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# Championing Children's Rights

A global study of independent human rights  
institutions for children

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## Foreword

Over the last two decades, progress in the development of independent human rights institutions for children has been remarkable. In 1991, there were far fewer than the more than 200 independent institutions that exist today in over 70 countries. Taking many forms – children’s ombudspersons, human rights commissions or children’s commissioners – they share the unique role of facilitating governance processes for children, and have emerged as important actors for the implementation of the Convention on the Rights of the Child. Their work remains little known, however, and their specification as both public and independent institutions is often difficult to grasp.

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

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

Yet the role and position of independent institutions are contested. Their recommendations are too often left unattended by the very governments and parliaments responsible for their creation. In the context of significant economic constraint, these often small offices are the targets of budgetary cuts. They need to constantly demonstrate their relevance in an area where the direct attribution of results is difficult. Institutions’ challenges can also be internal. Their effectiveness depends on their ability to reach out to the most marginalized children and

provide an adequate remedy for rights violations. Leadership and capacity are core aspects of their ability to fulfil their mission.

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

In November 2012 the UNICEF Office of Research published a summary of the research. This technical report provides practitioners with a more extensive discussion of the issues as well as a series of regional analyses from around the world. Our aim is to help readers understand the purpose and potential of independent human rights institutions for children, what it is they do and how they operate. Both reports invite policymakers and practitioners to consider how the role of such institutions can be strengthened and enhanced.

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

Gordon Alexander

Director, UNICEF Office of Research – Innocenti

# Glossary

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

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**Sub-Committee on Accreditation**

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

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# Introduction

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

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

Since the 1990s, independent human rights institutions for children<sup>1</sup> have emerged globally as influential bodies promoting children in public decision-making and discourse. There are now more than 200 at work in more than 70 countries. In the vast majority of cases their creation has followed state ratification of the Convention on the Rights of the Child (CRC), which is core to their operation.

These institutions are defined as public bodies with an independent status, whose mandate is to monitor, defend and promote human rights, with a focus on children's rights. They take a variety of forms – they may be institutions exclusively focused on children or institutions with a broader mandate that have an identifiable department dedicated to specific child-focused activities. They go by many different names: ombudsperson, child commissioner, child advocate, child rights or human rights commission in English; *défenseur des enfants* or *médiateur* in French; *defensoría* or *procuraduría* in Spanish; and many other designations in other languages.

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

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

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

there already exists a plethora of better-known institutions that deal in some respect with children's rights, and many have a long heritage. Implementation of the CRC is a national responsibility requiring all the organs of the state to play their part. Legal action through the courts is a primary remedy for addressing violations of children's rights. Parliaments are responsible for enacting legislation enshrining child rights, and specialized parliamentary committees often play an essential oversight role concerning the implementation of policy and legislation. Line ministries or ministries for children have key practical responsibilities in developing and implementing government policy realizing children's rights. Coordination mechanisms exist in principle to ensure that all areas of government recognize the obligations inherent in the CRC. Children's observatories monitor children's rights in order to provide evidence to influence policy. Non-governmental organizations (NGOs) and other elements of civil society, including the media, often play an important monitoring and advocacy role.

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

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

While the precise mandate of independent human rights institutions for children differs from place to place, their ability to effect change results from their combination of independence and 'soft power': the capacity to report, to convene, to mediate and to influence lawmakers, government bodies, public institutions



and public opinion. Indeed, it is the ability to influence those with direct responsibility for policy and practice that distinguishes an effective institution.

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

Independent institutions often contribute to the creation of a concrete child rights framework, with national or local discussions around their establishment involving debate about child rights concepts and what they mean in practice. Once formed, the institutions demonstrate rights in action, by advancing the rights of children through their interventions. The social, political and economic context to which they belong and contribute is a constantly shifting landscape, however, and competing interests continually affect institutions’ ability to carry out their mandate effectively. While the institutions may be independent of government and impartial in principle, numerous forces can for good or for ill have an impact on their actual independence, institutional capacity, funding, reputation, profile and authority – even their very existence.

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

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

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

<sup>4</sup> Committee on the Rights of the Child (2002). General Comment No. 2., op. cit., 1–2.

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

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

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

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

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

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

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



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

## Structure of the report

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

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

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

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

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

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

## Methodology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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





# PART I





# 1

## Independent Human Rights Institutions for Children: Standards and Frameworks

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

### A social contract for children

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

The most important contribution of this unprecedented global social contract<sup>4</sup> is the explicit recognition of children as human beings with the same human rights as other human beings.<sup>5</sup> Previous human rights treaties such as the International

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

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

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

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

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

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

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

### *Best interests of the child*

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

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

### *Evolving capacities and the right to be heard*

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

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

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

<sup>9</sup> Ibid., 36.

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

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

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

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

## *Children and families*

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

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

<sup>12</sup> Ibid., 3

<sup>13</sup> Ibid., 3 and 29.

<sup>14</sup> Doek (2008), op. cit., 20.

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

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

<sup>17</sup> Doek (2008), op. cit., 21 and 22.

<sup>18</sup> Steward (2009a), op. cit., 2.



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

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

### *The whole child*

The indivisibility of all rights is central to the role, functioning and value of independent human rights institutions for children. The CRC Committee has underlined the holistic perspective on children's rights put forth by the CRC, as well as the connection between enjoyment of economic, social and cultural rights and those that are civil and political.<sup>24</sup> The concept of interdependence considers relationships between rights<sup>25</sup> and is therefore at the heart of strategies aimed at promoting and protecting children's rights.<sup>26</sup> The implementation of each right set forth in the CRC therefore facilitates the implementation of other rights.

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

<sup>20</sup> Doek (2008), op. cit., 19 and 20.

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

<sup>22</sup> Ibid., Art. 27.

<sup>23</sup> Hodgkin and Newell (2007), op. cit., 231.

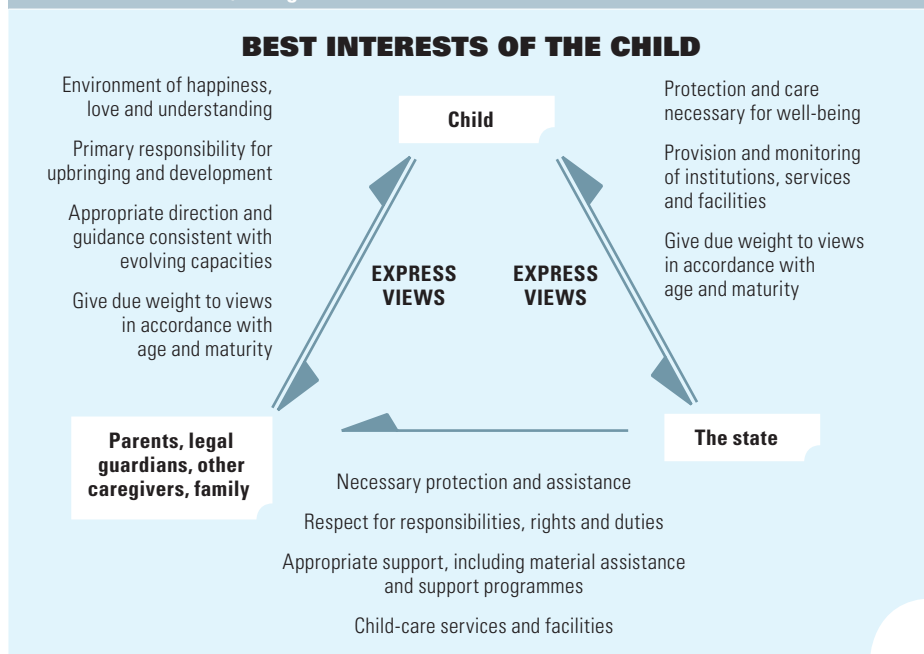
<sup>24</sup> General guidelines regarding the form and contents of periodic reports to be submitted by States Parties under article 44, paragraph 1 (b), of the Convention, adopted by the UN Committee on the Rights of the Child on 11 October 1996, CRC/C/58 (Basic Reference Document), para. 9; UN Committee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

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

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



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



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

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

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

<sup>27</sup> Doek (2008), op. cit., 5.

<sup>28</sup> Santos Pais (1999), op. cit., 9.

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

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

## International standards for independent human rights institutions

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

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

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

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

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

<sup>31</sup> Christensen and Laegreid (2006), op. cit., 9.

<sup>32</sup> Ibid., 11.

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

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

### *The Paris Principles*

This precedent paved the way for the adoption of the Principles relating to the Status of National Institutions, commonly called the Paris Principles, by the United Nations General Assembly in 1993.<sup>36</sup> Non-binding, the Paris Principles have nevertheless benefited from strong political endorsement by United Nations Member States.

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

The Paris Principles are an authoritative instrument for establishing independent institutions and assessing their conformity to international human rights law. They draw their status not only from their endorsement by the United Nations General Assembly, but also from their explicit recognition in more recent human rights treaties, such as the Optional Protocol to the Convention against Torture<sup>38</sup> and the Convention on the Rights of Persons with Disabilities.<sup>39</sup> They constitute the standards against which the International Coordinating Committee of National Institutions for the Promotion and Protection of Human

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>42</sup> Ibid.

<sup>43</sup> Decaux, E. (2003). 'Le dixième anniversaire des principes directeurs des institutions nationales des droits de l'homme dits "Principes de Paris"', *Droits Fondamentaux*, 3:25.

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

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

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

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

Although the Convention does not explicitly refer to independent human rights institutions, the CRC Committee with General Comment No. 2 identifies their establishment as a component of the general obligation of States parties to implement the CRC in the sense of its Article 4.<sup>49</sup> According to the CRC Committee, every state needs an independent institution able to independently and effectively monitor, promote and protect children's rights.<sup>50</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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