

**THE ROLES OF INDEPENDENT  
CHILDREN'S RIGHTS  
INSTITUTIONS IN ADVANCING  
HUMAN RIGHTS OF CHILDREN**

*This page intentionally left blank*

SOCIOLOGICAL STUDIES OF CHILDREN  
AND YOUTH VOLUME 28

**THE ROLES OF  
INDEPENDENT CHILDREN'S  
RIGHTS INSTITUTIONS  
IN ADVANCING HUMAN  
RIGHTS OF CHILDREN**

EDITED BY

**AGNES LUX**

*Centre for Social Sciences, Child Opportunities  
Research Group, Hungary*

AND

**BRIAN GRAN**

*Case Western Reserve University, USA*

SERIES EDITOR

**LORETTA E. BASS**

*The University of Oklahoma, USA*



United Kingdom – North America – Japan  
India – Malaysia – China

Emerald Publishing Limited  
Howard House, Wagon Lane, Bingley BD16 1WA, UK

First edition 2022

Editorial Matter and Selection © 2022 Agnes Lux and Brian Gran  
Individual chapters © the authors

Published by Emerald Publishing under an exclusive license.

**Reprints and permissions service**

Contact: [permissions@emeraldinsight.com](mailto:permissions@emeraldinsight.com)

No part of this book may be reproduced, stored in a retrieval system, transmitted in any form or by any means electronic, mechanical, photocopying, recording or otherwise without either the prior written permission of the publisher or a licence permitting restricted copying issued in the UK by The Copyright Licensing Agency and in the USA by The Copyright Clearance Center. Any opinions expressed in the chapters are those of the authors. Whilst Emerald makes every effort to ensure the quality and accuracy of its content, Emerald makes no representation implied or otherwise, as to the chapters' suitability and application and disclaims any warranties, express or implied, to their use.

**British Library Cataloguing in Publication Data**

A catalogue record for this book is available from the British Library

ISBN: 978-1-80117-609-5 (Print)

ISBN: 978-1-80117-608-8 (Online)

ISBN: 978-1-80117-610-1 (Epub)

ISSN: 1537-4661 (Series)



ISOQAR certified  
Management System,  
awarded to Emerald  
for adherence to  
Environmental  
standard  
ISO 14001:2004.

Certificate Number 1985  
ISO 14001



INVESTOR IN PEOPLE

*To Our Kids*

*This page intentionally left blank*

# CONTENTS

<i>Abbreviations</i>	<i>ix</i>
<i>About the Editors</i>	<i>xi</i>
<i>About the Authors</i>	<i>xiii</i>
<i>Preface by Maria Herczog</i>	<i>xvii</i>
<i>Acknowledgments</i>	<i>xxi</i>
<b>Introduction</b>	
<i>Agnes Lux and Brian Gran</i>	<i>1</i>

## SECTION 1 CHILDREN'S OMBUDSPERSON'S PERSPECTIVES OF THEIR WORK AND ITS IMPACTS

<b>Chapter 1 “Be Bold, Be Brave, Speak Out”: The Role of the Children and Young People’s Commissioner Scotland (CYPCS) During the Pandemic</b>	
<i>Bruce Adamson and Gina Wilson</i>	<i>11</i>
<b>Chapter 2 The Job of a Lifetime: Looking Back on My Years as a Children’s Rights Commissioner (1998–2009)</b>	
<i>Ankie Vandekerckhove</i>	<i>19</i>

## SECTION 2 CHILDREN'S OMBUDSPERSONS WORKING IN EUROPE

<b>Chapter 3 Ireland’s Ombudsman for Children – Combining Power and Influence to Advance Children’s Rights</b>	
<i>Ursula Kilkelly and Emily Logan</i>	<i>39</i>
<b>Chapter 4 How to Research Independent Children’s Rights Institutions: Lessons Learned from the Evaluation of the Dutch Children’s Ombudsman</b>	
<i>Katrien Klep, Stephanie Rap and Valérie Pattyn</i>	<i>55</i>

<b>Chapter 5 Analysis of the Performance of the Hungarian Ombudsman Related to Children’s Rights Through the Lens of the UN CRC’s Four Guiding Principles</b> <i>Agnes Lux</i>	75
---	----

<b>Chapter 6 The Role of the NHRI in Germany</b> <i>Rita Richter Nunes</i>	95
---	----

### SECTION 3 CHILDREN’S OMBUDSPERSONS IN THE UNITED STATES AND PAKISTAN

<b>Chapter 7 Why the United States Needs a National Children’s Rights Ombudsperson</b> <i>Brian Gran</i>	115
---	-----

<b>Chapter 8 The Founding Law of Pakistan’s National Commission on the Rights of the Child: Legal Challenges, Bureaucratic Barriers, and Vague Opportunities</b> <i>Abdullah Khoso and Umbreen Kousar</i>	131
--	-----

### SECTION 4 ICRIS’ ENGAGEMENT IN THE UN CRC MONITORING MECHANISMS AND QUESTIONS OF INDEPENDENCE

<b>Chapter 9 International Monitoring of the United Nations Convention on the Rights of the Child: Assessing the Engagement of Independent Children’s Rights Institutions</b> <i>Zsuzsanna Rutai</i>	153
---	-----

<b>Chapter 10 The European Network of Ombudspersons for Children: Key Influences in Children’s Rights Promotion</b> <i>Robin Shura and Brian Gran</i>	165
--	-----

### SECTION 5 CONCLUSIONS

<b>Chapter 11 Conclusions: A Big Picture of Independent Children’s Rights Institutions</b> <i>Brian Gran and Agnes Lux</i>	
---	--

<i>Index</i>	189
--------------	-----

# ABBREVIATIONS

AJBH	Alapvető Jogok Biztosának Hivatala (“Office of the Commissioner for Fundamental Rights in Hungary”)
BINOCC	British and Irish Network of Children’s Commissioners
CFR	Commissioner for Fundamental Rights, Hungary
CRC	Committee, UN Committee on the Rights of the Child
CYPCS	Children and Young People’s Commissioner Scotland
ENOC	European Network of Ombudspersons for Children
GANHRI	Global Alliance for National Human Rights Institutions
GC	General Comment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRIs	Independent Children’s Rights Institutions
LGBTQI	Lesbian, Gay, Bisexual, Transsexual, Queer, Intersex
NANHRI	Network of African National Human Rights Institutions
NCHRA	National Commission on Human Rights Act, Pakistan
NCRC	National Commission on the Rights of the Child, Pakistan
NGOs	Non-governmental organizations
NHRI	National Human Rights Institution
OPCAT NPM	Optional Protocol to the Convention Against Torture, National Preventive Mechanism
OPIC	Optional Protocol on a Communication Procedure to the Convention on the Rights of the Child
UN	United Nations
UN CRC	UN Convention on the Rights of the Child
UNCRPD	UN Convention on the Rights of Persons with Disabilities
UPR	Universal Periodic Review
US	United States

*This page intentionally left blank*

## ABOUT THE EDITORS

**Agnes Lux** earned degrees in Political Sciences and in Law (Eötvös Loránd University, Hungary). Her PhD thesis was about the child rights movement and independent children's rights institutions. She worked in the Hungarian Office of the Commissioner for Fundamental Rights (Ombudsman) as a Deputy Head of Department. She worked as Child Rights Education and Advocacy Director of UNICEF Hungary. She teaches at postgraduate programmes of the Eötvös Loránd University and of the Pázmány Péter Catholic University, Hungary. She is an International Consultant on Children's Rights and Human Rights. Since 2021, she is a Research Fellow at the Centre for Social Sciences, Child Opportunities Research Group, Hungary. She has published academic articles, and contributed to the UN CRC reporting process of Hungary on behalf of the coordinator of the Child Rights NGO Coalition.

**Brian Gran**, PhD, is a Professor at the School of Law at the Department of Sociology (College of Arts and Sciences) and also at the Mandel School of Applied Social Sciences, Case Western Reserve University. His scholarship concentrates on human rights, law, and social policy. Over 2020–2021, he is serving as a Jefferson Science Fellow. His research has received support from the National Science Foundation, the Department of Defense, British Academy, the Swiss National Science Foundation, the Robert Wood Johnson Foundation, and the Craig H. Neilsen Foundation. He was a Fulbright Scholar to Iceland where he taught a course on children's rights to the Law School of Reykjavik University. He's been Chair and Past Chair of American Sociological Association Human Rights Section between 2018 and 2020. Since 2018, he is the Chair of the Children's Rights Center, Hope for Children. He has contributed comments to the United Nations, published academic and law journal articles, and is the author of *The Sociology of Children's Rights*.

*This page intentionally left blank*

## ABOUT THE AUTHORS

**Bruce Adamson** is the Children and Young People's Commissioner Scotland and Chair of the European Network of Ombudspersons for Children. He is a Lawyer with over 20 years of experience in human rights. Prior to his appointment as Commissioner, he was a member of Scotland's Children's Panel and was a former Chair of the Scottish Child Law Centre. As Commissioner, he helped secure legislative change on the age of criminal responsibility, comprehensive protection for children from physical punishment, and the incorporation of the United Nations Convention of the Rights of the Child into Scots law. He co-chaired the Rights group of Scotland's Independent Care Review and has acted as an international expert for a wide range of international institutions including, the United Nations, Council of Europe, European Union, Organization for Security and Co-operation in Europe (OSCE), and the World Health Organization.

**Abdullah Khoso** earned his PhD in Sociology and Cultural Studies from the University of Malaya (UM), Malaysia. He also holds a master's degree in Anthropology from Pakistan's Quaid-e-Azam University in Islamabad. He is currently teaching as a part-time Instructor at the Faculty of Arts and Social Sciences, UM. Children's rights and migrant workers are two of his research interests. Since 2001, he has worked in the field of children's rights. He was honored to assist Pakistan's Ministry of Human Rights in drafting the country's fifth UN Convention on the Rights of the Child report. He has also worked with Save the Children International.

**Ursula Kilkelly** is a Professor of Law and Director of the Centre for Children's Rights and Family Law at the School of Law, University College Cork (UCC), Ireland. She teaches international children's rights law and has an additional expertise in youth justice and detention. She has published several monographs, edited collections, and over 60 journal articles in these areas. She is currently co-editor, with Professor Stefaan Pleysier of KU Leuven, of *Youth Justice*, the Sage journal. At UCC, she supervises both LLM and PhD students. Her research team undertakes commissioned and awarded research. In 2010, she founded the Child Law Clinic, which provides research services to those litigating children's rights. Her latest book, co-authored with Emily Logan, on *National Independent Human Rights Institutions for Children: Protecting and Promoting Children's Rights* was published by Palgrave Macmillan in 2021.

**Dr. Katrien Klep** is Assistant Professor of children's rights at the Department of Child Law at Leiden University, and Academic Coordinator of the Advanced Master International Children's Rights. She has two major research interests, how do (human) rights work in practice, and the use of qualitative methods in legal research. Her current research focusses on complaints procedures in youth care

at the municipal level in the Netherlands, and the role of Children's Ombudsmen therein. Moreover, she looks at the impact of Covid-19 (measures) on children's rights, especially in the Netherlands.

**Umbreen Kousar** is a PhD student in Anthropology and Sociology at the National University of Malaysia. Her area of interests includes children rights especially children's right to play (development), right to protection and refugee children. She also has a Masters in Anthropology from Quid-e-Azam University, Islamabad, Pakistan.

**Emily Logan** is a Commissioner with the Garda Síochána Ombudsman Commission and prior to that led two of Ireland's national human rights institutions over a 16-year period, as Ireland's first Ombudsman for Children and subsequently as the Chief Commissioner of the Irish Human Rights and Equality Commission. She is an Adjunct Professor at the School of Law, University College Cork and an Adjunct Professor (Human Rights Practice) at the Irish Centre for Human Rights, National University of Ireland, Galway. Her book, co-authored with Ursula Kilkelly, on *National Independent Human Rights Institutions for Children: Protecting and Promoting Children's Rights* was published by Palgrave Macmillan in 2021.

**Dr. Valérie Pattyn** is Assistant Professor in Public Policy and Policy Analysis at the Institute of Public Administration of Leiden University, The Netherlands, and is partially affiliated to the KU Leuven Public Governance Institute, Belgium. She holds a master's degree in Political sciences, and a bachelor's degree in Pedagogical sciences. Her research program examines the demands and use of evidence by policy makers. She specialized in policy evaluation as one particular type of evidence, and combines research on the politics of policy evaluation with applied evaluation research in different policy fields. She was involved in the evaluation of the Dutch Children's Ombudsman.

**Dr. Stephanie Rap** is Assistant Professor at the research group: Forensic Child and Youth Care, University of Amsterdam. She holds a master's degrees in Pedagogical sciences (2006) and Criminology (2008, Utrecht University). Stephanie's research interest lies in the field of the effective participation of children in (judicial) procedures and decision-making. She studies child participation in diverse (judicial and administrative) procedures and settings, such as in youth justice, child care and protection, asylum procedures and in schools. In her research she employs an interdisciplinary approach, combining international children's rights and child law with knowledge and theory from social sciences. She is a member of the editorial board of the Flemish journal *Tijdschrift voor Jeugd en Kinderrechten* and the *Chronicle of International Association of Youth and Family Judges and Magistrates (AIMJF)*.

**Rita Richter Nunes** is a Lecturer at the Hochschule RheinMain and a PhD student. She has an MA in Childhood Studies and Children's Rights from the Free University of Berlin (Germany) as well as a degree in Law from the University

of Lisbon (Portugal). Apart from her PhD research, she worked as a Research Consultant for the German Institute for Human Rights, as well as non-governmental organization's working with refugee children in Germany. She also worked in children's rights international projects led by the Queen's Belfast University (P4P and the Children with Disabilities and their Digital Rights). Her main areas of work and research are children's rights, childhood studies, child protection, and participatory research.

**Zsuzsanna Rutai** holds Doctors of Laws (Eötvös Loránd University, Hungary), Master of Laws in Human Rights (Central European University, Hungary), and is enrolled in a PhD program in Law (Eötvös Loránd University, Hungary). She has diverse work experience: she worked in national human rights institution (Ombudsman for Minority Rights of Hungary), international organization (Children's Rights Division of the Council of Europe), and non-governmental organizations. Currently, she is an independent consultant contributing to projects related to children's rights protection, child and youth participation, and the protection and promotion of the rights of vulnerable groups (minorities, children in contact with law). She is the author of the background chapters of the *Compassito – Manual on Human Rights Education with Children* of the Council of Europe discussing various children's rights issues.

**Robin Shura** is an Assistant Professor of Sociology at Kent State University at Stark. She received her PhD in Sociology from Case Western Reserve University in 2010. She was a postdoctoral scholar at the Carolina Population Center at the University of North Carolina at Chapel Hill for one year, after which she spent eight years on the Sociology Faculty of Hiram College. Her research interests include social inequality as explored through age, aging and the life course and health, illness, and health care systems. Her current research interests include institutionalized long-term care and intercountry adoption of children, among other areas related to age, ageism, and systemic social inequality. She enjoys teaching sociological theory, medical sociology, aging in society, and courses on childhoods.

**Ankie Vandekereckhove** is a Children's Rights Advisor. After studying law and criminology (University of Ghent, Belgium), she started working at the Ghent Bar and at the Ghent University Centre for Children's Rights. Under the inspiring mentoring of the late Prof. E. Verhellen, children's rights entered her professional life and never left it ever since. Whether she worked on introducing the children's rights strain of thought and awareness at Child and Family (a public agency), served 11 years as the first Flemish Children's Rights Commissioner, was a Policy Advisor at the Flemish Central Authority for Intercountry Adoption or worked at VBJK on diversity and quality in ECEC. Children as rights holders on their own were always the focus of her work. She continued to do so as an independent advisor on children's rights, for example, the Council of Europe, the European Union and United Nations Children's Fund and is currently the coordinator of the brand new Flemish "Afstammingscentrum," a center where adoptees, donor children, and others can get support in their search and their right to know their origins.

**Gina Wilson** is the Head of Strategy for the Children and Young People's Commissioner Scotland. She oversees the review of law, policy, and practice in relation to children's human rights and the meaningful participation of children and young people in the work of the Commissioner. She joined from Scotland's college sector, where she was the Head of Innovation and Partnerships for national skills development agency CDN. Her main areas of expertise in children's rights relate to education, justice, and youthwork. Prior to CDN, she worked for the think tank Carnegie UK Trust and the national youthwork agency, YouthLink Scotland; leading national initiatives aimed at improving digital inclusion, and capacity-building youth engagement programs in public health. She is an experienced Children's Panel Member, former Independent Prison Monitor, and a Trustee of the Digital Xtra Fund.

# PREFACE

*Maria Herczog*

In more and more countries around the world, different bodies are established to monitor and implement the rule of law, to fight injustice, to ensure good public administration, and to provide opportunities for citizens to file complaints against their governments. In many countries, these responsibilities belong to the Ombudsman office. The roles of the Ombudsman institution vary widely, with some offices covering specific issues, while others' scopes of activity are much broader and more diverse. The Ombudsman, in line with its original meaning, is representing those living in their jurisdiction. Despite the growing numbers of Ombudsmen, still only a limited number are responsible exclusively for children and prioritizing child rights.

A Children's Ombudsman, a Children's Rights Commissioner, a Youth Commissioner, a Child Advocacy Institution, or a similar body is charged with the promotion and protection of the rights of children and young people. Establishment of this kind of office is more than a symbolic expression of acknowledging the important fact that children are entitled to greater attention and visibility. Since the adoption of the UN Convention on the Rights of the Child (UN CRC) in 1989, considerable progress has been achieved at the local, national, regional and global levels in the development of legislation, policies and methodologies to promote the UN CRC's implementation of children's rights. Nevertheless, there is still a long way to go for the full acceptance of children's rights and their proper implementation.

Children's rights and interests are often overlooked. The key role of the children's Ombudsman is to speak out on the best interests of children and to ensure they can exercise their rights. A child advocate represents and gives voice to children whose interests and concerns are not being heard. A child advocate strives to obtain justice for those already suffering from any harm, ensuring access to different forms of help and support, rehabilitation and safety.

As children have the right to be heard and have their views taken into consideration, to participate in every decision-making process that may affect their lives, no matter whether local, national, regional or international level, children should be given appropriate opportunities to exercise their rights. The broader human rights system is yet to incorporate children's views and participation in its work effectively. *There is a need for advocates and also institutions supporting and demonstrating that empowering children themselves as rights defenders and strengthening the mechanisms and practices of participation not only is needed, but can and should be achieved.*

The UN Committee on the Rights of the Child (CRC Committee) in its General Comment No. 5 has highlighted that "for rights to have meaning,

effective remedies must be available to redress violations” and that “children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights” (CRC Committee, 2003, para 24). In principle, national systems could address and provide redress for children’s rights violations, but often this is not the case. Therefore, more and better mechanisms should exist at local, regional and national levels as well. Ensuring child-friendly and accessible systems that protect the rights of children where they live, providing them with remedies and strengthening the national justice systems to incorporate their rights and interests, would be the proper way to address these problems.

The Optional Protocol on a Communication Procedure to the Convention on the Rights of the Child (OPIC) elaborated by the CRC Committee entered into force on April 14, 2014. This international treaty aims to provide the opportunity for children or their representatives to submit complaints to the CRC Committee and make the States Parties more accountable. As of August 24, 2021, only 48 States have ratified, 16 have signed but not yet ratified it and 134 have taken no action.

While OPIC can enhance access to justice for children in both theoretical and practical terms, similar to human rights violations against adults, in practice the role of OPIC is first to draw attention to enhancing the possibilities to empower and strengthen local and national human rights and child rights institutions, such as the Ombudsman and Commissioners of Child Rights. These institutions can improve the procedures and bolster access for children and their representatives to file complaints about violations of children’s rights to the UN system. The CRC Committee will contact the Ombudsman, among others, to gather reliable information about the complaint, as well as to ensure a communication channel to learn more about the situation of children in a given context. However, the main role of the OPIC should be to influence the national and local child complaint mechanisms. This OPIC instrument is drawing attention to the possible procedures needed to ensure that children are aware of their rights and, when their rights are violated, opportunities to submit their complaints locally and technical assistance needed to do so. In increasing awareness about the rights of the child and supporting children and their representatives to have access in a safe and child friendly way to complaint mechanisms, child advocates, commissioners for children and Ombudsman hold eminent roles. As complaints often present sensitive issues, a specific channel to make complaints known is needed for children and their representatives. This need not only requires adequate procedures but also awareness raising campaigns, information provided to all groups of children, especially those in the most vulnerable situations with limited access to justice. Ombudspersons, Child Commissioners and Child Advocates can utilize the OPIC as a new and effective tool to enhance the active participation of children while strengthening the national provisions and implementation of the rights of the child.

The past and present activities, projects and programs of the Ombudspersons and the Commissioners for Children this book describes are excellent bases to further develop and enhance the areas covered, as well as inclusion of more and

more children themselves in advancing children's rights and interests. It seems to be an organic development to increasing involvement of children as right defenders in the work of the Ombudsman. These institutions' advocacy work can give more voice to children and provide the opportunity to be heard.

24 August 2021.

*The author is a former twice-elected member and rapporteur of the UN CRC Committee, President of the Executive Committee of Child Rights Connect and currently serves as Policy Analyst at the Institute of Human Services, Columbus, Ohio.*

*This page intentionally left blank*

# ACKNOWLEDGMENTS

We prepared this book to serve as a valuable resource not only for scholars and professionals but also for policy makers and leaders of institutions dedicated to children's rights and well-being. Another objective we set for this book is that it will serve as a reference point for undergraduate and graduate students whose special field is childhood, children's rights and protection of children, as well as to inspire students to pursue answers to questions around institutions, law and policy, and children's rights. We will be pleased that as a result of this book, new advocates, committed practitioners, policy makers, and researchers endeavor to study and improve institutions that advance children's rights and interests.

We thank our contributors for their extraordinary chapters. We have appreciated the privilege of cooperating with the contributors on our common field of interest, including former and current children's commissioners. We are grateful to leaders and staff of these independent children's rights institutions. We admire their commitment to advancing the rights and well-being of children across the world. Our hope is that this volume both acknowledges their hard work while encouraging their continuing service to children and their rights.

We have greatly enjoyed working with our authors, who hail from different time zones from across the world. We are grateful for their collaborations. We are especially honored that Maria Herczog, a twice-elected member of the UN CRC Committee, joined our team and provided an invaluable preface.

We are grateful to our awesome editorial team at Emerald Publishing, especially Ramya Murali, Katy Mathers, Hayley Coulson for their support, quick responsiveness, high flexibility, and strong professionalism. We have a special thank you for Professor Loretta Bass (University of Oklahoma), the Series Editor of Sociological Studies of Children and Youth (SSCY).

And last, but not least, we thank our families for supporting our work, even when this work sometimes occurred over the weekends and late at night.

Our hope is to have contributed to advancement of knowledge around childhood, children's rights, and interests.

Agnes Lux and Brian Gran

*This page intentionally left blank*

# INTRODUCTION

Agnes Lux and Brian Gran

## THE AIM OF OUR RESEARCH

What are independent children's rights institutions (ICRIs)? What do ICRIs have to do with children's rights? Are they needed, or are they merely another bureaucracy for which government spending is unnecessary?

This volume is a contribution to scholarship on ICRIs, which are often known as children's ombudspersons and children's commissioners. The overarching purpose of this contribution is to advance knowledge about ICRIs. What do we have to learn about ICRIs? What do they do? Do we need them? Where do they work? How do they work?

Over the last century, off and on children's rights have received attention from national and world leaders as well as child's rights advocates. Despite this attention, it would be hard to assert that all young people are endowed with rights they can effectively exercise to improve their lives. In some societies, children enjoy higher qualities of living. In some societies, children's interests and well-being are not forgotten, but taken seriously. Why are children and their rights considered important in some societies and not in others? Do ICRIs make a difference when it comes to children's rights, interests, and well-being? What have been the experiences of people who have led ICRIs?

To answer these questions, this volume presents accounts of people who have or are presently leading offices of children's ombudspersons and children's commissioners. It presents an overview of country-level politics over an ICRI and children's rights. This volume presents an in-depth discussion of an international network of ICRIs that has shaped and continues to influence work of national ICRIs. One chapter asks what one country could gain from establishing an ICRI. The volume concludes with what we have learned from these contributions and what questions remain.

## THE CRC's CALL FOR ICRI<sub>s</sub>

In 2002, the UN Committee on the Rights of the Child (CRC Committee) issued its General Comment (GC) on the role of independent national human rights institutions (IHRIs) in the promotion and protection of the rights of the child (CRC Committee, 2002). This General Comment was the second that the UN Committee published. It called on the State Parties to establish independent, national human rights institutions. This GC highlighted the child protection responsibilities of these institutions under Article 4 of the UN Convention on the Rights of the Child (UN CRC; UN, 1989). It asked State Parties to review the effectiveness of their existing institutions with due respect to their status in accordance with the UN Paris Principles (UN General Assembly, 1993), which set minimum standards for human rights institutions.

Why would the UN Committee take the step of obligating State Parties to establish IHRIs for children? What does Article 4 say, and why would the CRC Committee need to publish a GC focused on IHRIs? What are the Paris Principles and what do they have to do with children's rights?

Article 4 of the UN CRC states:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Employing Article 4, the UN Committee has called on all member parties to the UN CRC to establish an ICRI through GC 2. A criticism of Article 4 is its breadth and general scope. Article 4 can be interpreted as allowing the UN Committee to request a State Party to take virtually any step having to do with children's rights that the UN Committee designates as appropriate.

Why did the UN Committee employ Article 4 of the UN CRC to require State Parties to establish ISHRs? Scholarship on this question is sparse (but see Kilkelly, 2011; Thomas, Hanson, & Gran, 2011). The UN Committee states in paragraph 11 of General Comment 2, "The role of independent national human rights institutions in the promotion and protection of the rights of the child," in discussing resources necessary to ICRI operations, that States have a duty to make financial provision for the ICRI in light of Article 4. Of course country-specific factors matter, but UNICEF report (2012, pp. 8-16) suggests that institutional structures shape what an ICRI can achieve and how it will go about doing its work.

According to the General Comment No. 2, even in the case of broad-based IHRIs, in the absence of a separate commissioner/ombudsman for children, it is necessary to appoint a person responsible *exclusively* for children's rights or set up an independent unit to effectively monitor and promote children's rights in an effective and independent manner to make the protection of children's rights a key factor in policy- and decision-making.

The CRC Committee reaffirmed this need in its General Comment No. 5 (CRC Committee, 2003) on the Implementation of the Convention. Through GC 5, the CRC asserts that an independent institution with responsibility for promoting and

protecting children's rights is a core element of a State Party's commitment to the practical application of the Convention. In addition to General Comments Nos. 2 and 5, other organizations have called for establishment of independent institutions for the rights of the child (Council of Europe 2000, 2002; European Union 1992). The Council of Europe has called for establishment of ICRIs since the early 1990s (see e.g., [Council of Europe, 1990](#)). Save the Children has encouraged establishment of children's ombudspersons in ASEAN countries ([Thein, 2014](#)).

Although the recommendations of the UN General Assembly are not binding on the State Parties, these recommendations do shape the legal environment and how leadership of individual nation-states interact with the CRC Committee. ICRIs seek to promote environments conducive to children's enjoyment of their rights. They are also concerned with the social changes needed to ensure the realization of child rights.

## WHY ARE ICRIs ESTABLISHED?

One of the first Ombudsmen for Children in the world was set up in Norway 40 years ago: Barneombudet. Eight years before the UN CRC was adopted, the Norwegian institution in 1981 launched an "avalanche" of establishing ICRIs (more than 200 such institutions have been established in over 70 countries around the world) not only in its narrower region but worldwide, especially in countries with a tradition where the individual (also a child) has been recognized as a right holder. However there is "no-one-size fits all" in this field, stable democracies in Western Europe have typically established a separate ombudsman/commissioner for children, who is appointed by the executive (or by the King of Norway, for instance). Many countries, such as Ireland and Scotland, make it possible to apply openly to this position, which offers transparency around the process ([UNICEF, 2012](#)).

According to UNICEF, when we examine the countries that have established an ICRI, approximately one third have established a (1) separate, stand-alone institution, one third have set up; (2) an institution integrated into a broad-based human rights institution with a legislated child-specific mandate, and one-third have arranged; (3) an institution with an integrated child rights office without a mandate based in legislation.

The question of what an IHRI for children should look like arises from time to time. Why do institutional arrangements matter? While country-specific factors matter, a [UNICEF report \(2012, pp. 8–16\)](#) suggests that institutional structures shape what an ICRI can achieve and how it will go about doing its work. While this report maintains that a "one-size-fits-all" approach will not necessarily lead to a single, efficient solution that works for all countries, some organizations, including the European Network of Ombudspersons for Children, have established membership criteria for an ICRI to become an ENOC member (see Gran, 2021; Shura & Gran, this volume; [UNICEF, 2012](#)).

Across ICRIs, institutional autonomy is commonly considered to be a key feature. Institutional autonomy is, of course, only one element of operational

efficiency, but it still represents the most adequate form of grouping. The Paris Principles (UN, 1993) do not clearly set out an expectation of a separate institution, but do require an ICRI to have the widest possible powers, while ensuring the personal and financial independence of the institution. The CRC Committee states in GC No. 2 that in addition to the preference for an independent institution, it is of paramount importance, whatever the institutional structure, that the child rights institution be able to monitor, promote, and protect children's rights independently and effectively. Thus, the CRC Committee – also out of political sensitivity – does not choose one model or another (CRC Committee, 2002, 2003).

The work of an ICRI is shaped by other factors, of course. These factors range from various social–political–legal images of the child and the child's legal status to whether children can access the ICRI. In addition, cultural practices around human rights can shape the work of an ICRI. In some societies, children are understood to have rights to participation in multiple aspects of society. A right to participation can unlock the door to other human rights given the principle of the indivisibility of human rights. Another key feature of society that shapes the work of an ICRI are politics. Where do children, their rights, and their interests fit into a society's priorities? Do politicians consider young people in their work? When it comes to costs and expenditures, do children receive their fair shares? Priorities of children's rights may be a factor that shapes resources and work of an ICRI.

If we review the UNICEF's (2012) comprehensive report about ICRIs, we find that institutions are able to scrutinize policy decisions preliminary before and also after their implementation. Some institutions review the situation of the most excluded groups of children. A number of independent institutions take a proactive approach (e.g., by disseminating specific materials and visiting places and institutions, where (also vulnerable) children are) to ensure their accessibility to these groups. Several institutions have developed various strategies to reach children with disabilities and ensure their accessibility to them. They are usually in a particular position to promote child participation. However, not all ICRIs have the competence to handle individual complaints. In some countries, they refer or reorient cases, but individual and collective child rights violations can be remedied effectively through a well-working complaint mechanism. Access to an effective remedy for rights violations is crucial to the realization of all human rights. Access is an essential dimension to access of justice; moreover, complaints are also a very important source of information on children's daily experiences and a tool for change for ICRIs. It is challenging also for the institutions with complaint handling competence to develop and maintain a safe, effective, easily accessible, and child-sensitive complaint and reporting mechanism and reach children at all (UNICEF, 2019), especially because children usually do not turn the ICRIs very often.

Since UN CRC adoption, across the world, national governments have established ICRIs for purposes of monitoring and advancing children's rights: from Africa to the Middle East and North Africa to Asia to the Americas. Yet very little is known scientifically about ICRIs. What are ICRIs? How do ICRIs advance

human rights of children and young people? Why have national and state and provincial governments established ICRIIs? Are ICRIIs effective in monitoring and advancing the rights of all children? Do ICRIIs succeed in ensuring implementation of all children's rights, or do they encounter obstacles when pursuing particular kinds of rights? What factors undermine their efforts? What are Independent Human Rights Institutions (IHRIs)? What are ICRIIs? In many states, IHRIs have been established. Where are IHRIs located? How do they compare to ICRIIs? Some governments have established both IHRIs and ICRIIs, and some have set up ICRIIs within IHRIs. A fundamental question is why do ICRIIs exist if IHRIs exist? Do separate institutions confirm that children's rights and interests are distinct, that is, that somehow children do not possess human rights and dignity? Is one approach superior to others when it comes to advancing and monitoring children's rights?

How do the UN Committee and organizations like ENOC influence ICRIIs, their composition, and their work? A valuable contribution this volume will make is consideration of whether the United States should establish a national ICRI. ICRIIs are found in some of the US states, but a national-level ICRI does not exist. Despite establishment of ICRIIs in over half of the 50 US states, US ICRIIs look and function differently from ICRIIs found elsewhere.

We know that ICRIIs are unique, perhaps strange organizations for governments to establish. Why would a government establish an independent institution and pay its budget when leaders of that institution are likely to criticize government leaders for not implementing and advancing rights and interests of a social group whose members cannot vote? While ICRIIs are set up to monitor and report on governments' efforts to implement and advance children's rights, they are independent of those governments and are endowed with legal powers to gather information about and report on government failures to advance young people's rights. Some office holders of ICRIIs report that while their legal powers are important to their work, crucial to their efforts are their informal powers. Why is independence considered a key characteristic of ICRIIs? What challenges to independence do ICRI office holders experience?

Trying to find answers to these questions (and beyond), through this volume we gathered contributions from across the world (weighted to Europe, which is not surprising considering histories of ICRIIs). Some contributions present theoretically oriented aspects, others are more practically oriented. As we believe that the personality could shape the institution s/he is the head of, we sought personal voices, the thoughts of children's commissioners from Europe, current and former, on what ICRIIs do and what are barriers to their achievements.

Section 1 provides two papers, as Children's Ombudsperson's Perspectives of their Work and its Impacts. Bruce Adamson, Children and Young People's Commissioner Scotland (CYPSS) since 2017 (and ongoing chair of ENOC) and Gina Wilson (Head of Strategy, CYPSS) write a chapter about the incorporation of the UN CRC in the Scottish national law, which has been a priority issue for CYPSS since its inception. The UN CRC (Incorporation) (Scotland) Bill comes after decades of campaigning by children and young people and civil society organizations, and years of work by international experts marks a huge change.

They describe the tough times during the current pandemic, and highlight that the work of the CRC and ENOC has both influenced and been influenced by the approach of CYPCS during the pandemic. The pandemic plunged the world into a period of darkness, yet there have been unwavering glimmers of light. One of the positives has been the determination of young human rights defenders to continue to hold decision-makers to account. Outside of formal decision-making structures, children and young people have demonstrated their leadership on issues such as exam cancellation. Ankie Vandekerckhove, former (and first) Flemish Children's Rights Commissioner (1998–2009) offers a professional overview with a hint of personal insight from those highly determining years of her, what she calls "a job of a lifetime."

In Section 2, the authors are dealing with children's ombudspersons working in Europe. Ursula Kilkelly (BA, LL.M, PhD, University College Cork, Ireland) and Emily Logan (First Chief Commissioner of the Irish Human Rights and Equality Commission and Ireland's first Ombudsman for Children, Adjunct Professor (Human Rights Practice) at the School's Irish Centre for Human Rights) analyze the Irish model of ICRI, consider the strengths and weaknesses of the Irish model and illustrate the extent to which it meets international children's rights standards. Ireland established its ICRI by law in 2004, in response to public concern about multiple child abuse scandals and following Ireland's ratification of the UN CRC in 1992. The Irish Office has the power to receive complaints from children and investigate actions of public bodies that have adversely affected a child in areas of social and health services, child protection and education. Powers of research and inquiry have been used proactively to advocate for children's rights in prisons and in the asylum system. Katrien Klep (Assistant Professor, Department of Child Law, Leiden Law School, Leiden University), Stephanie Rap (Assistant Professor, Forensic Child and Youth Care, Faculty of Social and Behavioural Sciences, University of Amsterdam), Valérie Pattyn (Assistant Professor, Institute of Public Administration, Faculty of Governance and Global Affairs, Leiden University) in their chapter look at how to research ICRI, when trying to assess their capacity to monitor and promote children's rights. They use the case of the Dutch Children's Ombudsman to draw out key elements of such research. First, the international legal framework that guides the creation of a children's ombudsman is set out. Second, the notion of independence or autonomy of Children's Ombudsmen is scrutinized. Third, the wider "children's rights landscape," the networks of actors operating at different levels (local, national, supranational) of which a Children's Ombudsman is part, is addressed. They use multidisciplinary research to grasp these elements; the chapter is partly based on the lessons learned during the evaluation of the Dutch Children's Ombudsman Act in 2017 conducted by a multidisciplinary team of researchers from Leiden University of which all three authors were part. Agnes Lux (PhD, research fellow at the Centre for Social Sciences, Child Opportunities Research Group, Hungarian Academy of Sciences) writes about the performance of the last three Hungarian Ombudspersons related to children's rights through the lens of the UN CRC's four guiding principles. The chapter examines the historical background of this "hybrid" institution in Central-Eastern Europe and

the commissioners' performance based on the child rights approach of the UN CRC. The UN CRC represents the "whole child" approach, a holistic view of a child which also informs the work of the ICRI. Hence, the four guiding principles of the UN CRC (the right to non-discrimination; the best interests of the child; the right to life, survival and development; and the right to participation) can be seen as analyzable elements of an ICRI. But the outcome of the institution is influenced by several informal factors. Rita Richter Nunes (Department of Social Work, University of Applied Sciences RheinMain, Wiesbaden, Germany) reports about the position of the NHRI in Germany. In 2004, Germany received the recommendation to establish a permanent national mechanism to coordinate the implementation of the UN CRC. This recommendation was put into effect in 2015 with the mandate of the German Human Rights Institute to independently monitor the implementation of the UN CRC in Germany. In her chapter, she focuses on the role which the German National CRC Monitoring Mechanism plays in the promotion and advancement of children's rights in Germany. Nunes concluded that the cooperation between local, *Länder* (German federal states) and Federal governmental level has room for improvement as it reflects the demands for a change in the legislation to include children's rights at a constitutional level, which would elevate children's participation beyond consultancy and toward real political influence.

Section 3 concentrates on Children's Ombudspersons in the United States and in Pakistan. Brian Gran asks why the United States needs a national ICRI. For American children, in many ways, where they live shapes what rights they possess and whether they can exercise those rights. This problem is true for a range of rights, from a right to a free and appropriate public education to freedom from imprisonment with adults. A national ICRI for the United States can advocate on behalf of all children and their rights, monitor US Government efforts to implement children's rights, and ensure that all children, no matter their background or location, can enjoy human dignity and pursuit of their best interests while exercising their rights. Abdullah Khoso (PhD, Instructor at the Faculty of Arts and Social Sciences, University of Malaya) and Umbreen Kousar (PhD student, Anthropology and Sociology at the National University of Malaysia) write about the founding law of Pakistan's National Commission on the Rights of the Child. They deliberate that child rights institutions' founding or organic laws provide independence and powers to the national or local child rights institutions. In this regard, they analyzed the National Commission on the Rights of the Child Act (NCRCA), 2017, of Pakistan. The analysis finds that the NCRC has been facing serious challenges in performing its duties and functions, which were already limited within the organic law. In the future, the NCRC has to face these challenges in advancing and protecting children's rights because it does not have suo-motu powers to intervene in matters affecting children.

In Section 4, the authors are dealing with the level and quality of engagement of the ICRI in UN CRC monitoring procedures and the questions of independence. Zsuzsanna Rutai (JD LLM, international consultant on children's rights) focuses on the ICRI's engagement with the UN Committee on the Rights of the Child during the country-specific monitoring of the Convention: they can

provide reliable, precise and up-to-date information about the children's rights situation in the field. Based on the public database of reports submitted by national human rights institutions – without looking into the content of their submissions and the impact of their engagement – the chapter intends to draw the profile of those ICRIIs that actively engage with the monitoring body of the UN CRC. Robin Shura (Ph.D. assistant professor of sociology at Kent State University at Stark) and Brian Gran provide an overview of ways the European Network of Ombudspersons for Children (ENOC) has influenced the development, structure, and functions of ICRIIs. Employing theoretical perspectives of New Institutionalism and World Society Approach frameworks, and other concepts from institutional theories, this chapter explores explanations of isomorphic impacts of ENOC on ICRIIs. It is our hope that this volume contributes to studies of ICRIIs through raising and answering essential questions about these organizations and their efforts to advance children's rights.

## REFERENCES

- Council of Europe. (1990). Recommendation 1121 (1990) of the Parliamentary Assembly of the Council of Europe on the Rights of Children.
- Council of Europe. (2000). Recommendation 1460 (2000) of the Parliamentary Assembly of the Council of Europe called Setting up a European Ombudsman for Children.
- Council of Europe. (2002). Recommendation 1551 (2002) of the Parliamentary Assembly of the Council of Europe called Building a twenty-first century society with and for children: follow-up to the European strategy for children.
- CRC Committee. (2002). UN Committee on the Rights of the Child. General Comment No. 2. The role of independent national human rights institutions in the promotion and protection of the rights of the child. UN Doc CRC/C/GC/2.
- CRC Committee. (2003). UN Committee on the Rights of the Child. General Comment No. 5. General measures of implementation of the Convention on the Rights of the Child. UN Doc CRC/GC/2003/5.
- European Union. (1992). EU Resolution A3-0172/92 on the European Charter of the Rights of the Child.
- Gran, B. (2021). The Sociology of Children's Rights. Polity.
- Kilkelly, U. (2011). The CRC at 21: Assessing the legal impact. *Northern Ireland. Legal Quarterly*, 62, 143.
- Thein, C. (2014). NGOs push for child rights ombudsman. Retrieved from <https://humanrightsinasean.info/news/ngos-push-for-child-rights-ombudsman/>. Accessed on October 18, 2021.
- Thomas, N. A., Hanson, K. C., & Gran, B. B. (2011). An independent voice for children's rights in Europe? The role of independent children's rights institutions in the EU. *The International Journal of Children's Rights*, 19(3), 429–449.
- UN. (1989). Convention on the Rights of the Child.
- UN. (1993). Paris Principles. Principles relating to the status of national, adopted by General Assembly resolution 48/134 of 20 December 1993. UN GA 48/134. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>
- UNICEF. (2012). *Championing children's rights. A global study of independent human rights institutions for children – Summary report*. Florence: UNICEF Innocenti Publications.
- UNICEF. (2019). National Human Rights Institutions (NHRIs) Series: Tools to support child-friendly practices. Child-friendly complaint mechanisms. Developed by V. Sedletzki and A. Lux.