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**INDEPENDENT HUMAN RIGHTS
INSTITUTIONS FOR CHILDREN**

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Independent Human Rights Institutions for Children

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Abstract. One of the core requirements of the Convention on the Rights of the Child is that States Parties should undertake all necessary and appropriate measures to implement the rights recognized therein. However, the implementation of economic, social and cultural rights is a particular challenge for the discretionary power of the State Party because it has to determine what the available resources are. The Committee encourages “other competent bodies” and NGOs to have an active role in effective implementation of the Convention. This opens the way for independent monitoring bodies such as IHRICs, to provide expert advice on implementation. This paper discusses the need for such bodies, their role, possible mandate and powers, guiding principles, as well as the problems of financing and independence. A fundamental feature of the activities of IHRICs is the participation of civil society and children themselves.

Keywords: children’s rights, ombudspersons, children’s commissioners, Convention on the Rights of the Child, international instruments, evaluation and monitoring, implementation

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1. INTRODUCTION

This working paper addresses the role, contribution and impact of independent human rights institutions for children (IHRICs), also referred to as children's ombudspersons or children's commissioners. It looks at these institutions from the perspective and jurisprudence of the Committee on the Rights of the Child (the Committee) and the global perspective on the perception of the child and childhood resulting from contributions of these institutions to the process of implementing the Convention on the Rights of the Child (CRC).

The paper is based on the Committee's Concluding Observations, General Comments and other relevant documents, in particular reports and other information from IHRICs themselves. It also reflects my experience as a member of the Committee for eight years (1999 to 2007), including six years as chairperson. The approach is qualitative rather than quantitative. The first part (sections 2 and 3) addresses the key conditions for implementation of the CRC and the role of IHRICs in light of the views and jurisprudence of the Committee. The second part (section 4) focuses on perceptions of the child and childhood as a result of the implementation of the CRC and the role of IHRICs.

2. IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

2.1 General Observations

Article 4 of the CRC is considered the core or general provision for implementation of the rights of children. It requires States Parties to undertake all (not some) appropriate legislative, administrative and other measures to implement the rights recognized in the Convention. With regard to economic, social and cultural rights, such measures are to be undertaken to the maximum extent of the resources available to the State Party, and where needed, within the framework of international cooperation.

The wording of this requirement leaves considerable discretion to State Parties, but the CRC usually indicates clearly what is required. For instance, measures to implement article 7 (the right to a name and nationality) are appropriate if they ensure that a child is immediately registered after birth and is given a name. Measures to implement article 10 (family reunification) are appropriate if they explicitly provide for a process to deal with family reunification requests in a positive, humane and expeditious manner that does not entail adverse consequences for the applicant(s) and the family. Similar examples can be given for most of the CRC provisions. But it is left to the State Party to decide whether the measures will be legislative, administrative or of a social and/or cultural nature. It is equally possible that implementing an article requires a combination of measures and involves different ministries or departments of the government.

The implementation of economic, social and cultural rights is a particular challenge for the discretionary power of the State Party because it has to determine what the available resources are; the same applies to the 'maximum extent'. This discretion is directly linked

with the State Party's autonomy to set the priorities of its national policies. Economic, social and cultural rights are seen as subject to a process of 'progressive realization'; see for example art. 24 (health care), art. 26 (social security) and art. 28 (education).

It should be noted that the CRC does not distinguish economic, social and cultural rights from civil and political rights. In clustering the articles of the Convention, the Committee's reporting guidelines group articles 7, 8, 13, 17 and 37(a) as 'civil rights and freedoms'. But this grouping is meant to facilitate systematic reporting; it does not mean that there are no other civil or political rights. (See for example art. 6(1), 7(1), 12, 37(b)-(d) and the articles providing the rights to be protected from all forms of violence, abuse and exploitation.)

The Committee believes that the enjoyment of economic, social and cultural rights is inextricably intertwined with the enjoyment of civil and political rights and that both categories of rights should be considered as justiciable. This means that domestic laws must incorporate the rights of the child in sufficient detail to make it possible to effectively address and remedy violations of these rights.¹

The Committee also recommends that progressive realization (of economic, social and cultural rights) be understood as imposing an immediate obligation on States that are Parties to the Convention to undertake targeted measures aimed at moving as expeditiously and effectively as possible towards full realization of these rights.² In this regard the Committee also encourages States Parties to consider legislating a specific proportion of public expenditure to be allocated to children.³

The interdependence and indivisibility of children's human rights requires a multifaceted implementation process, involving not only diverse governmental actors but also all sectors of civil society, including children.⁴ Implementation is the obligation of a State Party, but various articles of the CRC indicate that civil society should play a role in this process (see for example arts. 3(3), 18(2), 19(2) and 20(3)). This also explains why States Parties are required to make the principles and provisions of the Convention widely known to adults and children alike (art. 42).

Article 45(a) expects UNICEF and other United Nations organs to play an active role in fostering effective implementation of the Convention and encouraging international cooperation. At the request of the Committee they may provide expert advice or submit reports. The role of non-governmental organizations (NGOs) is also acknowledged in article 45, which explicitly states that the Committee may invite "other competent bodies as it may consider appropriate to provide expert advice in the implementation of the Convention in areas falling within the scope of their respective mandates". The drafting history of the CRC

¹ General Comment No. 5 on the General Measures of Implementation of the Convention on the Rights of the Child (CRC/GC/2003/5, November 2003), paras. 6 and 25. References in footnotes to General Comments are those issued by the Committee on the Rights of the Child unless otherwise indicated.

² Recommendations from the Day of General Discussion on 'Resources for the rights of the child – Responsibility of States', 21 September 2007, para.47.

³ *Ibid.*, para. 23.

⁴ General Comment No. 5, para. 56-59.

makes clear that the term “other competent bodies” refers particularly to NGOs.⁵ But this term should be interpreted broadly, taking into account developments since the drafting of the CRC. This means, for instance, that independent monitoring bodies such as IHRICs, children’s ombudspersons and children’s commissioners should be considered as ‘other competent bodies’ that can be invited to provide expert advice on implementation.

2.2. Key Measures and Guiding Principles

2.2.1 General measures of implementation

Given the need for a multifaceted and holistic process of implementation, it is important to avoid article-by-article implementation. To encourage States Parties to develop a comprehensive implementation process, the Committee developed the concept of ‘general measures of implementation’, based on arts. 4, 42 and 44, para. 6. No other treaty body developed a similar concept of key conditions necessary for implementation of the treaty concerned. This unique concept was described first in the reporting guidelines (1996) of the Committee⁶ and elaborated in General Comment No. 5 on General Measures of Implementation.⁷ The State Party-specific Concluding Observations of the Committee follow this concept in presenting concerns and recommendations regarding these general measures for the State Party concerned.

To bring domestic laws in compliance with the provisions of the CRC legislation is one of the key general measures that States Parties should take.⁸ All States Parties have in fact undertaken various legislative measures, indicating that they see the Convention as a legal instrument requiring compliance through legislative measures. National plans of action are necessary not only to effectively implement legislation but also to implement social and other measures aiming at fulfilment of economic, social and cultural rights. These national plans can contain sectoral plans, such as to prevent child abuse and neglect in the family; trafficking, child prostitution and child pornography; and juvenile delinquency.⁹

All these legislative measures and national plans of action require coordination of the governmental activities required for their implementation and collaboration among national, regional and local authorities, including as much as possible the activities of United Nations agencies and NGOs.¹⁰ It goes without saying that effective implementation and coordination

⁵ See ‘Legislative History of the Convention on the Rights of the Child’ (volume II), pp. 845-848 (United Nations, New York/Geneva 2007).

⁶ ‘General guidelines regarding the form and contents of periodic reports to be submitted by States Parties under article 44, para. 1(b) of the Convention’ (adopted by the Committee on 11 October 1996).

⁷ To illustrate the special nature of this concept: the well-known Implementation Handbook for the Convention on the Rights of the Child (fully revised third edition 2007; UNICEF, New York) does not contain a separate chapter on these general measures.

⁸ See Alston, Philip, John Tobin and Mac Darrow, ‘Laying the Foundations for children’s rights’, Section 2.3, which contains a detailed analysis of the constitutional recognition of children’s rights (UNICEF, Innocenti Research Centre Florence, 2006).

⁹ For more details see General Comment No. 5, paras. 28-36.

¹⁰ For more information see General Comment No. 5, paras. 37-39, in which the Committee also emphasizes that decentralization of power at the national level in no way reduces the direct responsibility of the State Party’s government to fulfil its obligations under the CRC.

require allocation of resources (both financial and human) by the government.¹¹ Often this allocation is not sufficient, reflecting the low priority given to children's issues.

Efficient use of available resources and effective implementation of the CRC should be based on adequate and reliable data. Systematic collection of data disaggregated by categories such as age, gender and urban versus rural location is therefore one of the key conditions for effective and well-targeted implementation of policies and plans of action. Children, as the first and most important stakeholders, must be informed about the meaning and implementation of the Convention. This information is also key for parents, professionals working for or with children, and the public at large. Ongoing awareness-raising and training are necessary through public campaigns and also by integrating teaching on children's rights in school curricula.¹² Governments should recognize that implementation of the CRC can be supported by civil society in important ways, particularly through active cooperation with NGOs.

Finally, all the measures, activities and plans require systematic evaluation based on adequate data collection as well as monitoring by the responsible State authority so that impacts can be assessed and adjustments made. In addition to this self-monitoring, it is necessary for the State Party to establish an independent monitoring mechanism that can be used not only by government authorities but also by NGOs and other private actors.

These general measures are the key conditions for full and comprehensive implementation of the CRC. But their implementation is not a stand-alone exercise; they have to be linked to the implementation of the provisions of the Convention itself. For instance, implementation of the provisions on protection of children against violence should be structured and supported by a comprehensive national action plan. It should include legislative changes, coordination of activities, allocation of adequate financial and human resources, collection and analysis of all relevant data, participation by NGOs and other sectors of civil society, and systematic evaluation (self-monitoring). This also applies to implementation of other provisions, such as those on child labour, commercial sexual exploitation and alternative care for children without parental care. For all these actions independent monitoring is essential.

2.2.2 Guiding principles

While the general measures of implementation are fundamental, they are not sufficient to create a culture of respect for children's rights. That will only be achieved if the measures are inspired and guided by the General Principles of the CRC as identified by the Committee. If the general measures are the bones of the implementation, the general principles can be seen as the flesh on these bones. The key aspects of the General Principles are:

¹¹ The CRC Committee has made specific recommendations with regard to allocation of resources after its 2007 Day of General Discussion; see also note 2.

¹² The training of professionals and others working with or for children must emphasize the status of the child as a rights holder, increase the knowledge and understanding of the CRC and encourage active respect for all its provisions (General Comment No. 5, para. 53).

- Non-discrimination (art. 2): The provisions of all legislative measures must fully respect and contribute to the enjoyment of the rights enshrined in the Convention by each child without discrimination of any kind. Experience shows that legislative measures are still needed to ensure this enjoyment, particularly for girls, children born out of wedlock, children in institutions, children of the street, children affected by HIV/AIDS and children who are refugees or seeking asylum.

The Committee has paid sustained and particular attention to the prohibited forms of discrimination, such as gender discrimination in relation to personal status, marriage, education and health care; disability-based discrimination; and discrimination of non-citizen children and migrant children.¹³ But legislative measures, despite their importance, are not enough. Their implementation requires well-targeted awareness and educational campaigns. In addition the right to non-discrimination must be a key consideration in the development and implementation of policies and programmes for the realization of child rights. For instance a policy to provide the child with an adequate standard of living (art. 27) with a view to reducing poverty must pay special attention to the most vulnerable children, such as those who belong to an ethnic minority, come from very poor families or live in remote areas of the country. The non-discrimination principle must also be an integral part of all general measures, particularly with regard to allocation of resources and collection of data.

- The best interest of the child shall be a primary consideration in all actions concerning children (art. 3): The Committee has consistently emphasized that States Parties' legislation should explicitly recognize this principle, particularly in decision-making processes in courts or administrative procedures. For instance, the determination of what is in the best interest of an unaccompanied or separated child requires a clear and comprehensive assessment of the child's identity, including her or his nationality; upbringing; ethnic, cultural and linguistic background; and particular vulnerabilities and needs.¹⁴

But the best-interest principle applies not only to the individual child; it also incorporates children as a group in policies and programmes. For example, programmes to prevent HIV/AIDS and care for and treat its victims should be adapted to children's rights and needs.¹⁵ This principle applies not only to implementation of the Convention but to "all actions concerning children". This means that the best interest of the child should be a primary consideration in, for example, urban planning, measures to address environmental problems and national budget decisions and priorities.

¹³ For a full analysis of the attention given by the CRC Committee to the principle of non-discrimination in its Concluding Observations, see Wouter Vandenhoele, 'Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies', pp. 79-86, 157-182 and 272-285 (2005 Intersentia, Antwerpen-Oxford).

¹⁴ General Comment No. 6 on Treatment of Unaccompanied and Separated Children outside their Country of Origin (CRC/GC/2005/6, September 2005), para. 20. See also UNHCR Guidelines on Formal Determination of the Best Interests of the Child (May 2008, Geneva).

¹⁵ General Comment No. 3 on HIV/AIDS and the Rights of the Child (CRC/GC/2003/3, March 2003), para. 10; see also for early childhood programmes General Comment No. 7 on Implementing Child Rights in Early Childhood (CRC/C/GC/7, November 2005), para. 13.

- The right to life, survival and development (art. 6): Here the right should influence the content of programmes and plans of action for preventing and responding to violence against children, commercial sexual exploitation and trafficking. Such programmes should contribute to the child’s physical, mental, spiritual, moral and social development (see also art. 27(1)). Allocation of financial and human resources must give the highest priority to the child’s right to life, survival and development.
- The right to express her/his views and to participate (art. 12): Application of this right should not be limited to judicial and administrative proceedings (art. 12(2)); it applies in all matters affecting the child. This means that children should be provided with genuine opportunities to express their views and be involved in preparation and implementation of legislative measures, coordination of implementation activities, allocation of resources, data collection, cooperation with NGOs and establishment and operations of independent monitoring bodies. The Committee has underscored and elaborated on the importance of this principle in its Concluding Observations and General Comments.¹⁶

3. THE ROLE OF INDEPENDENT HUMAN RIGHTS INSTITUTIONS FOR CHILDREN

It goes without saying that the actual and possible roles of IHRICs relate in principle to implementation of all substantive articles of the CRC. My focus is on the role of these institutions in establishing infrastructure for implementation of the CRC, including promotion of a culture of respect for the rights of the child.

3.1 The Need for an Independent Monitoring Body

International human rights treaties (including the CRC) do not require States Parties to establish independent institutions/mechanisms to monitor their implementation. States Parties are obligated to ensure an effective remedy for any person whose rights and freedoms are violated (art. 2 (3) of the International Covenant on Civil and Political Rights [ICCPR]). But this does not necessarily result in an obligation to establish these national institutions. However, the CRC does not even contain a provision explicitly requiring an effective remedy in cases of violations of child rights. Yet the Committee on the Rights of the Child is of the opinion that providing such remedies is an inherent obligation of respecting and ensuring children’s rights.¹⁷

In 1993 two important events contributed to the acceptance of national human rights institutions as important instruments in the implementation of human rights:

¹⁶ See e.g. General Comment No. 3, para. 12; No 4, para. 39(d); and No. 6, para. 25.

¹⁷ See General Comment No. 5, para. 24; “For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties”.

- The Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights, encouraged the establishment and strengthening of national institutions for the promotion and protection of human rights.
- The United Nations General Assembly adopted Resolution 48/134 (the Paris Principles) relating to the status of national institutions for the promotion and protection of human rights. Since then the General Assembly and the Commission on Human Rights have repeatedly called for the establishment of these national institutions.

In short, the establishment of independent national human rights institutions in accordance with the Paris Principles became a necessary and integral part of the process of human rights implementation.

3.2 The Approach of the Committee on the Rights of the Child

3.2.1 Concluding Observations before General Comment No. 2

The Committee on the Rights of the Child has addressed the establishment of independent human rights institutions in its Concluding Observations almost from the beginning of its work. But in its early years the Committee did not systematically recommend such institutions in its country-specific Concluding Observations.¹⁸ In addition, the fact that the Vienna Declaration and the Paris Principles did not call for the establishment of independent monitoring institutions may have influenced the Committee's approach until about 2003; e.g. there was very limited reference to the Paris Principles. This may explain why the Committee's recommendations did not reflect a consistent approach.

For instance, for some countries the Committee recommended establishment of a multidisciplinary monitoring system to assess progress and difficulties in implementing the CRC, without explicitly suggesting that it should be a separate entity.¹⁹ For others it recommended consideration of independent mechanisms to monitor children's rights, such as an ombudsperson, or commissioner, for children.²⁰ In some instances the Concluding Observations were more specific on the role and/or mandate of the recommended independent body – such as by suggesting an ombudsperson to deal with complaints of violations of children's rights and to provide remedies for such violations²¹ and to more rapidly identify emerging problems in fields such as welfare, education and juvenile justice.²²

¹⁸ No specific recommendations were made in Concluding Observations on first reports submitted to the CRC Committee from e.g. Algeria (1997), Belarus (1994), Bolivia (1993), Egypt (1993), France (1994) and others, including Indonesia, Jamaica, Mexico and Nepal.

¹⁹ See e.g. Concluding Observations on Laos (1997), Lebanon, Mongolia and Morocco, all in 1996.

²⁰ See e.g. Concluding Observations on Ethiopia (24 Jan. 1997), para. 25 and Czech Republic (10 Oct. 1997) para. 28.

²¹ See e.g. Concluding Observations on the first report of Cyprus (7 June 1996), para. 26 and on the first report of Cuba (6 June 1997), para. 12.

²² See Concluding Observations on China's first report (1 June 1996), para. 26.

All these recommendations²³ were merged and structured in 2002 in General Comment No. 2 on ‘The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child’.

3.2.2 IHRICs and General Comment No. 2

In General Comment No. 2 the Committee on the Rights of the Child presented its views regarding the need for an independent body to monitor implementation of child rights and this body’s recommended mandate, powers and possible activities. General Comment No. 2 can be considered a landmark document, as no other human rights treaty body has issued such a detailed General Comment on independent monitoring bodies and their role.²⁴

In my opinion paragraph 5 is the most crucial because it explains the additional justifications for ensuring that children’s human rights receive special attention in the context of independent monitoring:

... These include the facts that children’s developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Government’s response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children’s access to organizations that may protect their rights is generally limited.²⁵

Another reason for paying special attention to monitoring the implementation of children’s rights is the need for specificity. Based on experiences from the period before the CRC entered into force (in 1990) we know that in the context of ‘general’ human rights instruments (ICCPR and the International Covenant on Economic, Social and Cultural Rights [ICESCR], both of which were adopted in 1966) the child as rights holder received little if any attention. A national institution for monitoring human rights may show the same lack of interest in children as subjects of rights. A special entity for monitoring implementation of children’s rights is necessary to provide dedicated attention to the various unique aspects of the rights of the child. Such a dedicated entity is needed to target and effectively promote implementation of the rights of the child.

It is also important to emphasize the importance of the domestic setting in ensuring accountability for CRC implementation. No matter how well the Committee on the Rights of the Child might function or how effective other international agencies might be, “the real litmus test of accountability will be in the quality of the domestic institutional arrangements

²³ For more Concluding Observations of the UN Committee on the Rights of the Child (Third to Seventeenth Session 1993-1998) see ‘The Raoul Wallenberg Institute Series of Intergovernmental Human Rights Documentation, volume 1 (MartinusNijhoff Publishers; The Hague/Boston/London 2000).

²⁴ The Committee on Economic, Social and Cultural Rights has issued a General Comment No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights. But the General Comment is very short and mainly gives a non-exhaustive list of possible activities of these institutions. It does not elaborate in more detail on e.g. the structure, powers and independence.

²⁵ See also ‘Independent Institutions Protecting Children’s Rights’, Innocenti Digest No. 8, June 2001 (UNICEF Innocenti Research Centre, Florence), in particular the box on p. 3 ‘The case for children’.

for ensuring that the national and local levels of government, as well as other key actors, are accountable for any failures that might have been avoided to ensure respect for the rights of children.”²⁶

In General Comment No. 2 the Committee expressed in detail its views on the various aspects of the possible mandate, powers and organizational structure of independent monitoring bodies for children’s rights. The following is a brief summary:

- **Organizational structure:** A much-debated question was whether an IHRIC should be a separate specialized body or part of an existing independent monitoring body, such as a national human rights institution.²⁷ The Committee implicitly expressed a preference for separate specialized independent monitoring bodies such as children’s ombudspersons or commissioners, but it acknowledged that limited resources might require a broad-based national human rights institution with a specific focus on children. Such an institution should include either an identifiable commissioner or a specific division or section responsible for children’s rights.

- **Mandate and powers**
 - The IHRIC’s mandate and powers should be based in the law, which should contain the provisions necessary to guarantee its independence. Although independence is a crucial feature, General Comment No. 2 does not specify how it should be guaranteed; the same applies for the Paris Principles.

 - The scope of its mandate should be as broad as possible to promote and protect all children’s rights enshrined in the CRC and its Optional Protocols, and not only in relation to the State and its organs, but to all relevant public and private entities.

 - The IHRIC should have the power to hear any person and obtain any information or document necessary so it can assess alleged violations of children’s rights.

 - The IHRIC must have the power to consider individual complaints and petitions, including those submitted on behalf of or directly by children. To investigate these complaints/petitions effectively, the IHRIC must have the power to compel and question witnesses, access relevant documentary evidence and access places of detention. It should, when appropriate, undertake mediation and conciliation of complaints.

²⁶ See Alston, Philip, John Tobin and Mac Darrow, ‘Laying the Foundations for Children’s Rights’, UNICEF, Innocenti Research Centre, Florence, 2006 Section 3.3.

²⁷ Ibid. pp. 40- 41 and ‘Independent Institutions Protecting Children’s Rights’, Innocenti Digest No. 8, June 2001 (UNICEF Innocenti Research Centre, Florence).

28. See General Comment No. 2, para. 14. This power resembles the practice of amicus curiae briefs in procedures before the US Supreme Court. See also the possibility of submitting written observations to the International Criminal Court (Rule 103 of the Rules of Procedure and Evidence of the ICC).

The Paris Principles do not explicitly require national human rights institutions to have the power to receive and investigate individual complaints. But the Committee on the Rights of the Child considers this power crucial for IHRICs.

- The powers of IHRICs must be well defined and must fully respect existing judicial, administrative and other mechanisms for addressing violations of children's rights. These powers should be complementary and should not compete or interfere with mechanisms existing under national law. This may mean that the IHRIC only becomes active if national remedies have been exhausted. But such a rule should be applied with the necessary flexibility. For instance, if the statute of limitations on a remedy expires before a child becomes aware of its existence, the IHRIC should be allowed to use its powers to investigate the child's complaint.
 - The IHRIC has a duty to seek to ensure that children have effective remedies for any breaches of their rights, such as their rights to independent advice, advocacy and complaint procedures (such as for children in institutions). In this regard the IHRIC should have the power to support children in taking cases to court, including the power to take cases concerning children's issues in the name of the IHRIC and to intervene in court cases to inform the court about children's rights issues involved in the case.²⁸
 - To perform its mandate and exercise its powers the IHRIC can carry out a variety of activities, which may differ from country to country. Para. 19 of General Comment No. 2 includes an indicative but not exhaustive list of these activities.
- **The IHRIC and children**²⁹

It goes without saying that IHRICs must be accessible to children, both geographically and physically, with special attention to ensure access of the most disadvantaged and vulnerable children. Although accessibility can be facilitated via telephone, the Internet and e-mail (despite the fact that these are not available to millions of children), geographical accessibility may require the establishment of regional or local branches of the IHRIC. Physical accessibility requires special facilities for children with disabilities.

The Committee believes that IHRICs have a key role in promoting respect for the views of children in all matters affecting them, as required by article 12 of the CRC. This includes consulting and involving children in the establishment, organization and activities of IHRICs. Direct contact with children must be ensured, and children's councils could be created as advisory bodies.

²⁹ See General Comment No. 2, paras. 15-18.

3.2.3 Concluding Observations after Issuance of General Comment No. 2

Since issuing General Comment No. 2, the Committee has systematically recommended to States Parties that they establish IHRICs in line with the Comment³⁰ and in accordance with the Paris Principles.³¹ The country-specific aspects of these recommendations relate to the organizational structure of an IHRIC in countries that have a national ombudsman or a human rights institution/committee/council. It is not always clear whether these bodies have the power to receive and investigate individual complaints, and sometimes their independence seems to be questionable. When appropriate, the Committee made recommendations to ensure that these national bodies have the power to deal with individual complaints by or on behalf of children.³²

Some countries (Austria and the Russian Federation, for example) have ombudspersons for children or similar bodies at the regional or local level. In some countries the situation is complicated by the existence of both regional and state level children's commissions and regional/state branches of the ombudsperson's office.³³ In its Concluding Observations the Committee has on occasion supported and encouraged the establishment of regional ombudsperson's offices while also recommending establishment of a federal or national office.³⁴ However, the advantages and disadvantages of a decentralized monitoring mechanism are not clear, nor are the relationships or division of powers between central and regional offices. A comparative study of practices could be helpful in designing guidelines for an effective system of decentralized and independent monitoring of children's rights.

For State Parties lacking an independent monitoring mechanism, the Committee recommends establishment of an IHRIC, such as an ombudsperson or commissioner for children. The Committee emphasizes that such structures should feature:

- Independence from the government;
- Power to deal with complaints from or on behalf of children;
- Accessibility for children, including the provision of well-trained staff and sufficient financial resources.

The independence of IHRICs needs further elaboration through a revision of General Comment No. 2. How to guarantee their independence is a question regularly raised. Is an appointment by the legislature a better guarantee than one by the head of state? Or does it not make a difference? Who can dismiss the children's ombudsperson/commissioner, and on

³⁰ Such references not only show how useful General Comments can be in the monitoring work of the CRC Committee but also eliminate repetition and elaborated details in Concluding Observations (with the risk of forgetting one or more details).

³¹ Principles relating to the Status of National Institutions adopted by the UN General Assembly by Resolution 48/134 of 20 December 1993.

³² See e.g. the Concluding Observations on the second report of Uganda, para. 213 and 214 of the Committee's report on the 40th Session (12-30 September 2005); UN Doc. CRC/C/153.

³³ See e.g. the Concluding Observations on the combined 2nd and 3rd report of Australia, paras. 40 and 41 of the Committee's report on the 40th session (12-30 September 2005); UN Doc. CRC/C/153).

³⁴ See e.g. the Concluding Observations on the 3rd report of the Russian Federation, paras. 555 and 556 of the CRC Committee's report on the 40th Session (12-30 September 2005); UN Doc. CRC/C/153.

what grounds? Experiences and regulations of IHRICs should be studied to develop some guidelines for ensuring their independence.

3.3 Input and Impact of IHRICs

3.3.1 Establishment and powers

The number of children's ombudspersons/commissioners and of special sections/departments within national human rights institutions is growing, but too slowly. Most States Parties to the CRC do not have an independent system for monitoring implementation of children's rights, so the following reflections are based on very limited experience.

Children's ombudspersons or commissioners are usually based in a specific law. Some are based on decrees, and the legal powers of regional or local ombudspersons are often not clear. These laws contain provisions regarding the independence of the ombudsperson or commissioner. Concerns have been expressed that the sometimes chronic lack of financial and human resources may hamper their de facto independence. The Committee on the Rights of the Child has clearly stated that in order to protect their independence IHRICs must have adequate infrastructure, funding and freedom from forms of financial control.³⁵

Not all children's ombudspersons/commissioners have the power to receive and investigate individual complaints from or on behalf of children, but those that have this power may find that a lack of resources hampers their ability to execute this part of their mandate. Some national human rights institutions have a special section or a deputy commissioner assigned to monitor children's rights. But they rarely have the power to deal with individual complaints, and most such institutions do not have specialized units for children's rights. With some exceptions (such as the ombudsperson of Azerbaijan), they pay little attention to the implementation of the specific rights of children.

Therefore, it is clear that action is necessary to bring IHRICs – both separate children's bodies and entities within broader national human rights institutions – into full compliance with the recommendations and standards of General Comment No. 2. This ideally should be undertaken based on a comprehensive, analytical study of current regulations and practices. Such a study should be performed primarily at the national level but with support from relevant international actors. Similar actions are also necessary to establish specialized commissioners or departments to monitor implementation of children's rights within national human rights institutions.

Special attention should be given to countries without any independent human rights monitoring mechanism, in both the developing and industrialized countries. Such efforts could be supported by IHRIC networks, such as the European Network of Ombudspersons for Children (ENOC), UNICEF and the Office of the High Commissioner for Human Rights. Some countries (including the Netherlands and the United Kingdom) have faced strong resistance to establishing a national human rights institution or a children's rights

³⁵ See e.g. Annual Report 2004-2005 of the Ombudsperson for Children's Office Mauritius.

ombudsperson. Sometimes the argument has been made that such institutions are not necessary, given existing remedies such as a national ombudsperson and complaint procedures before independent committees. In other countries lack of human and financial resources may be serious obstacles.

But another factor may be reluctance by politicians to be observed by an independent watchdog, which could lead to negative publicity about their human rights performance. It would be useful to study failed attempts to establish an IHRIC; the outcomes of such a study could inform a strategy for the creation of such mechanisms. Establishing an ombudsperson or commissioner for children in full compliance with General Comment No. 2 may be the most politically effective approach to creating a positive climate for independent monitoring of human rights implementation.

The IHRIC is a very important advocate for children's rights, but it should not be the only one. Other advocates can - and in many countries do - play an important role. The IHRIC should support and facilitate the activities of these advocates, who are fundamental allies IHRIC in performing its role.

3.3.2 Input and impact at national level

The national reports submitted to the Committee show that IHRICs have input in various aspects of CRC implementation at the national level. It goes without saying that the areas or specific provisions addressed depend on the problems the country is facing. The role of the IHRIC also depends on its mandate and powers. A general mandate to promote and protect children's rights allows the IHRIC to undertake a variety of activities (listed in para. 19 of General Comment No. 2), which do not automatically include investigation of individual complaints. However, the focus of this paper is the role of IHRICs in the broader context of implementation of the CRC and its guiding principles.

Legislation is undoubtedly one of the key general measures of implementation of the CRC. States Parties have invested much time and energy in legislative measures aimed at incorporating the provisions of the CRC into their domestic laws or bringing them in compliance with it. I am not aware of any systematic study of the impact of IHRICs on national legislation. But it is reasonable to assume that they have played and continue to play an important role in legislative initiatives by governments of States Parties to the CRC. The IHRIC reports contain numerous analytical observations on laws and their shortcomings in terms of compliance with the CRC and make specific recommendations in that regard. They have regularly recommended drafting a comprehensive national children's rights act, consistent with the Committee's view. They also recommend revisions to existing laws.

In this regard IHRIC reports often draw attention to the most vulnerable groups of children and call for respecting and ensuring the rights pledged in the CRC to each child without any kind of discrimination, as required by article 2. But the impact of the IHRICs' recommendations is often not clear.

One of the problems in assessing the impact of IHRIC activities is the fact that many involve awareness-raising, advocacy, facilitating dialogue among other child rights actors, creating

networks and supporting collaboration aimed at building consensus. It is rather difficult to measure in quantitative terms the impact of all these activities. But it is nevertheless important to develop methods to measure their impact, acknowledging that it may differ from country to country.

States Party reports show that many countries have developed national action plans for implementation of the CRC in general or in specific areas. IHRICs were sometimes consulted about these plans or even involved in their development; in other instances their role was limited to making suggestions for improvement. It was and is also the role of the IHRICs to closely follow the implementation of these plans as well as the enforcement of new laws. This should not result in active involvement in the implementation process, because that may endanger or undermine the independence of the IHRIC in its monitoring role.

The implementation of many laws and action plans suffers from insufficient resources, often reflecting a lack of political priority for children's issues. It is a crucial role of IHRICs to insist on adequate allocation of resources, and their reports confirm these efforts. An important part of the impact of their work depends on successful lobbying of legislatures and the media and the mobilization of children, parents and the rest of civil society to ensure that resources are allocated and professionals trained.

This kind of activity is part of awareness-raising, an area in which all IHRICs continue to have significant input and impact. Reports, campaigns and the distribution of information presented in a manner understood by children, parents and professionals have improved the understanding of the practical importance of child rights and their implementation. In these activities the IHRICs focus on non-discrimination and the best interests of the child as guiding principles.

Another important principle is child participation, and the information from IHRICs shows that this principle is not only preached but also practised. Many of their awareness-raising actions have been to a considerable degree the result of consultations with children. These take place through visits to schools and the use of the Internet and other media. They have turned out to be excellent opportunities for children to express their views, which is their right under CRC article 12. A number of children's ombudspersons and commissioners regularly consult with an advisory board of children. Experiences so far show that active participation of children is best developed within the framework of separate IHRICs, such as children's ombudspersons or commissioners. It is clear from the reports that the IHRICs are committed practitioners of article 12 as well as being the strongest advocates for the right of children to express their views and be involved in all matters affecting them.

The best interest of the child is the IHRICs' most important guiding principle, particularly for those that have the power to investigate individual complaints and petitions. These IHRICs devote a considerable portion of their reports to information on the nature of the complaints and actions taken to address the problems presented to them. But little research has been undertaken on the impact of IHRIC efforts in implementing child rights at the national level. Given the importance of this part of their role, as systematically confirmed in the

Committee's Concluding Observations, an analytical assessment is needed of the impact of this activity.

There is little information about the role of IHRICs in coordinating activities of government actors and NGOs to achieve efficient and effective implementation of the CRC. This is understandable given that the IHRIC is supposed to be independent, not a part of governmental structures. Yet active participation in these structures encourages impact. This quandary highlights the dilemma faced by IHRICs when trying to be informed but not too involved. Similar problems can arise in cooperating with NGOs. They are important partners, such as in campaigning to prohibit corporal punishment. But at the same time the IHRIC is supposed to critically monitor NGO activities and when appropriate discuss publicly their shortcomings in complying with the CRC.

However, in terms of an interim and preliminary assessment, it can be said that IHRICs contribute significantly to establishing and strengthening the key conditions for effective realization of children's rights based on consistent application of the general principles of the CRC, which serve as their guiding and inspiring instruments. Yet it is also clear that these institutions sometimes face serious obstacles in their work. These are often practical obstacles, such as lack of adequate resources, frequently due to the low political priority given to children's rights, despite rhetorical commitment.

- **Reporting within the framework of international monitoring**

The Committee on the Rights of the Child believes it is appropriate for States Parties to consult with independent human rights institutions during preparation of reports to the Committee. But this consultation must respect the independence of these institutions, including their role in providing the Committee with information. In short, participation in the preparation of the State's Party's report is all right, but it should not prevent the IHRIC from submitting its own report to the Committee. Given the importance of the IHRIC's independence, the Committee does not believe that States Parties should delegate the drafting of their reports to the IHRIC, nor should the representative of this body serve on the State Party's delegation to the Committee for its examination of the report.³⁶

In addition (and not elaborated in General Comment No. 2) it is important for the IHRIC to play an active role in the follow-up to the Committee's Concluding Observations. Some IHRICs undertake well-targeted measures, but this role needs further attention, given the key role these institutions play in following up on recommendations made by the Committee. This requires effective lobbying of the legislature, the media and other relevant actors and the best possible cooperation with NGOs and United Nations agencies.

3.3.3 Input and impact at international level

IHRICs can contribute in two ways to international monitoring of child rights implementation by the Committee in their respective countries: first, through their role in periodic reporting to

³⁶ See General Comment No. 2 para. 21.

the Committee (both by consulting with the government when it prepares its report and by submitting their own independent reports), and second, by improving cooperation through establishing or strengthening regional networks.

Regarding IHRICs' role in periodic reporting, the Committee encourages them to submit independent reports and to participate in the pre-sessional meetings to discuss the report with the Committee. This not only facilitates effective use of the information provided but also aids comparative study of these reports. The impact of this information is stronger if the IHRIC report goes beyond identifying the problems in implementing child rights by presenting specific recommendations to address them.

Usually IHRICs and NGOs meet together with the Committee to discuss their respective reports. But given the IHRIC's role in monitoring the performance of all child rights actors, the IHRIC can request a separate meeting with the Committee.³⁷

The Committee's Concluding Observations do not specify the source of information that feeds into the recommendations presented to the State Party, whether it is the IHRIC, NGOs or United Nations agencies, including UNICEF. But based on my experiences with the Committee I know this input has considerable impact on the Concluding Observations.

Regarding the role of IHRICs in strengthening cooperation, ENOC is a good example as a forum for exchange of experiences and as an instrument for influencing implementation of the CRC at the regional level. This can take place through speaking out, as ENOC did regarding violence against children. Such regional networks can influence the political agenda of structures like the European Union, Council of Europe, African Union and Organization of American States, with a goal of giving children's rights a permanent place on the agenda. This is a promising possibility, but it requires a well-funded and effective regional secretariat. The funding can be part of Official Development Assistance (ODA) since effective IHRICs are an important contribution to the realization of the rights of the child not only at the national level but also at the international level.

Through these networks the IHRICs could strengthen their voices on behalf of children, influencing the international agenda. For instance, the networks could advocate for realization of the Millennium Development Goals. Many of these have direct relevance for children, such as the goals to reduce poverty, achieve universal primary education and reduce child and maternal mortality. The networks could also play an active role in promoting ratification and full implementation of the two Optional Protocols to the CRC (on the involvement of children in armed conflict and in prostitution and pornography).

4. THE CONCEPT OF THE CHILD AND CHILDHOOD

This section presents some preliminary thoughts on the impact and meaning of CRC implementation for the concept of childhood (taking into account my experiences as a

³⁷ Meetings of the pre-sessional working group of the CRC Committee take place in private. No public or representatives of States Parties are present and no records of these meetings are kept.

member of the Committee) and on the possible role of IHRICs in this regard. I will not engage in or summarize the discussion among philosophers, sociologists, psychologists and other professionals on the concept of child and childhood per se, the more so since none of these has been an explicit basis of the CRC.³⁸ I do not agree with those who argue that the concept of childhood is a ‘Western’ construction.³⁹ Cultures in the South and the East have their own concepts of the child and childhood, often with strong roots in traditions. But these traditions cannot be used as a justification for treating children or young people in a way that hampers or harms their healthy development.

4.1 The CRC and Human Rights

To give perspective to the discussion of the concept of the child and childhood, it is important to emphasize that the CRC concerns the human rights of children. Underpinning the theory of human rights is the fact that they apply equally to all human beings. It was often felt necessary to explicitly state that *this includes children*. A survey of the reporting and monitoring activities under the core human rights treaties, the ICCPR and ICESCR, shows that both covenants contain some provisions explicitly addressing children.

The major and most important impact of the adoption of the CRC and its ratification to date by 193 States is, I believe, the explicit recognition of children as human beings with the same human rights as other human beings. The impact of this recognition since 1989 cannot be overestimated and is highly impressive in such a short period of time.

But the CRC is more than a copy of the ICCPR and ICESCR in which words like ‘person’ are replaced by ‘child’. Its substantive contribution to the promotion and protection of children’s human rights is the specificity of its articles. The lack of that specificity in the other human rights covenants is most likely the key reason why children received so little attention under them.⁴⁰

This specificity can be found in the CRC’s elaboration of very general provisions in the core human rights treaties on the right of the child to protection,⁴¹ or to health care, education and

³⁸ The idea of childhood as a social construction is usually attributed to Phillipe Aries in ‘Centuries of Childhood’ (Jonathan Cape, London, 1962, translation from French). But it has been repeatedly underlined that ideas about children and childhood change depending on their social, cultural and historical context. Childhood should be understood in different ways in different times and places. See inter alia: Martin Woodhead and Heather Montgomery (eds) ‘Understanding Childhood: An Interdisciplinary Approach’ (Open University 2003) and David Archard, ‘Children: Rights and Childhood’ (Routledge, London/New York, 2nd edition 2004) and many others.

³⁹ See e.g. John Holt, ‘Escape from Childhood’ (Penguin, Harmondsworth, 1975), Richard Farson, ‘Birthrights’ (Penguin, Harmondsworth, 1978) and Neil Postman, ‘The Disappearance of Childhood’ (Vintage Books, New York, 1994; first published 1982).

⁴⁰ The same may apply to e.g. women, migrant families and persons with disabilities now covered by separate human rights treaties. In recent years proposals within the framework of the UN Reform to allow States to submit one report covering all the human rights treaties to which they are a party have rightly been rejected because it would mean the loss of specificity so crucial for the promotion and protection of human rights of specific groups of human beings; the same applies to rejection of the proposal to have all human rights treaties monitored by one/single treaty body.

⁴¹ Art. 24(1) ICCPR: the child shall have (...) the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State; see e.g. arts. 19-23, 32-39 of the CRC.

an adequate standard of living.⁴² The IHRICs have an important role in highlighting and raising awareness about the specificity of the human rights of children. It is not enough to state the fact that children are human beings and therefore entitled to the enjoyment of all human rights. Children are persons with evolving capacities, and in the development of their capacities they depend on their parents and their broader family environment. The IHRICs should take that into account when campaigning on behalf of child rights.

This brings me to perhaps the most fundamental and crucial specificity of the CRC: it sets the implementation of the human rights of children in the context of the State-Parent-Child triangle (see for example articles 3(2), 5, 9, 18, 23, 27) while recognizing the child as a human being with developing and growing capacities and autonomy (arts. 5 and 12). It is this particular aspect that reflects what could be called a specific (rights based) concept of the child and childhood.

4.2 The State-Parents-Child Triangle

4.2.1 The parents and the State

A State Party has the obligation to respect the rights pledged in the CRC and ensure they are realized for each child under its jurisdiction without discrimination of any kind (art. 2). But the CRC also requires a State Party to respect the responsibilities, rights and duties of parents (art. 5)⁴³ in the child's upbringing and development (art. 18). This includes securing the conditions of living necessary for the child's physical, mental, spiritual, moral and social development (art. 27).

At the same time, a State Party must provide appropriate assistance to parents in their performance of these child-rearing responsibilities and it must ensure the development of institutions, facilities and services for the care of children (art. 18(2) and art. 4(2) and (3)). This may obligate the State to provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (art. 27(3)). The requirement that a State Party ensure that a child is not separated from her/his parents against their will (art. 9) is consistent with this definition of the responsibility of parents and with article 7, the right of the child to be cared for by her/his parents.

The CRC's concept of the child seems to be that he/she should be seen not only as an individual with human rights but also as a member of a family, and therefore entitled to be cared for by his or her parents. This is reflected in the recognition of the primary and common responsibility of parents for the upbringing of their child, which includes responsibility for the realization of the child's rights and the right to claim on the child's behalf respect for these rights in court. The State has the explicit obligation under the CRC to assist and support the parents in this regard as an important element of its overall responsibility for the realization of the rights of the child.

⁴² See arts. 11, 12, 13 of the ICESCR and compare them with arts. 24, 28 and 27 and 29 of the CRC.

⁴³ The CRC does also mention other possible caretakers such as legal guardians, others with legal responsible for the child and a member of the extended family or community. I will for practical reasons focus on parents.

This constitutes the foundation for the State's obligation to develop and implement programmes aiming at the full and harmonious development of the child and the prevention of all forms of violence, abuse, exploitation and other harmful actions such as traditional practices that may endanger or harm the child's development.

What does this mean for the role of the IHRICs? They should recognize and support the responsibility of parents or other caregivers for the upbringing and development of the child. This should entail actions to strengthen and empower the role of parents, which may include a critical attitude with regard to efforts to justify intervention by State organs in the family life of children and parents. Regarding State intervention, IHRICs should promote the right balance between the best interest of the child and the recognition of the parents' primary responsibility for the upbringing of their child.

At the same time the IHRIC must remind the State of its obligation to help the parents in performing their parental responsibilities. IHRICs must insist on adequate State assistance, such as provision of financial and human resources for services and facilities. If necessary they must mobilize all relevant stakeholders, in particular children and parents, through the media or in other ways to put pressure on government and the legislature to translate promises into concrete measures for parents and children.

The major challenge for IHRICs seems to be the development and implementation of an effective strategy to generate this political will. In that regard they should also consider ways to get parents and children actively involved in this strategy. It goes without saying that a single blueprint of such a strategy is not possible given the different political structures, traditions and cultures of different countries. But IHRICs should establish an effective process to exchange experiences so they can identify key elements of such a strategy.

4.2.2 The child

The CRC reflects its concept of the child in two key provisions: articles 12 and 5. In the light of the enormous body of research on the meaning/importance of these articles I will limit myself to some observations linked with the views of the Committee on the Rights of the Child:

- The child is seen as a person capable of forming her/his views and has the right to express these views in all matters concerning her/him;
- The child's views should not only be recorded but must be taken seriously, given due weight in accordance with the child's age and maturity; this can be directly linked to the concept of the child as a person with evolving capacities;
- These capacities must be taken into account when the child is provided with direction and guidance in the exercise of her/his rights. This requirement is linked to the rights and duties of parents. (See also art. 14 on the child's exercise of her/his right to freedom of thought, conscience and religion.) But it must be noted that the CRC considers the child a person who can exercise her/his rights. This implies that in all

other settings the exercise of rights should also be possible depending on the child's evolving capacities;

- 'Giving due weight' to the views of the child means that s/he should be actively involved and should participate in all matters concerning her/him. This is confirmed by article 12(2), which requires the child to be given an opportunity to be heard in judicial and administrative proceedings. This issue is also addressed in article 9(2), which requires that all interested parties (including the child) receive an opportunity *to participate* (emphasis added) in the proceedings and make their views known. Article 23 expects States Parties to create conditions that facilitate the active participation of a child with disabilities.

The concept of the child as reflected in articles 12 and 5 is of fundamental importance and should guide and direct the realization of all rights of the CRC. How it is used in practice will depend on the nature of specific CRC provisions and specific national circumstances. However, the Committee has emphasized that article 12 applies to both older and younger children. As holders of rights, even the youngest children are entitled to express their views. In this regard the Committee observed, "Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language."⁴⁴

The Committee has paid special attention to article 12 in all of its General Comments, observing, for instance, that HIV/AIDS intervention programmes "have been found to benefit children most when they are actively involved in assessing needs, devising solutions, shaping strategies and carrying them out rather than being seen as objects for whom decisions are made."⁴⁵

Similar observations are made in other General Comments, underscoring the fact that ensuring the right to express views and to participate not only respects the child as a human being but also contributes to effective implementation of her/his rights. In other words and as discussed in various contexts,⁴⁶ the CRC also expects the child to be a social actor. It calls on others to provide opportunities and guidance to the child so that he or she can exercise and further develop that role as a citizen.

The Committee has paid some attention to possible consequences of the concept of the child as a person with evolving capacities. But this has mainly been limited to recommendations for setting minimum ages of consent for sexual activity, marriage and medical treatment without parental consent. The latter includes medical counselling without the presence of a parent and

⁴⁴ See General Comment no. 7 on Implementing Children's Rights in Early Childhood, para. 14.

⁴⁵ General Comment No 3 on HIV/AIDS and the Rights of the Child, para. 12. See also the special attention for unaccompanied and separated children (General Comment No 9), children who are not adequately or not at all provided with opportunities to express their views.

⁴⁶ See e.g. *The International Journal of Children's Rights*, Special Issue on Children as Social Actors, Volume 15, No. 1, 2007.

disclosure of medical information only with the consent of the adolescent (see General Comment No. 4) and consent for confidential testing with no disclosure of the results to third parties without the child's consent (General Comment No. 3).

Gerison Lansdown has written a well-elaborated study on children's evolving capacities, showing the complexity and sensitive aspects of this concept. The Committee on the Rights of the Child should use this as a basis for a general comment to provide guidance to States Parties in addressing the various practical implications of the fact that the child is a person with evolving capacities. This would address, for example, the question as to when evolving capacities reach the point that the child can be considered competent to make independent decisions, and whether this competence should be respected even if the decision may not be in the best interest of the child.⁴⁷

Based on these observations, how should the monitoring activity of IHRICs be understood? Monitoring is a broad notion that incorporates, for example, promoting, supporting and if necessary initiating awareness-raising campaigns and training of families, parents and professionals to help them understand the concept of the child as a human being with rights. It also includes promotion of and respect for the right of children to express their views and to participate in and take increasing responsibility for decision-making in their own lives. IHRICs may conduct or commission studies to assess and analyse practice on the ground in providing children with genuine opportunities to express their views.

IHRICs can recommend specific legislative or administrative measures to ensure transparency on how the child's views are (or are not) taken into account. In other words, campaigning for recognition of the child as a rights holder should go hand in hand with very practical measures to make sure that this recognition is more than lip service. As the prime children's advocate in a country, the IHRIC must mobilize civil society and political support for these very concrete measures.

In addition, the recognition of the child as a rights holder is important not just to professionals working for or with children, in judicial or other proceedings and in the family circle. IHRICs should undertake efforts to broaden this awareness among the wider community, such as by campaigning for involvement of children in local and national policy development and implementation. Also crucial is close monitoring and analysis of legislative measures and implementation of local and national policies and programmes, leading to concrete recommendations for changes (if necessary) to ensure full respect for the concept of the child as reflected in articles 5 and 12. Such actions are necessary to make this concept of the child an integral part of dealing with individual complaints and in all other activities.

⁴⁷ In this regard see e.g. John Ekelaar, *The Interests of the Child and the Child's Wishes: The Role of Dynamic Self-Determination*, p. 42-61 in Philip Alston (ed), *The Best Interests of the Child: Reconciling Culture and Human Rights* (UNICEF/Clarendon, Oxford 1994).

5. CONCLUSIONS

- The activities of IHRICs with regard to the implementation of the CRC are largely determined by the specific challenges the country faces in realizing the rights of children.
- Regardless of these challenges, IHRICs should develop and implement a strategy to systematically address the shortcomings in establishing the necessary infrastructure and other key conditions for implementation of the CRC (while ensuring that this infrastructure fully respects the general principles of the CRC).
- IHRICs should continue to undertake targeted efforts to create a culture of respect for the child as a human being with rights. In that regard they should work to strengthen understanding of the child not primarily as a *protectable object* but as a *projecting subject*. A child should be seen as a person who should be provided with genuine opportunities to project her/his own life through the expression of views, active participation and respect for his/her evolving and increasing capacities to make decisions that direct the course of life as he/she sees it.