Chapter 10
The Roles of Independent Children’s Rights Institutions in Implementing the CRC

Brian Gran

Introduction

What roles do independent children’s rights institutions (ICRIs) play in implementing the CRC? After discussing what an ICRI is and the different types of ICRIs, this chapter will examine their objectives, their formal powers, their independence, and the resources they use to reach their objectives. Those resources include the circumstances in which ICRIs work to implement the CRC.

What is an ICRI?

Before proceeding to an analysis of the roles of ICRIs in implementing the CRC, a discussion of what exactly ICRIs are and the CRC will be useful. The CRC is the chief international treaty on children’s and young people’s rights. Adopted in 1989, and with nearly universal ratification, it is among the most widely ratified and most accepted of all human rights treaties.

An ICRI is a type of independent institution that concentrates on monitoring, promoting and protecting children’s rights (Borgen 1996, Davidson, Cohen and Girdner 1993, Flekkoy 1991, Lansdown 2001a, 2001b, Melton 1991, UNICEF 30 Innocenti Research Centre 1997). Although the first ICRI was set up over 30 years ago, since 2000 these institutions have been widely established, although in different shapes and sizes. However, with their increasing numbers, differences in their organisational features have become noticeable, resulting in debates over their efficacy. The CRC Committee, which is charged with monitoring governments’ efforts at implementing the CRC, has strongly influenced what makes an ICRI.

The author thanks Jane Williams for her guidance and generous suggestions. He also thanks Robin Shura and Lynn Falletta for their assistance in gathering data for this project. The author is especially grateful to the ICRIs who have participated in his international study. Much of this chapter arises from an international project the author is directing on ICRIs. Data for this chapter are from interviews conducted with ICRIs during ENOC annual meetings, and from research on the four UK ICRIs, including interviews with those ICRIs, their staff, NGO representatives and government officials.
As part of its work, the CRC Committee publishes General Comments in an effort to encourage States Parties to advance young people’s rights. These General Comments are designed to help States Parties and others interpret the provisions of the CRC. The CRC Committee has published a dozen General Comments from 2001 to 2009, with topics ranging from health to unaccompanied children. The second General Comment (CRC/GC/2002/2, 15 November 2002) (‘General Comment No. 2’) published by the Committee focused on ‘[s]pecialist independent human rights institutions for children, ombudspersons or commissioners for children’s rights ...’ (para. 6). The Committee (para. 1) said it welcomed the ‘establishment of NHRIs and children’s ombudspersons/children’s commissioners and similar independent bodies ...’. The general idea of such an institution is that it is to be ‘an independent institution for the promotion and monitoring of implementation of the Convention’ (para. 1). The CRC Committee further states (para. 3) that the UN General Assembly and the Commission on Human Rights have ‘repeatedly called for the establishment’ of these institutions and that through periodic reporting, States Parties are expected to report on these institutions.

In its General Comment (at paras 3–4), the CRC Committee refers to the Vienna Declaration and Programme of Action (United Nations General Assembly 1993) generated in 1993 at the World Conference on Human Rights. According to the United Nations, the Vienna Conference was held to assess progress towards universal human rights. Held 25 years after the International Year of Human Rights, the Vienna conference was attended by over 7,000 participants, representatives of over 800 non-governmental organisations and representatives of 171 national governments (United Nations General Assembly 2010).

The Vienna Declaration emphasised that national human rights institutions (NHRIs) ‘uphold the rule of law and democracy, electoral assistance, human rights awareness through training, teaching and education, popular participation and civil society’ (para. 34). It further emphasises that the important roles of national human rights institutions are to promote and protect human rights (para. 36) and says that these institutions are to advise ‘competent authorities’, such as a government or parliament, remedy violations of human rights, and distribute information on and educate about human rights.

In its General Comment No. 2 (at para. 4), the CRC Committee refers to the Paris Principles. The Paris Principles were adopted in December 1993 by the UN General Assembly, the ‘chief deliberative, policymaking and representative organ of the United Nations’ (United Nations General Assembly 2010). The Paris Principles state that a national institution shall promote and protect human rights, and shall be independent of government. In doing its work, the Paris Principles state such a national institution should have as its objectives lobbying on and publicising human rights issues, including human rights violations, monitoring and lobbying for human rights legislation, and educating about human rights.
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The Council of Europe has taken a strong interest in ICRIs. In 2003, its Parliamentary Assembly made a recommendation on ‘the institution of ombudsman’, for which it seemed to have in mind human rights ombudspersons (Council of Europe 2003). It noted three purposes of national human rights ombudspersons: protecting human rights, promoting the rule of law and ensuring the proper behaviour of public officials. The Council of Europe said the central work of an ombudsperson is to be an intermediary between ‘administration’ and ‘individuals’. Through this Recommendation, the Council of Europe notes that circumstances particular to each country will shape what its ombudsperson is expected to do. This Recommendation also notes how others are to work with the ombudsperson. It states that officials should turn to the ombudsperson when dealing with a particularly grave situation when normal procedures are ineffective.

However, the Council of Europe Assembly envisions an ombudsperson with limited powers. In their 2003 Recommendation, they hold that the ombudsperson’s enforcement powers should be limited to moral persuasion through ‘public criticism’. The Recommendation indicates this public criticism should be made through reports on ‘maladministration’, which the Assembly expects will result in the Council of Europe’s ‘political condemnation’. Given its vision of limited powers, the Assembly’s Recommendation expects an ombudsperson would only access courts to ask for interpretive judgments of legal questions needed to fulfil its work, including an investigation, or for purposes of representing an individual who has ‘no direct access’ to court (even then, the Assembly states it is best for an individual to go directly to courts without help from an ombudsperson). The Council of Europe expects an ombudsperson would only ensure ‘the procedural efficiency and administrative propriety of the judicial system’. Indeed, the Assembly recommends that the ombudsperson should not be able to initiate, intervene, or reopen judicial cases, with the exception of representing an individual who is without access to court.

Other definitions of ICRIs structure how ICRIs are established and how existing ICRIs implement the CRC. Membership requirements can shape the organisation and work of ICRIs. Probably the predominant network of ICRIs in the world is the European Network of Ombudpersons for Children (ENOC, formerly the European Network of Ombudsmen for Children). ENOC recently updated its membership guidelines. It designates two kinds of membership: full and associate. For an ICRI to be a full member, its government must be a member of the Council of Europe. Compared to the European Union, which has 27 members and is a governing structure, the Council of Europe has 47 members. Thus, this first membership criterion means ENOC membership is open to a broad group.

The second criterion to be a full ENOC member requires that the ICRI must have been established via parliamentary legislation. Third, this legislation must indicate the ICRI is independent (although in form and practice, even with a statement of independence, many ICRIs are encumbered with formal qualities that weaken their independence). Fourth, this legislation must indicate the ICRI has, at a minimum presumably, two functions: the first is to protect children’s
rights and the second is to promote children’s rights. Fifth, conversely, the legislation establishing the office cannot limit the ICRI in pursuing the functions of protecting and promoting children’s rights. Sixth, the legislation cannot limit the ICRI’s ability to pursue ‘core’ functions outlined in the Paris Principles (it is not clear what those core functions are, but they are most likely the two functions noted above). Seventh, the legislation cannot limit the ICRI’s ability to pursue these functions. This criterion downplays, if not ignores, limitations found in full members’ legislation, which will be discussed below. Eighth, acknowledging that some ICRIIs are part of human rights institutions, and sometimes are organised differently, ENOC requires that an official within the ICRI can be identified as exclusively devoted to protecting and promoting children’s rights. Thus, a NHRI without an official wholly focused on children’s rights will not meet this criterion. Finally, ENOC requires that processes for appointing new officials associated with an ICRI be set out in legislation. This legislation must identify the ICRI’s length of term, and if another term may be served, how the renewal process works. An associate ENOC member is an ICRI that does not fulfil a criterion. According to the ENOC website, numerous ENOC members are associate members. In fact, of the 36 ENOC members, eight are associate members: Andalusia of Spain, Georgia, England, Hungary, Portugal, Slovak Republic, Slovenia, and Styria of Austria. Associate status is sometimes given to encourage reform of the legislation governing an ICRI. In the case of the establishment of the Children’s Commissioner for England, ENOC leadership hoped this ICRI would enjoy greater independence. It should be noted that ENOC’s membership guidelines raise questions of arbitrariness. An example is independence. Merely stating ‘independence’ in legislation ignores crucial features of ICRIIs that undermine independence. Numerous ICRIIs are accountable, directly or indirectly, to government officials. Similarly, the budget of many ICRIIs is not automatically provided via legislation and instead, executive government officials control their budgets, determining increases and cuts. For example, the Prime Ministry of Iceland controls its ICRI’s financial affairs. Another example of arbitrariness concerns the ENOC membership criterion requiring that an ICRI’s legislation cannot limit its ability to pursue the core functions of protecting and promoting children’s rights, as this criterion ignores other ways ICRIIs are impeded in their work. For instance, ENOC does not address what level of resources are needed for an ICRI to do its work. The staff of the English Commissioner numbers approximately 25, but this ICRI is expected to serve over 9 million children (Office for National Statistics 2010). In contrast, the staff of the Norwegian ICRI is about 15 (Barneombudet 2010), but it serves 854,000 children (CIA 2010). From these comparisons, certain qualities begin to emerge regarding what is important in defining an ICRI. An ICRI is a specialist institution possessing extraordinary powers because children are outside normal politics. In contrast to some conceptions of an ombudsperson, an ICRI does not exist to point out
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1 extraordinarily awful situations, or maladministration, but because young people 1
cannot enforce their rights like adults. For this reason, an ICRI maintains some 2
3 degree of independence so that it can monitor what its government does and does 4
not do in promoting young people’s rights. It must be able to decry the failings of 5
government and society to its young people. 6
7 Some definitions expect an ICRI will work towards CRC implementation, but 8
not all. Indeed, while ENOC expects its members to pursue full implementation, 9
this is not a condition of ENOC membership. Across these definitions are different 10
visions of how an ICRI will pursue implementation of the CRC. 11
10
11 Why an ICRI, rather than an IHRI?
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14 Why establish an independent children’s rights institution? Why isn’t an 14
15 independent human rights institution good enough? This question seems 16
even more relevant when national economies are under significant pressures and 16
government’s budgets are facing cuts. In France, for example, just such a situation 17
may result in the closure of the French ICRI, despite the CRC Committee calling 18
for its strengthening (CRIN 2009). Is, therefore, a separate independent institution 19
for children’s rights necessary?
20
21 A variety of answers have been given to this question. The CRC Committee, 21
through its General Comment No. 2, calls for separate ICRIs because children 22
are different from adults. According to the Committee, children need their own 23
independent rights institution due to their development and different statuses 24
in major social, economic and political structures. Because children are still 25
developing (Lansdown 2001a, 2001b), the Committee (UN Committee on the 26
Rights of the Child 2002: 2) states they are ‘particularly vulnerable to human 27
rights violations …’. Moreover, due to the way most societies are organised, in 28
general young people are less likely to be heard. The CRC Committee’s reasoning 29
is that in very few places can young people effectively participate in political 30
systems and legal systems. Likewise, only in rare circumstances can young people 31
effectively work with organisations that might promote and protect their rights. 32
33 As a consequence, in para. 5 of General Comment No. 2, the CRC Committee 33
points to several reasons why an ICRI is needed, as opposed to only a NHRI, 34
but implicitly asks whether an ICRI based in a NHRI can serve as a voice in the 35
political process and legal system for young people. In para. 6 of the General 36
Comment, the CRC Committee seems to indicate a preference for an ICRI over an 37
ICRI based in a NHRI when it says:
38
39 Where resources are limited, consideration must be given to ensuring that the 39
available resources are used most effectively for the promotion and protection of 40
everyone’s human rights, including children’s, and in this context development 41
of a broad-based NHRI that includes a specific focus on children is likely to 42
constitute the best approach. A broad-based NHRI should include within 43
44
its structure either an identifiable commissioner specifically responsible for 1
children’s rights, or a specific section or division responsible for children’s 2
rights.
3
4
Yet it is important to note that the CRC Committee does approve here of 5
governments that establish ICRIs based in NHRI. The Committee states that 6
if within the structure of an independent human rights institution there is an 7
‘identifiable commissioner’ that is responsible for children’s rights, the CRC 8
Committee is satisfied. The CRC Committee is implicitly saying that an ICRI 9
based in a NHRI should be able to use resources for children’s rights effectively, 10
and that it should have a specific focus on children.
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12
13
14

Kinds of ICRIs
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As the various definitions suggest, there are different kinds of ICRIs, among whom 17
appear the titles ombudsperson and commissioner. Historically, these ICRIs can 18
trace their roots to the first ombudsperson, the Swedish Parliamentary Ombudsman, 19
established in 1809. Gellhorn (1966: 195, 202) states that this ombudsman had the 20
job of ensuring royal officers did not ignore the law, and refers to the Swedish 21
Constitution’s statement that the ombudsman must be an individual of ‘known 22
legal ability and outstanding integrity’. In his study Gellhorn refers to the work 23
of Jägerskiöld (1961), who relates the history of a series of European national 24
governments establishing ombudspersons after Sweden. This ombudsperson was 25
also expected to hold Swedish governmental bureaucracy accountable.
26
27
Currently, the Parliamentary Ombudsman (Chapter 12, Article 6 of the Swedish 28
Constitution) is elected by Parliament and numbers four: the Chief Parliamentary 29
Ombudsman and three Parliamentary Ombudsmen. The Riksdag Act of 1974 30
(Article 11) states that terms are for four years, although an Ombudsman may 31
be removed from office if Parliament carries out a vote of no confidence. The 32
Parliamentary Ombudsman can institute criminal proceedings and can be present 33
at court and administrative hearings. The Ombudsman has access to court records 34
and other documents on request, and may also request assistance from a public 35
prosecutor, which must be provided.
36
37
In general, some of these characteristics of the first Ombudsman are found in 38
ICRIs, but many are not. The point is that what are now called ombudspersons, 39
whether children’s ombudspersons or other types of ombudspersons, only faintly 40
resemble the Swedish Parliamentary Ombudsman. For instance, the Swedish 41
Children’s Ombudsperson, Barnombudsmannen, is appointed by government for 42
six years. Governed by the Children’s Ombudsperson Act of 1993, the children’s 43
ombudsperson cannot institute criminal proceedings, but she or he can request 44
governments on children’s rights issues, to which they must respond. In addition, 45
the children’s ombudsperson can request meetings with these administrative 46
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authorities and government officials. Thus, while the Parliamentary and Children’s 1
Ombudpersons share similarities, they are distinct in important ways, particularly 2
in terms of legal authority.

Some ICRI s are called children’s commissioners. How does a children’s 4
commissioner differ from a children’s ombudsperson? A commissioner is typified 5
as having the primary responsibility of advocacy, which a children’s ombudsperson 6
does not. On the other hand, an ombudsperson is characterised as being able to 7
hear and act on an individual’s complaint. A children’s commissioner cannot. 8
Empirically, however, the labels ‘ombudsperson’ and ‘commissioner’ seem 9
interchangeable at this point (SPICe 2001, UNICEF Innocenti Research Centre 10
2001). For instance, some commissioners, such as the Children’s Commissioner 11
for Wales, are empowered to investigate individual cases.

The form an ICRI takes is sometimes tied to its governmental system. For 13
example, ICRI s based in federal governmental systems are often set up at 14
subnational levels, such as the state. For instance, two ICRI s exist in Belgium, one 15
in the Walloon region, and the other in the Flemish region. Similar arrangements 16
are found in other countries whose national government systems are federal, 17
including the United States, where almost half of the 50 states have ICRI s. In the 18
United Kingdom, separate ICRI s exist for England, Northern Ireland, Scotland 19
and Wales.

How do Independent Children’s Rights Institutions Implement the CRC at 23
the National Level?

Various factors are at play in the work of implementing the CRC at the national 26
level, including ICRI s’ legislative objectives. Indeed, an ICRI s legislative authority 27
may not even indicate one of its objectives is to ensure national implementation 28
of the CRC. A second critical factor is whether the ICRI possesses the necessary 29
powers to ensure the CRC is implemented at the national level.

To identify differences among ICRI s in this regard, this chapter will contrast 31
seven offices: three commissioners – Malta, Wales and the ICRI of the Australian 32
state of Tasmania (Table 10.1); three ombudpersons – Norway, Belgium and 33
the ombudsperson of the US state of Rhode Island (Table 10.1); and the Danish 34
Council of Children’s Rights, whose distinct arrangement sharply contrasts with 35
the other six ICRI s.


1. Table 10.1  Examples of independent children’s rights institutions (ICRIs)

\begin{tabular}{|c|c|c|}
\hline
& National & Devolved & State \\
\hline
Commissioner & Malta & Wales & Tasmania \\
\hline
Ombudsperson & Norway & Belgium & Rhode Island \\
\hline
\end{tabular}

2. Formal Objectives

Let us first examine the legislative objectives of each of these seven ICRIs.

Objectives of the Malta ICRI, established in 2003, emphasise civil and social rights. Thus it has several objectives to fulfil, the first being advocacy of children’s rights and interests. A separate but related objective is to promote compliance with the CRC, as well as with other international treaties. With regards to young people’s civil rights, the Malta ICRI has the tasks of ensuring that young people can express their opinions, that government agencies and voluntary organisations take young people’s rights and viewpoints into account, and of securing their protection from harm and exploitation. Furthermore, the Malta ICRI is expected to ensure institutions comply with the CRC. Its legislation also indicates that it will ‘promote the highest standards’ of social, education and health services, and it is further obligated to ensure that appropriate agencies prevent and mitigate poverty and the social exclusion of children. A focus on families sets the Malta Commissioner apart from many ICRIs. Indeed, it has the objective of advocating for the protection of the family, an objective reflected in the expectation that the Malta ICRI will advocate on behalf of parents in the raising of their children, as well as improving ‘alternative care’ for young people. This ICRI also has the objective of promoting high quality services to pregnant women. Moreover it is expected to promote ‘special care and protection’, including legal protection, to foetuses and infants.

The objectives of the Children’s Commissioner for Wales, the first ICRI to be established in the United Kingdom, also emphasise social and civil rights, including safeguarding and advancing young people’s rights and protecting and promoting the welfare of children in Wales. However, it does not have the objective of promoting compliance with the CRC, although it does have the statutory duty of considering the CRC in its work. In addition to its work for all children in Wales, this ICRI has goals that are focused on children in care, particularly monitoring arrangements, ensuring service providers respond to complaints and providing information about children who are in care. The Welsh ICRI also has the objective of providing assistance and representation to young people in legal proceedings involving care arrangements.

Objectives of the Tasmania ICRI emphasise social rights, chief among which is raising public awareness of children’s well-being. Tasmania is a state in the federal structure of Australia and its ICRI is not tasked with promoting compliance with the CRC.
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1. with the CRC. Moreover, many objectives of the Tasmania ICRI, for example 1
2. making an inquiry into a matter involving the welfare of children, may only be 2
3. pursued at the request of the Minister for Health and Human Services, though the 3
4. ICRI may advise the Minister on its own prerogative about an issue concerning 4
5. young people’s well-being. This latter objective explicitly applies to children in 5
6. government custody or guardianship.
7. Established in 1981, the Norwegian ICRI has among its tasks that Norway 7
8. complies with the CRC. As a result, its objectives incorporate civil, political, 8
9. social and economic rights as their focus. Among its chief objectives is improving 9
10. the conditions in which young people grow up. It is obligated to reduce conflict 10
11. between young people and society, as well as to promote young people’s safety 11
12. through laws. A further objective is the protection of young people’s interests as 12
13. they pertain to planning by public and private authorities. In turn, the Norwegian 13
14. ICRI is expected to provide information to public and private actors regarding 14
15. young people’s rights and interests.

16. Similar to Wales in relation to the United Kingdom, the Flemish region of 16
17. Belgium possesses devolved powers, while some are reserved to the federal 17
18. government of Belgium (Vandekerckhove 2001). The Flemish ICRI is an 18
19. ombudsperson that is different from many ICRIs in that it is obligated to ‘defend’ 19
20. young people’s rights. Similar to the Norwegian ICRI, the Flemish ICRI is expected 20
21. to ensure, within the Flemish community, that government legislation conforms 21
22. to the CRC. Consequently, this ICRI’s objectives emphasise civil, political, 22
23. social and economic rights. Furthermore it is obligated to act as an advocate for 23
24. young people’s rights, interests and needs, and to do so, it is expected to analyse, 24
25. even evaluate, and then make public the state of the living conditions of young 25
26. people living in Flanders. In addition, the Flemish ICRI is obligated to distribute 26
27. information about the CRC to people, including young people, living in Flanders. 27
28. In the United States, the first children’s ombudsperson to be established was 28
29. that in the state of Rhode Island. Called the Office of the Child Advocate, this ICRI 29
30. was established in 1979, approximately two years before the Norwegian ICRI. 30
31. Given the US government has not ratified the CRC, this ICRI is not obligated to 31
32. take the CRC into account. The Rhode Island ICRI’s objectives emphasise civil 32
33. and social rights, but its focus is on children whose lives are directly affected 33
34. by the Rhode Island Department of Children, Youth, and Families. Among these 34
35. objectives, the Rhode Island ICRI aims to ensure that any young person in state 35
36. care is aware of her rights and hence conducts investigations of children needing 36
37. assistance who have been placed in institutions by a Rhode Island Family Court 37
38. or the Department. This ICRI also has the objective of monitoring these facilities 38
39. and their procedures. A further objective of this ICRI is to conduct reviews of 39
40. procedures of the Department of Children, Youth, and Families, including 40
41. reviewing any situation involving the death of a child who received Department 41
42. services. The ICRI is also obligated to review Family Court orders pertaining to 42
43. young people, and to train and offer technical assistance to guardians ad litem and 43
44. other advocates in Family Court proceedings.
Denmark’s Børnerådet (translated as the National Council for Children) (Børnerådet 2010), established in 1998, provides an interesting approach to an ICRI. Governed by six members, with another member serving as its chairperson, its overarching objective is to ensure young people’s rights, as well as to promote attention to children’s well-being. To this end it aims to assess the conditions in which young people live, particularly in comparison to the CRC, as a result of which, its objectives emphasise the civil, political, social and economic rights of Danish young people. Furthermore the Danish ICRI advises authorities on the conditions in which young people live and on what children’s perspectives are of the work of those authorities. Furthermore, as one of its critical objectives is monitoring and publicising the circumstances of young people, it is expected to identify problems in laws and administrative practices that conflict with children’s rights. The Danish ICRI is also obligated to distribute information about young people, including debates on issues involving them, and to strive to give young people opportunities to participate in and shape Danish society. Table 10.2 summarises the objectives of these seven ICRI.

### Table 10.2 Objectives of ICRI

<table>
<thead>
<tr>
<th>Civil rights</th>
<th>Political rights</th>
<th>Social rights</th>
<th>Economic rights</th>
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<tbody>
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<td>Malta</td>
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<td>Wales</td>
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<td>Tasmania</td>
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<td>Norway</td>
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<td>Flanders (Belgium)</td>
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<tr>
<td>Rhode Island (United States)</td>
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<tr>
<td>Denmark</td>
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**Formal Powers**

To reach their objectives, the ICRI must possess legal powers. These can be separated into powers to change young people’s circumstances, and powers to change how children are affected by others. The former consists of investigating, gathering evidence, providing legal assistance and removing children, while the latter consists of monitoring, researching, shaping opinion and lobbying. The Malta ICRI has significant powers enumerated in its legislation. It can monitor, research, shape opinion and lobby. It can initiate measures promoting young people’s rights and interests. It can gather evidence, as well as investigate violations of children’s rights. It is also obligated to investigate deaths of children. Furthermore, it has the power to establish standards for government institutions in...
order for them to evaluate whether their processes respond to complaints involving
young people; it then has the power to monitor whether those institutions are
meeting those standards. This ICRI also has the power to monitor the work of
social welfare services for young people. It also has powers to collect information
and conduct research. It can shape opinion through public education. And it can
lobby, including by preparing and submitting legislation. However, this ICRI can
neither provide legal assistance nor remove a child from a dangerous situation.

The Children’s Commissioner for Wales also possesses significant powers. It has the power to monitor arrangements and to gather evidence about the well-being of young people in care. If information on these arrangements indicates illegal or dangerous behaviour, the Welsh ICRI has the power to ensure remedies are taken. In addition, the Welsh ICRI has the power to provide advice and information. These efforts extend to providing assistance and representation in a proceeding involving problems with in-care arrangements. It also has the power to make reports; it can acquire evidence, including the provision of information and examination of witnesses under oath. Moreover, it possesses the power to review extant or proposed legislation, policy, practice or service as it pertains to all children in Wales. Indeed, the Welsh ICRI can make representations to the Welsh Assembly on ‘any matter affecting the rights or welfare of children in Wales’. This ICRI does not have the power to remove a child from a dangerous situation.

The ICRI of Tasmania, the Commissioner for Children, has the power to compel a person to answer questions or produce documents relevant to child abuse and protection. It also has the power to shape opinion and offer advice. If we broadly construe the powers of the Tasmania ICRI, it can also monitor, research and lobby. However, like others, its powers are in some respects limited. For example, its power to conduct an investigation may only be exercised when directed by the Minister of Health and Human Services (unless it involves a court). Similarly, the ICRI can only monitor impacts of legislation, policy or practice if requested by the Minister. Additionally, the Tasmania ICRI can gather evidence and it can compel a person to provide evidence for its work on child abuse and protection. However, it cannot provide legal assistance or remove children.

The Norwegian ICRI has the power to investigate and to gather evidence. Indeed, all institutions for children in Norway, whether public or private, are obliged to provide information to the ICRI to enable it to perform its tasks. As well as having the power also to monitor public and private institutions, it can conduct research, shape opinion and lobby public and private institutions. In some situations it can respond to individual complaints of a child, but it cannot provide legal assistance or remove children.

The Flemish ICRI of Belgium has powers similar to those of the Norwegian ICRI. The Flemish ICRI possesses powers to monitor and publicise the living conditions of young people. Furthermore, it can conduct or sponsor studies, and disseminate information about children’s interests. This set of powers includes...
investigating complaints about violations of the CRC, but this power is constrained by the ICRI’s inability to carry on the investigation when a judicial or administrative proceeding is underway. Nevertheless, the Flemish ICRI has the power to gather evidence, including documents from public officials, and can access government buildings. The ICRI can also evaluate national reports to the CRC Committee. It cannot provide legal assistance or remove children.

The powers of the Rhode Island ICRI, whose objectives are comparatively narrow, are at the same time weak. It has the power and responsibility to care for a child’s estate while the child is in state custody, and it is able to receive a petition from a foster home that wants a child to stay with the home while its licensing process is completed. The ICRI also has the power to monitor foster care arrangements and to investigate when concerns arise. Moreover, it has the power to investigate the fatality of a child in the in-care system. In that role, the ICRI can collect evidence. However, this ICRI cannot remove a child from the system or from elsewhere. Nor can it offer legal assistance.

The Danish ICRI, the National Council of Children, can monitor, research and publicise circumstances in which young people live. It can also lobby government and others for changes to legislation and other practices. Furthermore, it can investigate and collective evidence. The Danish ICRI cannot, however, provide legal assistance or remove children.

The powers of each of these ICRIIs are summarised in Tables 10.3 and 10.4.

<table>
<thead>
<tr>
<th>Table 10.3</th>
<th>Powers of ICRIIs to influence the circumstances of young people</th>
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<tbody>
<tr>
<td>Investigate</td>
<td>Collect evidence</td>
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<tr>
<td>Malta</td>
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<tr>
<td>Wales</td>
<td>• Limited</td>
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<tr>
<td>Tasmania</td>
<td>Limited</td>
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<td>Norway</td>
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<td>Rhode Island (United States)</td>
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<tr>
<td>Denmark</td>
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The Roles of Independent Children’s Rights Institutions

Table 10.4 Powers of ICRIIs to affect others

<table>
<thead>
<tr>
<th>Country</th>
<th>Monitor</th>
<th>Research</th>
<th>Shape opinion</th>
<th>Lobby</th>
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<tbody>
<tr>
<td>Malta</td>
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<td>Wales</td>
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<td>Denmark</td>
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</table>

A review of Tables 10.3 and 10.4 suggests that many ICRIIs possess more powers to affect others than to influence the circumstances of young people. With the exception of Rhode Island, an ICRI endowed with limited powers, the ICRIIs examined in this chapter tend to have fewer powers to shape the situations in which young people live.

Informal Powers

Another key aspect of an ICRI’s make-up is its informal powers. Informal powers can be thought of as tools an ICRI possesses that are not set out in legislation or in another legal document. An international study of ICRIIs I am directing indicates the informal power of communicating with the media is a powerful tool. Working with the media enables an ICRI to express opinions on children’s rights, on how government and private institutions, including international ones, are treating children’s rights and approaching children’s interests. Results from this study indicate working with the media is strongly valued by many ICRIIs. The legislation of none of the seven ICRIIs compared in this chapter prohibits working with the media.

Independence

The ability to work with other institutions raises questions of the independence of ICRIIs. All ICRIIs have relationships with their governments, and many cooperate with private entities; some are located within national human rights institutions (NHRIs). What factors are important to an ICRI’s independence? Does independence matter to an ICRI’s work? Studies of the independence of ICRIIs have not been published and scholarly work on issues surrounding the independence of ICRIIs is not available. Consequently, this chapter will turn to signals from the CRC Committee and other
institutions for factors important to an ICRI’s independence, then examine the
qualities of independence of the seven ICRIIs examined here. Paragraph 7 of the
CRC Committee’s General Comment No. 2 clearly articulates the Committee’s
viewpoint on the importance of independence to an ICRI: ‘… every State needs
an independent human rights institution with responsibility for promoting
and protecting children’s rights. The Committee’s principal concern is that the
institution, whatever its form, should be able, independently and effectively, to
monitor, promote and protect children’s rights.’ Thus, from the CRC Committee’s
standpoint, an ICRI’s independence is crucial.

10 The CRC Committee refers to the Paris Principles and the Vienna Declaration as the sources of its ideas on ICRIIs. The Paris Principles indicate factors to
consider in evaluating the independence of an ICRI. Does the ICRI have adequate,
stable funding it can use to advance children’s rights? Does the ICRI have its
own staff with premises that are identifiable as separate for children and young
people? Questions can be drawn from the Vienna Declaration, such as whether
relationships with other institutions hinder the ICRI from advising competent
authorities, remedying children’s rights violations, distributing information about
children’s rights, and taking an educational role in regards to children’s rights.

19 As mentioned above, one question regarding independence revolves around the
idea of having an ICRI located in a NHRI. The CRC Committee points to several
reasons why an ICRI is needed, as opposed to only a NHRI. These factors do not 21
demand a separate ICRI, but point to concerns regarding the independence of an ICRI
based in a NHRI. While paragraph 5 of General Comment No. 2 implicitly 24
asks whether an ICRI based in a NHRI can serve as a voice in the political process
and legal system for young people, paragraph 6, by emphasising that an ICRI 25
based in a NHRI should not only have a specific focus on children but also be able 26
to use resources for children’s rights effectively, raises questions of whether an ICRI
located in a NHRI can maintain independence in its work.

29 Many ICRIIs are labelled ‘independent’, and of the seven ICRIIs examined here, only the Rhode Island ICRI does not carry the ‘independence’ label. Labels of independence in charter or legislation, for instance, may seem like form over substance, but the ability to refer to this label may be an important resource for the institution. Yet the label of independence may be weakened by the formal qualities of an ICRI.

35 Given the paucity of studies and commentary, research on other independent institutions may suggest important qualities for an ICRI’s independence. For example, research on central banks has tended to focus on four components of independence. The first component is the label of independence, which, as stated, six of the seven ICRIIs studied in this chapter possess. The second component entails independence in doing work, which includes deciding on what work to undertake and how to conduct this work. Can another institution shape what work the ICRI undertakes? The third component relates to how the individual enters and exits the institution. Does another institution, such as government, influence how an individual takes and leaves the office of ICRI? Finally, control of the 44
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1 office’s management and functioning once an individual holds an office is the 1 fourth important component of independence. If a government official can control 2 management of the ICRI office, this official may effectively stop or hinder the 3 ICRI from reaching its goals.

7 Resources

ICRIs do not operate in a vacuum. Rather, ICRIs are located within a framework 9 of other organisations, norms and resources, all of which may hinder or promote 10 implementation of the CRC. Among the most crucial features of the children’s 11 rights landscape is the governmental system and leadership. If government 12 responds to popular opinion on children’s rights, the ICRI will, all things being 13 equal, enjoy a significant advantage. Popular support of children’s rights is also a 14 critical factor. Another indicator of support is the number and strength of NGOs 15 working to promote children’s rights. Of course, strength of the civil society in 16 which the ICRI functions shapes the efforts of the NGOs. And the legal system 17 shapes civil society. Thus, the legal system, particularly its effectiveness, will affect 18 the popular support of rights. If courts do not function, rights may be regarded as 19 not worth pursuing. Overall, available resources are central to an ICRI’s work 20 of implementing the CRC. While a variety of resources shape the goals and 21 functioning of individual ICRIs, both supporting and limiting their work, their 22 budgets and staff sizes certainly are critical.

26 How Do ICRIs Set Their Agendas?

Given the vast differences in legislative objectives, legislated powers, independence, 28 resources and other factors, including informal powers, how ICRIs go about 29 setting their agendas is quite complicated. To a significant degree, the agendas of 30 many ICRIs are set by their legislative schemes. However, the independence of 31 an ICRI also shapes its agenda setting, and some ICRIs are bound to respond to 32 requests from government officials. Not surprisingly, though, all ICRIs respond 33 to issues, even crises, facing children and young people in their own countries. 34 Finally, attitudes and beliefs about children, parents and other parts of society 35 shape ICRIs’ agendas.

We would expect that the objective of implementing the CRC to also be a 37 critical component of any ICRI’s agenda. For example, in Norway, despite the 38 Norwegian ICRI having been established in 1981, eight years prior to the CRC, 39 following CRC ratification the Norwegian government took steps to modify the 40 legislation regulating the ICRI so that the office is tasked with ensuring Norwegian 41 law and administration ‘are in accordance with Norway’s obligations according 42 to the UN Convention on the Rights of the Child’. Given the United States has 43 not ratified the CRC it is not surprising that a similar mandate does not affect 44
the Rhode Island ICRI. What is surprising is that some ICRIIs whose national
governments have ratified the CRC are not obligated to help implement the CRC.
While the United Kingdom ratified the CRC in 1991 and each of the four ICRIIs in the United Kingdom – that is, England, Northern Ireland, Scotland and Wales – have a (differently expressed) obligation to pay ‘due regard’ to the CRC and all emphasise in their publications the importance of the Convention to their work, only the Northern Ireland and Scottish ICRIIs have specific duties linked to CRC implementation. Even then, these duties do not encompass the general monitoring of implementation as such.

Independence of an ICRI also shapes its agendas, sometimes in restrictive ways. The Rhode Island ICRI, for example, filed a lawsuit against the Rhode Island state welfare system for purposes of reforming the Rhode Island in-care system. Through the lawsuit, the Rhode Island ICRI contends children who are in government care are being harmed by failures of the in-care system, including poor management. When the Rhode Island ICRI’s term ended in January 2010, the Rhode Island governor indicated he would not consider the current ICRI among the new applicants, despite the express desire of the ICRI to serve a second term (Rhode Island News 2010).

As mentioned above, ICRIIs do respond to crises involving young people. The Welsh ICRI in 2001 announced its intention to hold public inquiries into a sexual abuse case involving Ysgol Gyfun Rhydfelen school. During a period of almost 20 years, a number of children had been sexually abused, an injustice that had been covered up and ignored by some government officials. Whistleblowers, including current and past students, called attention to the crisis at the school. The ICRI’s work consisted of public inquiries and other investigations over a period of three years, gaining international attention and demanding a great deal of time and resources of the Welsh ICRI (Children’s Commissioner for Wales 2004).

Opinions, beliefs and attitudes can also shape the agendas of an ICRI. As noted, the Malta ICRI is obligated to provide legal protection to foetuses. In 2005, the Malta ICRI spoke out over IVF processes, raising concerns about how frozen embryos could be discarded and how research could not guarantee children conceived through IVF would live healthy lives (Sansone 2009). Given her legislated objectives, the Malta ICRI arguably was expected to raise such concerns, despite the fact that she faced criticism from medical doctors and media, among others.

**Strategies to Implement the CRC**

There are four broad strategies ICRIIs take to implementing the CRC: using existing legislation, calling on government to institute new legislation, working with the media, and collaborating with other organisations. In relation to the first of these – insisting that government officials enforce national laws – ICRIIs may use powers to monitor legislation, as well as to investigate and collect evidence.
of maladministration of laws that harm young people's rights. For example, the
English ICRI publicly criticised the British government over its policies and
practices of detaining immigrant children in asylum detention centres, contending
young people held in these centres do not enjoy their rights according to British
law (Aynsley-Green 2010).

In relation to the second strategy, ICRI may lobby government officials to
prepare and pass new laws that will implement rights identified in the CRC. For
example, in early 2010, the first Russian federal ICRI, the former ICRI of the city of
Moscow – who was fired after supporting the creation of a juvenile justice system
(The Moscow Times 2010) – had loudly raised the alarm about the deterioration of
children's rights in Russia over the last eight years.

In the third strategy – approaching the media to discuss how national
governments can further implement the CRC – an ICRI may find one of its most
potent powers is not in the legislation governing the office but in working informally
with other actors and institutions, including the media. This power may be used
to set agendas beyond the legislated objectives of the ICRI. For instance, an ICRI
may work with newspapers to set terms of public debate over issues affecting
young people and their rights. With the availability of this informal power, an
ICRI take on significant issues of national importance, or issues affecting smaller
groups of young people but in deeply serious ways. For example, in 2010, the
Norwegian ICRI pressed employers to shorten working hours for parents, citing
evidence of higher divorce rates among parents who work long hours and fail to
spend time with their children (Sandelson 2010).

The fourth strategy, which is quite commonly employed, is to work with
other organisations to implement the CRC. Nearly every ICRI who works in a
country with a strong civil society cooperates with non-profit organisations. In
some locations, these non-profit organisations are not local, but international.
An important example is ENOC, which provides various forms of support to its
members in their work towards CRC implementation. In many places, however,
ICRIs work with domestic non-profit organisations to pursue CRC implementation.
Iceland's ICRI, for example, works with universities to improve children's rights
and wellbeing (Umboðsmaður barna 2007).

Barriers to and Successes in ICRI's Implementation of the CRC

ICRIs may take on a variety of roles in their work to implement the CRC. This
chapter has sought to demonstrate that a variety of factors shape how ICRI go
about this work. It is important, however, to emphasise that not all ICRI are
expected to work towards implementation of the CRC. In the United States, ICRI
do not focus on the CRC and only to a limited degree do they concentrate on
children's rights. Even in countries whose national governments have ratified the
CRC, not all ICRI are obligated to consider the CRC in their work.
Two primary types of ICRI, ombudspersons and commissioners, are to be found, although notable exceptions, such as the Danish ICRI, do exist. Beyond these differences, which may only be superficial, varying objectives and powers often lead to ICRIs assuming different roles. Indeed, the objectives of an ICRI may emphasise certain aspects of the CRC, while the powers an ICRI possesses may enable it to pursue certain features of the CRC. Without the power to investigate, for instance, a young person’s freedom from imprisonment with adults is difficult to evaluate. Additionally, an inability to collect evidence, particularly on a sensitive issue, may weaken the position an ICRI wants to take regarding young people’s rights. Even with legal powers and adequate resources, compromised independence may hinder an ICRI from implementing the CRC.

In the bigger picture, ICRIIs are unique institutions, positioned at public–private divides, between government and family and other institutions, appointed to safeguard and advance young people’s rights. When government officials conclude young people’s rights are not in their interest to pursue, or when such rights are overlooked by institutions in civil society, or are not pursued by parents and caretakers, advocacy and dogged pursuit by an ICRI may make critical differences to young people and their rights and well-being. Thus ICRIIs may take leadership roles, guiding public and private institutions to implement the CRC and give credence to children’s rights.

References


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