

THE FUTURE OF THEMATIC CHILDREN'S RIGHTS INSTITUTIONS IN A NATIONAL HUMAN RIGHTS INSTITUTION WORLD: THE PARIS PRINCIPLES AND THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

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I. INTRODUCTION

Independent thematic human rights institutions have been established by some states to focus on the protection and promotion of one category of human rights or the rights of a vulnerable group.¹ Children are a vulnerable population and, in response, thematic children's rights institutions have been established at the national and sub-national levels of government, albeit in a relatively small number of states.² Leaders of these institutions are given titles such as ombudsperson for children, ombudsman for children, commissioner for children or defender of children. The first of its kind, Norway's Ombudsman for Children, was established in 1981.³

By the early 1990s, however, the international community began to place greater importance on the establishment and strengthening of broad-based national human rights institutions ("NHRIs"). The minimum standards for NHRIs were enshrined in the Paris Principles, which were drafted in 1991 and adopted

1. Thematic human rights institutions may also be called "specialist" or "specialized" human rights institutions.

2. In this Article, the words "children" or "minors" will be used to denote children and youth up to the age of majority.

3. *About the Ombudsman*, BARNEOMBUDET [OMBUDSMAN], <http://barneombudet.no/english/about-the-ombudsman> (last visited Nov. 24, 2014); Act No. 5 of Mar. 6, 1981 Relating to the Ombudsman for Children, 1981, (Nor.), available at <http://barneombudet.no/english/act-and-instructions-for-the-ombudsman>; Instructions for the Ombudsman for Children, Royal Decree, Sept. 11, 1981 (Nor.), available at <http://barneombudet.no/english/act-and-instructions-for-the-ombudsman>. In 1969, Norwegian law professor Anders Bratholm called for the establishment of a children's ombudsman. M.G. Flekkoy, Children's Rights. Reflections on and Consequences of the Use of Developmental Psychology in Working for the Interests of Children. The Norwegian Ombudsman for Children: A Practical Experience 107 (Oct. 4, 1991) (unpublished Ph.D. thesis, University of Gent) (on file with Children's Rights Center, Gent, Belgium).

by the UN General Assembly in 1993.⁴ The Paris Principles have been interpreted in more depth by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (“ICC”) through its General Observations and accreditation process.⁵ In the ensuing years, NHRIs—primarily national level human rights commissions and national level human rights ombudsman institutions—have multiplied. Some of these NHRIs have a legislative responsibility to focus on children’s rights while other NHRIs prioritize children’s rights through their operating practices.

Today, independent human rights institutions that pay special attention to children’s rights are commonly understood to comprise thematic children’s rights institutions at all levels of governance, broad-based NHRIs that pay special attention to children’s rights, and sub-national human rights institutions with a focus on children.⁶ Terms such as “independent human rights institutions for children” or “independent children’s rights

4. The Paris Principles, G.A. Res. 48/134, UN Doc. A/RES/48/134 (Dec. 20, 1993).

5. The ICC is an association of NHRIs, incorporated under Swiss law. *A Brief History of the ICC*, INT'L COORDINATING COMMITTEE NAT'L INSTITUTIONS FOR PROMOTION & PROTECTION HUM. RTS., <http://nhri.ohchr.org/EN/AboutUs/Pages/History.aspx> (last visited Nov. 23, 2014). General Observations are formulated by the ICC’s Sub-Committee on Accreditation and approved by the ICC Bureau. The Sub-Committee also operates the accreditation process. For purposes of this Article, all references will be to the ICC. See INT'L COORDINATING COMM. OF NAT'L INST. FOR THE PROMOTION & PROT. OF HUMAN RIGHTS, REPORT AND RECOMMENDATIONS OF THE SESSION OF THE SUB-COMMITTEE ON ACCREDITATION (SCA), ANNEX III (2013), available at <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Report%20May%202013-Consolidated-English.pdf> [hereinafter GENERAL OBSERVATIONS], for most recent General Observations; see also INT'L COORDINATING COMM. OF NAT'L INST. FOR THE PROMOTION & PROT. OF HUMAN RIGHTS, CHART OF THE STATUS OF NATIONAL INSTITUTIONS ACCREDITED BY THE INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (2014), available at http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf [hereinafter ACCREDITED NHRIS CHART] (listing the status of national institutions’ compliance with the Paris Principles); *Governance and Operations*, INT'L COORDINATING COMMITTEE NAT'L INSTITUTIONS FOR PROMOTION & PROTECTION HUM. RTS., <http://nhri.ohchr.org/EN/AboutUs/Governance/Pages/Governance.aspx> (last visited Nov. 23, 2014).

6. See, e.g., UNICEF OFFICE OF RESEARCH, CHAMPIONING CHILDREN’S RIGHTS: A GLOBAL STUDY OF INDEPENDENT HUMAN RIGHTS INSTITUTIONS FOR CHILDREN 1–4 (2013) (providing a broad framework for the various children’s rights institutions).

institutions” (“ICRIs”) are used to describe this institutional mixture.⁷ Regardless of their structure, a core function of most ICRIs is to facilitate the domestic implementation of the UN Convention on the Rights of the Child (“CRC”) and its Protocols.⁸

Since great importance has been placed on the establishment of NHRI^s that are fully compliant with the Paris Principles, the existence and role of thematic human rights institutions, including thematic children’s rights institutions, are being reevaluated. In recent years, some countries have collapsed thematic children’s rights institutions into broad-based NHRI^s while others have established only one comprehensive NHRI. Countervailing factors and forces influence the choice of institutional structure made by governments when deciding whether or not to establish or retain a thematic children’s rights

7. *Id.* at 1; Nigel Thomas, Brian Gran & Karl Hanson, *An Independent Voice for Children’s Rights in Europe? The Role of Independent Children’s Rights Institutions in the EU*, 19 INT’L J. CHILD. RTS. 429 (2011); Nigel Thomas, *The Role and Impact of Independent Children’s Rights Institutions in the UK and Europe*, 33 J. SOC. WELFARE & FAM. L. 279, 280–81 (2011); Brian Gran, *The Roles of Independent Children’s Rights Institutions in Implementing the CRC*, in THE HUMAN RIGHTS OF CHILDREN: FROM VISIONS TO IMPLEMENTATION 219 (Antonella Invernizzi & Jane Williams eds., 2011). This Article uses the term “independent children’s rights institution” or “ICRI.”

8. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990); Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 54/263 U.N. Doc. A/RES/54/263 (May 25, 2000) (entered into force Feb. 12, 2002) [hereinafter Children in Armed Conflict Protocol]; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000) (entered into force Jan. 18, 2002) [hereinafter Sale of Children Protocol]; Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, G.A. Res. 66/138, U.N. Doc. A/RES/66/138 (Dec. 19, 2011) (entered into force Apr. 14, 2014) [hereinafter Communications Procedure Protocol]. While there are many other international children’s rights instruments, this Article will focus on the CRC regime. See generally TREVOR BUCK ET AL., INTERNATIONAL CHILD LAW (2d ed. 2011) (detailing the international legal framework regarding children’s rights, with a primary focus on the CRC). Some ICRIs do not have an express mandate to implement or use the CRC, although they may use it in practice, such as many Canadian provincial/territorial child and youth representatives/advocates. See, e.g., *A Voice for Kids in British Columbia*, REPRESENTATIVE FOR CHILD. & YOUTH (Oct. 27, 2014), <http://www.rcybc.ca> (supporting the British Columbia’s child and youth welfare system and promoting oversight in order to improve the system); The Advocate for Children and Youth Act, S.S. 2012, c. A-5.4 (Sask. Can.), available at <http://www.qp.gov.sk.ca/documents/english/Statutes/Statutes/a5-4.pdf>.

institution. These include economic factors, efficiency concerns, political attitudes to children's rights and domestic and regional legal systems. There are also competing functional considerations that influence the decision whether to have a thematic children's rights institution as opposed to integrating the children's rights mandate into a broad-based NHRI (or equivalent sub-national human rights institution). The burgeoning international standards on NRHIs and thematic human rights institutions also play a role in influencing the decisions of national governments on the composition of their ICRI(s). This Article focuses on the interplay between the UN Paris Principles as interpreted by the ICC and the practice of the CRC's treaty committee, the Committee on the Rights of the Child ("CtRC").

Thematic human rights institutions at all levels of governance (including thematic children's rights institutions) and sub-national human rights institutions are not considered to be NRHIs pursuant to the Paris Principles as interpreted by the ICC.⁹ Based on ICC practice, it is impossible for thematic human rights/children's rights institutions to be deemed by the ICC to be fully compliant with the Paris Principles, which has material implications for these institutions in the UN and regional human rights systems. Only broad-based NRHIs have the capacity to be fully compliant with the Paris Principles. As a result, this Article argues that the application of the Paris Principles by the ICC exerts pressure on states to have one comprehensive NHRI that includes a children's rights focus and subtly discourages states from establishing or retaining a separate national level thematic children's rights institution. This Article further argues that while the CtRC originally had a stronger inclination to encourage CRC states to establish thematic children's rights institutions, this attitude has changed as the Paris Principles have become dominant in the international human rights community. Moreover, the CtRC has exerted almost no pressure on CRC states to establish a national level thematic children's rights institution as long as they have an NHRI with a focus on children's rights. While extant thematic

9. GENERAL OBSERVATIONS, *supra* note 5, at 101–05, 110. See *infra* text accompanying notes 100–17 (offering a more detailed discussion).

children's rights institutions are supported by the CtRC, they are almost never affirmatively recommended. Thus, the CtRC's practice exerts no appreciable pressure on CRC states to establish thematic children's rights institutions at the national level, thereby underscoring the influence of the one-NHRI movement set in motion by the Paris Principles.

However, since the Paris Principles do not apply to sub-national human rights institutions, sub-national governments with plenary jurisdiction over children's rights will probably not be influenced by the UN human rights standards and pressures, at least to the same degree, in their decision-making on thematic children's rights institutions.

II. INDEPENDENT HUMAN RIGHTS INSTITUTIONS FOR CHILDREN AND THE UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

The CRC contains numerous civil, political, economic, social, cultural and protective rights for children. Its substantive protocols protect children involved in armed conflict and prohibit the sale of children, child prostitution and child pornography.¹⁰ Four general principles of the CRC are: non-discrimination; the best interests of the child; the right to life, survival and development of the child; and the rights of children to provide their views in matters affecting them according to their age and maturity.¹¹ The CtRC has powers to review periodic reports issued by the state parties and issue recommendations thereon (concluding observations), issue general comments containing detailed interpretations of individual CRC rights or thematic issues related to children's rights and, pursuant to the Optional

10. E.g., Children in Armed Conflict Protocol, *supra* note 8, art. 1; Sale of Children Protocol, *supra* note 8, art. 1.

11. Convention on the Rights of the Child, *supra* note 8, arts. 2–3, 6, 12; see Comm. on the Rights of the Child, General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), Sept. 19–Oct. 3, 2003, ¶ 12, UN Doc. CRC/GC/2003/5 (Nov. 27, 2003) [hereinafter General Comment No. 5] (describing the four general principles in detail); Lothar Krappmann, *The Weight of the Child's View (Article 12 of the Convention on the Rights of the Child)*, 18 INT'L J. CHILD. RTS. 501, 501–02 (2010) (noting that the weight given to those views is dependent on age and maturity of the child and that article 12 is often described in participation rights language).

Protocol on a Communications Procedure, hear complaints and engage in inquiries concerning alleged CRC/Protocol violations.¹²

Article 4 of the CRC contains implementation obligations for states parties.¹³ Although the treaty drafters discussed the possibility of requiring states to establish domestic human rights institutions to protect children's rights, the final text of the CRC was silent on the matter.¹⁴ As discussed further below, the CtRC has interpreted article 4 to include an obligation that CRC parties must establish ICRIs.

A. Typology of Independent Children's Rights Institutions (ICRIs)

The definitions of ICRIs used by UNICEF's Office of Research and the European Network of Ombudspersons for Children (ENOC) reflect the influence of the Paris Principles and the work of the CtRC.

UNICEF's Office of Research defines an independent human rights institution for children as:

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 [sic] or because it carries out activities specifically focusing on children, with an identifiable department. It can be established at national or sub-national level.¹⁵

The definition includes: (1) thematic children's rights institutions at all levels of governance; (2) NHRIs and sub-national human rights institutions that have integrated children's rights into their broad human rights mandates based on express child-focused legislative provisions; and (3) NHRIs and sub-national human rights institutions that have integrated children's rights into their broad human rights mandates in

12. BUCK, *supra* note 8, at 92–99; Committee on the Rights of the Child, OFF. HIGH COMMISSIONER FOR HUM. RTS., <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx> (last visited Nov. 7, 2014).

13. Convention on the Rights of the Child, *supra* note 8, art. 4.

14. GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 408 (1995).

15. UNICEF OFFICE OF RESEARCH, *supra* note 6, at xi.

practice only, but “[t]o qualify as an independent human rights institution for children, this [third] model must feature an identifiable commissioner or unit dedicated to children’s rights.”¹⁶

Apart from its geographic limitation to institutions located in Council of Europe (COE) member states, ENOC membership is open to both thematic children’s rights institutions at national and sub-national levels of governance and institutions that “form part of an independent national or regional human rights institution.”¹⁷ To obtain ENOC full membership, institutions must satisfy the following criteria: the institution is established by the legislature through legislation that gives it independence, the legislation gives the institution the functions of protecting and promoting children’s rights, the legislation provides for appointment of the institution’s leadership and the term(s) of appointment, there are no statutory limitations on the institution’s ability to set its own children’s rights protection and promotion agenda or that prevent it from undertaking significant core functions suggested in the Paris Principles and ENOC’s standards and an identifiable person(s) must work exclusively on children’s rights promotion and protection.¹⁸

For the purposes of this Article, I will use the following variation on the UNICEF/ENOC approaches to classification of ICRIs:

1. NHRIs—national level human rights commissions and national level human rights ombudsman institutions—that address children’s rights within their broad human rights mandates based on an explicit legislative children’s rights mandate that sometimes also requires the appointment of a commissioner/deputy ombudsman for children;¹⁹

16. *Id.* at 75–78.

17. *Membership Information*, EUR. NETWORK OMBUDSPEOPLE FOR CHILD., available in archived format at <http://www.crinarchive.org/enoc/membership/index.asp> (last visited Nov. 1, 2014) [hereinafter *Membership Information*].

18. *Id.* Institutions can become ENOC associate members if they can show that they are actively striving to meet these criteria. *Id.*

19. See generally Linda C. Reif, *Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman*, 31 B.C. THIRD WORLD L.J. 269, 271–72, 290–93 (2011).

2. NHRIIs that have a broad human rights mandate and the operating practices of the NHRI prioritize children's rights, including the designation of an identifiable unit or commissioner/deputy ombudsman dedicated to children's rights;
3. thematic children's rights institutions found at national and/or sub-national levels, established with a singular focus on the protection and promotion of children's rights;
4. human rights commissions and human rights ombudsman institutions found at the sub-national level in federal and decentralized states that have an explicit legislative children's rights mandate that sometimes also requires the appointment of a deputy ombudsman/commissioner for children; and
5. human rights commissions and human rights ombudsman institutions found at the sub-national level in federal and decentralized states with broad human rights mandates and the operating practices of the institution prioritize children's rights, including the designation of an identifiable commissioner or unit dedicated to children's rights.²⁰

NHRIIs or broad-based sub-national human rights institutions in categories (1), (2), (4) and (5) will not be classified as ICRIs if they do not have a children's human rights mandate in law or practice that leads to the designation of a person or

(addressing various ombudsman institutions that have express mandates to protect and promote human rights); HUMAN RIGHTS, STATE COMPLIANCE, AND SOCIAL CHANGE: ASSESSING NATIONAL HUMAN RIGHTS INSTITUTIONS (Ryan Goodman & Thomas Pegram eds., 2012) (assessing national human rights institutions).

20. Classical ombudsman institutions do not constitute ICRIs since they do not have express human rights protection and promotion mandates. There are some classical ombudsman institutions that have explicit legislative duties to protect children through investigation, reporting, auditing and related activities—such as the New South Wales Ombudsman—and there are other classical ombudsman institutions that in practice use the CRC sometimes to support their investigations involving treatment of children. Linda C. Reif, *The Ombudsman and the Protection of Children's Rights*, 17 ASIA PAC. L. REV. 27, 27–28 (2009); Bruce Barbour, Ombudsman of N.S.W., Actions Speak Louder Than Words: An Ombudsman's Office and Children, Address at the International Ombudsman Institute Stockholm Conference (June 11, 2009), available at http://www.theioi.org/downloads/f3sfh/Stockholm%20Conference_21.%20Workshop%204_Bruce%20Barbour.pdf.

unit/department focusing on children's rights. If the conditions are satisfied, all five categories of ICRIIs are considered to be children's rights institutions.²¹ Scholars also accept this relatively broad conception of an ICRI.²²

However, as demonstrated further below, only those institutions in categories (1) and (2), i.e., NHRIIs, primarily national level human rights commissions and national level human rights ombudsman institutions with broad human rights mandates, are considered both to constitute NHRIIs and to be capable of full compliance with the Paris Principles as interpreted by the ICC. This has ramifications for national level thematic children's rights institutions in (3) because the CtRC uses the Paris Principles and NHRI terminology in its concluding observations and relevant general comments.

B. Geography of Independent Children's Rights Institutions

1. Thematic Children's Rights Institutions

a. National Level Thematic Children's Rights Institutions

National level thematic children's rights institutions are found in over twenty countries, with many of them located in Europe.²³ National level thematic institutions in Europe are located in Croatia, Cyprus, Denmark, Finland, Iceland, Ireland, Italy, Lichtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Russia, Sweden and Ukraine.²⁴ Further, in addition to

21. See *supra* text accompanying note 18, for ENOC membership requirements; UNICEF OFFICE OF RESEARCH, *supra* note 6, at xi (defining ICRI).

22. See, e.g., Thomas, Gran & Hanson, *supra* note 7, at 429–31 (defining an Independent Human Rights Institution for Children (the authors' term for an ICRI) as an independent institution "with duties and powers to monitor, promote and protect the rights of children"); Thomas, *supra* note 7, at 281–84 (using ENOC typology for ICRIs); Gran, *supra* note 7, at 219 ("An ICRI is a type of independent institution that concentrates on monitoring, promoting and protecting children's rights.").

23. See UNICEF OFFICE OF RESEARCH, *supra* note 6, at 317–27 (listing the countries that have national level thematic children's rights institutions as of August 30, 2013). The Directory does not separate the thematic children's rights institutions from the general jurisdiction human rights institutions. *Id.*

24. PRAVOBANITELJA ZA DJECU [OMBUDSPERSON FOR CHILD.], <http://www.dijete.hr/en.html> (last visited Nov. 24, 2014) (Croat.); EPÍTROPOS PROSTASÍAS TΩΝ

its primary focus on children's rights in England, England's Children's Commissioner also has jurisdiction over non-devolved areas covering the United Kingdom (UK).²⁵ In other parts of the world, national thematic institutions for children are found in Mauritius, India, Jamaica, Guyana, Indonesia and New

DIKAIOMATON TOU PAIDIOU [COMMISSIONER FOR CHILD. RTS.], http://www.childcom.org.cy/CCR/CCR.NSF/DMLINDEX_EN/DMLINDEX_EN?OPENDOCUMENT (last visited Nov. 24, 2014) (Cyprus); BØRNERÅDET [NAT'L COUNCIL FOR CHILD.], <http://www.boerneraadet.dk/english> (last visited Nov. 24, 2014) (Den.); LAPSIASIAVALTUUTETTU [OMBUDSMAN FOR CHILD.], <http://www.lapsiasia.fi/en/frontpage> (last visited Nov. 24, 2014) (Fin.); UMBODSMADUR BARNA [OFF. OMBUDSMAN FOR CHILD.], <http://barn.is/um-embaettid/upplysingar-a-erlendum-tungumalum/enska> (last visited Nov. 24, 2014) (Ice.); OMBUDSMAN FOR CHILDREN, <http://www.oco.ie/about-us/background> (last visited Nov. 24, 2014) (Ir.); AUTORITÀ GARANTE PER L'INFANZIA E L'ADOLESCENZA [AUTHORITY COMMISSIONER FOR CHILD. & ADOLESCENTS], <http://www.garanteinfanzia.org/siamo> (last visited Nov. 24, 2014) (It.); OMBUDSSTELLE FÜR KINDER UND JUGENDLICHE [OMBUDSMAN FOR CHILD. & YOUNG PEOPLE], <http://www.oskj.li/%C3%9CberdieOSKJ/tabid/62/Default.aspx> (last visited Nov. 24, 2014) (Liech.); LIETUVOS RESPUBLIKOS VAIKO TEISIŲ APSAUGOS KONTROLIERIAUS ĮSTAIGA [INSTITUTION OMBUDSMAN FOR CHILD. RTS. REPUBLIC LITHUANIA], <http://www3.lrs.lt/pls/inter/vaikai?sakId=7877&dokId=68788&kalbId=2> (last visited Nov. 24, 2014); OMBUDS COMITÉ POUR LES DROITS DE L'ENFANTS [OMBUDS COMMITTEE FOR CHILD. RTS.], <http://ork.lu/index.php/en/home-en> (last visited Nov. 24, 2014) (Lux.); L-UFFIČČJU TAL-KUMMISSARJU GHAT-TFAL [OFF. COMMISSIONER FOR CHILD.], <http://www.tfal.org.mt/aboutus.aspx> (last visited Nov. 24, 2014) (Malta); BARNEOMBUDET [OMBUDSMAN FOR CHILD.], <http://barneombudet.no/english/about-the-ombudsman> (last visited Nov. 24, 2014) (Nor.); RZECZNIK PRAW DZIECKA [OMBUDSMAN FOR CHILD.], <http://brpd.gov.pl/czym-zajmuje-sie-rzecznik-praw-dziecka> (last visited Nov. 24, 2014) (Pol.); OB UPOLNOMOCHENNOM PRI PREZIDENTE ROSSIYSKOY FEDERATSII PO PRAVAM REBENKA [CHILD. RTS. COMMISSIONER UNDER PRESIDENT RUSSIAN FED'N], <http://www.rfdeti.ru/menu/12> (last visited Nov. 24, 2014); About Us, BARNOMBUDSMANNEN [OMBUDSMAN FOR CHILD.], <http://www.barnombudsmannen.se/english/about-us> (last visited Nov. 24, 2014) (Swed.); UPOVNOVAZHENYY PREZYDENTA UKRAYINY Z PRAV DYTINY [OMBUDSMAN FOR CHILD. UNDER PRESIDENT OF UKRAINE], <http://www.president.gov.ua/en/content/pravadytyny.html> (last visited Nov. 24, 2014); KINDEROMBUDSMAN [CHILD. OMBUDSMAN], <http://www.dekinderombudsmann.nl> (last visited Nov. 24, 2014) (Neth.). See also Thomas, Gran & Hanson, *supra* note 7, at 436–37 (chart showing some ENOC members are national level thematic children's rights institutions); Richard Carver, *National Human Rights Institutions in Central and Eastern Europe: The Ombudsman as an Agent of International Law*, in HUMAN RIGHTS, STATE COMPLIANCE, AND SOCIAL CHANGE ASSESSING NATIONAL HUMAN RIGHTS INSTITUTIONS 181, 204, 206–07 (Ryan Goodman & Thomas Pegram eds., 2012) (discussing the development of Eastern European ombudsman institutions including Lithuania's Children's Ombudsman).

25. *About Us*, CHILD. COMMISSIONER FOR ENGLAND, http://www.childrenscommissioner.gov.uk/info/about_us (last visited Nov. 19, 2014); Children Act, 2004, c. 31, §§ 5–7 (U.K.); Children and Families Act 2014, c. 6, Part 6, § 107 (U.K.).

Zealand.²⁶ These thematic children's rights institutions have differing levels of independence and powers.²⁷ Thematic children's rights institutions are under consideration in other countries, some of which have not acted on the initiative for years.²⁸

26. OMBUDSPERSON POUR LES ENFANTS [OMBUDSPERSON FOR CHILD.], <http://oco.gov.mu/English/AboutUs/Pages/The-Role,-Powers-and-Functions-of-the-ombudsperson-for-children.aspx> (last visited Oct. 19, 2014) (Mauritius); NAT'L COMMISSION FOR PROTECTION CHILD RTS., <http://nepcr.gov.in> (last visited Nov. 24, 2014) (India); OFF. CHILD. ADVOC., <http://www.welcome.oca.gov.jm> (last visited Nov. 24, 2014) (Jam.); Comm. on the Rights of the Child, Concluding Observations on the Combined Second to Fourth Periodic Reports of Guyana, Adopted by the Committee at its Sixty-Second Session (14 Jan.–1 Feb. 2013), ¶¶ 18–19, UN Doc. CRC/C/GUN/CO/2-4 (June 18, 2013) [hereinafter CRC, Guyana]; Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Indonesia, ¶¶ 17–18, UN Doc. CRC/C/IDN/CO/3-4 (June 13, 2014) [hereinafter CRC, Indonesia]; CHILD. COMMISSIONER, <http://www.ooc.org.nz> (last visited Nov. 24, 2014) (N.Z.).

27. See, e.g., Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Denmark, 56th Sess., Jan. 17–Feb. 4, 2011, ¶¶ 18, 20, UN Doc. CRC/C/DNK/CO/4 (Apr. 7, 2011) [hereinafter CRC, Denmark] (criticizing Denmark because its National Council for Children does not fulfill ombudsman role or it has not established child rights facility inside ombudsman institution); OMBUDSMAN FOR CHILD. PRESIDENT UKRAINE, *supra* note 24 (showing that Ukraine's institution is not independent, rather it is under the office of the President); CHILD. RTS. COMMISSIONER UNDER PRESIDENT RUSSIAN FED'N, *supra* note 24 (showing the Russian institution is under the office of the President and not independent).

28. See, e.g., UNICEF OFFICE OF RESEARCH, *supra* note 6, at 264, 281 (Argentina's unimplemented legislation for a *Defensor de Derechos de Niños, Niñas y Adolescentes* [Defender of the Rights of Children and Adolescents]); *id.* at 261, 281 (Dominican Republic's unimplemented legislation); *id.* at 215 (Namibia's unimplemented legislation); *id.* at 281 (thematic children's rights institution under consideration in Suriname); Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Uzbekistan, Adopted by the Committee at its Sixty-Third Session (27 May–14 June 2013), ¶ 7(c), UN Doc. CRC/C/UZB/CO/3-4 (July 10, 2013) [hereinafter CRC, Uzbekistan] (Uzbekistan's unimplemented legislation for a children's ombudsman); Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of China (Including Hong Kong and Macau Special Administrative Regions), Adopted by the Committee at its Sixty-Fourth Session (16 Sept.–4 Oct. 2013), ¶¶ 18–19, UN Doc. CRC/C/CHN/CO/3-4 (Oct. 29, 2013) [hereinafter CRC, China] (stating that Hong Kong, China has not acted on a 2007 Legislative Council motion to establish an independent children's commission); Comm. on the Rights of the Child, Concluding Observations on the Combined Second to Fourth Periodic Reports Saint Lucia, ¶ 18, UN Doc. CRC/C/LCA/CO/2-4 (June 13, 2014) [hereinafter CRC, Saint Lucia] (stating Saint Lucia intends to establish a children's advocate).

In some countries, the national level thematic institution coexists with an NHRI that has ICC accreditation confirming full or partial compliance with the Paris Principles.²⁹ As discussed further below, since only one NHRI in a state is typically accredited by the ICC and the process is based on voluntary application, there are also a few nations where the thematic child's rights institution also coexists with a non-accredited broad-based national level institution that has some form of human rights protection and/or promotion mandate(s) that may include children's rights.

b. Sub-National Level Thematic Children's Rights Institutions

There are a number of federal and decentralized states around the world where children's matters fall partly or fully within the jurisdiction of sub-national governments. To a certain extent, children's rights issues can also fall within the purview of municipal governments.

Over ten countries have multiple thematic children's rights institutions at provincial, state or municipal levels of governance.³⁰ Many of these sub-national thematic children's

29. See, e.g., ACCREDITED NHRIS CHART, *supra* note 5 (listing accredited NRHIs that comply in full or part with the Paris Principles, including Mauritius' Human Rights Commission, India's National Human Rights Commission, Indonesia's National Commission on Human Rights, Croatia's Ombudsman, Denmark's Danish Institute for Human Rights, Ireland's Human Rights Commission, Luxembourg's Consultative Human Rights Commission, Norway's Norwegian Centre for Human Rights, Poland's Human Rights Defender, Russian Federation's Commissioner for Human Rights, Ukraine's Parliamentary Commissioner for Human Rights, New Zealand's Human Rights Commission, and Argentina's *Defensoría del Pueblo*); UNIVERSAL PERIODIC REVIEW, NORWAY: SECOND NATIONAL REPORT TO THE U.N. HUMAN RIGHTS COUNCIL UNDER THE UNIVERSAL PERIODIC REVIEW MECHANISM 4–5 (2014), available at http://www.regjeringen.no/upload/UD/Vedlegg/Menneskerettigheter/upr_rapport1401.pdf (noting that Norway is establishing a new NHRI designed to comply fully with the Paris Principles).

30. See, e.g., Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Japan, 54th Sess., May 25–June 11, 2010, ¶ 17, UN Doc. CRC/C/JPN/CO/3 (June 20, 2010) [hereinafter CRC, Japan] (five Japanese municipalities with Ombudspersons for Children); KINDER- UND JUGENDANWALTSCHAFTEN [CHILD. & YOUTH ADVOC.], <http://www.kija.at/> kija (last visited Nov. 24, 2014) (Austria) (Austrian provincial level institutions); DE KINDERRECHTENCOMMISSARIAAT [COMMUNITY CHILD. RTS. COMMISSIONER], <http://>

rights institutions also are found in Europe, including the unusual case of the UK where, under devolution of government, England, Wales, Scotland and Northern Ireland each have a children's commissioner and, as noted above, England's Children's Commissioner also has jurisdiction over reserved and excepted matters.³¹ Beyond Europe, common law countries such as Canada, Australia and the United States have a number of child advocate or child representative institutions at provincial and state levels of governance, some of which have developed in the child welfare context. Very few federal or decentralized countries have children's commissioners or ombudspersons at both national and sub-national levels of governance; for the most part, thematic institutions are found only at the sub-national

www.kinderrechten.be (last visited Nov. 19, 2014) (Belg.) (Belgium's Flemish speaking provincial level institution); DÉLÉGUÉ GÉNÉRAL DE LA COMMUNAUTÉ FRANÇAISE AUX DROITS DE L'ENFANT [GEN. DELEGATE FOR FRENCH COMMUNITY TO RTS. CHILD], <http://www.dgde.cfwb.be> (last visited Nov. 19, 2014) (Belg.) (Belgium's French speaking community level institution); OMBUDSMANA ZA DJECU REPUBLIKE SRPSKE [REPUBLIC SRPSKA CHILD. OMBUDSMAN], <http://www.djeca.rs.ba/index.php?lang=2> (last visited Nov. 19, 2014) (Bosn. & Herz.) (Republic of Srpska's institution); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Italy, 58th Sess., Sept. 19–Oct. 7, 2011, ¶ 12, UN Doc. CRC/C/ITA/CO/3-4 (Oct. 31, 2011) [hereinafter CRC, Italy] (numerous regional level institutions in Italy); DEFENSOR DEL MENOR DE ANDALUCÍA [CHILD. OMBUDSMAN ANDALUSIA], <http://www.defensordelmenordeandalucia.es> (last visited Nov. 19, 2014) (Spain) (Spanish autonomous community institution); CHILD. COMMISSIONER FOR ENGLAND, *supra* note 25; CHILD. COMMISSIONER FOR WALES, <http://www.childecomwales.org.uk> (last visited Nov. 19, 2014); SCOTLAND'S COMMISSIONER FOR CHILD. & YOUNG PEOPLE, <http://www.scyp.org.uk> (last visited Nov. 19, 2014); N. IRELAND COMMISSIONER FOR CHILD. & YOUNG PEOPLE, <http://www.niccy.org> (last visited Oct. 19, 2014) (thematic children's rights institutions located in UK); UNICEF OFFICE OF RESEARCH, *supra* note 6, at 324 (children's rights defenders in certain Argentine provinces); *id.* at 325–26 (Australian state-level commissioners/commissions/guardians for children); *id.* at 326 (children's advocates/representatives in most Canadian provinces/territories); *id.* at 327 (advocates/ombudsman/commission for children in nine U.S. states); Comm. on the Rights of the Child, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of the Russian Federation, ¶ 16, UN Doc. CRC/C/RUS/CO/4-5 (Feb. 25, 2014) [hereinafter CRC, Russian Federation] (children's rights commissioners in certain Russian regions); Comm. on the Rights of the Child, Concluding Observations on the Consolidated Third and Fourth Periodic Reports of India, ¶ 21, UN Doc. CRC/C/IND/CO/3-4 (June 13, 2014) [hereinafter CRC, India] (noting India's National Commission for the Protection of Child Rights includes establishment of commissions at state level in some states and in Union territories).

31. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 107.

level.³² Sub-national thematic children's rights institutions also differ in their levels of independence and scope of powers.

2. *NHRIs and Sub-National Human Rights Institutions as Independent Children's Rights Institutions*

The past few decades have seen a considerable increase in the number of NHRIs and sub-national human rights institutions that include children's rights within their broad mandates to protect and promote human rights. In particular, the promotion of NHRIs and the Paris Principles by the UN, ICC, regional groupings of NHRIs, regional international organizations and NGOs has led to the establishment of a considerable number of NHRIs.³³

While UNICEF research finds that there are approximately two hundred ICRIs at national and sub-national levels of government in over seventy countries, it does not provide the percentage of thematic institutions compared to broad-based

32. *Id.* at 317–27. The UK and Italy have institutions at both levels, and this is pending in Argentina. *Id.* at 320–24.

33. See, e.g., ACCREDITED NHRIS CHART, *supra* note 5 (noting that as of May 2014, of the 106 NHRIs accredited by the ICC, one hundred were general jurisdiction institutions and six were thematic institutions). Some national level human rights institutions have not applied for ICC accreditation, but if willing and permitted to apply, could receive partial or full Paris Principles compliance ratings, such as certain human rights ombudsman institutions in Western Europe. In addition, sub-national level human rights institutions in federal and decentralized states are not classified as NHRIs, such as those at the state level in Argentina and Mexico, the provincial level in Canada, and the community level in Spain. See Linda C. Reif, *The Shifting Boundaries of NHRIs Definition in the International System*, in HUMAN RIGHTS, STATE COMPLIANCE, AND SOCIAL CHANGE ASSESSING NATIONAL HUMAN RIGHTS INSTITUTIONS 52, 57 (Ryan Goodman & Thomas Pegram eds., 2012) (noting that the “General Observations give some flexibility to the Paris Principles so that human rights ombudsman can certainly meet their requirements” but that subnational and thematic human rights institutions are not considered to be NHRIs); Catherine Renshaw & Kieren Fitzpatrick, *National Human Rights Institutions in the Asia Pacific Region: Change Agents Under Conditions of Uncertainty*, in HUMAN RIGHTS, STATE COMPLIANCE, AND SOCIAL CHANGE ASSESSING NATIONAL HUMAN RIGHTS INSTITUTIONS 150, 150–51 (Ryan Goodman & Thomas Pegram eds., 2012) (noting the establishment of nineteen NHRIs in the Asia Pacific region); Catherine Shanahan Renshaw, *National Human Rights Institutions and Civil Society Organizations: New Dynamics of Engagement at Domestic, Regional, and International Levels*, 18 GLOBAL GOVERNANCE 299, 302 (2012) (asserting the influence of civil society organizations in lobbying for the establishment of NHRIs based on the Paris Principles).

institutions.³⁴ However, UNICEF's indicative list of ICRIs can be broken down. If national level institutions are compared, there are approximately fifty-three NHRIIs and other national institutions with a child's rights focus compared to only approximately twenty national level thematic children's rights institutions.³⁵ At the sub-national level, there are approximately six broad-based human rights ombudsman or classical ombudsman institutions with a child rights focus and sixty-five thematic children's rights institutions of various kinds.³⁶ Thus, at least at the national level a proportionally larger number of ICRIs are NHRIIs that include a children's rights focus rather than thematic children's rights institutions. These broad-based NHRIIs are found in all regions of the world.

Some countries with legislative provisions on children's rights in the NHRI's legal framework also include a statute-based position of deputy ombudsman or commissioner for children, a post located inside the broad-based NHRI and usually with an accompanying departmental focus on children's rights. For example, this approach has been used in France,³⁷ Greece,³⁸

34. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 1, 195.

35. See *id.* at 317–27 (listing types of child's rights institutions and noting one thematic institution pending).

36. See *id.* (list includes Canadian and U.S. child advocate/representative institutions that do not have an express mandate to apply the CRC and notes that there are also eight sub-national thematic institutions pending). See *id.* at 316 (stating that Canada and the United States lack a national independent human rights institution for children).

37. LE DÉFENSEUR DES DROITS [DEFENDER OF RTS.], <http://www.defenseurdesdroits.fr/connaitre-son-action/la-defense-des-droits-de-l-enfant> (last visited Nov. 22, 2014) (Fr.) (noting that the Defender of Rights has a Deputy Defender of Children (Défenseure Adjoint aux Droits des Enfants)). France has an ICC A-status accredited advisory human rights commission so that the Defender of Rights is not accredited although it satisfies many if not all of the Paris Principles. See ACCREDITED NHRIS CHART, *supra* note 5, at 5 (noting France's Commission nationale consultative des droits de l'homme [National Consultative Commission on Human Rights] has A-status accreditation).

38. *Children's Rights*, SYNIGOROS TOU POLITI [GREEK OMBUDSMAN], <http://www.synigoros.gr/?i=childrens-rights.en> (last visited Nov. 22, 2014) (Greece) (detailing that the Greek Ombudsman institution has a Department of Children's Rights run by a Deputy Ombudsman). Greece has an ICC A-status accredited national human rights commission so that the Greek Ombudsman, a human rights ombudsman, is not accredited although it satisfies many if not all of the Paris Principles. See ACCREDITED

Nicaragua,³⁹ Australia⁴⁰ and Ethiopia.⁴¹ A number of other NHRIs have a legislated prioritization of children's rights, (contained either in the NHRIs statute or in separate child protection legislation), such as in Hungary,⁴² Serbia,⁴³ Estonia,⁴⁴ Montenegro,⁴⁵ Afghanistan and Ecuador.⁴⁶ There are also several recent cases in Europe where formerly classical national ombudsman institutions have been utilized in different ways for children's rights institutions. In the Netherlands, a thematic Children's Ombudsman was created that is administratively

NHRIS CHART, *supra* note 5, at 6 (noting Greece's National Commission for Human Rights has A-status accreditation).

39. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 77 (noting the establishment of a *Procurador* [Attorney] for Children and Adolescents in Nicaragua's Procuraduría para la Defensa de los Derechos Humanos legislation).

40. *Presidents & Commissioners*, AUSTRALIAN HUM. RTS. COMMISSION, <http://www.humanrights.gov.au/about/president-commissioners> (last visited Nov. 22, 2014) (showing that Children's Rights Commissioner is part of the Australian Human Rights Commission); Joint Press Release, Austl. Attorney-General, et al., Gillard Government to Establish a National Children's Commissioner (Apr. 29, 2012), available at <http://www.formerministers.dss.gov.au/12869/gillard-government-to-establish-national-childrens-commissioner>.

41. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 77 (noting Ethiopia's Ombudsman for Women and Children, part of Ethiopia's Ombudsman institution).

42. 2011. évi CXI. törvény az Alapvető Jogok Biztosáról (Act CXI of 2011 on the Commissioner for Fundamental Rights) (Hung.), s. 1(2), available at <http://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011> [hereinafter Hungary, Act CXI of 2011] (specifying Hungary's Commissioner for Fundamental Rights is required to pay special attention to, inter alia, children's rights in course of activities, especially own-motion investigations); Máté Szabó, *Changes in the Institutional Context of the Ombudsman System in the Republic of Hungary in 2012*, 3 BEIJING L. REV. 112, 114 (2012).

43. *Areas of Work*, ZASTITNIK GRADANA [PROTECTOR CITIZENS], <http://www.ombudsman.rs/index.php/lang-sr/oblasti-rada> (last visited Nov. 23, 2014) (Serb.) (noting the Ombudsman has jurisdiction over, inter alia, children's rights).

44. *Who is the Ombudsman for Children?*, ŒIGUSKANTSLER [CHANCELLOR JUST.], <http://lasteombudsman.ee/en/ombudsman-for-children> (last visited Oct. 22, 2014) (Est.); Œiguskantsleri Seadus [Chancellor of Justice Act], c. 1, § 1, art. 8 (Est.) ("The Chancellor of Justice performs the functions of protection of the rights of children and promotion thereof according to Article 4 of the Convention on the Rights of the Child.").

45. *Ombudsman*, MONTENEGRO OMBUDSMAN PROTECTOR HUM. RTS. & FREEDOMS, <http://www.ombudsman.co.me/eng/index.htm> (last visited Nov. 24, 2014) (Montenegro); Zakon O Zaštitniku/ci Ljudskih Prava i Sloboda Crne Gore [Law on the Protector of Human Rights and Freedoms of Montenegro], § II, art. 8, § IV, arts. 26–27, § V, arts. 28–30 (Montenegro).

46. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 77.

attached to the country's classical parliamentary ombudsman institution.⁴⁷ In Denmark, rather than strengthen the thematic National Council for Children or add to the responsibilities of the country's NHRI, the Danish Institute for Human Rights, the government added children's rights protection responsibilities to the mandate of the Danish Parliamentary Ombudsman.⁴⁸

There are considerably more NRIs that focus on children's rights only through their operating practices. To qualify as an ICRI, it must at a minimum designate a children's rights unit/department or an internal commissioner/deputy ombudsman responsible for children's rights.⁴⁹

In addition, there are more NRIs located around the world that have an insufficient focus on children's rights and so cannot be classified as ICRIIs, although their broad-based mandates will

47. KINDEROMBUDSMAN [CHILD. OMBUDSMAN], *supra* note 24; *Children*, DE NATIONALE OMBUDSMAN [NAT'L OMBUDSMAN] (Mar. 15, 2011), <https://www.nationaleombudsman.nl/kinderen> (Neth.). This ICRI is hard to categorize and could possibly be classified as a thematic children's rights institution.

48. CRC, Denmark, *supra* note 27, ¶¶ 18–20; see The Ombudsman Act, c. 2, § 7(1) (Den.), available at <http://en.ombudsmanden.dk> (noting that the Children's Division investigates complaints by or on behalf of children and inspects public and private institutions for children); see also Christoffer Badse, *The Danish Experience: The Danish Institute for Human Rights*, in NATIONAL HUMAN RIGHTS INSTITUTIONS IN EUROPE: COMPARATIVE, EUROPEAN AND INTERNATIONAL PERSPECTIVES 29, 51 (Jan Wouters & Katrien Meuwissen eds., 2013) (noting that the “Children’s Office was established at [sic] an integrated part of the Parliamentary Ombudsman office in 2012” and “[t]he DIHR will continue to monitor the efforts and work of the designated office and will provide technical assistance if needed”).

49. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 78 (noting, for example, the South African Human Rights Commission and Zambia's Human Rights Commissions); see also *Defenders of Children's Rights*, HUM. RTS. DEFENDER REPUBLIC ARMENIA, <http://www.pashtpan.am/en/guards/browse/code/1> (last visited Oct. 22, 2014) (Armenia) (citing Armenia's Defender's Advisor on the Children's Rights as an example); see LATVJIS REPUBLIKAS TIESĪBSARGS [REPUBLIC LATVIA OMBUDSMAN], <http://www.tiesibsargs.lv/en/about-us/darbinieki> (last visited Nov. 22, 2014) (Latvia) (Latvia Ombudsman Children's Rights Division); see REPUBLIKA SLOVENIJA VARUH ČLOVEKOVIH PRAVIC [REPUBLIC SLOVENIA HUM. RTS. OMBUDSMAN], <http://www.varuh-rs.si/about-us/leadership/tone-dolcic/?L=6> (last visited Nov. 22, 2014) (Slovenia) (noting that Slovenia has a Deputy Ombudsman that is responsible for children's rights and social security); see Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Report of Portugal, ¶ 19, UN Doc. CRC/C/PRT/CO/3-4 (Feb. 25, 2014) [hereinafter CRC, Portugal] (noting the creation of the Department on Children, Elderly Persons and Persons with Disabilities, under a Deputy Ombudsperson).

usually encompass children's rights in whole or in part and they may engage in protection and/or promotion of children's rights to differing degrees in practice. An example of this type of NHRI is Spain's national Defender of the People (*Defensor del Pueblo*), an NHRI that does engage in some investigations that involve children's rights.⁵⁰ It is always open to these NRHIs to change their operating practices to prioritize children's rights sufficiently to move within the definition of an ICRI. In a similar vein, it is always open to the national governments of these states to amend the legislative framework of their NHRI so that it addresses children's rights expressly, also bringing the NHRI within the ICRI definition.

Since human rights matters may fall fully or partly within the jurisdiction of sub-national governments in federal and decentralized states, human rights commissions and human rights ombudsman institutions have been established at the sub-national levels of governance in these types of states. They may coexist with an NHRI, and jurisdiction over human rights in general and children's rights in particular may be shared or split between the two levels of government. A few of these sub-national human rights commissions and human rights ombudsman institutions have a legislative prioritization of children's rights or have instituted operating practices that have enabled them to be classified as ICRIIs. For example, in Spain's autonomous community of Catalonia, the *Síndic de Greuges* is required by its legislation to pay attention to children's rights and appoint a deputy ombudsperson for children.⁵¹ Similar to the national level, there are numerous human rights institutions at the sub-national level that are not considered to be ICRIIs

50. See DEFENSOR DEL PUEBLO, ANNUAL REPORT SUMMARY 2012, at 12–13, 38–40, 45–51 (Spain) (noting that the Defensor del Pueblo's duties involving children include processing complaints of families in need of housing and stolen babies, investigating underage offenses, underage unaccompanied minors, visits to juvenile centers, asylum, education, and student rights); see also UNICEF OFFICE OF RESEARCH, *supra* note 6, at 105, 323 (noting that Spain's national Defensor del Pueblo does not have a child rights office and is not listed as an ICRI).

51. Llei 24/2009, del 23 de desembre, del Síndic de Greuges [Act 24/2009, of December 23, on the Síndic de Greuges], arts. 4, 17(b), 20, 22–25 (D.O.G.C. 2009, 5536) (Spain), available at <http://www.sindic.cat/en/page.asp?id=41>.

even though their legal mandates include children's rights to one degree or another.⁵²

C. Threats to Thematic Children's Rights Institutions: Closure, Merger with an NHRI or Rejection of Model

Even in the early years of life of thematic children's rights institutions, closure and integration of the institution into the nation's NHRI occurred. Costa Rica was the second country in the world to establish a thematic institution in the form of its 1987 *Defensoría de la Infancia* (Defender of Childhood).⁵³ However, in 1993 the institution was closed down and its functions were moved into Costa Rica's NHRI, the *Defensoría de las Habitantes*, which created an internal section for children.⁵⁴ In 1995, the Province of Quebec in Canada merged its children's rights commission with its broad-based human rights commission.⁵⁵

In the past decade, more thematic children's rights institutions have been threatened with closure or merger into one broad-based NHRI. Various economic, efficiency-building, political, legal and other factors played roles in the final decisions. The threat materialized in France at the national level and in Spain and the United States at the sub-national level. In 2011, the *Défenseur des Enfants* (Defender of Children) was merged into France's new *Défenseur des Droits* (Defender of Rights) institution for political, cost-saving and efficiency reasons.⁵⁶ On June 30, 2012, the autonomous community of

52. See UNICEF OFFICE OF RESEARCH, *supra* note 6, at 323, 326 (other autonomous community human rights ombudsman institutions in Spain and human rights commissions at the provincial/territorial level in Canada are not listed as ICRIIs).

53. LINDA C. REIF, THE OMBUDSMAN, GOOD GOVERNANCE AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM 309 (2004).

54. *Id.* at 309; see *Historical Review*, LA DEFENSORÍA DE LOS HABITANTES [OFF. DEFENDER], http://www.dhr.go.cr/la_defensoria (last visited Nov. 22, 2014) (Costa Rica) (discussing how the Defender of Childhood was reconstituted inside the Office of the Defender, which, unlike its predecessor, was independent of the government); LA DEFENSORÍA DE LOS HABITANTES, INFORME ANUAL DE LABORES 2012–2013, at 229 (Costa Rica) (highlighting some of the duties of and policies behind the Office of the Defender).

55. REIF, *supra* note 53, at 325–26.

56. 1958 CONST. art. 71-1 (Fr.); Loi 2011-333 du 29 mars 2011 relative au Défenseur des droits [Law 2011-333 of Mar. 29, 2011 on the Defender of Rights],

Madrid closed down its *Defensor del Menor* (Children's Defender) in budget cuts connected with Spain's economic crisis.⁵⁷ New Jersey's Office of the Child Advocate was shut down in 2010 for various reasons.⁵⁸ Some of these developments can be seen as one component of a broader movement that includes other European countries such as Sweden, the UK and Hungary to eliminate some or all of their thematic human rights institutions through closure and merger with an NHRI.⁵⁹

JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 30, 2011, p. 5497; Loi 2011-334 du 29 mars 2011 relative au Défenseur des droits [Law 2011-334 of Mar. 29, 2011 on the Defender of Rights], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 30, 2011, p. 5504; UNICEF OFFICE OF RESEARCH, *supra* note 6, at 83–84. Other thematic institutions were also integrated into the Defender of Rights institution. See LE DÉFENSEUR DES DROITS, *supra* note 37 (explaining how the Defender of Rights institution includes the tasks of general ombudsman, the ombudsman for children, the High Authority Against Discrimination, and the National Commission on Ethics and Security).

57. *Desaparece el Defensor del Menor de la Comunidad de Madrid* [*The Ombudsman for Children of the Community of Madrid Disappears*], ABC.ES (June 13, 2012, 10:37 AM), <http://www.abc.es/20120607/familia-padres-hijos/abci-defensor-menor-201206071039.html>; UNICEF OFFICE OF RESEARCH, *supra* note 6, at 44; *The Office of the Defensor del Menor en la Comunidad de Madrid is Closed Down*, CHILD RTS. INT'L NETWORK (June 21, 2012), <https://www.crin.org/en/library/news-archive/office-defensor-del-menor-en-la-comunidad-de-madrid-closed-down>.

58. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 39–40, 44.

59. In the past, Hungary had a broad-based Parliamentary Commissioner for Civil Rights and three thematic parliamentary commissioners for minority rights, future generations (environment) and data protection. Recently, these institutions were replaced with one NHRI, the Commissioner for Fundamental Rights, who appoints internal deputies for national minority rights and future generations. A MAGYAR KOZTARSASAG ALKOTMANYA [CONSTITUTION OF THE REPUBLIC OF HUNGARY], art. 30; Hungary, Act CXI of 2011, *supra* note 42; SZABO, *supra* note 42, at 113–15. Sweden merged the ombudsman institutions for gender equality, ethnic discrimination, disability discrimination and discrimination on the basis of sexual orientation in 2009. *About the Equality Ombudsman*, DISKRIMINERINGS OMBUDSMANNEN [EQUALITY OMBUDSMAN], <http://www.do.se/sv/Om-DO> (last visited Nov. 23, 2014) (Swed.). In the UK, 2006 equality legislation replaced three thematic rights commissions with the UK Commission for Equality and Human Rights (covers England, Wales, Scotland). *Our Vision and Mission*, EQUALITY & HUM. RTS. COMMISSION, <http://www.equalityhumanrights.com/about-us/about-commission/our-vision-and-mission> (last visited Nov. 23, 2014); Richard Carver, *One NHRI or Many? How Many Institutions Does It Take to Protect Human Rights?—Lessons from the European Experience*, 3 J. HUM. RTS. PRAC. 1, 6 (2011). See generally Bruno de Witte, *New Institutions for Promoting Equality in Europe: Legal Transfers, National Bricolage and European Governance*, 60 AM. J. COMP. L. 49, 63–64 (2012) (highlighting recent trend of amalgamating existing equality institutions or absorbing

In other countries the threat was avoided and the thematic children's rights institution has been preserved. Financial crisis and budget constraints led to a 2009 proposal by a government-appointed review body to collapse Ireland's Ombudsman for Children into the country's classical Ombudsman institution, but this idea was not implemented.⁶⁰ In the UK, a proposal to merge Scotland's Commissioner for Children and Young People with the Scottish Human Rights Commission was rejected by a legislative committee, and a suggestion by the Conservative party that they would abolish England's Commissioner for Children was averted by the 2010 election of a coalition government.⁶¹ During the merger of Swedish thematic human rights institutions into a new Equality Ombudsman, the legislature discussed collapsing Sweden's Children's Ombudsman into the new institution but this idea was rejected based on legal considerations.⁶² A review of the viability of separate institutions in Croatia, including that of the Children's Ombudsperson, did not result in the closure of the Children's Ombudsperson institution.⁶³ In Canada, the British Columbia ("B.C.") Representative for Children and Youth successfully fought a 2010 attempt by the B.C. government to restrict the Representative's powers to review Cabinet documents.⁶⁴

separate equality rights institutions into an NHRI).

60. Barry O'Halloran & Ruadhán MacCormaic, *Merger of State Bodies Would Save €83m*, IRISH TIMES, July 17, 2009, at 9; RACHEL HODGKIN & PETER NEWELL, EUR. NETWORK OF OMBUDSPERSONS FOR CHILDREN, ENOC SURVEY 2010: THE ROLE AND MANDATE OF CHILDREN'S OMBUDSPERSONS IN EUROPE: SAFEGUARDING AND PROMOTING CHILDREN'S RIGHTS AND ENSURING CHILDREN'S VIEWS ARE TAKEN SERIOUSLY 40; UNICEF OFFICE OF RESEARCH, *supra* note 6, at 45 (noting that Ombudsman for Children demonstrated its own relevance, and was protected from merger by need for legislative approval).

61. HODGKIN & NEWELL, *supra* note 60, at 41.

62. *Id.* at 40–41 (explaining the broader coverage of CRC rights compared to the Discrimination Act and how the Children's Ombudsman does not have an individual complaints-handling power whereas the Equality Ombudsman does have such a power with respect to part of its mandate); UNICEF OFFICE OF RESEARCH, *supra* note 6, at 84.

63. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 83 (noting that cost-savings with a merger could be partially achieved instead by preserving the institutions and cost-sharing).

64. *Id.* at 43.

Recently, several countries have attached children's rights mandates to existing NHRI s or formerly classical ombudsman institutions, rather than establishing or strengthening a stand-alone thematic children's rights institution. For example, Australia created a Children's Commissioner inside its existing NHRI, the Netherlands established a Children's Ombudsman attached to its parliamentary ombudsman institution, Denmark gave child protection functions to its Parliamentary Ombudsman, and both Moldova and Georgia decided to give children's rights mandates to their NHRI s.⁶⁵

Yet, over the same period, a few countries have moved in the other direction. Italy established a national thematic children's rights institution in 2011, the UK strengthened the statutory human rights protection mandate of England's Children's Commissioner in 2014, and some other states continue to consider the establishment of thematic children's rights institutions.⁶⁶ Further, in its recent construction of an NHRI by adding a human rights promotion center to its human rights ombudsman, Finland did not collapse the Children's Ombudsman into the NHRI.⁶⁷

65. See *Presidents & Commissioners*, *supra* note 40 (showing that the Children's Rights Commissioner is part of the Australian Human Rights Commission); KINDEROMBUDSMAN [CHILD. OMBDUDSMAN], *supra* note 24 (showing that the Netherlands' Children's Ombudsman is part of the National Ombudsman institution); CRC, Denmark, *supra* note 27, at 4 (explaining how the CtRC criticized Denmark for not establishing a facility to monitor the implementation of child rights inside the Ombudsman institution); The Ombudsman Act, *supra* note 48, at chs. 1, 3 (mandating that Denmark's Parliamentary Ombudsman ensure that existing legislation and regulations be consistent with the CRC); Carver, *supra* note 59, at 7, 14 (explaining how both Moldova and Georgia respectively incorporated the children's ombudsman functions into their existing NHRI s).

66. See AUTORITÀ GARANTE PER L'INFANZIA E L'ADOLESCENZA [AUTHORITY COMMISSIONER FOR CHILD. & ADOLESCENTS], *supra* note 24 (explaining Italy's establishment of the Autorità Garante per l'Infanzia e l'Adolescenza [Authority Commissioner for Children and Adolescents] in 2011); Children and Families Act 2014, *supra* note 25 (enunciating the primary functions of the Children's Commissioner of England); UNICEF OFFICE OF RESEARCH, *supra* note 6, at 215, 281 (addressing countries considering the establishment of a thematic children's rights institution).

67. See EDUSKUNNAN OIKEUSASIAMIET [PARLIAMENTARY OMBUDSMAN], <http://www.oikeusasiamies.fi/Resource.phx/ea/index.htm> (last visited Nov. 23, 2014) (Fin.) (detailing the office of the Parliamentary Ombudsman of Finland); *Human Rights Centre*, EDUSKUNNAN OIKEUSASIAMIET [PARLIAMENTARY OMBUDSMAN], <http://www.oikeusasiamies.fi/Resource.phx/ea/index.htm>.

D. Thematic Human Rights Institutions for Children Versus NHRIs: Countervailing Forces and Views

A number of forces can be observed that may be pushing governments away from use of a thematic children's rights institution and towards the establishment or strengthening of one multi-purpose NHRI (or sub-national human rights institution) with a mandate that includes children's rights protection and promotion. Indeed, the Office of the UN High Commissioner for Human Rights has issued best practices for the merger and/or transformation of human rights institutions.⁶⁸

As reflected in the recent threats to thematic children's rights institutions described above, these forces include: budgetary pressures that induce states to reduce resources allocated to domestic human rights institutions by funding one multi-purpose human rights institution rather than multiple, often thematic, institutions; related efficiency concerns resulting in the push to cut the number of or eliminate thematic human rights institutions to reduce overlap, duplication of resources and public confusion over which institution has jurisdiction over their complaint; and negative political attitudes towards children's rights in the domestic sphere.⁶⁹ In the legal sphere,

oikeusasiamies.fi/Resource.phx/ea/english/hrc/general.htm (last visited Nov. 23, 2014) (Fin.) (describing the Human Rights Centre's mission as part of the Office of the Parliamentary Ombudsman); LAPSIASIAVALTUUTETTU [OMBUDSMAN FOR CHILD.], *supra* note 24 (acknowledging the establishment of a separate Ombudsman for Children in Finland). Norway will have to decide whether to preserve its thematic Children's Ombudsman when it establishes a new NHRI. See UNIVERSAL PERIODIC REVIEW, NORWAY, *supra* note 29, at 4–5 (noting that “an inter-ministerial working group was then established to consider changes to Norway's [Norwegian Centre for Human Rights], including the creation of a new institution with a different organisation and structure” after the ICC downgraded the NCHR from A to B status); BARNEOMBUDET [OMBUDSMAN FOR CHILD.], *supra* note 24 (detailing the duties of the Norwegian Ombudsman for Children).

68. OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS, BEST PRACTICES ON THE TRANSFORMATION AND/OR MERGER OF HUMAN RIGHTS INSTITUTIONS (2011).

69. See, e.g., Jean Grugel & Enrique Peruzzotti, *The Domestic Politics of International Human Rights Law: Implementing the Convention on the Rights of the Child in Ecuador, Chile, and Argentina*, 34 HUM. RTS. Q. 178, 178–79, 191, 194, 196–98 (2012) (explaining how CRC compliance varies based on a number of factors, including domestic politics and state and nonstate actors); see also *supra* text accompanying notes

constitutional enshrinement can protect an institution. This is certainly the case with NHRIs as a number of them are included in their state's constitution. However, thematic children's rights institutions are usually not constitutionally protected and so are relatively easier to close.⁷⁰

There are certainly countervailing forces. For example, domestic scandals about the mistreatment of children may lead to the establishment of a thematic children's rights institution, which may then be protected if it effectively redresses the situation.⁷¹ More generally, the work and profile of a thematic children's rights institution can protect it from closure or merger with a broad-based NHRI, especially if it also has multi-stakeholder support.⁷²

Regional and comparative law influences can also affect the choice of institutional structure. Thus, given that thematic children's rights institutions had their origins and are often found in Europe, they might be expected to have more support inside individual European nations. However, as discussed above, the more recent serious threats to thematic children's rights institutions have occurred predominantly in Europe. In some other regions, the general practice is to have one broad-based NHRI and few or no separate thematic institutions.⁷³

53–67 (explaining specific cases of threats to thematic children's rights institution).

70. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 82. *But see, e.g.*, KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION], Apr. 2, 1997, art. 72(4) (Pol.), available at <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (stating competence and procedure for appointment of Commissioner for Children's Rights shall be specified by statute); CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA, Feb. 20, 1980, Cap: 1:01, pt. 2, tit. 7, art. 212G, 212U, 212V (providing a constitutional framework for the office of the Rights of the Child Commission).

71. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 78.

72. *See, e.g.*, *Children Need and Deserve a Distinct and Independent Ombudsman for Children*, OMBUDSMAN FOR CHILD., (July 16, 2009), <http://www.oco.ie/2009/07/children-need-and-deserve-a-distinct-and-independent-ombudsman-for-children> (Ir.) (noting the Ombudsman for Children's opposition to a proposed merger with the Office of the Ombudsman by remarking that the Children's Ombudsman is the only statutory body endowed with unique powers to ensure the voice of children is protected and heard).

73. For example, in Latin America, the NHRIs tend to have deputies, internal units or programs for children's rights. *See* UNICEF OFFICE OF RESEARCH, *supra* note 6, at 324–25 (listing Argentina as the only Latin American country considering a separate institution).

Outside of Europe, small concentrations of thematic children's rights institutions are found at the national and/or sub-national levels in North America, the Caribbean and Australia/New Zealand.⁷⁴

Commentators have also discussed the advantages and disadvantages of thematic human rights institutions such as children's ombudsman or commissioner institutions versus general-purpose NHRIs (or broad-based sub-national human rights institutions) on a functional basis. In favor of thematic children's rights institutions, given their *raison d'être*, children's rights are always the top priority of the institution, whereas an NHRI or sub-national human rights institution may not place the same priority on children.⁷⁵ Also, all of the resources of a thematic children's rights institution will be devoted to children and their rights, whereas when there is one NHRI vulnerable groups such as children may not receive the same level of resources because there will be competition between groups for resource allocation.⁷⁶ Further, a thematic children's rights institution will act as a "focal point" for children and their concerns, enhancing the legitimacy of the institution.⁷⁷ It is more likely that thematic children's rights institutions are legally required to be accessible to children and include children in the work of the institution through, for example, the use of child and youth advisory councils.⁷⁸ In contrast, "adult-orientated" NHRIs may not be accessible to children who wish to contact the institution or lodge complaints, and they are less likely to provide for other forms of child participation.⁷⁹ However,

74. *Id.* at 324–27 (listing the North American, Caribbean, Australian and New Zealand independent human rights institutions for children by institution name and indicating which are separate thematic institutions).

75. See Carver, *supra* note 59, at 9–10 (reviewing arguments that single institutions are not as equipped to handle the specific needs of vulnerable groups who will have to compete for a single institution's limited resources whereas separate thematic institutions would provide a better focal point for such vulnerable groups).

76. *Id.*

77. *Id.* at 9–11.

78. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 80–81.

79. *Id.* at 183.

it is easy to marginalize thematic institutions, such as through underfunding and physical location of their premises.⁸⁰

In contrast, there are many advantages to using a broad-based NHRI. The UNICEF Office of Research states:

The main argument for an integrated institution is the need to build on the interdependence and indivisibility of all human rights and mainstream children's rights across all areas. The assumption is that a single institution will foster greater communication (which will enhance the cross-fertilization of ideas and sharing of good practices) and favour a unified approach to issues affecting all rights. This can also mitigate potential jurisdiction issues, where a particular problem . . . could fall under the remit of various specialized institutions.⁸¹

However, full-spectrum children's rights mainstreaming does not automatically occur within a broad-based NHRI or sub-national institution.⁸² The requirement that an NHRI or equivalent sub-national institution have a commissioner or deputy ombudsman for children's rights or an internal department for children's rights assists in raising the priority of children's rights within the institution.

A single NHRI is arguably more authoritative and influential than multiple institutions, whereas rights protection can be "fragmented" when multiple institutions exist.⁸³ One NHRI can offer consistent service, in particular where a child is suffering from multiple forms of discrimination.⁸⁴ A single NHRI can give

80. See Maria Kaisa Aula, *Ombudsman for Children, Has Resigned from Office, LAPSIAVALTUUTETTU [OMBUDSMAN FOR CHILD.]* (Jan. 9 2014), http://www.lapsiasia.fi/en/current/press_releases/press_release/-/view/1872308 (explaining how the Finland Children's Ombudsman is located outside the capital and understaffed).

81. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 81. See also Carver, *supra* note 59, at 13–14 (presenting the three broad arguments supporting a single NHRI, namely diversity and cross-fertilization, consistency of service regardless of the issue involved, and greater cost-effectiveness compared to multiple institutions).

82. See Carver, *supra* note 59, at 13–14 (arguing that willingness and incentives needed). NHRI leadership is crucial to developing this approach to children's rights.

83. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 82. See Carver, *supra* note 59, at 18 (arguing that single NRHIs experience greater ease and authority in their relationships with government authorities and other bodies over which they have jurisdiction).

84. See Carver, *supra* note 59, at 13–14 (discussing one of the benefits of creating a

equal coverage to all vulnerable populations, whereas when one or more thematic institutions are implemented, some vulnerable groups will be left without their own thematic institution thereby privileging some groups over others.⁸⁵ Also, the singularity of one NHRI and its consistent message, it is argued, leads to better public awareness of and a higher profile for the institution, which in turn leads to relatively better public support for human rights.⁸⁶ One NHRI is often more cost-effective than multiple institutions.⁸⁷ However, there is no guarantee that the government will return the resources saved to the NHRI for improved programmatic and operational use. It is also argued that a single NHRI is more physically accessible than thematic institutions are, but this is also partially dependent on the funding of the institution and whether the NHRI can choose the location of its premises. Further, a single NHRI may not always be effective, for example because its legal framework is flawed or its leadership is politicized or weak, and this affects negatively the entire population.

In review, there are extensive countervailing forces and arguments so that the choice between a thematic children's rights institution and an NHRI (or broad-based human rights institution at the sub-national level) with a children's right focus is not clear-cut.

E. UN Paris Principles, the ICC and the Committee on the Rights of the Child: NRHIs with a Children's Rights Focus Versus Thematic Children's Rights Institutions

Richard Carver takes the position that international and regional standards on single NRHIs versus multiple domestic human rights institutions are "either non-existent or contradictory".⁸⁸ He argues:

single NHRI is that it can provide consistent service for anyone, regardless of the issue involved or the origin of the person).

85. *Id.* at 15.

86. *Id.* at 20.

87. *Id.* at 13–15 (establishing how having just one NHRI will reduce staff salaries and infrastructure and IT expenses); UNICEF OFFICE OF RESEARCH, *supra* note 6, at 83.

88. Carver, *supra* note 59, at 2.

[I]n the absence of any clear position in international law, the sole criterion for determining the chosen organizational model should be the greatest effectiveness in promoting and protecting human rights . . . generally the model of a single national human rights institution is likely to lead to greater effectiveness, provided that it is designed with inbuilt guarantees that the interests of particular vulnerable groups will not be neglected and will receive an appropriate level of priority.⁸⁹

However, evolving UN standards on and attitudes towards NHRI s and thematic children's rights institutions can be discerned. The CtRC is the UN human rights treaty committee that focuses on thematic children's rights institutions and NHRI s as domestic mechanisms for CRC implementation. This Article scrutinizes the UN Paris Principles as interpreted by the ICC in relation to ICRIs and the CtRC's position on the Paris Principles and ICRIs, including thematic children's rights institutions, as displayed in its General Comments and Concluding Observations to CRC state periodic reports.⁹⁰ This Article attempts to demonstrate that these standards and attitudes do favor the establishment of a single comprehensive NHRI that includes a focus on children's rights.

This Article does not explore in any detail the attitudes of other UN human rights treaty committees or the UN Human Rights Council Universal Periodic Review (UPR) process towards ICRIs in light of the Paris Principles as interpreted by the ICC.⁹¹ Regional organizational standards and attitudes may also play

89. *Id.*

90. This Article does not include CtRC Concluding Observations on periodic state reports concerning the first two CRC Protocols.

91. See *infra* text accompanying notes 96–98 on the UPR process and thematic children's rights institutions. In addition to any relevant treaty provisions and General Comments/Recommendations, the Concluding Observations of the other human rights treaty committees on independent monitoring would also have to be reviewed. See, e.g., Linda C. Reif, *Ombudsman Institutions and Article 33(2) of the United Nations Convention on the Rights of Persons with Disabilities*, 65 N.B. L.J. 213, 214–15 (2014) (treaty committee requires article 33(2) domestic framework to comply with Paris Principles, current lack of certainty concerning committee's attitude towards, *inter alia*, inclusion of thematic human rights institutions in a multiple-institution domestic framework).

a role in influencing state behavior. Most regions are clearly following the UN Paris Principles NHRI approach.⁹² Europe, as the region with the highest concentration of thematic children's rights institutions, takes a more tolerant approach to the coexistence of NRHIs and thematic rights institutions, although even here there is an increasing tendency to favor and refer to broad-based NRHIs.⁹³ However, a detailed examination of regional developments is also beyond the scope of this Article.

92. See, e.g., Reif, *supra* note 33, at 58–61 (discussing how regional organizations and NHRI networks in Africa, Asia Pacific, the Americas and Europe apply the Paris Principles to NRHIs).

93. See EUR. PARL. ASS., *Parliamentary Assembly Recommendation 1286 (1996) on a European Strategy for Children*, art. 7(iv) (promoting co-existence by inviting member states to appoint ombudsman/commissioner for children or another independent structure); Eur. Parl. Ass., *Parliamentary Assembly Recommendation 1460 (2000), Setting up a European Ombudsman for Children*, art. 8(i) (asking member states to appoint national children's ombudsman); European Convention on the Exercise of Child Rights, art. 12, CETS No. 160 (1996); Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, art. 10(2)(a), 49 I.L.M. 1667 (2010); Convention on Preventing and Combatting Violence Against Women and Domestic Violence, arts. 3(f), 7(3), 13(1), Apr. 12, 2011, 51 I.L.M. 106 (extending their reach to include girls, refers only to NRHIs); Committee of Ministers, Eur. Parl. Ass., *Council of Europe Strategy for the Rights of the Child (2012–2015)*, at 12, CM(2011)171 final (Feb. 15, 2012) (showing support for NRHIs including ombudspersons for children); Welcome, COMMISSIONER HUM. RTS., <http://www.coe.int/en/web/commissioner/welcome> (last visited Nov. 23, 2014) (presenting the COE Commissioner for Human Rights' position on cooperation with “national human rights structures” that comprise ombudsman institutions, NRHIs and thematic institutions at all levels that comply with the Paris Principles); *Positions on Children's Rights: Position Paper From the Council of Europe Commissioner for Human Rights*, COMM'R FOR HUMAN RIGHTS (May 3, 2010), available at <https://wcd.coe.int/ViewDoc.jsp?id=1621589> (promoting the establishment of thematic children's rights institutions); High Level Conference on the Future of the European Court of Human Rights, Brighton, Eng., Apr. 19–20, 2012, *Brighton Declaration*, arts. 4, 9(c)(i), 20(g), available at <https://wcd.coe.int/ViewDoc.jsp?id=1934031> (referencing NRHIs only); *National Human Rights Bodies*, EUR. UNION AGENCY FOR FUNDAMENTAL RTS., <http://fra.europa.eu/en/cooperation/national-human-rights-bodies> (last visited Nov. 15, 2014) (“national human rights bodies” comprise NRHIs, ombudsperson institutions and equality bodies); see also *Membership Information*, *supra* note 17 (noting the acceptance of both thematic children's rights institutions and NRHIs with a child focus); Bruce Adamson, *NRHIs and their European Counterparts: Scope for Strengthened Cooperation and Performance towards European Human Rights Institutions*, in NATIONAL HUMAN RIGHTS INSTITUTIONS IN EUROPE: COMPARATIVE, EUROPEAN AND INTERNATIONAL PERSPECTIVES, 127, 127–28 (Jan Wouters & Katrien Meuwissen eds., 2013) (discussing how NRHIs play an increasing role in providing a link between the regional human rights systems and domestic systems); Jan Wouters, Katrien Meuwissen & Ana Sofia

1. *The UN Paris Principles and the ICC: NHRIs Versus Thematic Children's Rights Institutions*

The UN Paris Principles are the internationally recognized minimum standards for NHRIs.⁹⁴ The ICC was created to support the establishment and strengthening of NHRIs and towards this end it operates an accreditation process for institutions using the Paris Principles as the “international benchmark”, with A-status accreditation denoting full compliance with the Paris Principles, B-status accreditation confirming partial compliance and C-status representing non-compliance with the Paris Principles.⁹⁵ As discussed further below, thematic children’s rights institutions cannot obtain A-status accreditation.

Only ICC A-status accreditation of an NHRI opens the door to its full participation in UN human rights mechanisms, including speaking privileges before the Human Rights Council, such as during the UPR process.⁹⁶ For example, while children’s

Barros, *The European Union and National Human Rights Institutions*, in NATIONAL HUMAN RIGHTS INSTITUTIONS IN EUROPE: COMPARATIVE, EUROPEAN AND INTERNATIONAL PERSPECTIVES, 187, 188 (Jan Wouters & Katrien Meuwissen eds., 2013) (discussing how a multi-layered EU human rights architecture has emerged).

94. The Paris Principles, *supra* note 4; Reif, *supra* note 33, at 54.

95. See, e.g., INT'L COORDINATING COMM. OF NAT'L INSTS. FOR THE PROMOTION AND PROT. OF HUMAN RIGHTS, REPORT AND RECOMMENDATIONS OF THE SESSION OF THE SUB-COMMITTEE ON ACCREDITATION (SCA) (2014), available at <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20MARCH%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf> [hereinafter ICC REPORT] (highlighting the different levels of accreditation classification that specify the extent of compliance with the Paris Principles). As of May 2014, 71 institutions had received A-status accreditation, 25 had B-status and 10 had C-status accreditation. ICC, ACCREDITED NHRIS CHART, *supra* note 5. The ICC accreditation process has been criticized. See, e.g., Peter Rosenblum, *Tainted Origins and Uncertain Outcomes: Evaluating NHRIs*, in HUMAN RIGHTS, STATE COMPLIANCE, AND SOCIAL CHANGE: ASSESSING NATIONAL HUMAN RIGHTS INSTITUTIONS 297 (Ryan Goodman & Thomas Pegram eds., 2012) (discussing the reasons why the accreditation process has been criticized).

96. On NHRI privileges in Human Rights Council and UN human rights treaty committee processes, see Chris Sidoti, *National Human Rights Institutions and the International Human Rights System*, in HUMAN RIGHTS, STATE COMPLIANCE, AND SOCIAL CHANGE: ASSESSING NATIONAL HUMAN RIGHTS INSTITUTIONS 93, 105 (Ryan Goodman & Thomas Pegram eds., 2012) (discussing participation by NHRIs in Human Rights Council processes provided they have ICC A-status accreditation); Katrien Meuwissen, *NHRI Participation to United Nations Human Rights Procedures: International*

rights are an important part of the UPR, since thematic children's rights institutions cannot obtain ICC A-status accreditation they only can make written submissions to the UPR.⁹⁷ Thus, although thematic children's rights institutions

Promotion Versus Institutional Consolidation?, in NATIONAL HUMAN RIGHTS INSTITUTIONS IN EUROPE: COMPARATIVE, EUROPEAN AND INTERNATIONAL PERSPECTIVES, 263, 273–79 (Jan Wouters & Katrien Meuwissen eds., 2013) (discussing the different “rules of procedure, working methods or general comments and statements” of each of the treaty bodies for NHRI interaction); Kirsten Roberts, *The Role and Functioning of the International Coordinating Committee of National Human Rights Institutions in International Human Rights Bodies*, in NATIONAL HUMAN RIGHTS INSTITUTIONS IN EUROPE: COMPARATIVE, EUROPEAN AND INTERNATIONAL PERSPECTIVES 223, 237 (Jan Wouters & Katrien Meuwissen eds., 2013) (noting that A-status NRIs can submit documents and make written and oral statements to the Human Rights Council, play a role in the UPR and have their own designated seating). The UPR process entails review of UN member states' human rights records, supplemented by civil society, NHRI and regional inter-governmental organization submissions, and numerous recommendations are made to assist the member states in improving compliance with their international human rights obligations. *Universal Periodic Review*, UNITED NATIONS HUM. RTS. OFF. HIGH COMMISSIONER FOR HUM. RTS., <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx> (last visited Nov. 24, 2014); UNITED NATIONS OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, OHCHR INFORMATION NOTE FOR NATIONAL HUMAN RIGHTS INSTITUTIONS ON THE 2ND CYCLE OF THE UNIVERSAL PERIODIC REVIEW, available at <http://www.ohchr.org/Documents/HRBodies/UPR/InfoNoteNHRIUPR2ndCycle.pdf> [hereinafter INFORMATION NOTE] (explaining how the Universal Review Process works).

97. UNICEF OFFICE OF RESEARCH, *supra* note 6 at 166–67; Edward McMahon & Marta Ascherio, *A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council*, 18 GLOBAL GOVERNANCE 231, 243 (2012); INFORMATION NOTE, *supra* note 96; Review of the Work and Functioning of the Human Rights Council, H.R.C. Res. 16/21, 16th Sess., annex ¶¶ 9, 13, U.N. Doc. A/HRC/RES/16/21 (Apr. 12, 2011) (stating that the summary of the information provided by other relevant stakeholders should contain a separate section for contributions by the NHRI of the State under review that is accredited in full compliance with the Paris Principles); Institution-Building of the United Nations Human Rights Council, H.R.C. Res. 5/1, annex ¶¶ 3(m), 15(c), U.N. Doc. A/HRC/RES/5/1 (June 18, 2007) (stating that the UPR should ensure the participation of all relevant stakeholders, including nongovernmental organizations, which can provide credible and reliable information). Only some of the thematic children's rights institutions make submissions to the UPR. However, up to mid-2014, the UN UPR summary of stakeholders' information reports were inconsistent in the categorization of thematic children's rights institutions. Some are recorded as NRIs (and will also be included in this category if they make a joint submission with the country's NHR). See Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Norway, 6th Sess., Nov. 30–Dec. 11, 2009, at 13, U.N. Doc. A/HRC/WG.6/6/NOR/3 (July 21, 2009) (listing the Norwegian Centre for Human Rights

and Norwegian Ombudsman for Children as NRIs that contributed to this summary); Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Sweden, 8th Sess., May 3–14, 2010, at 10, U.N. Doc A/HRC/WG.6/8/SWE/3 (Feb. 17, 2010) (listing the Children's Ombudsman as an NRI that contributed to this summary); Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Ireland, 12th Sess., Oct. 3–14, 2011, at 14, U.N. Doc A/HRC/WG.6/12/IRL/3 (July 22, 2011) (listing the Irish Human Rights Commission and the Ombudsman for Children as NRIs that contributed to this summary); Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Croatia, 9th Sess., Nov. 1–12, at 12, U.N. Doc A/HRC/WG.6/9/HRV/3 (Aug. 10, 2010) (noting a joint submission from the Ombudsman of the Republic of Croatia together with the Ombudsman for Children and other institutions); *see* Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Netherlands, 13th Sess., May 21–June 4, 2012, at 12, U.N. Doc A/HRC/WG.6/13/NLD/3 (Mar. 12, 2012) (noting a joint submission by the National Ombudsman of the Netherlands together with the Ombudsman for Children and other thematic institutions); Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21: Norway, 19th Sess., Apr. 28–May 9, 2014, at 12, U.N. Doc A/HRC/WG.6/19/NOR/3 (Jan. 21, 2014) (noting a joint submission by the Norwegian Centre for Human Rights together with the Ombudsman for Children and other thematic institutions). However, in other cases, thematic children's rights institutions are listed in the "civil society" category. *See* Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Iceland, 12th Sess., Oct. 3–14, at 11, U.N. Doc A/HRC/WG.6/12/ISL/3 (July 22, 2011) (listing the Ombudsman for Children under the "Civil society" category of stakeholders); Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: United Kingdom of Great Britain and Northern Ireland, 13th Sess., May 21–June 4, 2012, at 13, U.N. Doc A/HRC/WG.6/13/GBR/3 (Mar. 9, 2012); Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: United Kingdom of Great Britain and Northern Ireland, Corrigendum, 13th Sess., May 21–June 4, at 1–2, U.N. Doc A/HRC/WG.6/13/GBR/3/Corr.1 (May 25, 2012) (noting a joint submission by children's commissioners in UK, and only UK and Welsh Commissioners listed among civil society contributors); Human Rights Council, Working Group on the Universal

can contribute to the information gathering, they “cannot directly participate in discussions. They are consequently unable to be vocal in official child rights debates . . .”⁹⁸ The Paris Principles require that NHRIs have a broad mandate “to promote and protect human rights” that is enshrined in the constitution or legislation, be independent from government, have a pluralist composition, both promote and protect human rights through numerous listed responsibilities, enjoy adequate funding and cooperate with international organizations and other NHRIs.⁹⁹ The Paris Principles are based on an advisory human rights commission model and do not require states to give NHRIs the power to undertake individual complaints-based

Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights in accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Canada, 16th Sess., Apr. 22–May 3, at 15, U.N. Doc A/HRC/WG.6/16/CAN/3 (Jan. 29, 2013) (listing the Ontario Provincial Advocate for Children and Youth under “Civil society” category of stakeholders); Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21: New Zealand, 18th Sess., Jan. 27–Feb. 7, 2014, at 16–17, U.N. Doc A/HRC/WG.6/18/NZL/3 (Nov. 4, 2013) (listing the joint submission of New Zealand’s OP-CAT National Preventative Mechanisms including NHRI, Ombudsman, Children’s Commissioner under the “Civil society” category of stakeholders); *see also* Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: France, 15th Sess., Jan. 21–Feb. 1, 2013, at 12, U.N. Doc A/HRC/WG.6/15/FRA/3 (Nov. 8, 2012) (listing France’s national human rights ombudsman with deputy for children’s rights under the “Civil society” category of stakeholders).

98. UNICEF OFFICE OF RESEARCH, *supra* note 6, at 166–67.

99. The Paris Principles, *supra* note 4, at “Competence and responsibilities,” “Composition and guarantees of independence and pluralism.” Listed responsibilities are to: give advice to government on human rights protection and promotion such as on legislation or human rights violations; promote and ensure the harmonization of national law with the country’s international human rights law obligations and the effective implementation of the latter; encourage the state to accede to or ratify international human rights treaties; contribute to the reports which states are required to submit periodically to UN human rights treaty committees and regional institutions and, where necessary, to express an opinion on the subject with due respect for their independence; cooperate with the UN, other UN and regional organizations and NHRIs in other countries; assist in the formulation of programs for the teaching of and research into human rights and take part in their execution; and increase public awareness of human rights. *Id.* at “Competence and responsibilities.”

investigations.¹⁰⁰ The ICC has issued a number of General Observations that it calls “interpretative tools of the Paris Principles” that give more detail to the meaning and scope of individual Paris Principles (much like UN human rights treaty committee General Comments).¹⁰¹ The General Observations are used: in the NHRI accreditation, reaccreditation and special review procedures; to instruct NRIs on the development of their own processes and mechanisms to ensure Paris Principles compliance; and to persuade governments to change laws and practices as may be needed to comply with the standards contained in the General Observations.¹⁰² It is stated that “[i]f an institution falls substantially short of the standards articulated in the General Observations, it will be open for the [ICC] to find that it was not Paris Principle compliant.”¹⁰³

While both the Paris Principles and the ICC General Observations are soft law norms, the ICC has stated:

The establishment and strengthening of National Institutions pursuant to the Paris Principles falls within the set of international human rights commitments made by States. It is therefore the responsibility of the State to ensure that it has in place a Paris Principle-compliant national institution.¹⁰⁴

In May 2013, the ICC placed its General Observations into categories, one of which, “Essential requirements of the Paris Principles”, contains those General Observations that are “direct interpretations of the Paris Principles” and another, “Practices that directly promote Paris Principles compliance”, includes those General Observations “which are drawn from the [ICC’s] extensive experience in identifying proven practices to ensure independent and effective National Institutions in line with the

100. See *id.* at “Additional principles concerning the status of commissions with quasi jurisdictional competence” (stating “[a] national institution may be authorized to hear and consider complaints”).

101. ICC REPORT, *supra* note 95, ¶ 1.8, at 4; GENERAL OBSERVATIONS, *supra* note 5, ¶ 6, at 47.

102. ICC REPORT, *supra* note 95, ¶ 1.8(a)–(c), at 4–5; GENERAL OBSERVATIONS, *supra* note 5, ¶ 6, at 47.

103. ICC REPORT, *supra* note 95, ¶ 1.8(c)(i), at 5; GENERAL OBSERVATIONS, *supra* note 5, ¶ 6(c)(i), at 47.

104. GENERAL OBSERVATIONS, *supra* note 5, ¶ 2, at 46.

Paris Principles.”¹⁰⁵ A third category addresses “Procedural issues”.¹⁰⁶ Further, the ICC has stated that it will apply its General Observations to “every National Institution, regardless of its structural model type”, thereby including not just all types of human rights commissions/institutes but also, for example, all types of human rights ombudsman institutions.¹⁰⁷ However, as discussed further below, in the Paris Principles as interpreted by the ICC, “national institution” or NHRI does not mean “domestic institution”, it means “national-level” human rights institution and does not include sub-national institutions.

The Paris Principles require that a national institution “shall be vested with competence to promote and protect human rights” and “shall be given as broad a mandate as possible”.¹⁰⁸ ICC General Observation 1.2, classified under essential requirements of the Paris Principles, takes this further, stating that the institution’s mandate should be interpreted broadly to “promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights.”¹⁰⁹

Also, the Paris Principles require NHRIs to “[m]aintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions).”¹¹⁰ While the Paris Principles do not expressly exclude thematic rights institutions, this is implied by the Principles’ tenor. Further, ICC General Observation 1.5 on “Cooperation with other human rights bodies”, classified under

105. *Id.* ¶ 9, at 47–48.

106. *Id.* ¶ 1.12, at 5.

107. *Id.* ¶ 7, at 47, ¶ 1.7, at 66. I use “human rights ombudsman” as the generic term to include single-leader institutions that are purely human rights oriented as well as institutions that have hybrid ombudsman maladministration/human rights mandates and powers, regardless of their various titles (e.g., defender of the people, civil rights protector).

108. The Paris Principles, *supra* note 4, at “Competence and responsibilities” ¶¶ 1–2.

109. GENERAL OBSERVATIONS, *supra* note 5, ¶ 1.2, at 53.

110. The Paris Principles, *supra* note 4, at “Methods of operation” para. 1(f), at 6. The Paris Principles use the word “jurisdictional”. This is seen to be a translation error; the word “judicial” is more accurate.

essential requirements of the Paris Principles, is more explicit, stating:

Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with *other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.*¹¹¹

While there is nothing explicit in the Paris Principles on the number of NHRIs that a state should maintain, it can be argued that the Paris Principles implicitly consider that a nation will have only one NHRI given references to the broad mandate of the institution. ICC General Observation 6.6, classified as a procedural issue, avoids taking a legal position on the matter. However, in essence General Observation 6.6 does indicate that the ICC favors one comprehensive NHRI to the exclusion of thematic and other human rights institutions, as it “acknowledges and encourages the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive national human rights institution”.¹¹² Also, General Observation 6.6 stipulates that only in very exceptional circumstances will more than one national institution in a nation be accredited by the ICC.¹¹³ Of the 106 NHRIs accredited by the ICC by May 2014, only six of the many thematic human rights institutions around the world had applied for and received ICC accreditation, and most are located in countries where there is no broad-based NHRI.¹¹⁴ No independent children's rights institutions were accredited. Of the six accredited thematic institutions, none had A-status

111. GENERAL OBSERVATIONS, *supra* note 5, ¶ 1.5, at 61 (emphasis added).

112. *Id.* ¶ 6.6, at 100.

113. *See id.* (noting also the participation limitations imposed if more than one national institution from a state is accredited).

114. *See* ICC, ACCREDITED NHRIS CHART, *supra* note 5, at 8–9 (listing institutions in Belgium, Bulgaria, Sweden, Switzerland and Hong Kong (China) as the thematic institutions that have applied for and received ICC accreditation).

designation, three had B-status and three had C-status accreditation.¹¹⁵ The ICC had accredited more than one national institution in a country in only two cases, one of which treated devolved governments in the UK equivalent to independent states.¹¹⁶

In combination, these ICC General Observations that elaborate on the meaning of the Paris Principles have the effect of excluding thematic human rights institutions at all levels of governance and sub-national human rights institutions from being classified as NHRIs. Accordingly, the Paris Principles are only directly applicable to, and instruct states to establish, national level human rights institutions that have broad human rights protection and promotion mandates covering all human rights. Thus, all thematic children's rights institutions and all sub-national human rights institutions found in categories (3), (4) and (5) of my typology are not considered to be NHRIs. Rather, they are classified as "other domestic institutions established for the promotion and protection of human rights" or "other human rights bodies". As a result, in most cases they will not be able to apply for ICC accreditation and will not obtain an authoritative confirmation of their partial or non-compliance with the Paris Principles. This will occur because, for example, an NHRI in their country is already accredited or the institution is a sub-national body. Even if a national level thematic children's rights institution can and does apply for ICC accreditation because their state does not have an ICC-accredited NHRI, they will not receive A-status denoting full compliance with the Paris Principles because of their limited focus on children and children's rights. While the CRC and other children's rights instruments applied by thematic children's rights institutions cover a full spectrum of rights, the rights and the institutions do not apply to or protect the rights of adults.¹¹⁷

115. *Id.* at 1, 8–9.

116. *Id.* at 1, 6–8 (listing Great Britain, Northern Ireland, and Scotland separately with each having A-status NHRIs and Bulgaria having one B-status NHRI and one B-status thematic national institution). Although the UN considers the UK to be one state, the ICC has given the Great Britain, Scotland and Northern Ireland human rights commissions separate A-status accreditations. *Id.* at 6, 8.

117. There may be other problematic issues as well such as insufficient

Pursuant to the Paris Principles as interpreted by the ICC through its General Observations, only broad-based national level human rights commissions/institutes and national human rights ombudsman institutions, the types of ICRIIs found in categories (1) and (2) of my typology, are encompassed by the Paris Principles and are capable of fully complying with the Paris Principles and achieving ICC A-status accreditation. Although the Paris Principles and the ICC General Observations are not legally binding on states, they have soft normative influence on national governments as the importance of NHRI compliance with the Paris Principles is reaffirmed in various UN human rights fora, the ICC and regional organizations. In effect, the Paris Principles as interpreted by ICC General Observations and ICC accreditation practice exert pressure on states either to avoid the establishment of separate national thematic institutions for children or to collapse an existing children's ombudsman/commissioner into one comprehensive NHRI with a mandate that includes the protection and promotion of children's rights.

*2. The CRC and the Committee on the Rights of the Child:
Thematic Children's Rights Institutions and Broad-Based
NHRIs with a Child Rights Focus*

As noted earlier, the CRC does not contain any explicit provisions on NHRIs or other domestic ICRIIs. However, in 2002

independence from government. For example Sweden's Equality Ombudsman received B-status accreditation in 2011. The ICC stated that the Equality Ombudsman "does not have a broad mandate to promote and protect human rights; the mandate is restricted to matters of equality" and it had insufficient independence from government. INT'L COORDINATING COMM. OF NAT'L INST. FOR THE PROMOTION & PROT. OF HUMAN RIGHTS, REPORT AND RECOMMENDATIONS OF THE SESSION OF THE SUB-COMMITTEE ON ACCREDITATION (SCA) § 2.4, at 9–10 (2011), *available at* <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20%28with%20annexes%29.pdf>; *see also* INT'L COORDINATING COMM. OF NAT'L INST. FOR THE PROMOTION & PROT. OF HUMAN RIGHTS, REPORT AND RECOMMENDATIONS OF THE SESSION OF THE SUB-COMMITTEE ON ACCREDITATION (SCA) § 3.6 (2010), *available at* [http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MARCH%202010%20%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MARCH%202010%20%20FINAL%20(with%20annexes).pdf) (recommending B status for Belgium's Centre for Equal Opportunities and Opposition to Racism and encouraging the Centre to expand its mandate to promote and protect all human rights).

the CtRC issued General Comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (General Comment No. 2).¹¹⁸

General Comment No. 2 states that independent NHRIs are important mechanisms that are included within states parties' article 4 commitments on CRC implementation.¹¹⁹ It states that the CtRC has "welcomed the establishment of NHRIs and children's ombudspersons/children's commissioners and similar independent bodies" in CRC states.¹²⁰ The Comment provides detailed standards for the structure and powers of such institutions, and stipulates that NHRIs should be structured to comply with the Paris Principles.¹²¹ According to the CtRC:

[E]very State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights. It is essential that promotion and protection of children's rights is "mainstreamed" and that all human rights institutions existing in a country work closely together to this end.¹²²

Although General Comment No. 2 recognizes that "[s]pecialist independent human rights institutions for children, ombudspersons or commissioners for children's rights" have been established in a number of CRC parties, it does not expressly require the establishment of thematic children's rights institutions.¹²³ General Comment No. 2 uses "NHRIs" throughout to cover all institutions working for children's rights, including thematic children's rights institutions. Given the Paris Principles,

118. Comm. on the Rights of the Child, General Comment No. 2 (2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child, 32d Sess., Jan. 13–31, 2003, U.N. Doc. CRC/GC/2002/2 (Nov. 15, 2002) [hereinafter General Comment No. 2].

119. *Id.* ¶ 1.

120. *Id.*

121. *Id.* ¶ 4.

122. *Id.* ¶ 7.

123. *Id.* ¶ 6.

ICC interpretation of the Paris Principles and the resulting boundaries on the definition of an NHRI, the General Comment's use of the term NHRI to encompass thematic children's rights institutions is incorrect. As discussed above, thematic institutions instead are classified as "other domestic institutions established for the protection and promotion of human rights".

General Comment No. 2 also states:

Where resources are limited, consideration must be given to ensuring that the available resources are used most effectively for the promotion and protection of everyone's human rights, including children's, and in this context development of a broad-based NHRI that includes a specific focus on children is likely to constitute the best approach. A broad-based NHRI should include within its structure either an identifiable commissioner specifically responsible for children's rights, or a specific section or division responsible for children's rights, or a specific section or division responsible for children's rights.¹²⁴

While the CtRC does not make distinctions between developed and developing countries in terms of whether a CRC party can rely on limited resources to avoid establishment of a thematic children's rights institution, it seems reasonable to consider that developed and middle-income states will be those most likely to have the resources to establish a thematic children's rights institution and that developing states can rely more justifiably solely on an NHRI with a children's rights focus. However, the General Comment's language permits developed states facing budgetary problems to justify their failure to establish a thematic children's rights institution or its closure as long as they have NHRI with a children's rights focus.

General Comment No. 2 also provides extensive provisions on the mandate and powers that should be given to NRHIs working for children and their rights. Many of these channel the Paris Principles and include: a legislative mandate (and constitutional entrenchment if possible); a broad mandate for protecting and promoting human rights that incorporates the CRC, its Protocols and other relevant international human

124. *Id.* ¶ 6.

rights instruments; a range of powers that will enable them to fulfill their mandate; jurisdiction over the public authorities and “all relevant public and private entities”; independence through, for example, reasonable levels of funding and the institution’s freedom to determine its own agenda; a composition that is a pluralistic representation of civil society groups involved with human rights; transparent and competitive appointment procedures; accessibility for all children, especially vulnerable minors and children in institutions; and independent reporting on children’s rights directly to the legislature and public.¹²⁵

In contrast to the Paris Principles, however, General Comment No. 2 states that “NHRIs *must* have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children.”¹²⁶ General Comment No. 2 emphasizes the centrality of children: NHRIs should be accessible to all children and they must involve children in their work, through direct contact, interaction, consultation and other mechanisms such as advisory children’s councils.¹²⁷ NHRIs are directed to work with human rights and children’s rights NGOs and they should engage in regional and international cooperation on children’s rights matters.¹²⁸ Further, NHRIs should have powers to “support children taking cases to court” including bringing actions on children’s matters and should have intervener status

125. *Id.* ¶¶ 8–12, 15, 18, 25. Paragraph 19 of General Comment No. 2 provides a nonexhaustive list of activities that NHRIs should engage in to implement the CRC and children’s rights, including: launching investigations on receipt of a complaint or own-motion; conducting inquiries; drafting and publicizing reports, opinions and recommendations; reviewing the adequacy and effectiveness of law and practice; promoting harmonization of national law and practice with the CRC and other relevant international human rights law and promoting the effective implementation of the latter through the provision of advice; encouraging the state to ratify or accede to relevant human rights treaties; ensuring that a child-impact analysis is applied to the law-making process, laws and policies; ensuring that the views of children are expressed and heard on matters affecting their human rights; promoting public awareness and understanding of children’s rights and undertaking research and education; and visiting facilities where children are detained and care institutions to inspect the conditions and making recommendations for improvement. *Id.* ¶ 19.

126. *Id.* ¶ 13 (emphasis added).

127. *Id.* ¶¶ 15–16.

128. *Id.* ¶ 26.

in actions “to inform the court about the human rights issued involved in the case.”¹²⁹ Also, in some contrast to the Paris Principles, General Comment No. 2 provides that NHRIs should make independent contributions to the periodic state reporting process to the CtRC and the reporting processes under “other relevant international instruments”.¹³⁰ NHRIs should “monitor the integrity” of state reports to international treaty bodies on children’s rights but, while governments can consult with “independent human rights institutions” during the drafting of their periodic reports to the [CtRC], it is inappropriate for the NHRI to draft the government report or form part of the government delegation.¹³¹

Some of the other CtRC General Comments also refer to NHRIs and/or thematic children’s rights institutions and they exhibit a similar flexibility concerning the structure of the ICRI and use of terminology that equates thematic children’s rights institutions with NHRIs. For example, CtRC General Comment No. 5 on General measures of implementation of the CRC looks with favor on the establishment of a wide variety of domestic “child-focused and child-sensitive bodies” including “children’s ombudspersons and children’s rights commissioners”, yet also refers to the need for independent NHRIs or “human rights institutions” to monitor CRC compliance.¹³² CtRC General Comment No. 9 on the rights of children with disabilities states that the domestic independent monitoring mechanism used by a CRC party can be a broad-based NHRI or a thematic institution and classifies thematic institutions as NHRIs: “National human rights institutions can take many shapes or forms such as an Ombudsman or a Commissioner and may be broad-based or specific.”¹³³ Several other General Comments are more vague or

129. *Id.* ¶ 14.

130. *Id.* ¶ 20.

131. *Id.* ¶¶ 20–21. The Paris Principles are not as clear, as they call on NHRIs to “contribute” to periodic state reports submitted to UN and other treaty committees/bodies. The Paris Principles, *supra* note 4, at “Competence and responsibilities” ¶ 3(d).

132. General Comment No. 5, *supra* note 11, ¶ 9; *see also id.* ¶ 27 (referring to NHRIs), ¶ 46 (referring to independent human rights institutions) and ¶ 65 (referring to independent NHRIs and human rights institutions interchangeably).

133. Comm. on the Rights of the Child, General Comment No. 9 (2006): The Rights

appear to support thematic children's rights institutions. For example, General Comment No. 12 on the right of the child to be heard states that CRC parties should “[e]stablish independent human rights institutions, such as children's ombudsmen or commissioners with a broad children's rights mandate.”¹³⁴

However, recent General Comment No. 16, on state obligations regarding the impact of the business sector on children's rights, refers only to NHRIs.¹³⁵ In addition, the new CRC Communications Procedure Protocol distinguishes between NHRIs and thematic children's rights institutions. In indicating that the Protocol will reinforce and complement domestic children's rights remedial mechanisms, the Preamble recalls “the important role that national human rights institutions and other relevant specialized institutions, mandated to promote and protect the rights of the child, can play in this regard.”¹³⁶ However, there is no limitation on the types of third parties that

of Children with Disabilities, 43d Sess., Sept. 11–29, 2006, ¶ 24, UN Doc. CRC/C/GC/9 (Feb. 27, 2007). *See also* Comm. on the Rights of the Child, General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art. 24), ¶ 103, UN Doc. CRC/C/GC/15 (Apr. 17, 2013) (“National human rights institutions have an important role to play in reviewing and promoting accountability The Committee recalls its general comment No. 2, and reminds States that the mandate of children's commissioners or children's ombudsmen should include ensuring the right to health”).

134. Comm. on the Rights of the Child, General Comment No. 12 (2009): The Right of the Child to be Heard, 51st Sess., May 25–June 12, 2009, ¶ 49, UN Doc. CRC/C/GC/12 (July 20, 2009); *see also* Comm. on the Rights of the Child, General Comment No. 13 (2011): The Right of the Child to Freedom from All Forms of Violence, ¶ 42(a)(vi), UN Doc. CRC/C/GC/13 (Apr. 18, 2011) (including in the list of administrative measures to be taken “[p]roviding independent national human rights institutions with support and promoting the establishment of specific child rights mandates such as child rights ombudsmen where these do not yet exist.”).

135. Comm. on the Rights of the Child, General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights, ¶¶ 30, 75–76, 82–84, UN Doc. CRC/C/GC/16 (Apr. 17, 2013). For example, it states “[w]here necessary, States should broaden the legislative mandate of national human rights institutions to accommodate children's rights and business.” *Id.* ¶ 76.

136. Communications Procedure Protocol, *supra* note 8, at pml.; *see* Rhona Smith, *The Third Optional Protocol to the UN Convention on the Rights of the Child?—Challenges Arising Transforming the Rhetoric into Reality*, 21 INT'L J. CHILD. RTS. 305, 315, 320–21 (2013) (noting that Protocol that may result in increasing numbers of NHRIs and children's ombudspersons so that children can seek remedies at domestic level).

can submit communications on behalf of the child victim,¹³⁷ so that presumably all types of ICRIIs can make these submissions to protect children's rights as long as the Protocol's other admissibility criteria are satisfied and the institution's legal framework permits this activity. In addition, all types of ICRIIs can assist potential complainants in other ways.¹³⁸

A review of the CtRC's Concluding Observations to state periodic reports issued over the period between January 2009 and June 2014 uncovers a generally consistent approach of the CtRC with respect to ICRIIs. The CtRC always took the position that a domestic ICRI is required, but was not insistent that a separate thematic institution for children be used, even in cases where the CRC party is an industrialized, well-resourced state, as long as the CRC party had established a general NHRI (e.g., human rights commission or human rights ombudsman) with an explicit and meaningful children's rights focus. The CtRC often recommended the establishment or strengthening of a child's rights department, unit or specialization located within the broad-based NHRI and/or the appointment of a commissioner or deputy ombudsman for children's rights.¹³⁹ If a CRC party did

137. See Communications Procedure Protocol, *supra* note 8, art. 5(1) (stating “[c]ommunications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments”). Other admissibility criteria include the need for the consent of the victim unless the author can justify acting without such consent, and exhaustion of domestic remedies. *Id.* art. 5(2).

138. See UNICEF OFFICE OF RESEARCH, *supra* note 6, at 181–82 (informing children and others about the communications procedure, advising on eligibility, supporting complainants, providing documentation to the CtRC, monitoring state compliance with the CtRC's views).

139. See Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Myanmar, 59th Sess., Jan. 16–Feb. 3, 2012, ¶ 16(d), UN Doc. CRC/C/MMR/CO/3-4 (Mar. 14, 2012) (recommending the NHRI have a children's rights division with children's commissioner); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Azerbaijan, 59th Sess., Jan. 16–Feb. 3, 2012, ¶ 16, UN Doc. CRC/C/AZE/CO/3-4 (Mar. 12, 2012) (recommending a children's rights commissioner or deputy commissioner within NHRI); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Thailand, 59th Sess., Jan. 16–Feb. 3, 2012, ¶ 18, UN Doc. CRC/C/THA/CO/3-4 (Feb. 17, 2012) (urging the establishment of a

special unit for children in NHRI); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Panama, 58th Sess., Sept. 19–Oct. 7, 2011, ¶¶ 15–16, UN Doc. CRC/C/PAN/CO/3-4 (Dec. 21, 2011) (noting the establishment of a Specialized Unit for Children and Youth, and calling for the Unit to be provided with the resources to effectively, promote, and protect children's rights); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Bahrain, 57th Sess., May 30–June 17, 2011, ¶ 15, UN Doc. CRC/C/BHR/CO/2-3 (Aug. 3, 2011) (urging the establishment of an NHRI including specialization on children's rights); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Costa Rica, 57th Sess., May 30–June 17, 2011, ¶ 15, UN Doc. CRC/C/CRI/CO/4 (Aug. 3, 2011) (recommending creation of a specialized child rights unit); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Egypt, 57th Sess., May 30–June 17, 2011, ¶ 18, UN Doc. CRC/C/EGY/CO/3-4 (July 15, 2011) (recommending establishment of independent monitoring mechanism devoted to child rights); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Afghanistan, 56th Sess., Jan. 17–Feb. 4, 2011, ¶ 14, UN Doc. CRC/C/AFG/CO/1 (Apr. 8, 2011) (urging assurance of funds and increased awareness for NHRI child rights unit); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Guatemala, 55th Sess., Sept. 13–Oct. 1, 2010, ¶ 24, UN Doc. CRC/C/GTM/CO/3-4 (Oct. 25, 2010) (recommending allocation of increased resources for the office for children and youth); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Montenegro, 55th Sess., Sept. 1–Oct. 13, 2010, ¶¶ 11–12, UN Doc. CRC/C/MNE/CO/1 (Oct. 21, 2010) (welcoming the creation of department for child rights within the NHRI but recommending the State party ensure the department is accessible to children and equipped to handle complaints); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Burundi, 55th Sess., Sept. 13–Oct. 1, 2010, ¶ 17, UN Doc. CRC/C/BDI/CO/2 (Oct. 19, 2010) (recommending establishment of national human rights commission with children's rights unit); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: The Former Yugoslav Republic of Macedonia, 54th Sess., May 25–June 11, 2010, ¶¶ 14–15, UN Doc. CRC/C/MKD/CO/2 (June 23, 2010) (noting child rights unit headed by deputy ombudsman and recommending the unit be given the authority, capacity, resources, and financial independence to carry out its mandate effectively); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Nigeria, 54th Sess., May 25–June 11, 2010, ¶¶ 14–15, UN Doc. CRC/C/NGA/CO/3-4 (June 21, 2010) (noting NHRI Special Rapporteur on Children's Rights and recommending the Special Rapporteur is accessible to children and adequately resourced); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Grenada, 54th Sess., May 25–June 11, 2010, ¶¶ 13–14, UN Doc. CRC/C/GRD/CO/2 (June 22, 2010)

(recommending newly appointed Ombudsman be given necessary resources to monitor child rights); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations of the Committee on the Rights of the Child: Tunisia, 54th Sess., May 25–June 11, 2010, ¶¶ 13–14, UN Doc. CRC/C/TUN/CO/3 (June 16, 2010) (recommending creation of children's unit within NHRI); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Mongolia, 53d Sess., Jan. 11–29, 2010, ¶¶ 15–16, UN Doc. CRC/C/MNG/CO/3-4 (Apr. 16, 2010) (noting commissioner for children in NHRI and encouraging the State party to ensure Commission has the capacity to receive complaints from children and seek remedies for violations); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations of the Committee on the Rights of the Child: Ecuador, 53d Sess., Jan. 11–29, 2010, ¶ 20, UN Doc. CRC/C/ECU/CO/4 (Mar. 2, 2010) (recommending creation of specialized child rights office within the Office of the Ombudsman); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: El Salvador, 53d Sess., Jan. 11–29, 2010, ¶¶ 15–16, UN Doc. CRC/C/SLV/CO/3-4 (Feb. 17, 2010) (welcoming Deputy Procurator for Protection of Children and Youth in NHRI, and recommending Deputy Procurator receive sufficient resources); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: The Philippines, 52d Sess., ¶¶ 17–18, UN Doc. CRC/C/PHL/CO/3-4 (Oct. 22, 2009) (categorizing Child Rights Center within NHRI and recommending adequate resources be given to the Child Rights Center); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Qatar, 52d Sess., ¶¶ 15–16, UN Doc. CRC/C/QAT/CO/2 (Oct. 14, 2009) (encouraging the establishment of planned children's rights unit inside NHRI); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography Concluding Observations: Slovenia, 51st Sess., ¶ 4, UN Doc. CRC/C/SVN/CO/1 (July 23, 2009) (noting with appreciation appointment of deputy in NHRI specifically for children's rights); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Mauritania, 51st Sess., ¶¶ 16–17, UN Doc. CRC/C/MRT/CO/2 (June 17, 2009) (recommending NHRI Child Rights Unit be provided with appropriate resources); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Niger, 51st Sess., ¶¶ 15–16, UN Doc. CRC/C/NER/CO/2 (June 18, 2009) (discussing NHRI Women and Children's Rights Department, and urging the State party to provide adequate resources to the Department); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Malawi, 50th Sess., ¶¶ 14–15, UN Doc. CRC/C/MWI/CO/2 (Mar. 27, 2009) (voicing appreciation of NHRI Child Rights Unit and recommending ongoing independence of the NHRI); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Chad, 50th Sess., ¶ 19, UN Doc. CRC/C/TCD/CO/2 (Feb. 12, 2009) (recommending establishment of ombudsperson or unit

not have an institution in place, the CtRC often recommended that an “independent monitoring mechanism” or an independent NHRI be established or operationalized for children’s rights without any express reference to the need for a thematic children’s rights institution.¹⁴⁰

inside NHRI for monitoring child rights); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Viet Nam, 60th Sess., May 29–June 15, 2012, ¶ 16, UN Doc. CRC/C/VNM/CO/3-4 (Aug. 22, 2012) (recommending establishment of independent monitoring body for promotion and protection of children’s rights); Comm. on the Rights of the Child, Concluding Observations on the Consolidated Second and Third Periodic Reports of Namibia, Adopted by the Committee at its Sixty-First Session (17 Sept.–5 Oct. 2012), ¶ 21, UN Doc. CRC/C/NAM/CO/2-3 (Oct. 16, 2012) (calling for establishment of children’s rights division within Office of the Ombudsman); Comm. on the Rights of the Child, Concluding Observations on the Consolidated Second to Fourth Periodic Reports of Bosnia & Herzegovina, Adopted by the Committee at its Sixty-First Session (17 Sept.–5 Oct. 2012), ¶¶ 19–20, UN Doc. CRC/C/BIH/CO/2-4 (Nov. 29, 2012) [hereinafter CRC, Bosnia & Herzegovina] (welcoming establishment of Child Rights Protection Department in Federation Human Rights Ombudsman institution, welcoming Republika Srpska Children’s Ombudsman and recommending the State party provide it with adequate resources); Comm. for the Rights of the Child, Concluding Observations on the Combined Second to Fourth Periodic Reports of Albania, Adopted by the Committee at its Sixty-First Session (17 Sept.–5 Oct. 2012), ¶¶ 19–20, UN Doc. CRC/C/ALB/CO/2-4 (Dec. 7, 2012) (expressing concern that the Children’s Department has been inactive and urging the State party to provide the Department with resources); Comm. on the Rights of the Child, Concluding Observations on the Combined Second to Fourth Periodic Reports of Liberia, Adopted by the Committee at its Sixty-First Session (17 Sept.–5 Oct. 2012), ¶¶ 22–23, UN Doc. CRC/C/LBR/CO/2-4 (Dec. 13, 2012) (urging the State party to strengthen NHRI); Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Armenia, Adopted by the Committee at its Sixty-Third Session (27 May–14 June 2013), ¶¶ 16–17, UN Doc. CRC/C/ARM/CO/3-4 (July 8, 2013) (recommending establishment of child rights unit in NHRI); Comm. on the Rights of the Child, Concluding Observations on the Consolidated Third and Fourth Periodic Reports of Kyrgyzstan, ¶ 7(c), UN Doc. CRC/C/KGZ/CO/3-4 (June 13, 2014) (recommending the strengthening of Ombudsman institution, Deputy Ombudsman for Children, and unit for children’s rights). *But see* Comm. on the Rights of the Child, Concluding Observations on the Consolidated Third and Fourth Periodic Reports of Jordan, ¶ 8(e), UN Doc. CRC/C/JOR/CO/4-5 (June 13, 2014) (recommending that the NHRI be given adequate resources and facilities to monitor and investigate children’s rights complaints).

140. See Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Cook Islands, 59th Sess., Jan. 16–Feb. 3, 2012, ¶ 14, UN Doc. CRC/C/COK/CO/1 (Feb. 22, 2012) (recommending the establishment of the Human Rights Office with mandate to monitor, promote, and protect child rights); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the

Convention Concluding Observations: Seychelles, 58th Sess., Sept. 19–Oct. 7, 2011, ¶ 17, UN Doc. CRC/C/SYC/CO/2-4 (Jan. 23, 2012) (recommending that the National Human Rights Commission be empowered to receive and investigate child rights complaints); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Cuba, 57th Sess., May 30–June 17, 2011, ¶ 13, UN Doc. CRC/C/CUB/CO/2 (Aug. 3, 2011) (recommending establishment of independent mechanism for the promotion and protection of human rights, including child rights); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Singapore, 56th Sess., Jan. 17–Feb. 4, 2011, ¶ 15, UN Doc. CRC/C/SGP/CO/2-3 (May 2, 2011) (recommending establishment of an independent mechanism); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Belarus, 56th Sess., Jan. 17–Feb. 4, 2011, ¶ 15, UN Doc. CRC/C/BLR/CO/3-4 (Apr. 8, 2011) (recommending establishment of an independent national mechanism); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Lao People's Democratic Republic, 56th Sess., Jan. 17–Feb. 4, 2011, ¶ 15, UN Doc. CRC/C/LAO/CO/2 (Apr. 8, 2011) (recommending establishment of Ombudsman or other independent monitoring body); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Burkina Faso, 53d Sess., Jan. 11–29, 2010, ¶¶ 14–15, UN Doc. CRC/C/BFA/CO/3-4 (Feb. 9, 2010) (recommending reconsideration of the structure and function of its National Human Rights Commission to enable it to cover child rights); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations of the Committee on the Rights of the Child: Mozambique, 52d Sess., ¶¶ 15–16, UN Doc. CRC/C/MOZ/CO/2 (Nov. 4, 2009) (urging the State party to ensure the National Human Rights Commission monitors child rights); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Pakistan, 52d Sess., ¶ 17, UN Doc. CRC/C/PAK/CO/3-4 (Oct. 15, 2009) (recommending the establishment of an independent monitoring mechanism); Comm. on the Rights of the Child, Concluding Observations on the Second Periodic Report of Guinea, Adopted by the Committee at its Sixty-Second Session (14 Jan.–1 Feb. 2013), ¶¶ 23–24, UN Doc. CRC/C/GIN/CO/2 (June 13, 2013) (recommending the establishment of NHRI); Comm. on the Rights of the Child, Concluding Observations of the Combined Second to Fourth Periodic Reports of Guinea-Bissau, Adopted by the Committee at its Sixty-Third Session (27 May–14 June 2013), ¶¶ 20–21, UN Doc. CRC/C/GNB/CO/2-4 (July 8, 2013) (recommending the establishment of an independent NHRI); Comm. on the Rights of the Child, Concluding Observations of the Initial Report of Tuvalu, Adopted by the Committee at its Sixty-Fourth Session (16 Sept.–4 Oct. 2013), ¶¶ 17–18, UN Doc. CRC/C/TUV/CO/1 (Oct. 30, 2013) (recommending the establishment of NHRI that is mandated to handle child right complaints); CRC Uzbekistan, *supra* note 28, ¶ 7(c) (recommending that the role of the Office of the Ombudsman be strengthened); CRC China, *supra* note 28, ¶¶ 19–20 (recommending the establishment of NRHIs on mainland, Macau, and Hong Kong); Comm. on the Rights of the Child, Concluding Observations on the Combined Second to Fourth Periodic Reports of Sao Tome and Principe, Adopted by the Committee

Although many of the countries examined in this period were developing states with resource limitations, a number of industrialized or middle-income CRC parties without the same kind of resource constraints were scrutinized. Even when industrialized or middle income CRC parties were reviewed, the CtRC typically approved of or accepted a child rights unit inside a broad-based NHRI or recommended that an internal unit be established in an NHRI.¹⁴¹ In several cases, the CtRC

at its Sixty-Fourth Session (16 Sept.–4 Oct. 2013), ¶¶ 17–18, UN Doc. CRC/C/STP/CO/2-4 (Oct. 29, 2013) (recommending the establishment of an independent mechanism for monitoring human rights, including child rights); Comm. for the Rights of the Child, Concluding Observations on the Fourth Periodic Report of Yemen, ¶¶ 19–20, UN Doc. CRC/C/YEM/CO/4 (Feb. 25, 2014) (recommending the establishment of NHRI with child rights observatory); CRC, Saint Lucia, *supra* note 28, ¶¶ 18–19 (recommending the establishment of an independent human rights mechanism in full compliance with Paris Principles and noting the intention of the state to establish a thematic institution).

141. See CRC, Denmark, *supra* note 27, ¶ 20 (recommending the establishment of a child rights facility within Ombudsman system); see Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Netherlands, 50th Sess., ¶¶ 16–17, UN Doc. CRC/C/NLD/CO/3 (Mar. 27, 2009) [hereinafter CRC, Netherlands] (welcoming the establishment of Children's Ombudsman within Netherlands Ombudsman institution and recommending creation of a human rights institution or children's ombudsman in Aruba and Netherlands Antilles); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Greece, 60th Sess., May 29–June 15, 2012, ¶¶ 15–16, UN Doc. CRC/C/GRC/CO/2-3 (Aug. 13, 2012) (recommending a continuity of the mandate of the Child Rights Department in the Greek Ombudsman); Comm. of the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Australia, 60th Sess., May 29–June 15, 2012, ¶¶ 17–18, UN Doc. CRC/C/AUS/CO/4 (Aug. 28, 2012) [hereinafter CRC, Australia] (welcoming establishment of National Children's Commissioner (inside Australia's Human Rights Commission) but expressing concern over its initial allocation of resources); Comm. on the Rights of the Child, Concluding Observations on the Second Periodic Report of Andorra, Adopted by the Committee at its Sixty-First Session (17 Sept.–5 Oct. 2012), ¶ 19, UN Doc. CRC/C/AND/CO/2 (Dec. 3, 2012) (recommending an expanded role of NHRI in children's rights work); Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Germany, ¶¶ 17–18, UN Doc. CRC/C/DEU/CO/3-4 (Feb. 25, 2014) [hereinafter CRC, Germany] (recommending NHRI mandate at national and sub-national levels to receive and address violations of child rights); CRC, Portugal, *supra* note 49, ¶¶ 19–20 (recommending adequate resources for the NHRI in the promotion and protection of children).

recommended that an NHRI be established or an existing institution be reformed to turn it into an independent NHRI.¹⁴²

With respect to CRC parties of all levels of development, occasionally the CtRC recommended that a CRC party establish either an NHRI with a child rights unit (or a child rights unit if an NHRI already existed) or a thematic children's rights institution such as a children's ombudsperson.¹⁴³ The CtRC

142. See CRC, Japan, *supra* note 30, ¶¶ 17–18 (recommending the establishment of NHRI and noting absence of information on municipal-level children's ombudspersons); Comm. on the Rights of Children, Concluding Observations on the Combined Second and Third Periodic Reports of Monaco, Adopted by the Committee at its Sixty-Fourth Session (16 Sept.–4 Oct. 2013), ¶¶ 16–17, UN Doc. CRC/C/MCO/CO/2-3 (Oct. 29, 2013) (recommending an expanding role of Adviser for Appeals/Mediation by providing it with a mandate to monitor human rights, including children's rights).

143. CRC, Netherlands, *supra* note 141, ¶ 171; see Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on: Turkey, 60th Sess., May 29–June 15, 2012, ¶ 17, UN Doc. CRC/C/TUR/CO/2-3 (July 20, 2012) (recommending the establishment of a separate unit in a planned Ombudsman Agency or a separate independent institution); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on: Cambodia, 57th Sess., May 30–June 17, 2011, ¶ 15, UN Doc. CRC/C/KHM/CO/2 (Aug. 3, 2011) (recommending the establishment of an independent mechanism either as part of an NHRI with a child unit or a separate mechanism); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on: Sri Lanka, 55th Sess., Sept. 13–Oct. 1, 2010, ¶ 15, UN Doc. CRC/C/LKA/CO/3-4 (Oct. 19, 2010) (recommending the establishment of either a child rights bureau inside National Human Rights Commission or an ombudsman for children); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on: Cameroon, 53d Sess., Jan. 11–29, 2010, ¶ 16, UN Doc. CRC/C/CMR/CO/2 (Feb. 18, 2010) (recommending the establishment of a child rights office of the National Commission on Human Rights or an independent ombudsperson); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on: The Plurinational State of Bolivia, 52d Sess., ¶ 14, UN Doc. CRC/C/BOL/CO/4 (Oct. 16, 2009) (recommending the establishment of a Children's Ombudsman either as separate or as part of existing Defensor del Pueblo/human rights ombudsman); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on: Democratic People's Republic of Korea, 50th Sess., ¶ 12, UN Doc. CRC/C/PRK/CO/4 (Mar. 27, 2009) (recommending the establishment of an independent monitoring mechanism such as an ombudsperson for children); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on: Algeria, 16th Sess., May 29–June 15, 2012, ¶ 18, UN Doc. CRC/C/DZA/CO/3-4 (July 18, 2012) (establishing NHRI with child unit or

stated that a thematic children's rights institution such as an ombudsperson for children would be preferable to an NHRI with a children's rights unit in only one concluding observation in the period under review.¹⁴⁴ If a state already had a thematic children's rights institution in place or was planning to establish one, the CtRC held them to this commitment and made recommendations on strengthening or establishing it.¹⁴⁵ In most

a separate mechanism, e.g., ombudsperson for children); CRC, China, *supra* note 28, ¶¶ 19–20 (for Hong Kong, recommending the establishment of either a children's commission as referred to in Legislative Council motion or another independent human rights institution); Comm. on the Rights of the Child, Concluding Observations on the Combined Second to Fourth Periodic Report of the Congo, ¶¶ 20–21, UN Doc. CRC/C/COG/CO/2-4 (Feb. 25, 2014) (recommending establishment of a specific mechanism for children's rights inside or outside NHRI).

144. Comm. on the Rights of the Child, Concluding Observations on the Second Periodic Report of Kuwait, Adopted by the Committee at its Sixty-Fourth Session (16 Sept.–4 Oct. 2013), ¶ 20, UN Doc. CRC/C/KWT/CO/2 (Oct. 29, 2013) [hereinafter CRC, Kuwait].

145. See Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Iceland, 58th Sess., Sept. 19–Oct. 7, 2011, ¶ 17, UN Doc. CRC/C/ISL/CO/3-4 (Jan. 23, 2012) (recommending the strengthening of the Ombudsman for Children); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Republic of Korea, 58th Sess., Sept. 19–Oct. 7, 2011, ¶ 17, UN Doc. CRC/C/KOR/CO/3-4 (Feb. 2, 2012) (recommending that the State clearly define Korea Monitoring Centre for Human Rights/Children's Rights Ombudspersons for efficacy purposes); CRC, Italy, *supra* note 30, ¶ 12 (recommending the establishment of a National Ombudsperson for Children and Adolescents promptly); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Finland, 57th Sess., May 30–June 17, 2011, ¶ 15, UN Doc. CRC/C/FIN/CO/4 (Aug. 3, 2011) (recommending that the State party makes the general public aware of the procedures involved in the Ombudsman for Children); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: New Zealand, 56th Sess., Jan. 17–Feb. 4, 2011, ¶ 4(g), UN Doc. CRC/C/NZL/CO/3-4 (Apr. 11, 2011) (welcoming the Children's Commissioner legislation); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Ukraine, 56th Sess., Jan. 17–Feb. 4, 2011, ¶ 16, UN Doc. CRC/C/UKR/CO/3-4 (Apr. 21, 2011) [hereinafter CRC, Ukraine] (recommending the establishment of an independent mechanism separate from NHRI and the adoption of children's ombudsman legislation); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Nicaragua, 55th Sess., Sept. 1–Oct. 13, 2010, ¶¶ 16–17, UN Doc. CRC/C/NIC/CO/4 (Oct. 20, 2010) (expressing concern about the lack of technical and financial resources available for the Special Ombudsperson for the

Protection of Children and Adolescents and NHRI); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Angola, 55th Sess., Sept. 13–Oct. 1, 2010, ¶¶ 14–15, UN Doc. CRC/C/AGO/CO/2-4 (Oct. 19, 2010) (stating that the Provider of Justice also serves as an Ombudsman for Children); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Argentina, 54th Sess., May 25–June 11, 2010, ¶¶ 19–20, UN Doc. CRC/C/ARG/CO/3-4 (June 21, 2010) (recommending changes to a planned Ombudsperson for Children and Adolescents); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Belgium, 54th Sess., May 25–June 11, 2010, ¶¶ 6, 17–18, UN Doc. CRC/C/BEL/CO/3-4 (June 18, 2010) (recommending methods to ensure adequate coordination of the ombudsman institutions at all levels, e.g., children's ombudsman at community levels); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Norway, 53d Sess., Jan. 11–29, 2010, ¶¶ 13–14, UN Doc. CRC/C/NOR/CO/4 (Mar. 3, 2010) (recommending giving the Children's Ombudsman a mandate to receive complaints from children to provide immediate assistance); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations of the Committee on the Rights of the Child: Bangladesh, 51st Sess., ¶¶ 18–19, UN Doc. CRC/C/BGD/CO/4 (June 26, 2009) (recommending the establishment of a planned Children's Commissioner); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Child Concluding Observations of the Committee on the Rights of the Child: Romania, 51st Sess., ¶¶ 13–14, UN Doc. CRC/C/ROM/CO/4 (June 30, 2009) (recommending the establishment of a planned children's ombudsperson, strengthening NHRI with children's rights deputy); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations of the Committee on the Rights of the Child: Sweden, 51st Sess., ¶ 16, UN Doc. CRC/C/SWE/CO/4 (June 26, 2009) (providing several recommendations for the Ombudsman for Children in accordance with the Paris Principles); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Republic of Moldova, 50th Sess., ¶ 16, UN Doc. CRC/C/MDA/CO/3 (Feb. 20, 2009) (stating that the State needs to ensure that the Children's Advocate has adequate human and financial resources); Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Report of Cyprus, Adopted by the Committee at its Sixtieth Session (29 May–15 June 2012), ¶¶ 13–14, UN Doc. CRC/C/CYP/CO/3-4 (Sept. 24, 2012) (commending the State on appointing a Commissioner for Protection of Children's Rights but urging it to ensure the Commissioner is provided with resources); CRC, Guyana, *supra* note 26, ¶¶ 18–19 (noting the concerns and recommendations of the CtRC including that “the State party take measures to ensure that its Rights of the Child Commission is able to receive, investigate and address complaints by children in a child-sensitive manner”); Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Luxembourg, Adopted by the Committee at its Sixty-Fourth Session (16 Sept.–4 Oct. 2013), ¶¶ 20–21, UN Doc. CRC/C/LUX/CO/3-4 (Oct. 29, 2013) (recommending the strengthening of both NHRI and Ombuds Committee for Child Rights); CRC, Russian

of these countries with a thematic children's rights institution, the state in question also had an NHRI.¹⁴⁶ The CtRC recommended the establishment of a children's ombudsman when there was already an NHRI in the state in only a few cases.¹⁴⁷

When federal or decentralized states with sub-national governments were reviewed, the CtRC either made positive comments about thematic children's rights institutions in place at the sub-national levels or criticized weaknesses in these thematic institutions. The CtRC occasionally discussed the lack of monitoring oversight at the sub-national level.¹⁴⁸

Federation, *supra* note 30, ¶¶ 16–17 (recommending that “the State party introduce a transparent and competitive process, regulated by law, for nominations and appointments to all posts of commissioners for children’s rights”); CRC, India, *supra* note 30, ¶¶ 21–22 (recommending the strengthening of the independence of national child rights commission and sub-national commissions and expediting establishment of commissions in remaining states); CRC, Indonesia, *supra* note 26, ¶¶ 17–18 (noting “the Commission has a limited mandate, lacking the explicit authority to investigate” and recommends “necessary measure to strengthen the mandate”). *But see* Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on Czech Republic, 57th Sess., May 30–June 17, 2011, ¶¶ 16–17, UN Doc. CRC/C/CZE/CO/3-4 (Aug. 4, 2011) (recognizing initial efforts to establish a Children’s Ombudsman and recommending the establishment of an independent body).

146. See ICC, ACCREDITED NHRIS CHART, *supra* note 5, at 2–9 (listing NHRIs in Indonesia, South Korea, Luxembourg, Russian Federation, Ukraine, Argentina and Nicaragua as A-status accredited NHRIs, Norway’s NHRI as a B-status accredited NHRI and Romania’s NHRI as a C-status accredited NHRIs).

147. See Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Tajikistan, 53d Sess., Jan. 11–29, 2010, ¶¶ 12–13, UN Doc. CRC/C/TJK/CO/2 (Jan. 29, 2010) [hereinafter CRC, Tajikistan] (recommending establishment of a Children’s Rights Ombudsman despite the existence of a Human Rights Ombudsman); Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Report of Canada, Adopted by the Committee at its Sixty-First Session (17 Sept.–5 Oct. 2012), ¶¶ 22–23 UN Doc. CRC/C/CAN/CO/3-4 (Dec. 6, 2012) [hereinafter CRC, Canada] (stating that federal anti-discrimination focused Human Rights Commission does not give all children meaningful process for breaches of all CRC rights, recommending establishment of a federal Children’s Ombudsman, and noting that most provinces have an Ombudsman for Children although some concerns with them); CRC, Uzbekistan, *supra* note 28, ¶ 7 (recommending strengthening NHRI, pursuing establishment of Children’s Ombudsman that is provided for in legislation).

148. See CRC, Australia, *supra* note 141, ¶¶ 17–18 (expressing appreciation for children’s commissioners or independent guardians in all Australian states/territories);

In almost all cases, the CtRC recommended that the ICRI comply with the Paris Principles and reflect the standards in the CtRC's General Comment No. 2. In recent cases where thematic children's rights institutions are discussed, the CtRC has called for the thematic institutions to be fully Paris Principles compliant which, as discussed above, is impossible given the current interpretation of the Paris Principles.¹⁴⁹ The CtRC was also consistent in requiring that the children's rights mechanism, whether separate or part of an NHRI: be independent; have the mandate to monitor, promote and protect children's rights; have the power to receive and investigate complaints from or on behalf of children concerning violations of their CRC rights in a child-friendly and expeditious manner; have sufficient financial, human and technical resources to guarantee its efficacy and independence; and be accessible to children, especially those in vulnerable situations. On occasion, the CtRC also called on CRC parties to raise awareness of the institution and its complaints procedure among the public, children and their parents and to permit the ICRI to provide remedies for breaches of children's rights under the CRC.

In conclusion, in the 2009 to mid-2014 period there was almost no pressure exerted by the CtRC on CRC parties to establish thematic children's rights institutions as long as they

CRC, Bosnia & Herzegovina, *supra* note 139, ¶¶ 7–8 (noting that past recommendations were not implemented by government); CRC, Canada, *supra* note 147, ¶ 23 (emphasizing that provincial thematic institutions have limited mandates and not all children are aware of these complaints procedures); CRC, Germany, *supra* note 141, ¶¶ 17–18, (calling to strengthen German NHRI over sub-national levels); CRC, Russian Federation, *supra* note 30, ¶¶ 16–17 (noting numerous problems with regional commissioners); CRC, India, *supra* note 30, ¶ 22 (recommending that the State party “[e]nsure the independence of the NCPNR and all other Commissions at all levels”). *But see* Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on Spain, 55th Sess., Sept. 13–Oct. 1, 2010, UN Doc. CRC/C/ESP/CO/3-4 (Nov. 3, 2010) (no discussion by CtRC of independent monitoring in Spain despite existence national Defensor del Pueblo (human rights ombudsman), equivalent institutions in some autonomous communities and the now-closed Community of Madrid children's defender); *supra* text accompanying notes 50, 57 (noting that Spain's Defensor del Pueblo is not an ICRI given insufficient focus on children's rights, highlighting Madrid's closure of its Children's Defender because of budget cuts).

149. CRC, India, *supra* note 30, ¶ 22; CRC, Indonesia, *supra* note 26, ¶ 18; CRC, Guyana, *supra* note 26, ¶ 19; CRC, Canada, *supra* note 147, ¶ 23; CRC, Ukraine, *supra* note 145, ¶ 16.

established or maintained a broad-based NHRI that complied with the Paris Principles and had a child rights focus, including a distinct department or unit for children's rights and/or a distinct commissioner or deputy ombudsman responsible for children's rights. Thematic children's rights institutions were accepted and supported by the CtRC, and in some cases the CtRC gave the CRC party a choice to establish either an NHRI or a thematic children's rights institution. However, thematic children's rights institutions were almost never affirmatively required.¹⁵⁰ In addition, the CtRC's emphasis on Paris Principles compliance (as enhanced by General Comment No. 2) increased the pressure on CRC parties to use one comprehensive NHRI rather than a thematic children's rights institution.

III. CONCLUSION

Thematic children's rights institutions at all levels of governance, NRHIs with a legislated children's rights responsibilities or sufficiently precise operating practices (child rights department/unit and/or deputy tasked with children's rights oversight) and equivalent sub-national human rights institutions are broadly defined as ICRIs in current parlance. All types of ICRIs can play a valuable role in applying the CRC in the domestic sphere and improving children's rights protection and promotion. The CtRC provides important oversight of all ICRIs in CRC states, *inter alia*, providing General Comments on institutional structure and roles and making recommendations on the establishment and strengthening of ICRIs in their Concluding Observations on periodic state reports.

In recent years, a few thematic children's rights institutions have been closed down or merged with a broad NHRI. In some other countries, governments have established or extended the mandate of their NHRI to include attention to children's rights rather than creating a separate children's rights body. Thematic children's rights institutions continue in operation at the

150. Recommendations for the establishment of thematic children's rights institutions were made for only three CRC parties that had not already expressed an intention to establish a thematic institution: Kuwait, Tajikistan, Canada and Uzbekistan. CRC, Kuwait, *supra* note 144, ¶ 20; CRC, Tajikistan, *supra* note 147, ¶ 13; CRC, Canada, *supra* note 147, ¶ 23; *supra* note 145.

national level in over twenty countries, mainly in Europe, at the sub-national level in over ten countries, and new institutions are contemplated in a handful of other nations.

Many countervailing forces operate to push governments either in the direction of a single comprehensive NHRI (or equivalent sub-national institution) that includes children's rights oversight or towards a separate thematic children's rights institution that may exist alongside a comprehensive NHRI. CRC states will make their decisions on the configuration of their ICRIIs based on their unique environments and the forces in play domestically and internationally. However, they also have to take into account their CRC obligations and they are increasingly influenced by the UN Paris Principles, the standards on NRHIs that have permeated through most of the UN and regional human rights systems.

Based on the Paris Principles and ICC General Observations, thematic children's rights institutions are not considered to be NRHIs and can never be fully compliant with the Paris Principles due to their thematic and non-comprehensive jurisdiction over human rights in the country. Consequently, the soft law effect of the Paris Principles as interpreted by the ICC through their General Observations and accreditation process is to pressure states in the direction of one NHRI that integrates children's rights into its comprehensive mandate and to reject the use of thematic human rights institutions such as children's ombudspersons and children's commissioners.

The CtRC provides greater detail to CRC states parties' obligations through, *inter alia*, their General Comments and Concluding Observations to state reports. In particular, General Comment No. 2 of the CtRC states that it is a CRC obligation to establish independent NRHIs¹⁵¹ although it seems to include thematic children's rights institutions within the NHRI definition. General Comment No. 2 does not require states to establish thematic children's rights institutions, approaching the decision on a resource availability basis.

A review of the Concluding Observations of the CtRC over the 2009 to mid-2014 period demonstrates that the CtRC

151. General Comment No. 2, *supra* note 118, ¶ 1.

does not use the availability of resources as a factor in its recommendations on organizational choice for ICRIIs. Rather, the CtRC's main concern is that the CRC party has some form of national level ICRI in place with a child's rights focus. In the vast majority of CRC party reports examined where there is no ICRI in place, the CtRC does not recommend that the state establish a thematic children's rights institution. Thus, almost all of the CRC states examined during the review period were under no pressure from the CtRC to use a thematic institution such as a children's commissioner or children's ombudsperson. Combined with the effect of the Paris Principles as interpreted and applied by the ICC, NHRIs such as broad-based national human rights commissions and human rights ombudsman institutions with a sufficient focus on children's rights will satisfy both the CtRC and the ICC as to institutional form.

In addition, the CtRC often calls for compliance of the ICRI with the Paris Principles. This is completely appropriate where a NHRI such as a human rights commission or a human rights ombudsman is involved. However, in some cases the CtRC applies the Paris Principles to thematic children's rights institutions and has called for their full compliance with the Paris Principles. As this Article demonstrates, the ICC considers that national level thematic children's rights institutions are not NHRIs. Thus, the Paris Principles do not apply to thematic children's rights institutions and a thematic institution such as a children's rights commissioner or ombudsperson will never achieve full compliance with the Paris Principles based on ICC General Observations and practice. Full compliance with the Paris Principles can only be achieved if a thematic children's rights institution is totally transformed into a general purpose national level human rights commission or human rights ombudsman with a mandate to protect and promote all human rights.