian Child Death Review Team issues a report on child deaths every year, providing a

49 CBC News (2010). 'B. C. Children's Rep Wins Court Decision', 14 May 2010. Available at: <http://www.cbc.ca/canada/british-columbia/story/2010/05/14/bc-mary-ellen-turpel-lafond-lawsuit.html>.

50 Section 6 (e) of the Children's Ombudsman Act, Act 204 of 1994 (Michigan, United States of America).

51 Sections 20 and 21 of the Children's Commissioner Act, No. 121 of 25 November 2003 (New Zealand).

52 Information provided by the Children's Commissioner, New Zealand, 31 March 2010.

53 Queensland Child Death Case Review Committee (2009). *Annual Report, 2008–2009*, Brisbane, Queensland: CDCRC, 6.

comprehensive analysis of the circumstances of child deaths and highlighting emerging themes for policy interventions and systemic change.⁵⁴

In Canada, the British Columbia Representative for Children and Youth and the Manitoba Children's Advocate have explicit legal responsibility to inquire into the deaths of children. The annual report of the Children's Representative in British Columbia for 2008–2009 points out that more than half of the injured children were Aboriginal children in alternate care.⁵⁵ Many other Canadian advocates review child deaths as well, though this competency is not expressly included in their legislated mandates.

In Connecticut (United States) the State Child Fatality Review Panel of the Office of the Child Advocate reviews the circumstances of the death of every child who has received state services. Focusing on deaths by suicide, the office found that bullying was often a determining factor and made recommendations for bullying prevention plans.⁵⁶

The legislation of the New Zealand Children's Commissioner does not give the office the mandate to review the deaths of children, but the office can "undertake and promote research into any matter that relates to the welfare of children", and under this umbrella has reported on child deaths.⁵⁷ For example, it has identified child homicide as a significant issue and found that parental fights were a frequent precursor to such acts.⁵⁸

Representatives from various child death review teams across Australia and New Zealand have established a working group in which they inform each other of their findings every year. The various bodies felt the need to develop data that could be compared on a national level. Through this mechanism, the representatives can detect underlying causes of deaths, address them in order to decrease the number of deaths and develop a common protocol for reporting on child deaths.⁵⁹

Employment screening

A very specific function of some offices in Australia is employment screening. Related to their role as watchdogs of state agencies, this task is meant to ensure

⁵⁴ Victorian Child Death Review Committee (2009). *Annual Report of Inquiries into the Deaths of Children known to Child Protection*, Melbourne, Victoria: Office of the Child Safety Commissioner.

⁵⁵ Office of the Representative for Children and Youth [2009]. *Annual Report 2008–2009*, British Columbia: RCY, 42.

⁵⁶ Information provided by the Office of the Child Advocate, Connecticut, United States of America, 26 March 2010. More information is available at <http://www.ct.gov/oca/cwp/view.asp?a=1301&Q=270100&ocaNav=>.

⁵⁷ Duncanson, M. J., D. Smith and E. Davies (2009). *Death and Serious Injury from Assault of Children aged under 5 years in Aotearoa New Zealand: A review of international literature and recent findings*, Office of the Children's Commissioner, 2.

⁵⁸ *Ibid.*, 10.

⁵⁹ Commission for Children and Young People and Child Guardian (2006). *Annual Report: Deaths of children and young people Queensland 2005–2006*, Brisbane: Commission for Children and Young People and Child Guardian, 28.

the integrity of anyone working in contact with children, either in government or the private sector. The Commission for Children and Young People and Child Guardian Act of 2000 gives the Queensland office the authority to issue Blue Cards to people who have gone through the 'Working with Children Check' as part of the process to determine their eligibility for child-related work covered by the Act. Anyone convicted for crimes involving children (e.g., child pornography, child abuse, incest or child murder) is not eligible for the Blue Card. The system has provided a model for similar mechanisms in New South Wales and Victoria.

Education, promoting rights and raising awareness

Offices in the common-law countries frequently undertake public awareness activities to inform adults and children about child rights and, more broadly, children's circumstances.

Public awareness around children's rights is often raised through websites and the dissemination of reports, leaflets and newsletters. The New Zealand office is legally mandated to promote children's rights and has done so by circulating the colourful CRC-based brochure 'You Have Rights! Know Them and Share Them With Others'.⁶⁰ Some institutions issue brochures aimed at professionals working with children.

A number of institutions have launched campaigns to raise awareness of child rights. In Canada, the Alberta office issued a training package that helps teachers and parents improve their advocacy skills. The Saskatchewan office supported the Rights Advocacy Project, a youth-developed and youth-operated initiative, which was promoted in schools and has been very successful. This office also partnered the Bar Association to develop a pro bono model for children's access to legal counselling.⁶¹

Important work is also being undertaken to sensitize the public and relevant decision-makers on the situation of children in their countries. In Australia, the New South Wales Commission developed 'Kids Stats', a programme that collects data on and from children in order to monitor their well-being.⁶² In a similar vein, the New Brunswick Children and Youth Advocate (Canada) publishes an annual report on the state of children and youth, where youth and those

⁶⁰ Information extracted from the website of the New Zealand Office of the Children's Commissioner. Available at: http://www.occ.org.nz/__data/assets/pdf_file/0005/5990/you_have_rights.pdf.

⁶¹ Children's Advocate Office (2010). *Annual Report 2009*, Saskatoon: Saskatchewan: Children's Advocate Office, 4.

⁶² Information extracted from the website of the New South Wales Commission for Children and Young People. Available at: <http://kids.nsw.gov.au/kids/kidsstats.cfm>.

who work with them together take a statistics-based look at the situation of New Brunswick's children.⁶³

Child participation

A prominent focus of offices in Australia, Canada, New Zealand and to some extent the United States is the right of children to express their views in all decisions affecting them. Sometimes this principle is inscribed in institutional legislation.⁶⁴ While most institutions' mandates are not based on the CRC, attention to child participation reflects a commitment to make children actors and decision-makers in their own lives.

One reason for this approach stems from the historical reality that although these offices were typically set up to monitor welfare systems that were, in principle, highly professionalized and focused on the best interests of the child, they eventually left little space for children's views. Consequently, children's commissioners and child advocates consistently emphasize the importance of children's voices and their own role in echoing them. Most offices in this country grouping are called 'child advocates', 'children's commissioners' or 'children's representatives', an indication of their intended function.

In this group of countries, child participation occurs primarily through consultation processes, establishment of advisory groups composed of children and young people and the use of various tools aimed at fostering child participation.

Most offices in Canada actively support children's participation. Websites are a common way to encourage children to participate.⁶⁵ As the New Brunswick Child and Youth Advocate's website says, "Your voice is powerful; we can help you use it."⁶⁶

Some offices have produced kits and guidance tools to help promote child participation in society. The New South Wales (Australia) office has developed a 'Participation Kit' which provides organizations with practical advice on involving children and young people in activities, events and decision-making issues affecting them.⁶⁷ The offices in South Australia and Western Australia have issued,

⁶³ Office of the Child and Youth Advocate (2008). *More Than Just Words: A statistical backgrounder to the 2008 State of our Children and Youth* address, Fredericton, New Brunswick: Office of the Child and Youth Advocate, 2.

⁶⁴ See for example laws establishing offices in Queensland, New South Wales and Tasmania (Australia), Ontario (Canada), and New Zealand.

⁶⁵ For instance, the Saskatchewan Children's Advocate emphasizes children's right to participate on its website. In 2013, Manitoba's Children's Advocate's website called for submissions of artwork from children in care.

⁶⁶ See: <http://www.gnb.ca/0073/Child-YouthAdvocate/index-e.asp>.

⁶⁷ Information extracted from the website of the New South Wales Commission for Children and Young People, Australia. Available at <http://kids.nsw.gov.au/kids/resources/participationkit.cfm>.

respectively, a 'Guide to Good Practice in Children's Participation'⁶⁸ and guidelines for government and other organizations; both explain how to encourage children and young people to participate in decisions that affect them.

Offices consult directly with children on a number of topics. In Canada, children in Alberta, New Brunswick, Ontario and Saskatchewan participate in consultation processes with the office. In Alberta, children can monitor the office's work and have a say in selecting the advocates. In 2008 the same office conducted a broad consultation to obtain young people's views on their experiences; responses helped the office to better understand the outcomes of individual advocacy services, and this, in turn, influenced policy advocacy.⁶⁹ In Victoria (Australia), the office gathers children's views on the quality of care they receive.⁷⁰

Several offices have permanent consultative bodies composed of children and young people. The New Zealand Children's Commissioner, which has a statutory responsibility to consult children,⁷¹ set up the Young People Reference Group, consisting of children aged 12–18 years. These children advise the Commissioner on issues they find important. Similarly, the law establishing the Commissioner for Children in Tasmania (Australia) requires the Commissioner to establish a Children's Consultative Council.⁷² The Council, formed by adolescents aged 16–18 years and from diverse backgrounds, is a forum for participants to share their views and opinions with the Commissioner regularly. The mandate of the New South Wales Commission for Children and Young People lists as a principle governing its work that "the views of children are to be given serious consideration and taken into account".⁷³ The Commission developed a Youth Participation Reference Group that meets five times a year.⁷⁴ A similar group in Western Australia is called 'Join the Crew'. In Ontario (Canada) children can participate in the work of the Office of the Provincial Advocate for Children and Youth through the children's advisory group 'Alligator', composed of children aged 7–13 years.⁷⁵ The office also supports development of a network of youth groups across the province.

68 Guardian for Children and Young People (2009). *Guide to Good Practice: Participation of children and young people in decisions made about their care*, Adelaide, South Australia: Guardian for Children and Young People.

69 Gray, E. (2008). "So we are not alone": *The Office of the Child and Youth Advocate Youth Feedback Project*, Alberta: Office of the Child and Youth Advocate, iv.

70 Office of the Child Safety Commissioner (2009), op. cit., 14.

71 Art. 14 of the Children's Commissioner Act, No. 121 of 25 November 2003 (New Zealand).

72 Art. 81 of the Children, Young Persons and Their Families Act 1997 (No. 28 of 1997) (Tasmania, Australia).

73 Section 10 of the Commission for Children and Young People Act 1998 (New South Wales, Australia).

74 Information extracted from the website of the Western Australia Commissioner for Children and Young People. Available at: <http://www.kids.nsw.gov.au/kids/kidzone/youngpeopleadvisorygroup.cfm>.

75 Information extracted from the website of the Ontario Office of the Provincial Advocate for Children and Youth. Available at: <http://provincialadvocate.on.ca/youth/en/projects/>.

In the United States, the child participation tradition of child rights offices is more limited. A review of legislation and other sources of information suggests that children's views are not yet fully incorporated into the law and practice of US offices, although there is some evidence that this may be changing. For example, the Rhode Island Office of the Child Advocate published its *Kid's Rights Handbook* developed with the help of young people, along with an accompanying brochure aimed at teenagers.⁷⁶

Networking

Children's advocates and commissioners in Australia, Canada and New Zealand belong to one of two networks. One is the Asia Pacific Association of Children's Commissioners, which links institutions from Australia and New Zealand. The other is the Canadian Council of Children and Youth Advocates, which brings together the Canadian offices.

The Canadian Council of Children and Youth Advocates has been active since 1996 and meets every year. The objectives of the Council are to increase knowledge and understanding of children's advocacy across Canada, identify areas for common action, influence policy and practice affecting children, and increase public awareness of child advocacy and children's issues.⁷⁷

The Council has a formal structure, with an appointed chair acting as spokesperson for the group. It adopts positions as a group on issues of national scope regarding children's rights. For example, it issued a substantial position paper urging the federal government to adopt a comprehensive national strategy to improve the situation of Aboriginal children and youth.⁷⁸ The network has also taken an active role in pushing for the establishment of a national children's commissioner.

The Asia Pacific Association of Children's Commissioners is composed of all the children's commissioners and guardians in Australia and New Zealand. It builds on exchange of good practices among members and is a force for policy advocacy at the national level. For example, in 2007, the network submitted a coordinated response to the review of Children's Television Standards. It recommended that television networks maintain or improve on current minimum quota levels for

⁷⁶ Office of the Child Advocate [2004]. *Kid's Rights Handbook: A guide to legal issues affecting youth in Rhode Island*. Available at: <http://www.child-advocate.ri.gov/HandbooksandBrochures/ChildAdvocateHandbookindex.php>.

⁷⁷ Finlay, J. (2006). *The Role of Child Advocacy in Canada: With special reference to the Province of Ontario*, Office of Child & Family Service Advocacy.

⁷⁸ Canadian Council of Children and Youth Advocates (2010). 'Aboriginal Children and Youth in Canada: Canada must do better', position paper, 23 June 2010.

programming developed specifically for children.⁷⁹ Individual institutions in Australia also occasionally submit joint opinions and reviews on specific topics examined at the federal level, for example, draft legislation related to health and safety, the national disability strategy, and tax issues. The submission of joint recommendations by several offices is a rather recent phenomenon, with the first such submission occurring in 2008.

The two networks have significant interaction, with representatives often attending each other's meetings. Both participate in the Global Network of Independent Human Rights Institutions for Children.

Looking forward: Challenges and opportunities

Independent human rights institutions for children in Australia, Canada, New Zealand and the United States share a number of common features linked to their original roles as regulatory bodies for their countries' child welfare systems. They have increasingly expanded their scope of action to include policy advocacy and raising awareness.

These institutions do face a number of challenges, including failure on the part of governments to respond to policy recommendations. In Canada, institutions in British Columbia, New Brunswick and Ontario have all expressed concerns about a lack of political responsiveness to their work. The Quebec Commission can refer a case to court when its recommendation has not been complied with – but other institutions in Canada do not have that option. They must use their influence with executive and legislative powers or speak out publicly about their concerns.⁸⁰

Another challenge lies in threats to the very existence of child advocate offices in countries grouped here. In June 2010, the New Jersey Office of the Child Advocate was abolished following the adoption of the state annual budget. The office had been created in 2003 to address serious malfunctions in the state welfare agency, but significant improvements in the provision of child welfare services led to the conclusion by the government that the office was no longer needed.⁸¹

Some institutions in the countries covered here have yet to gain full autonomy from government. Although independent in principle, several institutions are incorporated into governmental services and ministries. In the United States, in particular, many advocates are attached to the departments they monitor.

⁷⁹ Asia Pacific Association of Children's Commissioners (2007). *Review of Children's Television Standards: A coordinated response on behalf of the Asia Pacific Association of Children's Commissioners*, position paper, 31 August 2007.

⁸⁰ United Nations Children's Fund (2009). *Not There Yet: Canada's implementation of the general measures of the Convention on the Rights of the Child*, UNICEF Innocenti Research Centre and UNICEF-Canada, 49.

⁸¹ Livio, S. K. (2010). 'N.J. Gov. Chris Christie's proposed budget eliminates Office of the Child Advocate', *N.J. News*, 25 March 2010. Available at: http://www.nj.com/news/index.ssf/2010/03/nj_gov_chris_christie_proposed.html.

A key challenge for Australia, Canada and the United States is the absence of an independent human rights institution for children operating at the national level. This gap has been highlighted by the CRC Committee in its concluding observations on these countries. The CRC Committee noted that the National Human Rights and Equal Opportunity Commission in Australia has done significant work in the area of children's rights,⁸² but expressed concern at the absence of a commissioner devoted specifically to children's rights, especially in light of deep cuts to the Commission's budget.⁸³

The CRC Committee has recommended that the State Party in Canada establish a federal ombudsman's office responsible for children's rights.⁸⁴ While the Canadian Human Rights Commission can refer cases of children's rights violations to the Canadian Human Rights Tribunal, its scope is limited and there is a clear need for a national institution with a specific child rights mandate and a scope that allows for the protection and promotion of rights, in addition to the redress of violations. Following years of advocacy on the part of child advocate offices, politicians, academics, civil society groups and others, along with a Senate recommendation, a private bill was tabled in the House of Commons in 2009 and a second one in 2012, still to be adopted. A similar process that took place in Australia led to the establishment of a National Children's Commissioner in 2012.⁸⁵

The CRC Committee has called on the United States to create a child rights institution at the federal level to monitor independently the implementation of the Optional Protocol on the sale of children, child prostitution and child pornography, to which the country is a signatory.⁸⁶

The experience of independent human rights institutions for children in Australia, Canada, New Zealand and the United States underscores not only the potential of such bodies but also the challenges they continue to face – despite their strong legal basis and long history. Institutions in these countries must continually assert their place as defenders of child rights to protect the gains they have made for children.

⁸² See also: Asia Pacific Forum of National Human Rights Institutions (2012). *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation*, Sydney: AFP.

⁸³ Concluding Observations of the CRC Committee on Canada, CRC/C/CAN/CO/3-4, 5 October 2012, para. 23.

⁸⁴ Concluding Observations of the CRC Committee on Canada, CRC/C/15/Add. 215, 27 October 2003, para. 15. See also: United Nations Children's Fund (2009), *op. cit.*, 45–50.

⁸⁵ National Commissioner for Children, Bill 2008, Explanatory Memorandum. Available at: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201213/ChildrensCommissioner.

⁸⁶ Concluding Observations of the CRC Committee on the United States of America, CRC/C/OPSC/USA/CO/1, 25 June 2005, paras. 18–19.

Indicative Directory of Independent Human Rights Institutions for Children

As of 30 August 2013

SUB-SAHARAN AFRICA						
	Country	Institution name	Separate	Integrated	Date ¹	Website
1	Ethiopia	Ethiopian Institution of the Ombudsman		Ombudsman for Women and Children	2005	www.ethombudsman.gov.et
2	Malawi	Human Rights Commission		Child Rights Unit and Child Rights Committee	1999	
3	Mauritania	Commission Nationale des Droits de l'Homme		Children's Rights Unit		www.cndh.mr
4	Mauritius	Ombudsperson for Children's Office	√		2003	www.gov.mu/portal/sites/ncb/oco/index.htm
5	Nigeria	National Human Rights Commission		Special Rapporteur on Child Rights		
6	Sierra Leone	Human Rights Commission		Women and Children's Rights Unit	2008	www.hrcsl.org
7	South Africa	South African Human Rights Commission		Coordinator for Children's Rights	2006	www.sahrc.org.za
8	Tanzania	Commission for Human Rights and Good Governance		Children's Desk	2006	www.chragg.go.tz
9	Zambia	Human Rights Commission		Office of the Commissioner for Children's Rights	2009	www.hrcchildren.org.zm

ASIA						
	Country	Institution name	Separate	Integrated	Date	Website
1	Afghanistan	Afghanistan Independent Human Rights Commission		Children's Rights Protection Unit	2003	www.aihrc.org.af
2	India	National Commission for Protection of Child Rights	√		2007	http://ncpcr.gov.in/
3	Indonesia	Komnas HAM – National Human Rights Commission		Sub-Commission for the Protection of the Rights of Children	2004	http://www.komnasham.go.id

1 The date corresponds to the year that the independent human rights institution for children (either separate or integrated) started to operate. This date may differ from the year of adoption of enabling legislation

ASIA

	Country	Institution name	Separate	Integrated	Date	Website
4	Japan	Ombudsman for Children Kawanishi City	√		1999	www.city.kawanishi.hyogo.jp/shimin/jinken/kdm_onbs/index.html
		Ombudsman for Children Kawasaki City	√		2002	www.city.kawasaki.jp/75/75sioz/home/jimu/ichiran_i60.htm
		Ombudsman for Children Saitama Prefecture	√		2002	www.pref.saitama.lg.jp/site/smile-net/
		Ombudsman for Children Tajimi City	√		2004	www.city.tajimi.gifu.jp/jinken/sodan2/top2.htm
		Ombudsman for Children Akita Prefecture	√		2006	
		Ombudsman for Children Shime Town	√		2007	
		Ombudsman for Children Nabari City	√		2007	
		Ombudsman for Children Meguro City			2008	
		Ombudsman for Children Toyota City	√		2008	
		Ombudsman for Children Sapporo City	√		2009	
		Ombudsman for Children Chikuzen Town	√		2009	
5	Kyrgyzstan	Office of the Ombudsman		Young People and Children's Rights Protection Department		www.ombudsman.kg
6	Mongolia	National Human Rights Commission		Commissioner with specific mandate on children's rights		www.mn-nhrc.org
7	Nepal	National Human Rights Commission		Child Rights Desk	2005	http://www.nhrcnepal.org
8	Pakistan	National Ombudsman				
		Provincial Ombudsman Sindh		Children Complaints Office	2010	http://www.mohtasibsindh.gov.pk/index.php
9	Philippines	Commission on Human Rights		Child Rights Centre	2007	

EUROPE						
	Country	Institution name	Separate	Integrated	Date	Website
1	Albania	People's Advocate		Subsection for Children's Rights	2004	www.avokatipopullit.gov.al
2	Armenia	Office of the Human Rights Defender		Defender of Children's Rights	2011	www.pashtpan.am
3	Austria ²	Ombudsoffice for Children and Youth Burgenland	√		1992	www.burgenland.at/kija
		Ombudsoffice for Children and Youth Carinthia	√		1993	www.kija.ktn.gv.at
		Ombudsoffice for Children and Youth Lower Austria	√		1992	www.kija-noe.at
		Ombudsoffice for Children and Youth Salzburg	√		1993	www.kija.at/sbg
		Ombudsoffice for Children and Youth Styria	√		1995	www.kinderanwalt.at
		Ombudsoffice for Children and Youth Tyrol	√		1995	http://www.kija-tirol.at
		Ombudsoffice for Children and Youth Upper Austria	√		1992	www.kija-ooe.at
		Ombudsoffice for Children and Youth Vienna	√		1989	www.kja.at
		Ombudsoffice for Children and Youth Vorarlberg	√		1993	www.vorarlberg.kija.at
4	Azerbaijan	Office of the Commissioner for Human Rights		Child Rights Centre	2006	www.ombudsman.gov.az
5	Belgium	Children's Rights Commissioner (Kinderrechtencommissariaat) in Flemish community	√		1998	www.kinderrechten.be
		Délégué général de la Communauté française aux droits de l'enfant	√		1991	www.dgde.cfwb.be

2 Kinder- und Jugendanwaltschaft (KIJA), www.kija.at

3 The year refers to the date of the amendment of the law on the Office of the Ombudsman that incorporates child rights in its mandate.

EUROPE						
	Country	Institution name	Separate	Integrated	Date	Website
6	Bosnia and Herzegovina	Human Rights Ombudsman		Department for the Protection of the Rights of the Child	2009	www.ombudsmen.gov.ba
		Ombudsman for Children of Republic of Srpska	√		2009	www.djeca.rs.ba
7	Bulgaria	The Office of the Ombudsman		Rights of Children, Disabled, and against Discrimination	2012 ²	http://www.ombudsman.bg
8	Croatia	Ombudsman for Children	√		2003	www.dijete.hr
9	Cyprus	Commissioner for Children's Rights	√		2008	www.childcom.org.cy
10	Denmark	National Council for Children	√		1994	http://www.boerneraadet.dk
11	Estonia	Chancellor of Justice		Ombudsman for Children ⁴	2011	http://lasteombudsman.ee
12	Finland	Ombudsman for Children	√		2005	www.lapsiasia.fi
13	France	Défenseur des Droits		Défenseur des enfants	2011 ⁵	defenseurdesdroits.fr
14	Georgia	Public Defender		Child's and Woman's Rights Centre	2001	www.ombudsman.ge/children/
15	Greece	Greek Ombudsman		Deputy Ombudsman for Children's Rights	2003	http://www.0-18.gr/
16	Hungary	Commissioner for Fundamental Rights		Deputy-Commissioner for Fundamental Rights (Future Generations)	2008 for special projects but no specialized office	http://www.ajbh.hu/
17	Iceland	Ombudsman for Children	√		1995	www.barn.is
18	Ireland	Ombudsman for Children's Office	√		2004	www.oco.ie
19	Italy ⁶	National Ombudsman for Children and Adolescents	√		2011	
		Apulia Region (pending)				
		Basilicata Region (pending)				

4 In Estonia, the post of Ombudsman for Children is under the Chancellor of Justice and appointed by the President.

5 The year refers to the incorporation of the office of Ombudsman for Children into the Office of Ombudsman for human rights; the original Ombudsman for Children was established as a separate institution in 2000.

6 In addition, a regional law to establish an ombudsperson for children has been issued in nine other Italian regions, namely, the regions of Basilicata (2009), Calabria (2004), Emilia Romagna (2005), Liguria (2007), Lombardia (2009), Piemonte (2009), Puglia (2006), Toscana (2010), and Umbria (2009). These institutions have not yet been established. In the Autonomous Province of Trento since 2009, the Difensore civico has also the mandate of Garante dei diritti dell'infanzia. In the region of Abruzzo, the Italian Committee for UNICEF plays the role of Difensore dell'infanzia.

EUROPE

	Country	Institution name	Separate	Integrated	Date	Website
19	Italy ⁶	Garante dell'infanzia e dell'adolescenza Bolzano Province	√		2010	www.garanteinfanzia-adolescenza-bz.org
		Garante dell'infanzia e dell'adolescenza Calabria Region	√			www.consiglioregionale.calabria.it/garanteinfanzia
		Garante dell'Infanzia e dell'Adolescenza Campania Region (pending)	√		2008	
		Garante dell'Infanzia e dell'Adolescenza Emilia Romagna Region	√		2011	www.assemblea.emr.it/assemblea-legislativa/struttura-organizzativa/istituti-di-garanzia-diritti-e-cittadinanza-attiva/difesa-dei-diritti-dellinfanzia
		Garante dell'Infanzia e dell'Adolescenza Lazio Region	√		2007	www.laziominori.it
		Difensore civico e garante per l'infanzia Liguria Region				www.regione.liguria.it/argomenti/consiglio/difensore-civico/garante-per-linfanzia.html
		Lombardia Region (pending)				
		Ombudsman Regionale – Autorità di garanzia per il rispetto dei diritti di adulti e bambini Marche Region		Ufficio di Garante per l'Infanzia e l'Adolescenza	2010	www.consiglio.marche.it/difensorecivico/ufficio_del_garante_per_infanzia_e_adolescenza.php
		Ufficio del tutore pubblico dei minori Molise Region (pending)	√		2007	www.tutoredeiminorimolise.webnode.com
		Piemonte Region (pending)				
		Garante dell'Infanzia e dell'Adolescenza Puglia Region	√		2011	
		Sardegna Region (pending)				
		Garante dell'Infanzia e dell'Adolescenza Toscana Region	√		2011	www.consiglio.regione.toscana.it/garante-infanzia
Umbria Region (pending)						

EUROPE						
	Country	Institution name	Separate	Integrated	Date	Website
19	Italy ⁶	Difensore Civico e Garante dei Minori Provincia Autonoma di Trento			2009	www.consiglio.provincia.tn.it/consiglio/difensore_civico/garante_minori.it.asp
		Ufficio di protezione e pubblica tutela dei minori Veneto Region	√		1988	http://tutoreminori.regione.veneto.it
20	Kosovo	Ombudsperson Institution		Children's Rights Team	2004	www.ombudspersonkosovo.org
21	Latvia	Ombudsman		Department for Children's Rights	2007	www.tiesibsargs.lv
22	Liechtenstein	Ombudsperson for Children	√		2009	http://www.oskj.li/
23	Lithuania	Ombudsperson for Children	√		2000	http://vaikams.lrs.lt
24	Luxembourg	Ombudscommittee for the Rights of the Child	√		2003	http://www.ork.lu/index.php
25	Macedonia	Ombudsman		Department for Protection of Children's Rights headed by Ombudsman Deputy	1999	www.ombudsman.mk
26	Malta	Office of the Commissioner for Children	√		2003	www.tfal.org.mt
27	Moldova	Center for Human Rights		Ombudsman for Children's Rights	2008	www.ombudsman.md
28	Montenegro	Ombudsman – Protector of Human Rights and Freedoms		Deputy Ombudsman for Children	2009	www.ombudsman.co.me/eng/index.htm
29	The Netherlands	National Ombudsman		Deputy Ombudsman for children	2011	http://www.dekinderombudsman.nl
30	Norway	Ombudsman for Children	√		1981	www.barneombudet.no
31	Poland	Ombudsman for Children	√		2000	www.brpd.gov.pl
32	Portugal	Provedor de Justiça		Work Unit on Minors, Elderly People, Persons with Disabilities and Women	2006	www.provedor-jus.pt/index.php
33	Romania	People's Advocate		Deputy for Rights of Children, Family, Youth, Retired Persons and Disabled Persons	2007	www.avp.ro

EUROPE						
	Country	Institution name	Separate	Integrated	Date	Website
34	Russian Federation ⁷	Children's Rights Commissioner for the President of the Russian Federation	√		2009	www.rfdeti.ru
35	Serbia	Protector of Citizens/ Ombudsman		Deputy Ombudsman for Children's Rights	2008	www.ombudsman.rs
		Provincial Ombudsman Office for the Province of Vojvodina		Deputy Ombudsman for the Protection of Children's Rights	2004	www.ombudsmanapv.org
36	Slovakia	Office of the Public Defender of Rights		Within organizational structure of the Public Defender of Rights	2001	www.vop.gov.sk
37	Slovenia	Human Rights Ombudsman		Special Group on Children's Rights headed by Deputy Ombudsman	2002	www.pravice-otrok.si
38	Spain	Síndic de Greuges de Catalunya		Adjunto para defensa de niños y adolescentes	1997	www.sindic.cat/infants
		Defensor del Menor de Andalucía	√		1998	www.defensordelmenor-and.es
		Valedor do Pobo De Galicia		Vicealedor de menores	1998	www.valedordopobo.com
		Ararteko País Vasco		Oficina de la Infancia y la Adolescencia	2010	www.ararteko.net
39	Sweden	Ombudsman for Children and Young Persons	√		1993	www.bo.se
40	Ukraine	Children's Ombudsman under the President of Ukraine	√		2011	
41	United Kingdom	Children's Commissioner for England	√		2005	www.childrenscommissioner.gov.uk
		Northern Ireland Commissioner for Children and Young People	√		2003	www.niccy.org
		Scotland's Commissioner for Children and Young People	√		2004	www.sccyp.org.uk
		Children's Commissioner for Wales	√		2001	www.childcomwales.org.uk

⁷ To date, out of 83 federative subjects of the Russian Federation, 58 have children's commissioners and are members of the Association of Children's Rights Commissioners for Constituent Territories of the Russian Federation.

LATIN AMERICA & THE CARRIBEAN

	Country	Institution name	Separate	Integrated	Date	Website
1	Argentina ⁸	Defensoría del Pueblo de la Nación		Jefe Área Derechos Humanos, Mujer, Niñez y Adolescencia		www.dpn.gob.ar/index.php
		Defensor de Derechos de Niños, Niñas y Adolescentes (pending)	√			
		Defensor de Derechos de Niños, Niñas y Adolescentes Córdoba Province			2008	www.eldefensorcordoba.org.ar
		Defensor de Derechos de Niños, Niñas y Adolescentes Corrientes Province			n/a	
		Defensor de Derechos de Niños, Niñas y Adolescentes Misiones Province			n/a	
		Defensor de los Derechos del Niño y Adolescente Neuquén Province			2000	www.defensorianqn.org
2	Bolivia	Defensoría del Pueblo		Adjuntia para Niñez y Adolescencia	n/a	www.defensor.gob.bo
3	Colombia	Defensoría del Pueblo		Defensoría Delegada para los Derechos de la Niñez, la Juventud y las Mujeres	1999	www.defensoria.org.co
4	Costa Rica	Defensoría de los Habitantes		Dirección de Niñez y Adolescencia	1987	www.dhr.go.cr/index2.html
5	Dominican Republic	Defensor del Pueblo		Defensor Adjunto para la Niñez y la Juventud		
6	Ecuador	Defensoría del Pueblo		Defensoría Adjunta de la Mujer y de la Niñez	1998	www.dpe.gob.ec/dpe/
7	El Salvador	Procuraduría para la Defensa de los Derechos Humanos		Procuraduría Adjunta para la Defensa de los Derechos de la Niñez y la Juventud	2006 (law)	www.pddh.gob.sv
8	Guatemala	Procuraduría de los Derechos Humanos		Defensoría de la Niñez y la Adolescencia	1990	www.pdh.org.gt

⁸ In Argentina, there are also Defensorías del Pueblo at provincial and municipal levels.

LATIN AMERICA & THE CARRIBEAN

	Country	Institution name	Separate	Integrated	Date	Website
9	Honduras	Comisionado Nacional de Derechos Humanos		Programa Especial de Derechos Humanos de la Niñez y la Adolescencia	1995 (law)	www.conadeh.hn
10	Jamaica	Office of the Children's Advocate	√		2006	www.ocajamaica.gov.jm
11	Mexico ⁹	Comisión Nacional de Derechos Humanos		Programa sobre Asuntos de la Niñez y la Familia	1994	www.cndh.org.mx
12	Nicaragua	Procuraduría para la Defensa de los Derechos Humanos		Procuraduría Especial de la Niñez y la Adolescencia	1999	www.nineznicaragua.org.ni
13	Panama	Defensoría del Pueblo		Unidad Especializada de Niñez y Adolescencia	2008	www.defensoriadelpueblo.gob.pa/index.php
14	Paraguay	Defensoría del Pueblo		Departamento de la Niñez y la Adolescencia	2005	www.defensoriadelpueblo.gov.py
15	Peru	Defensoría del Pueblo		Adjuntía para la Niñez y la Adolescencia	1992	www.defensoria.gob.pe
16	Venezuela	Defensoría del Pueblo		Defensoría Delegada Especial en materia de Niños, Niñas y Adolescentes	2004 (law)	www.defensoria.gob.ve

AUSTRALIA, CANADA, NEW ZEALAND & THE UNITED STATES OF AMERICA

	Country	Institution name	Separate	Integrated	Date	Website
1	Australia	Australian Human Rights Commission		National Children's Commissioner	2012	www.hreoc.gov.au
		Australian Capital Territory (ACT) Human Rights Commission		ACT Children and Young People Commissioner	2006	www.hrc.act.gov.au
		New South Wales (NSW) Commission for Children and Young People	√		1998	www.kids.nsw.gov.au
		New South Wales Children's Guardian	√		1998	www.kidsguardian.nsw.gov.au
		Northern Territory Children's Commissioner	√		2008	www.childrenscommissioner.nt.gov.au
		Queensland Commission for Children and Young People and Child Guardian	√		1996	www.ccypcg.qld.gov.au

⁹ In Mexico, there are 32 state human rights commissions.

AUSTRALIA, CANADA, NEW ZEALAND & THE UNITED STATES OF AMERICA

	Country	Institution name	Separate	Integrated	Date	Website
1	Australia (continued)	South Australia Guardian for Children and Young People	√		2006	www.gcyp.sa.gov.au
		Tasmania Commissioner for Children	√		2000	www.childcomm.tas.gov.au
		Victoria Child Safety Commissioner	√		2005	www.ocsc.vic.gov.au
		Western Australia (WA) Commissioner for Children and Young People	√		2007	www.ccyp.wa.gov.au
2	Canada	Office of the Child and Youth Advocate Alberta	√		1989	http://advocate.gov.ab.ca
		Representative for Children and Youth British Columbia	√		2006	www.rcybc.ca
		Children's Advocate Manitoba	√		1999	www.childrensadvocate.mb.ca
		Office of the Ombudsman and Child and Youth Advocate New Brunswick	√		2007	www.gnb.ca/0073/index-e.asp
		Child and Youth Advocate Newfoundland and Labrador	√		2002	www.childandyouthadvocate.nf.ca
		Office of the Ombudsman Nova Scotia		Youth Service		www.gov.ns.ca/ombu
		Office of the Provincial Advocate for Children and Youth Ontario	√		2007	www.provincialadvocate.on.ca
		Commission des droits de la personne et des droits de la jeunesse Québec	√		1995	www.cdpcj.qc.ca
		Children's Advocate Office Saskatchewan	√		1995	www.saskcao.ca
		Child and Youth Advocate Office Yukon	√		2010	http://ycao.ca
3	New Zealand	Office of the Children's Commissioner	√		1989	www.occ.org.nz

AUSTRALIA, CANADA, NEW ZEALAND & THE UNITED STATES OF AMERICA

	Country	Institution name	Separate	Integrated	Date	Website
4	Unites States of America ¹⁰	Office of the Child Advocate Connecticut	√		1995	www.ct.gov/oca/site/default.asp
		Office of the Child Advocate Delaware	√		2000	http://courts.delaware.gov/childadvocate
		Office of the Child Advocate Georgia	√		2000	http://oca.georgia.gov
		Office of the Child Advocate Massachusetts	√		2008	www.mass.gov/childadvocate
		Office of Children's Ombudsman Michigan	√		1994	www.michigan.gov/oco
		Office of the Child Advocate Missouri	√		2003	www.oca.mo.gov
		Office of the Child Advocate Rhode Island	√		2005	www.child-advocate.ri.gov/index.php
		Commission on Children and Youth Tennessee	√		1996	www.tn.gov/tccy/ombuds.shtml
		Office of the Family and Children's Ombudsman Washington	√		1996	www.governor.wa.gov/ofco

¹⁰ About 29 states currently have either an Ombudsman or an Office of the Child Advocate with a child specific mandate, and others are in the process of establishing such offices. The nine institutions listed are autonomous.

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UNICEF
Office of Research – Innocenti
Piazza SS. Annunziata 12
50122 Florence, Italy
Tel: +39 055 20330
Fax: +39 055 2033 220
florence@unicef.org

www.unicef-irc.org