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**CHILD PARTICIPATION AND
INDEPENDENT HUMAN RIGHTS INSTITUTIONS
FOR CHILDREN IN EUROPE**

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This paper focuses on the role played by independent human rights institutions for children in promoting children's and adolescents' participatory rights. It presents the conceptual and normative framework of participatory rights, including the approach of the Committee on the Rights of the Child. The paper analyses the involvement of children and adolescents in the functioning of these institutions in Europe. It also examines the extent to which these institutions are advocating for ethical and meaningful children's participation in all areas of their lives. This paper has been prepared as a background paper to the Global Study on Independent Human Rights Institutions for Children. This initiative is part of the UNICEF IRC Study on the General Measures of Implementation of the Convention on the Rights of the Child.

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Child Participation and Independent Human Rights Institutions for Children in Europe

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Summary: Child participation is closely linked and interdependent with civil and political rights and with the fundamental perceived concepts of childhood, evolving capacity and autonomy. The right of children to express their views freely and to have them taken into account is both a substantive right and a general principle relevant to all aspects of implementation of the Convention on the Rights of the Child. The degree of children's participation within a society and the ways of involving children and adolescents in all matters affecting them depend on various factors, including the perceptions of childhood and adults' views about children's capacity to participate. Independent human rights institutions for children promote, protect and monitor progress in the realization of children's rights. These institutions should be geographically and physically accessible to all children and adolescents and ensure close and continual interactions with them, in order to be able to speak out on their behalf and make their voices reach decision makers. In Europe, children and adolescents have been involved in different aspects of the functioning and work of independent institutions. The establishment of youth advisory bodies has been a practical way to institutionalize child participation. Independent institutions also have a critical role to play in promoting ethical and meaningful participation of children and adolescents in all matters affecting them and in all relevant decision-making processes. In conclusion, independent institutions can contribute to making children and adolescents more visible, changing mindsets with respect to their rights and shaping the perceptions of childhood.

Keywords: independent human rights institutions for children, Convention on the Rights of the Child, participation rights, perceptions of childhood

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Contents

1. INTRODUCTION	1
2. CHILD PARTICIPATION: FRAMEWORK AND APPROACH OF THE COMMITTEE ON THE RIGHTS OF THE CHILD	5
Perceptions of childhood, evolving capacities, autonomy and participation	5
General principles and ethical aspects of child participation	9
Approach of the CRC Committee to child participation and IHRICs	12
3. CHILD PARTICIPATION IN THE FUNCTIONING OF IHRICS	14
IHRICs' approach to child participation	14
Legislation and mandate of IHRICs	19
The right to non-discrimination and multiple dimensions of accessibility	21
Overview of child involvement in the functioning of IHRICs	27
Participation of marginalized and excluded groups	29
Youth advisory body: a model for child participation?	30
4. IHRICS: ACTIVE ADVOCATES FOR CHILD PARTICIPATION IN ALL MATTERS AFFECTING THE CHILD?	33
In which areas of children's lives are IHRICs promoting child participation?	33
How are IHRICs promoting child participation?	37
5. CONCLUDING REMARKS AND RECOMMENDATIONS	39

1. INTRODUCTION

To do this job I need to hear what children and young people have to say.

Irish Ombudsman for Children, *Annual Report 2007*, p. 59

The Finnish Ombudsman for Children's 2008 Yearbook is entitled *Children Have the Right to Participation*. According to the Finnish Ombudsman for Children, Maria Kaisa Aul, "[a]dults have to change their attitudes so that children can participate more widely on matters that concern them. Adults have to realize that children's priorities are often different from those of adults."¹

It is commonly acknowledged that participatory rights are cornerstones for the realization and enjoyment of children's rights. Research and analysis about child participation have been increasingly undertaken by a wide range of academic disciplines, including developmental psychology, sociology, medicine, pedagogy and law, as well as by United Nations agencies and non-governmental organizations (NGOs).²

The underlying philosophy of the United Nations Convention on the Rights of the Child (CRC) is that children and adolescents are rights holders.³ Therefore, this international, legally binding instrument encompasses the need to strike a balance between the concept of children and young people as dependants requiring protection, and the concept of children and young people as independent social agents who are able to directly exercise their rights and influence their own lives.

Child participation is closely linked and interdependent with civil and political rights and with other key concepts, including perceptions of childhood, evolving capacities, and autonomy. The right to participation in article 12 of the CRC, like many other human rights encompassed by the Convention, needs to be translated into reality through practical measures, such as the ones outlined in the general measures of implementation, including legislation, public policies, programmes, practices, awareness-raising activities, etc. Increasingly, in Europe and other parts of the world, the principle of participation is being embedded in law, policy and practice.

¹ Press release 8/2008 'Yearbook of the Ombudsman for Children stresses children's rights of participation', 17 June 2008, <www.lapsiasia.fi/en/current/press_releases>.

² Thomas, Nigel, 'Towards a Theory of Children's Participation', *International Journal of Children's Rights*, Vol. 25, 2007, pp. 199–218.

³ "Su reconocimiento implica un cambio de perspectiva, el menor pasa a ser considerado como sujeto de derechos y no como mero objeto de protección. Se le reconoce su capacidad para opinar sobre la forma de solucionar los problemas que le afectan. [...] A partir de la Convención de Derechos del Niño se produjo un cambio con relación a la consideración del niño, que pasó de ser un mero objeto de protección a ser sujeto titular de derechos. A partir de este momento la tendencia ha sido la de potenciar la autonomía y participación del menor en todos aquellos ámbitos que le afectan. Como consecuencia de ello se pasa a reconocer al niño toda una serie de derechos que permiten y fomentan esa participación, entre los que se encuentran y tienen especial relevancia la libertad de expresión y el acceso a una información adecuada," Giménez Romero, Carlos, et al., *La integración de los menores de origen extranjero de la Comunidad de Madrid: necesidades, derechos y actuaciones*, 2002, pp. 452 and 458, at <www.defensordelmenor.org/upload/documentacion/estudios/2002integracion_menores.pdf>; Freeman, Michael, 'Why It Remains Important to Take Children's Rights Seriously', *International Journal of Children's Rights*, Vol. 15, 2007, pp. 5–23.

To build a world fit for children, the United Nations General Assembly identified in 2002 a number of objectives and principles, including the obligation to “listen to children and ensure their participation.” According to the Declaration contained in the outcome document of the twenty-seventh special session of the General Assembly entitled ‘A World Fit for Children’, “children and adolescents are resourceful citizens capable of helping to build a better future for all,” and States members “must respect their right to express themselves and to participate in all matters affecting them, in accordance with their age and maturity.”⁴ In a new Declaration on children adopted at the close of the World Fit for Children + 5 special session, more than 140 government delegations welcomed “the voices and the views of children, including adolescents, heard at the commemorative plenary meeting” and strove to “strengthen their participation in the decisions that affect them, in accordance with their age and maturity.”⁵

The UN Secretary-General’s Study on Violence against Children,⁶ launched on 11 October 2006 in the UN General Assembly in New York, involved governments, international organizations, civil society organizations, research institutions and children, around the world. Children and young people had many roles in the UN Study process: they were advisers, documenters, advocates, respondents, researchers and facilitators, as well as active participants during national, regional and global consultations. They were able to make clear recommendations of how they feel that violence can be stopped. In one of its 12 recommendations, the UN Study has a clear focus on child participation. It recommends that

States actively engage with children and respect their views in all aspects of prevention, response and monitoring of violence against them, taking into account article 12 of the Convention on the Rights of the Child. Children’s organizations and child-led initiatives to address violence guided by the best interests of the child should be supported and encouraged.

Advocating the participation of children in all matters affecting them and involving children in the functioning of the institution is one key area for independent human rights institutions for children (IHRICs) in Europe. The philosophy and *raison d’être* of IHRICs is to speak for children in a society where “their opinions are still rarely taken into account” and they “cannot play a significant role in the political process.”⁷ Therefore, it is necessary for IHRICs

⁴ Resolution adopted by the General Assembly S-27/2 ‘A World Fit for Children’, 11 Oct. 2002, para. 7.

⁵ Declaration of the commemorative high-level plenary meeting devoted to the follow-up to the outcome of the special session on children, Dec. 2007, para. 5.

⁶ For more information on the UN Study on Violence against Children see <www.savethechildren.se/>; <www.unicef.org>; <www.crin.org>.

⁷ Committee 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, CRC/GC/2002/2, para. 5; “While some of these developments may seem largely cosmetic, their emergence at the least indicates a change in the perception of the child’s place in society, a willingness to give higher political priority to children and an increasing sensitivity to the impact of governance on children and their human rights,” Committee on the Rights of the Child, General Comment No. 5 (2003) General Measures of Implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, para. 10; “[I]n many cases, only children themselves are in a position to indicate whether their rights are being fully recognized and realized,” in *ibid.*, para. 50.

to ensure close and permanent interactions and partnerships with children and adolescents.⁸ For instance, the Children's Commissioner for England heads a national organization called 11 Million; the 11 million children and young people in England have a voice. Generally speaking, independent institutions created to promote and protect human rights must be accessible to rights holders, as should IHRICs. However, since IHRICs are explicitly mandated to be advocates for and to protect children as rights holders, they face the challenge of being accessible to these particular rights holders, as well as creating and promoting an enabling and stimulating environment, internally and externally, conducive to child participation. They need inclusive processes in place to ensure that the issues and recommendations raised by girls and boys from various age groups and backgrounds (in terms of disability, religion, nationality, etc.) are taken into consideration. The present paper will also highlight the extent to which the personality and sensibility of the ombudsperson influences the degree of involvement of children in the functioning of IHRICs.⁹

This specific issue is one of the key topics in the global study of independent human rights institutions for children undertaken by UNICEF Innocenti Research Centre (IRC).¹⁰ In the context of this study, UNICEF IRC developed an online survey to be filled in by IHRICs. This survey included various questions that are directly or indirectly related to the right to participation. A variety of sources have been used to draft this paper, including replies to the online survey, country updates for meetings of the European Network of Ombudspersons for Children (ENOC) in 2006 and 2007, IHRICs' annual reports of activities and other specific reports, IHRICs' websites, alternative reports submitted by IHRICs to the Committee on the Rights of the Child (CRC Committee), the most recent periodic reports from State Parties to the CRC Committee in Europe, concluding observations (COBs) issued by the CRC Committee, documentation related to the CRC Committee's approach to child participation, as well as specialized literature.¹¹

⁸ "Plus que toute autre institution, la Défenseure des Enfants se doit d'être à l'écoute de leur parole et de la façon dont celle-ci est prise en compte par les autres institutions," Défenseure des Enfants (France), *Rapport d'activités 2007*, p. 7; "It is widely accepted that one of the primary justifications for creating an institution to monitor the implementation of children's rights, is the need for children to have an advocate to act on their behalf due to their lack of political power," Alston, Philip and John Tobin, *Laying the Foundations for Children's Rights: An independent study of some key legal and institutional aspects of the impact of the Convention on the Rights of the Child*, Innocenti Insight, UNICEF Innocenti Research Centre, Florence, 2005, p. 48.

⁹ "[L]o que más cuenta según el Defensor del Menor en Styria es 'la filosofía o ideas de las personas y cómo sea de humano y social' añadiendo además que 'la persona del Defensor del Menor debe ser más social que política o al menos al cincuenta por ciento y entre sus cualidades debe figurar la de ser una persona sensata y sensible' [...] Sin lugar a dudas un equipo que trabaja tan íntimamente relacionado con los niños debe ser humano ante todo, y Styria viene a reforzar esta parte humana de las personas al calificarlos de sensatos, sociales, de confianza, dedicados al bienestar de los niños, así como flexibles y preparados para resolver conflictos, mientras que Islandia y Finlandia hablan por otra parte de personas con un fuerte carácter defensor de los derechos e intereses de los niños, para lo que piden que sean valientes, ingeniosos, trabajadores, meticulosos, buenos en las relaciones humanas e independientes," in Crespo González, Jorge et al., *La figura del Defensor del Menor en la Comunidad de Madrid: un análisis intergubernamental y comparado*, pp. 446-447, at <www.defensordelmenor.org/upload/documentacion/estudios/2001figura_defensor.pdf>.

¹⁰ See <www.unicef-irc.org/knowledge_pages/Independent-Human-Rights-Institutions-for-Children/>.

¹¹ The author gathered information available in English, French and Spanish. The websites of some European IHRICs provide little information in English (e.g. the translation into English of the website of the Controller for Protection of the Rights of the Child from Lithuania is under construction, the website of the Ombudsman for

This paper explores a number of crucial questions regarding child participation and IHRICs, including the following:

- Are contemporary developmental, ecological and social theories around child development and participation influencing IHRICs and put into practice by them?
- How is the CRC Committee's approach to child participation influencing the work of IHRICs?
- Do examples of child involvement in IHRICs' work reflect meaningful participation?
- Are IHRICs adopting an events based approach to consultation with children and adolescents rather than systematic inclusion?
- Are European IHRICs promoting and advocating for a specific model of child participation? Should this model be promoted and adapted to other regions?
- Is there any good practice of child participation promoted by European IHRICs?
- Trond Waage, former Ombudsman for Children of Norway, noted that "there is a structural and functional diversity of the ombudsoffices established based on the political, historical, cultural, and economic environment of the countries in which they have been formed."¹² Is this diversity reflected in ombudsoffices' approach to child participation? Does the specific model of institution, as an integrated or separate entity, influence IHRICs' interactions with children and young people? (Separate institutions are independent institutions whose mandate is solely focused on children's rights. In other instances, an independent institution covering all human rights has an integrated office or division working specifically on children's rights.)
- What impact is the work of IHRICs in the field of child participation having on perceptions of childhood and a culture of respect for children's rights? How are IHRICs fighting against patriarchal, traditional and sexist attitudes that hinder children's participation?

Children in Poland is not translated into English, and the website of the Portuguese Ombudsman provides little information in English).

¹² Waage, Trond, 'Lo sviluppo di istituzioni nazionali indipendenti di diritti umani per i minori in Europa: la figura dell'ombudsman per i minori', *Cittadini in Crescita*, No. 3, 2006.

2. CHILD PARTICIPATION: FRAMEWORK AND APPROACH OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

Perceptions of childhood, evolving capacities, autonomy and participation

In order to understand the child's right to participation and its full implications in practice, it is essential to keep in mind various concepts that are mutually interlinked, namely perceptions of childhood, autonomy and evolving capacities.

There is no universal definition of childhood. Underlying cultural beliefs and traditional conceptions of childhood influence and shape perceptions of childhood in every part of the world. It is commonly acknowledged that there are a variety of perspectives in comprehending and analysing childhood and children's experience of the world, as well as adults' expectations concerning children and the abilities and skills of adolescents according to their respective ages. Those perceptions depend on multiple factors, including historic, cultural and social factors, and may vary from country to country and/or from region to region. The CRC conveys a holistic approach and a specific understanding of the concept of the child and his or her rights. This international instrument contains key elements to shape the overall perception of childhood and challenges the fact that "traditionally in most, if not all, societies children have not been regarded as rights holders."¹³ As an implementation and monitoring mechanism for the CRC, IHRICs play a key role in changing mindsets with respect to children and adolescents and their rights in society.¹⁴

Nowadays, IHRICs play or should play a crucial role in influencing and shaping perceptions of childhood in the overall society. The impact of their active work on child participation can make a contribution. In the opinion of the Children's Commissioner for Wales, "we aim to influence and change culture, within organisations and wider society."¹⁵ The complex issue of perceptions of childhood has been explicitly addressed by IHRICs.¹⁶ For instance, the Northern Ireland Commissioner for Children and the Young People's Youth Panel delivered a video verdict on growing up in Northern Ireland and on the way adults regard teenagers. According to one of the members of the Young People's Youth Panel, children and young people "suffer from an adult world that threatens to criminalize young people through antisocial behaviour orders, and now seems to be planning dispersal orders if we even want to hang about with our friends."¹⁷

¹³ Committee on the Rights of the Child, General Comment No. 5, op. cit., para. 66.

¹⁴ Draft Report: Consultative meeting with Professor Dion Summer, Monday 14 Apr. 2008, Innocenti Research Centre, Florence, p. 1.

¹⁵ Children's Commissioner for Wales, *Annual Review 2006–07*, p. 14, at <www.childcom.org.uk/uploads/publications/58.pdf>.

¹⁶ "In many societies, children are considered as being in the waiting room for adulthood and therefore not respected as important actors now but only referred to as 'the future'. Children are on the frontline to assess their situation, and find their own solutions. Yet they are often not listened to in a genuine manner," Report of Preparatory Meeting for the Second Global Meeting of Independent Human Rights Institutions for Children, 11–12 Nov. 2007, Florence, p. 5.

¹⁷ At <www.nickey.org/article.aspx?menuId=708>.

The concept of ‘evolving capacities’, one of the challenging principles embodied in article 5 of the CRC,¹⁸ has far-reaching implications for all children’s human rights, especially the right to participation. Gerison Lansdown conceives this complex principle as a “participatory or emancipatory concept”¹⁹ since children and adolescents are viewed as active agents according to their capacities and competence. According to a well-known developmental psychologist, Dion Summer, children should be viewed as competent human beings who are highly socially able and active.²⁰

In compliance with the innovative principle of ‘evolving capacities’, the more children grow up, the less they need direction from adults, and the more they are able to be autonomous and have a greater capacity to express their views and opinions and take responsibility for their own decisions.²¹ The CRC could be regarded as “a tool for promoting children’s development, competence and emerging personal autonomy.”²² Therefore, “the Convention challenges concepts that parents have absolute rights over their children, which the Committee has noted are traditional in many societies but already changing to some degree in most.”²³ This legal instrument encourages children and adolescents to increasingly have agency in the exercise of their own rights. How best to respect children’s capacities to realize their rights? What role can children play in their own protection? There is a need to strike a balance between the concept of children as dependants requiring protection, and independent individuals seeking autonomy,²⁴ bearing in mind that it is also crucial not to expose children and young people to unnecessary risk or excessive expectations.

Promoting child participation is a way to acknowledge children’s competence and autonomy and their abilities to exercise their rights, while respecting their evolving capacities. However, the CRC Committee “has noted that the traditional view of the child as a dependent, invisible and passive member of the family persists in some States.”²⁵ Indeed, there is a significant gap between the theoretical acceptance that a child is an active agent and

¹⁸ Article 5 of CRC: “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

¹⁹ Lansdown, Gerison, *The Evolving Capacities of the Child*, Innocenti Insight, UNICEF Innocenti Research Centre and Save the Children, 2005, p. 15; “Evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children’s autonomy and self-expression and which have traditionally been justified by pointing to children’s relative immaturity and their need for socialization,” General Comment No. 7 Implementing Child Rights in Early Childhood (CRC/C/GC/2005), para. 17.

²⁰ See Draft Report: Consultative Meeting with Professor Dion Summer, op. cit., p. 3.

²¹ “This principle has profound implications for the human rights of the child. It has been described as a new principle of interpretation in International Law, recognizing that as children acquire enhanced competencies, accordingly, there is a reduced need for direction and a greater capacity to take responsibility for decisions affecting their lives,” Lansdown, Gerison, *The Evolving Capacities of the Child*, op. cit., p. 3.

²² Ibid., p. 16.

²³ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, fully rev. 3rd ed, Sept. 2007, p. 76.

²⁴ Lansdown, Gerison, *The Evolving Capacities of the Child*, op. cit., p. 16.

²⁵ UNICEF, *Implementation Handbook*, op. cit., p. 80.

current practices by state authorities and the private sector (that is, the presumption of age-related development).

It is often stated that child participation constitutes a substantive and procedural right and principle, in the sense that it helps to realize other rights.²⁶ Ensuring an appropriate level of protection as well as promoting children's participation in decision making involves a fight against the deeply rooted presumption that children are incapable, owned by their parents or caregivers and merely passive recipients of adult protection. The degree and level of child participation within a society, as well as the ways of involving children in matters affecting them, depend on a variety of complex factors, especially perceptions of childhood and adults' views about children's capacity to participate. In addition, the ways in which they participate must be adjusted according to the child's capacities.

One reason, among many others, for promoting participation is that "children's capacities are developed most effectively through interaction" and that "the process of learning generates development and children grow in competence through participation."²⁷ Indeed, "[p]articipation is not only a means by which children can effect change but also provides an opportunity for developing a sense of autonomy, independence, heightened social competence and resilience."²⁸ The opportunity to participate is a "vital element in promoting children's capacities, self-esteem and confidence."²⁹ Moreover, there is growing recognition that the participation of children and adolescents can play a key role in increasing their protection from abuse, violence and exploitation. The experience of participation can build capacity for active citizenship, good governance and sustainable development. When children, especially the most marginalized, have opportunities to express their views, to access information, to form associations, to participate in decisions affecting them and to take action for their rights, they are often better able to protect themselves, address discrimination, claim their rights and hold adults accountable. Participation can therefore help to transform adult-child power relations and end children's and adolescents' low status, and address the exploitation and abuse of girls and boys. It will further help adults to have a better understanding of the reality of children's lives and help children and adolescents to protect themselves better. In addition, consulting with children and adolescents and taking their views into account are important to ensure that relevant policies and other measures are child friendly, adequate and appropriate for children and adolescents.

Since the effective implementation of the child's right to participation is greatly influenced by perceptions of childhood in the society at large, it is obvious that there are many obstacles

²⁶ "The concept of children's right to be heard enshrined in the UN Convention on the Rights of the Child has a twofold significance. Firstly, Article 12 identifies children under eighteen years as rights-holders, with a right to their own voice and to have their voices heard. Secondly, the status of Article 12 as one of the UNCRC's four general principles emphasizes that children's right to be heard is a mechanism for the promotion and protection of children's other rights and, moreover, one through which children can be empowered to contribute to the implementation of their rights," Ombudsman for Children (Ireland), *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland's Second Report to the Committee*, April 2006, p. 14.

²⁷ Lansdown, Gerison, *The Evolving Capacities of the Child*, op. cit., p. 16.

²⁸ *Ibid.*, p. 17.

²⁹ *Ibid.*, p. 62.

hindering the meaningful participation of children and adolescents.³⁰ According to the CRC Committee, traditional and cultural attitudes constitute major obstacles to the acceptance of children and young people as subjects of rights, and to implementation of article 12 of the CRC.³¹ These barriers, which can be *de iure* or/and *de facto*, may originate from the political, historical, economic and social contexts in a given country that come to be reflected in specific legislation and practices.³²

In an interesting study related to general barriers to the realization of children's rights in Ireland, Ursula Kilkelly identified the invisibility of children and the failure to listen to children's views within Irish society as a barrier to children's rights. Concerning the failure to listen to children's views, she pointed out a range of factors, including lack of structures, lack of guidance, advice and technical support, and lack of public awareness campaigns.³³ Furthermore, according to the UK Children's Commissioners,

there are a number of barriers that limit children's participation in decision making. Some of those barriers are strategic (such as complaints policies that are unsuitable for use by children or that specifically exclude children from making a complaint), while others are attitudinal. These barriers are unlikely to be removed until children are perceived as rights-holders and there are increased training opportunities for professionals on children's rights generally and on Articles 12 and 13 in particular.³⁴

In the opinion of Anita Franklin, the main barriers to the participation of disabled young people are the following: lack of time and resources; lack of skills, training and confidence; lack of access to communication methods; organizational and practical issues; lack of evidence on methodologies and outcomes; and fear.³⁵

As pointed out above, recognizing children as "active subjects of rights, rather than passive recipient of care"³⁶ as well as ensuring the effective realization of their right to express their own views and to participate, remains complex and challenging.³⁷ In this context, it is crucial

³⁰ "En matière de respect des droits des enfants, le problème primordial est, à mon sens, la difficulté de modifier les mentalités pour acquérir, ce que j'appelle, la culture des droits de l'enfant," *Rapport Annuel 2006–07 du Délégué Général de la Communauté Française aux Droits de l'Enfant*, p. 1.

³¹ UNICEF, *Implementation Handbook*, op. cit., p. 150.

³² "La escasa participación de jóvenes de hoy se debe a múltiples, complejos y diferentes factores. Vivimos en una sociedad escasamente participativa, y no son los jóvenes los únicos afectados por este mal. Con los años de transición asistimos a una imperiosa necesidad de participar como cauce para cambiar la sociedad. Los años han pasado y ese ímpetu ha ido decreciendo en la medida que la democracia se ha asentado en nuestra sociedad y han imperado valores más individualistas. Los jóvenes de hoy no son menos participativos que cualquier otro colectivo," Defensor del Menor de la Comunidad de Madrid, *Informe Anual 2006*, p. 221, at <www.defensordelmenor.org/upload/documentacion/informes/informeAnual2006.pdf>.

³³ 'Barriers to the Realization of Children's Rights in Ireland', by Ursula Kilkelly, senior lecturer, Faculty of Law, University College Cork, commissioned by the Ombudsman for Children (Ireland), 2007.

³⁴ UK Children's Commissioners' Report to the UN Committee on the Rights of the Child, June 2008, para. 33, p. 13.

³⁵ Franklin, Anita, 'The Participation of Disabled Young People in Decision-Making: The barriers to participation and factors which facilitate it', University of York/Social Policy Research Unit, PowerPoint, at www.york.ac.uk/depts/spsw/mrc/documents/AnitaFranklinParticipationofdisabledyoungpeoplePowerpoint.ppt.

³⁶ Lansdown, Gerison, *The Evolving Capacities of the Child*, op. cit., p. 62.

³⁷ "Calls for the participation of children in such events are often not accompanied by the necessary analysis of what this might entail in practice and of the best ways of achieving the relevant objectives, without treating the

to avoid underestimating children's capacities. Indeed, "much of the vulnerability of children derives not from their lack of capacity, but rather, from their lack of power and status with which to exercise their rights and challenge abuses."³⁸ How best do IHRICs manage to deal with this issue? What does the right to participation mean for the daily work of ombuds for children? What are the practical implications for the ombuds for children within its role of advocating for children's rights and contributing to shaping the overall perception of childhood? In the following, specific examples will show the current practice of IHRICs in Europe.

General principles and ethical aspects of child participation

The participation of the rights holder is today a core element in any human rights based approach currently promoted in a variety of contexts at local, national, regional and international levels (i.e. development of legislation, public policy making, development strategy, poverty reduction strategy, etc.). The Statement on a Common Understanding of a Human Rights Based Approach to Development Cooperation (the Stamford Common Understanding), endorsed by the UN Development Group (2003), declared that "development cooperation contributes to the development of the capacities of duty-bearers to meet their obligations and/or of rights-holders to claim their rights."³⁹ Therefore, the issue of participation is closely linked to the benefit of individual and collective empowerment.

child participants as tokens or generally underestimating the importance of providing conditions for meaningful participation," Alston, Philip and John Tobin, *Laying the Foundations for Children's Rights*, op. cit., p. 37; "The starting point is to emphasize that children's participation does not mean children playing the same roles as adults, by being invited to conferences where they will be unable to make an effective contribution or by being invited to make submissions which require skills that most will not possess. Rather, the challenge is to devise new and appropriate ways to involve children, based on the contexts in which children are comfortable and to ensure that when these views are fed into broader policy processes, they are accorded full weight, rather than being noted as token contributions 'to which every consideration will certainly be given'," *ibid.*, p. 49.

³⁸ Lansdown, Gerison, *The Evolving Capacities of the Child*, op. cit., p. 32.

³⁹ The Stamford Common Understanding was elaborated during the Interagency Workshop on a Human Rights-Based Approach in the Context of UN Reform, held in Stamford, USA, in May 2003. The United Nations Development Group unites the 32 UN funds, programmes, agencies, departments and offices that play a role in development. "Active participation in home, school and community life is fundamental to a human rights based approach," Lansdown, Gerison, *The Evolving Capacities of the Child*, op. cit., p. 22; "A human rights approach will influence how a strategy on child poverty reduction is developed and implemented. Integration of the four main principles of the UNCRC (namely non-discrimination, best interests of the child, survival and development and respect for the views of the child) will change the way strategies and initiatives are developed – even if they do not necessarily change what is actually done. The notion of participation is one of the most important principles in the design and implementation of any policies affecting children. So, children must be recognised as active citizens in the processes and decisions that concern them and affect their lives. The Convention encourages adults to listen to the opinions of children and involve them in decision-making processes. It recognises that the level of a child's participation in decisions must be appropriate to the child's level of maturity," 'A Child Rights Approach to Child Poverty', discussion paper, Eurochild, Sept. 2007, p. 7, <www.eurochild.org/fileadmin/user_upload/files/Eurochild_discussion_paper_child_rights_poverty.pdf>; "With regards to an effective child poverty reduction strategy, children's involvement is crucial. Children must be recognised as full actors in their own well-being rather than be passive objects of choices made on their behalf. Participation can occur at various levels where children can provide insights that others cannot automatically provide," *ibid.*, p. 9; Office of the High Commissioner for Human Rights (OHCHR), *Human Rights and Poverty Reduction: A conceptual framework*, Mar. 2004, <www2.ohchr.org/english/issues/poverty/docs/povertyE.pdf>.

Article 12 of the CRC is the legal foundation for child participation in international human rights law, by providing that:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.⁴⁰

This provision entails “the child’s right to be involved in a process of participation in all matters affecting him or her, but adults retain responsibility for the outcome.”⁴¹ According to the Swedish Children’s Ombudsman, “[t]he right of children and young people to be involved and influence, as stated in the United Nations Convention on the Rights of the Child, is one of the absolute rights in the Convention and is not dependent upon a state’s level of development and prosperity.”⁴²

The enjoyment of this right is closely linked to other human rights that are enshrined in the CRC, especially the right to freedom of speech (also known as the right to freedom of expression or the right to express those views freely). Article 13 of the CRC declares that:

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

⁴⁰ “Article 12 of the UN Convention is forthright in saying that children and young people must have a say in decisions that directly affect them. It’s about providing the significant platforms and tools for them to have their say in the first place. It’s about supporting them and building their capacity to make their mark. It’s about ensuring that all children, including the most silent and the most marginalized are given a safe and welcoming space to make their voice heard. And then, we need to hear and consider their ideas, insights, imagination and solutions,” Ombudsman for Children (Ireland), *Annual Report 2007*, p. 32, <www.oco.ie/pdf/oco_annual_report_web.pdf>; “The right of the child to express its opinions in all matters by which it is affected is one of the most farsighted and urgent messages of the CRC. This article expresses a child perspective in which the child is an individual in its own right with full human dignity and with an opinion of its own which must be respected. This right amounts to a new view of the child and of the content of the child perspective concept, whereby children’s and young people’s own view of existence is made clear,” Children’s Ombudsmen of Iceland, Norway and Sweden, and Börnerådet in Denmark, ‘The Best Interests of the Child in our Time: A discussion paper on the concept of the best interests of the child in a Nordic perspective’, Oct. 1999, p. 19, <www.barneombudet.no/sfiles/3/80/1/file/best_of_the_child.doc>.

⁴¹ Lansdown, Gerison, *The Evolving Capacities of the Child*, op. cit., p. 4.

⁴² Report from the Children’s Ombudsman (Sweden), *The Right to be Heard: A final statistical report*, 2007, p. 5, <www.bo.se/files/in%20english,%20publikationer,%20pdf/righttobeheard2007.pdf>.

The right to participation is also related to article 14 (freedom of thought, conscience and religion), article 15 (freedom of association), article 16 (right to privacy) and article 17 (access to information).

The child's right to express his or her views freely in all matters affecting the child and those views being given due weight constitutes one of the four general principles identified by the CRC Committee for the implementation of the Convention.⁴³ Article 12 is interdependent with the other three general principles of the CRC, namely, the non-discrimination principle (article 2), the best interests of the child (article 3), and the right to life, to survival and development to the maximum extent possible (article 6). That means that "the implementation of article 12 is an integral part of the implementation of other articles of the Convention, as well as a free standing right of the child."⁴⁴ According to this treaty body, article 12 highlights "the role of the child as an active participant in the promotion, protection and monitoring of his or her rights."⁴⁵

According to Gerison Lansdown, there are four possible levels of child involvement: (a) to be informed; (b) to express an informed view; (c) to have that view taken into account; and (d) to be the main or joint decision maker.⁴⁶ On the other hand, the National Council for Children stated that in Denmark "a distinction will often be drawn between three degrees of children's rights to take part in decisions," namely, (1) joint influence, which means the child has a right to express its view; (2) participation in decision-making processes, which means that the child has a right to express its view and to give its consent; and (3) self-determination, which entitles the child to actual legal autonomy.⁴⁷

Nowadays, children's participation is a very 'fashionable' concept, especially in Europe. However, various current practices are far from implementing the child's right to participation, especially for young children.⁴⁸ Even some current practices and legislation encourage a model of non-participation by the child; several authors describe those practices as an example of manipulation or tokenism. Roger A. Hart provided a clear and meaningful definition of the concept of tokenism. In 1992, in his essay *Children's Participation: From tokenism to citizenship*, he described tokenism as

those instances in which children are apparently given a voice, but in fact have little or no choice about the subject or the style of communicating it, and little or no opportunity to formulate their own opinions. Such contradictions seem to be particularly common in the western world because of progressive ideas about child-rearing which are often recognized, but not truly understood. There are many more instances of tokenism than there are genuine forms of children's participation in

⁴³ Committee on the Rights of the Child, General Comment No. 5, op. cit., para. 12.

⁴⁴ Committee on the Rights of the Child, Day of General Discussion on the Right of the Child to be Heard, 29 Sept. 2006, paras 2 and 6.

⁴⁵ Committee on the Rights of the Child, General Comment No. 5, op. cit., para. 12.

⁴⁶ Lansdown, Gerison, *The Evolving Capacities of the Child*, op. cit., p. 4.

⁴⁷ National Council for Children, *Supplementary Report to Denmark's Second Periodic Report*, May 2000, p. 9.

⁴⁸ "Too little emphasis has been placed on creating opportunities for very young children to demonstrate their capacities to participate in decision-making processes," Lansdown, Gerison, *The Evolving Capacities of the Child*, op. cit., p. 17.

projects. Commonly, as far as the adults are concerned, the projects are in the best interests of children, but they are manipulative nevertheless.⁴⁹

Therefore, a challenging issue in implementing article 12 of the CRC is to achieve real, meaningful, effective and good quality participation. Adults have the responsibility to provide children and adolescents with a genuine opportunity to express their views and be involved in decision making. In order to achieve this, adults must create an enabling environment, where children and young people can feel secure and protected.⁵⁰ According to Save the Children, meaningful children's participation is characterized by approaches that are ethical (with a commitment to transparency, honesty and accountability that ensures respect for and guarantees the dignity of each child); safe (in which children's rights to protection are properly safeguarded); non-discriminatory (ensuring that all children have an equal opportunity to be involved); and child friendly (enabling children to contribute to the best of their abilities).⁵¹

Approach of the CRC Committee to child participation and IHRICs

In the opinion of the CRC Committee, "NHRIs have a key role to play in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention, by Government and throughout the society."⁵² Furthermore, the CRC Committee is encouraging States Parties to undertake a sustained and ongoing strategy, rather than one-off events.⁵³ "Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights."⁵⁴ Finally, the CRC Committee provides that "[i]f consultation is to be meaningful, documents as well as processes need to be made accessible."⁵⁵

Both interdependent key concepts, participation and respect for evolving capacities are reiterated elements that are developed and analysed by the CRC Committee, in particular in its general comments and during its days of general discussion.⁵⁶ For instance, in September

⁴⁹ Hart, Roger A., *Children's Participation: From tokenism to citizenship*, Innocenti Essays No. 4, UNICEF Innocenti Research Centre, 1992, p. 9.

⁵⁰ Save the Children, *So You Want to Consult with Children? A toolkit of good practice*, Nov. 2003, pp. 57–62.

⁵¹ Save the Children, *Promoting Children's Meaningful and Ethical Participation in the UN Global Study on Violence against Children: A short guide for members of the NGO Advisory Panel and others*, Sept. 2003, p. 5.

⁵² Committee on the Rights of the Child, General Comment No. 2, op. cit., para. 16.

⁵³ UNICEF, *Implementation Handbook*, op. cit., p. 163.

⁵⁴ Committee on the Rights of the Child, General Comment No. 5, op. cit., para. 12.

⁵⁵ Ibid.

⁵⁶ See, for example, Committee on the Rights of the Child, Tenth Anniversary Commemorative Meeting, excerpted from CRC/C/87, Annex IV, 22nd Session, 30 Sept.–1 Oct. 1999, para. 291w): "The Committee will consider adopting, as a priority, a comprehensive general comment on child participation as envisaged in the Convention (and more particularly in articles 12 through 17) bearing in mind that participation includes, but is not limited to, consultation and proactive initiatives by children themselves. The Committee reminds States Parties of the need to give adequate consideration to the requirements of these provisions. Such attention should include: taking appropriate measures to support the right of children to express their views; ensuring that schools, as well as other bodies providing services for children, establish permanent ways of consulting with children in all decisions concerning their functioning, the content of the curriculum or other activities; increased consideration to the creation of space, channels, structures and/or mechanisms to facilitate the expression by

2006, the CRC Committee devoted its annual day of general discussion to the right of the child to be heard.⁵⁷

Is the CRC Committee addressing the issue of child participation in its COBs on European State Parties? Accessibility and participation are subjects of concern and recommendations with regard to independent monitoring. Concerns include limited levels of awareness regarding mechanisms and lack of easy access/availability of complaint mechanisms for children. Recommendations have been made on accessibility to children, receiving complaints from children, ensuring the involvement of children and children's organizations in the setting up and activities of independent institutions, ensuring easily accessible and user-friendly/child-sensitive complaint mechanisms for all children, and conducting awareness-raising campaigns to facilitate effective use by children.

On the other hand, respect for the views of children is a permanent subject of concern for the CRC Committee. Among 22 European countries the issue does not arise in the concluding observations of only one country (Norway).⁵⁸ The most common subject of concern for these 22 European countries is the insufficient application of the general principle of article 12 in judicial and administrative decisions and implementation of laws, policies and programmes. As regards recommendations related to child participation, the CRC Committee repeatedly recommended State Parties to promote and facilitate children's participation in all matters affecting them, with special emphasis on vulnerable and minority groups. In the text of concluding observations, the CRC Committee sometimes explicitly mentioned the complex issue of the perception of childhood and linked it with child participation. For instance, in June 2008 the Committee noted with concern that "the traditional attitudes in Georgian society may limit children's right to freely express their views within the family, in schools and in the community at large."⁵⁹ Earlier, the Committee commended Portugal for "ongoing efforts to address concerns regarding cultural conceptions of the value of a child's opinion within schools and society."⁶⁰

children of their views, in particular with regard to the formulation of public policies from local up to national level, with appropriate support from adults, including in particular support regarding training. This requires investment to institutionalize effective spaces and opportunities for children to express their views and to engage with adults, especially through schools, community organisations, NGOs, and the media; encouraging and facilitating the creation of structures and organisations run by and for children and youth"; Committee on the Rights of the Child, General Comment No. 1 'The Aim of Education', CRC/CG/2001/1, 17 Apr. 2001, para. 8; Committee on the Rights of the Child, Day of General Discussion on the Rights of Indigenous Children, 3 Oct. 2003, para. 8: "The Committee commends the development of a comprehensive national strategy or national plan of action for children, built on the framework of the Convention. [...] It will need to be developed through a process of consultation, including with children and young people and those living and working with them," Committee on the Rights of the Child, General Comment No. 5, *op. cit.*, para. 29; and "In light of article 12, as well as articles 13 to 17, of the Convention, recommends that States Parties work closely with indigenous peoples and organizations to seek consensus on development strategies, policies and projects aimed at implementing children's rights, and set up adequate institutional mechanisms involving all relevant actors and provide sufficient funding to facilitate the participation of children in the design, implementation and evaluation of these programmes and policies"; Committee on the Rights of the Child, General Comment No. 9 'The Rights of Children with Disabilities', 2006, CRC/C/GC/9, 27 Feb. 2007, para. 15.

⁵⁷ Committee on the Rights of the Child, Day of General Discussion on the Right of the Child to be Heard, 29 Sept. 2006.

⁵⁸ CRC/C/15/Add.263, 21 Sept. 2005.

⁵⁹ COBs on Georgia, CRC/C/GEO/CO/3, 23 June 2008, para. 25.

⁶⁰ COBs on Portugal, CRC/C/15/Add.162, 6 Nov. 2001, para. 22.

Is the CRC Committee explicitly referring to IHRICs in recommendations related to the general principle of ‘respect for the views of the child’? For the 22 European countries under consideration, there is very little reference to the work of IHRICs. One exception is the case of the Irish Ombudsman for Children. In 2006, the CRC Committee noted that the “high number of the complaints received by the Ombudsman for Children relate to a lack of respect for the views of the child.”⁶¹ The previous submission of the shadow report by the Irish Ombudsman may have had an impact on the content of COBs.

It is now interesting to analyse whether the CRC Committee’s approach to child participation is influencing the daily work of IHRICs.

3. CHILD PARTICIPATION IN THE FUNCTIONING OF IHRICs

General Comment No. 2 (2002) explicitly sets out that the principle of article 12 “should be applied to the establishment, organization and activities of national human rights institutions [NHRIs]” and adds that IHRICs “must ensure that they have direct contact with children and that children are appropriately involved and consulted.”⁶² The present section aims at gathering and analysing specific examples of child participation in the functioning of European IHRICs.

IHRICs’ approach to child participation

What are the benefits of child participation according to IHRICs? What may IHRICs teach us about child participation? What is their vision, opinion, understanding and perception about child participation? Is child participation a key element in the exercise of their mandate as they see it?

It is noteworthy to gather IHRICs’ opinions, understandings and views about perceptions of childhood, participation, children’s rights and their role, since the personality and perception of the heads of independent institutions make an impact on activities, the priorities of the office, and approaches and motivation regarding child participation, as well as on the degree and level of child involvement. During the Preparatory Meeting for the Second Global Meeting of Independent Human Rights Institutions for Children held in November 2007 in Italy, IHRICs’ representatives acknowledged that “child participation is one of the major concerns of independent institutions” and stressed that they are working hard to change mindsets by “giving children a voice and speaking out on their behalf.”⁶³ IHRICs view themselves as “agents that translate children’s experiences, perspectives and concerns into policy change,”⁶⁴ as well as “firm and ethical voices for the best interests of the child.”⁶⁵

⁶¹ COBs on Ireland, CRC/C/IRL/CO/2, 29 Sept. 2006, para. 24.

⁶² Committee on the Rights of the Child, General Comment No. 2, *op. cit.*, para. 16.

⁶³ Report of Preparatory Meeting for the Second Global Meeting, *op. cit.*, p. 5.

⁶⁴ Statement of Independent Human Rights Institutions for Children, Mid-Term Review of the UN Special Session on Children, New York, 11–12 Dec. 2007.

⁶⁵ Report of Preparatory Meeting for the Second Global Meeting, *op. cit.*, p. 3.

Furthermore; various ENOC statements have explicitly addressed the specific issue of child participation.⁶⁶ Table 3.1 presents opinions and analysis of various European IHRICs. Key concepts and ideas addressed by IHRICs are highlighted in the third column.

Table 3.1: Views of European IHRICs on child participation

Institution (Country)	Opinion/Perception/Analysis	Key concepts/ ideas
National Council for Children (Denmark)	<ul style="list-style-type: none"> • “Children have opinions of their own. Children’s own descriptions of their thoughts, opinions and experiences are important contributions to the development of society’s view of children and their involvement as fully-fledged citizens. Children’s attitudes, views and suggestions can inform the political work and make it more relevant to children.”^a • “We ensure that children can voice their opinions when new legislation is put forward. The National Council for Children does not intervene in specific cases but we work to secure that children’s perspectives are recognised in matters of decision-making that has to do with children’s lives and welfare. [...] Children’s views and suggestions are important for a healthy democracy. That is why the National Council for Children listens to children and we incorporate children’s opinions in our planning of initiatives.”^b 	<p>Benefits from/value added of child participation</p> <p>Ombuds’ role</p>
Ombudsman for Children (Finland)	<ul style="list-style-type: none"> • “It is the responsibility of adults to ensure that children have opportunities to participate, exert an influence and express their views.”^c • “Adults have to change their attitudes so that children can participate more widely on matters that concern them. Adults have to realize that children’s priorities are often different from those of adults.”^d • “The Ombudsman for Children emphasises that Finnish legislation supports the participation of children. There is a need for changes in adults’ attitudes and the operational environment in various services. Decision-makers and people employed in services need information and know-how to better interact with children of different age groups.”^e 	<p>Adult responsibility</p> <p>Traditional attitudes</p>
Défenseur des Enfants (France)	<ul style="list-style-type: none"> • “Listening to children helps to better understand collective malfunctioning that hinders the implementation of the CRC.”^f 	<p>Benefits from/value added of child participation</p>

⁶⁶ ENOC Statement on State Obligations for the Treatment of Unaccompanied Children, approved at the annual meeting in Athens, 26–28 Sept. 2006: “6. In all relevant procedures and decision-making, public authorities should assure to all unaccompanied children the right to express their views freely in all matters affecting them. These views should be given due weight in accordance with the child’s age and maturity (article 12 CRC).”

Table 3.1 *continued*

Institution (Country)	Opinion/Perception/Analysis	Key concepts/ ideas
<p>Ombudsman for Children (Ireland)</p>	<ul style="list-style-type: none"> • “My experience at this early stage is that many adults are apprehensive about the concept of children’s participation and a smaller number have expressed scepticism about its value.”^g • “In order for the child’s best interests to be determined, it is important that the child be heard. I believe that these are two fundamental principles to improving the lives of many children in Ireland.”^h • “The Ombudsman for Children Office believes that children and young people must be provided with the participative opportunities to influence and shape our work.”ⁱ • “The OCO is approached regularly by organizations seeking our advice and input on how to involve children and young people in their work. We are happy to share our experiences of, and learning from the participation of children and young people.”^j • “To do this job I need to hear what children and young people have to say.”^k • “The OCO works for young people and young people are at the centre of everything it does. It’s important that young people have a real say in how the Office works on their behalf.”^l • “The best interests rule requires the involvement of children where possible (in accordance with capacity) because best interests cannot be ascertained unless the child’s perspective is taken into account.”^m 	<p>Perception of childhood</p> <p>Traditional attitudes</p> <p>Benefits from/value added of child participation</p> <p>Ombuds’ role</p>
<p>Department for Protection of Children’s Rights of the Ombudsman (Macedonia)</p>	<ul style="list-style-type: none"> • “Children should have priority and should be treated as separate subjects with rights and obligations, respecting the principles: non-discrimination, the best interest and participation in making decisions referring to their rights and interests and undertaking all possible measures for protection of children from violence and abuse.”ⁿ 	<p>Children’s rights</p>

continued

Table 3.1 *continued*

Institution (Country)	Opinion/Perception/Analysis	Key concepts/ ideas
<p>Ombudsman for Children (Norway)</p>	<ul style="list-style-type: none"> • “Children are undoubtedly the most photographed and the least listened to members of society.”^o • “The Ombudsman for Children is more than just a public figure with statutory powers. The office aspires to strengthen its partnership with children and youth, continuing to improve various conditions affecting all children in Norway. The CRC article 12 stresses children's right to express their own views on all matters affecting them, i.e. empowering children and youth. To stay in touch with children and youth the Ombudsman employs several communication tools. These are considered to be the core of the Ombudsman's knowledge of the Norwegian childhood, which is crucial in order to change and improve both attitudes as well as legislation concerning children and youth.”^p • “What is the strategic role of an ombudsman for children? [...] to promote full implementation of the Convention on the Rights of the Child; to promote a higher priority for children and a higher visibility of children, in government and in civil society; to improve public attitudes toward children; to influence law, policy and practice, both by responding to government and other proposals and by actively proposing changes; to promote proper co-ordination of government for children at all levels; to promote effective use of resources for children; to provide a channel for children's views, and to encourage government and the public to give proper respect to children's views; to review children's access to, and the effectiveness of, advocacy and complaints systems, including in institutions, schools, and the courts; and to respond to individual problems or complaints from children, and where appropriate to initiate or support legal action on behalf of children.”^q 	<p>Children’s rights</p> <p>Perception of childhood</p> <p>Ombuds’ role</p>

continued

Table 3.1 *continued*

Institution (Country)	Opinion/Perception/Analysis	Key concepts/ideas
Human Rights Ombudsman (Slovenia)	<ul style="list-style-type: none"> “We are less frequently encountering opinions that children possess too many rights and that they should be more aware of their obligations, while parents are increasingly coming to us with concrete problems in the upbringing of children. [...] It is evident from the treatment of initiatives and monitoring the situation of children in Slovenia that unfortunately, despite several legislative changes, the attitude towards the child as a holder of rights has not significantly changed.”^r 	Perception of childhood
Children’s Commissioner (United Kingdom– England)	<ul style="list-style-type: none"> “Our vision: Children and young people will actively be involved in shaping all decisions that affect their lives, are supported to achieve their full potential through the provision of appropriate services, and will live in homes and communities where their rights are respected and they are loved, safe and enjoy life. Our mission: We will use our powers and independence to ensure that the views of children and young people are routinely asked for, listened to and that outcomes for children improve over time. We will do this in partnership with others, by bringing children and young people into the heart of the decision-making process to increase understanding of their best interests.”^s 	Ombuds’ role
Children’s Commissioner (United Kingdom– Scotland)	<ul style="list-style-type: none"> “Contact with children and young people with additional support needs made SCCYP aware of the difficulties they faced in finding work experience placements.”^t 	Benefits from/value added of child participation
Children’s Commissioner (United Kingdom–Wales)	<ul style="list-style-type: none"> “Part of the role of the Children’s Commissioner is to make sure that the views and opinions of children and young people are sought on what issues affect their lives. They should also help us in deciding on our priorities and have an influence on how the office works. We try to make sure that young people have a chance to be involved in our day-to-day work and have a way of knowing that what they have told us is accurately reflected in the influencing activity and policy development of the organisation.”^u 	Ombuds’ role
Children’s Commissioner (United Kingdom– Northern Ireland)	<ul style="list-style-type: none"> “Children and young people are central to the work of NICCY.”^v 	Ombuds’ role

Notes to table 3.1

^a <www.boerneraadet.dk/English>.

^b National Council for Children, *Annual Report and Visions 2006–2007*, at *ibid*.

^c Summary of Action Plan of the Office of the Ombudsman for Children, 2008, <www.lapsiasia.fi/en/overv/annual_report>.

^d Press release 8/2008, ‘Yearbook of the Ombudsman for Children stresses children’s rights of participation’, 17 June 2008, <www.lapsiasia.fi/en/current/press_releases>.

^e ‘Summary of 2008 Yearbook of the Finnish Ombudsman for Children’, p. 5.

^f “De même, entendre la parole des enfants sur les questions importantes qui les concernent (santé, violence, discrimination, liberté d’expression, justice...) permet de mieux apprécier les dysfonctionnements collectifs qui font obstacle à l’application des droits de l’enfant en France et d’en tenir compte à l’occasion d’avis rendus par la Défenseure ou de propositions de réformes législatives ou réglementaires,” *Défenseure des Enfants (France), Rapport d’activité 2007*, p. 29.

^g Ombudsman for Children (Ireland), *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland’s Second Report to the Committee*, Apr. 2006, p. 17.

^h Ombudsman for Children (Ireland), *2007 Annual Report*, p. 10, <www.oco.ie/pdf/oco_annual_report_web.pdf>.

ⁱ *Ibid.*, p. 32.

^j *Ibid.*, p. 36.

^k *Ibid.*, p. 59.

^l <www.oco.ie/gettingInvolved/participation.aspx>.

^m Advice of the Ombudsman for Children (Ireland) on the proposed referendum on children’s rights, 22 Dec. 2006, p. 7.

ⁿ Ombudsman (Macedonia), *2007 Annual Report*, p. 62, <www.ombudsman.mk/comp_includes/webdata/documents/Izvestaj-2007-ang.pdf>.

^o Children’s Ombudsmen of Iceland, Norway and Sweden, and Børnerådet in Denmark, *The Best Interests of the Child in our Time: A discussion paper on the concept of the best interests of the child in a Nordic perspective*, Oct. 1999, p. 1, <www.barneombudet.no/sfiles/3/80/1/file/best_of_the_child.doc>.

^p <www.barneombudet.no/english/communicat/>.

^q <www.barneombudet.no/english/about_the_/why_an_omb/>.

^r Human Rights Ombudsman (Slovenia), *Annual Report 2006*, p. 67.

^s Children’s Commissioner for England/11 Million, “‘Fun and freedom’: What children say about play in a sample of Play Strategy consultations”, p. 3,

<www.11million.org.uk/resource/7u6oy0vcbwmb008v7knj5ayp.pdf>.

^t Scotland’s Commissioner for Children and Young People, *Annual Report 07/08*, June 2008, p. 22, <www.sccyp.org.uk/webpages/pr_single.php?article=Annual%20Report%202007-2008%20&id=140>.

^u Children’s Commissioner for Wales, *Annual Review 2006–07*, p. 18, <www.childcom.org.uk>.

^v Commissioner for Children and Young People for Northern Ireland, *Annual Report and Accounts for the year ended March 2007*, p. 17, <www.niccy.org/uploaded_docs/2235.pdf>.

Legislation and mandate of IHRICs

The legislation governing the establishment of IHRICs is an indicator of the degree of attention devoted to the issue of accessibility to children and their involvement in the internal functioning of the institution. The formal presence of both issues in legislation necessarily influences the subsequent work, priorities and activities of the institution. However, the lack of attention to both issues in legislation does not automatically mean that the institution will not be accessible to children or not involve children and adolescents in its daily work. Legislation is a factor, but not the only one. However, we may assume that explicit legal reference to accessibility and participation would constitute a strong source of legitimacy, credibility and transparency for IHRICs. In this context, it is also possible to assess how proactive IHRICs are in the area of child participation.

Table 3.2: Extracts from legislation establishing IHRICs related to accessibility and child participation

Institution (Country)	Extracts from legislation
Children and Youth Legal Service (Austria, Styria)	<p><i>Styrian Youth Welfare Act, 1995:</i></p> <ul style="list-style-type: none"> • §13a(7) “to facilitate access, it shall hold counselling sessions, outside of Graz, in particular”
Ombudsman for Children (Croatia)	<p><i>Law on the Ombudsman for Children passed by the Croatian Parliament on 29 May 2003:</i></p> <ul style="list-style-type: none"> • “Article 7. (1) The Ombudsman for Children informs and advises children on the manner of the realization and protection of their rights and interests. (2) The Ombudsman for Children cooperates with children, encourages children to declare themselves and respects their opinion, initiates and participates in public activities oriented towards improvement of the position of children and proposes measures for the enhancement of the influence of children in the society.”
Ombudsman for Children (Ireland)	<p><i>Ombudsman for Children Act 2002:</i></p> <ul style="list-style-type: none"> • “give due consideration, having regard to the age and understanding of the child, to his or her wishes in so far as is practicable in the performance of her function to examine and investigate complaints made against public bodies, schools and voluntary hospitals” (Section 6.2) • “establish structures to consult regularly with groups of children that she considers to be representative of children and to give their views due weight in accordance with their age and understanding in the performance of her function to promote the rights and welfare of children” (Section 7.2)
Children’s Commissioner (United Kingdom–Northern Ireland)	<p><i>The Commissioner for Children and Young People (Northern Ireland) Order 2003:</i></p> <ul style="list-style-type: none"> • “6. – (1) The principal aim of the Commissioner in exercising his functions under this Order is to safeguard and promote the rights and best interests of children and young persons. (2) In determining whether and, if so, how to exercise his functions under this Order in relation to any particular child or young person – (a) the Commissioner's paramount consideration shall be the rights of the child or young person; and (b) the Commissioner shall have regard in particular to the ascertainable wishes and feelings of the child or young person (considered in the light of his age and understanding); [...] • “(5) The Commissioner shall take reasonable steps to ensure that – (a) children and young persons and their parents are made aware of – (i) the functions of the Commissioner; (ii) the location of the Commissioner's office; and (iii) the ways in which they may communicate with the Commissioner; (b) children and young persons are encouraged to communicate with the Commissioner; (c) the content of any matter published by the Commissioner takes account, so far as practicable, of the age, understanding and usual language of any children or young persons by whom it is intended that such matter will be read and of the effect of any disabilities they may have; (d) the views of children and young persons and their parents are sought concerning the exercise by the Commissioner of his functions; (e) the services of the Commissioner are, so far as practicable, made available to children and young persons in the locality in which they live.”
Defensor del Menor (Spain – Madrid)	<p><i>Ley 5/1996, de 8 de julio, Defensor del Menor en la Comunidad de Madrid</i></p> <ul style="list-style-type: none"> • Preámbulo: “La regulación de la Institución del Defensor del Menor es una aspiración de todos los sectores de nuestra sociedad preocupados por dar una mayor seguridad jurídica al desarrollo de los intereses y participación social de las personas menores de edad.”

Moreover, specific legislation related to children's rights (basic services, education, child care, juvenile justice, etc.) could make an impact on IHRICs' work in this specific area. For instance, in Ireland,

schools have clearly made tremendous efforts to encourage a culture of participation within their institution. Under the Education Act, 1998, post-primary schools are encouraged to create and assist student councils. The recent report of the Task Force on Student Behaviour (to which the Ombudsman for Children made a submission) highlighted the significant role of participation in creating "an ethos of mutual regard and co-operation between student and staff."⁶⁷

Accordingly, it is relevant to analyse whether national legislation establishing IHRICs explicitly encompasses the concept of child participation or an obligation related to accessibility to children. Table 3.2 presents several examples of national laws that explicitly refer to both key issues. This table is not an exhaustive list of extracts of legislation.

The right to non-discrimination and multiple dimensions of accessibility

Accessibility is a key issue for IHRICs, since this dimension has a direct impact on the effectiveness of their activities and on the degree and level of child participation in the functioning of IHRICs.⁶⁸ In General Comment No. 2, the CRC Committee provides that "NHRIs should be geographically and physically accessible to all children" (para. 15). In compliance with ENOC's Standards for Independent Children's Rights Institutions of 2001, IHRICs "must be readily accessible to children and able to respond to any individual communications from children."

Accordingly, the concept of accessibility of IHRICs to children and adolescents is multidimensional. Accessibility can be understood at different levels, namely, physical, geographic and economic. Furthermore, this issue is closely related to article 2 of the CRC setting out the principle of non-discrimination.

With regard to the dimensions of physical and geographic accessibility, IHRICs need to work in a flexible and decentralized way, especially in countries covering vast areas.⁶⁹ In Russia, for instance, there are regional ombuds' offices for children. In addition, most of the European Ombuds for children carry out regular visits in places where children spend time, including detention centres, schools, hospitals or foster homes. Ensuring geographic

⁶⁷ Ombudsman for Children (Ireland), *Report of the Ombudsman for Children*, Apr. 2006, op. cit., p. 33.

⁶⁸ "Pour que son action puisse obtenir un impact signifiant, le service du Délégué général doit être largement accessible aux jeunes et aux enfants. Cette accessibilité débute par la meilleure connaissance possible de l'institution par le grand public," *Projet Institutionnel du Nouveau Délégué de la Communauté Française*, p. 4.

⁶⁹ "Esta relación directa con los niños y jóvenes no puede ser del todo realizable en aquellos países grandes en número de habitantes sin una descentralización territorial de las Oficinas del Defensor," Crespo González, Jorge et al., *La figura del Defensor del Menor*, op. cit., p. 449; "This experience also points to an issue to which we shall return later in this study, which is the need for institutions and processes which do not focus solely on the national level, especially in an era when decentralization is systematically reducing the power and reach of national authorities in many areas. The reality is that children's lives are experienced at the local level, which raises issues about the ability of national institutions to represent children, allow for their participation and ensure their accessibility," Alston, Philip and John Tobin, *Laying the Foundations for Children's Rights*, op. cit., p. 44.

accessibility makes it easier for children to lodge complaints directly.⁷⁰ The Children's Commissioner for England is used to visiting various regions to meet with children and young people and find out their concerns ('listening tours').⁷¹ In Ireland, the Ombuds for Children plans "to give children throughout the country an opportunity later this year to identify priority areas for the work of the Office in the period 2006–2009, and to develop regional participation structures to ensure the Office has a strong presence outside of Dublin."⁷² According to the Northern Ireland Commissioner for Children and Young People,

Reaching out to children and young people, close to where they live, is a culture the team has been developing in all parts of Northern Ireland. [The] outreach offices in Derry, Ballymena and Newry means Participation Officers can operate close to local schools, youth groups and other organisations to reach children first hand and then feed their views back to the Commissioner.⁷³

Concerning the dimension of economic accessibility, it is noteworthy that no European IHRICs charge for their services, including for receiving and examining individual and collective complaints. On the other hand, it is widely agreed that the internet is a very efficient tool for communicating with children and adolescents,⁷⁴ but it is crucial to bear in mind the unequal access to and use of the internet in every society. Increasingly in Europe, the internet is an integral part of the communication strategy of IHRICs. Various European Ombuds for Children, such as the Spanish Ombuds in Madrid (April 2008) and in Catalonia (September 2008), have recently modified the format and content of their websites in order to enhance child friendly spaces.⁷⁵ On its website, the Danish National Council for Children explicitly stresses that the office is seeking "new ways of involving children and working continuously on methodological development."⁷⁶

IHRICs cannot be self-proclaimed speakers for children if they do not directly and regularly interact with children and young people through, *inter alia*, letters by post, emails, phone calls, formal and informal chats, visits, individualized consultations,⁷⁷ field visits, workshops, targeted programmes (for vulnerable, marginalized and hard-to-reach groups), recreational events, awareness raising and training, and school ambassadors.⁷⁸ Direct interactions with

⁷⁰ "Children need access to complaints procedures in all aspects of their lives," UNICEF, *Implementation Handbook*, op. cit., p. 158.

⁷¹ Children's Commissioner for England, *Annual Review 2007/08*, p. 15, <www.11million.org.uk/resource/w25igu2zliy93yzfylvbkhdpb.pdf>.

⁷² Ombudsman for Children (Ireland), *Report of the Ombudsman for Children*, Apr. 2006, op. cit., p. 16.

⁷³ Commissioner for Children and Young People for Northern Ireland, *Annual Report and Accounts for the year ended March 2007*, p. 10, <www.niccy.org/uploaded_docs/2235.pdf>.

⁷⁴ Crespo González, Jorge et al., *La figura del Defensor del Menor*, op. cit., p. 449.

⁷⁵ See <www.defensordelmenor.org/upload/prensa/notas/09Abril_2008_web_Defensor.pdf>, <www.sindic.cat/es/page.asp?id=53&ui=2308>.

⁷⁶ <www.boerneraadet.dk/English>.

⁷⁷ "Cada vez se da más importancia al dialogo con los niños," Crespo González, Jorge et al., *La figura del Defensor del Menor*, op. cit., p. 441; "Los datos de consulta de la web de niños indican un promedio de entradas entre 1.500 y 2.000 mensuales. Son cifras que aún tienen que crecer y que requieren que esta institución difunda más la web de niños y despliegue otras estrategias de acercamiento de la institución del Síndic a los niños y adolescentes," Síndic, *El Defensor de les Persones, Informe al Parlament 2007*, p. 187, <www.sindic.cat/site/unitFiles/2284/INFORME%20AL%20PARLAMENT%20CASTELLANO.pdf>.

⁷⁸ Children's Commissioner for Wales, *Annual Review 2006–07*, op. cit., p. 20.

children take place through the handling of individual cases and through the establishment of various participatory mechanisms.⁷⁹ Moreover, direct interactions greatly benefit children and adolescents and facilitate their capacity to claim their rights, in the sense that they get to know the institution, its mandate and activities. Other governmental and non-governmental national bodies or organizations may also contribute in disseminating IHRICs' mandate.⁸⁰

A number of factors enhance direct access to IHRICs for children and young people. Indeed, European IHRICs have been developing several efficient communication tools, including hotlines, child helplines, chat and online forums,⁸¹ child friendly websites, radio broadcasts and child friendly reports.⁸² For instance, the Irish Ombudsman for Children publishes child friendly annual reports of activities. The Children's Commissioner for England's report of activities 2007–2008 could constitute good practice in this field.⁸³ According to this Ombuds, the Office takes its "promise to listen to the views and opinions of children and young people very seriously, and what they say shapes [its] work programme."⁸⁴ Furthermore, the Children's Commissioner for Wales has been developing various communication tools, especially a free phone line and free text service.⁸⁵ In Scotland, the Ombuds is publishing its annual report for children and young people "in poster format for distribution to schools and other places."⁸⁶ In November 2007, the French Défenseure des Enfants launched an online forum called Parole aux Jeunes in order to collect the views of children and adolescents about five key issues, namely, violence, health, justice, freedom of speech, and discrimination.⁸⁷

In Europe, as of September 2008, there were four types of IHRIC website:

- an official formal website that is exclusively directed towards an adult audience (i.e. Austria, French Community of Belgium, Croatia, Georgia, Luxembourg, Macedonia, Norway, Poland, Portugal, Russia, Sweden);
- some child friendly pages on an official formal website (i.e. France, Lithuania, Spain-Basque Region);
- a child friendly website (i.e. England, Ireland, Northern Ireland, Scotland, Spain-Region of Madrid, Wales);

⁷⁹ Report of Preparatory Meeting for the Second Global Meeting, op. cit., p. 3.

⁸⁰ "However, the task of reaching all of Wales' children so they know about the Children's Commissioner is too great for us to achieve alone. The National Assembly, Local Education Authorities, Schools and all those working with children and young people share this responsibility," Children's Commissioner for Wales, *Annual Review 2006–07*, op. cit., p. 21.

⁸¹ Ibid., p. 20.

⁸² "Translations, including child friendly versions, are essential for engaging children and minority groups in the process," Committee on the Rights of the Child, General Comment No. 5, op. cit., para. 49.

⁸³ Children's Commissioner for England, *Annual Review 2007/08*, op. cit. (see in particular the section on the budget called 'Money Matters').

⁸⁴ Ibid., p. 3.

⁸⁵ Launch event: Your Voice, Your Choice, Your Life: "During 2006-07 we prepared for the launch of our free phone and free text service for children and young people," Children's Commissioner for Wales, *Annual Review 2006–07*, op. cit., p. 6.

⁸⁶ Scotland's Commissioner for Children and Young People, *Annual Report 2007–2008*, June 2008, p. 10, <www.sccyp.org.uk/webpages/pr_single.php?article=Annual%20Report%202007-2008%20&id=140>.

⁸⁷ Défenseure des Enfants (France), *Rapport d'activité 2007*, p. 33.

- an official website with different entries according to ages, mostly children/adolescents/adults (i.e. Flemish Community of Belgium, Greece, Iceland, Spain-Region of Catalonia).

In this context, it is interesting to assess whether the model of an IHRIC (integrated or separate) may influence the type and content of its website. There is no clear-cut reply, since both models develop similar types of website, as in the case of the integrated Greek institution and the separate Ombuds in Iceland. Taking a comparative perspective, it seems that the websites developed by Children’s Commissioners in the United Kingdom and Ireland are the most innovative, interactive and creative.⁸⁸

IHRICs’ websites also play a fundamental role in the area of individual complaints, as well as in gathering children’s opinions and views.⁸⁹ For instance, the Deputy Ombudsman for Children within the Síndic de Greuges in the Spanish Region of Catalonia (integrated institution) can receive complaints via email or comments and opinions.⁹⁰ In the opinion of the English Children’s Commissioner, the child friendly website can become a channel for children to have their say⁹¹ and a space to share worries and wishes.⁹² “The site is helping us to collect the views and opinions of large numbers of children.”⁹³

As analysed below, children and young people sometimes help Ombuds in designing and developing child friendly websites. For instance, in Scotland,

members of SCCYP’s Reference Group helped develop a new young people’s website [...] which will hopefully make a substantial contribution to raising awareness of SCCYP and the CRC. The website will be an opportunity for young people to engage not only with the issues SCCYP are currently working on, but also tell the office about other issues that affect them, which will inform the office’s work.⁹⁴

At the same time,

The website’s Participation Portal allows access to a library of resources demonstrating good practice in involving children and young people across all ages and on a variety of subjects. This was updated during the year and we are always on the lookout for stimulating additions.⁹⁵

⁸⁸ For instance, it is useful to compare <www.oco.ie>, <www.11million.org.uk>, <www.childcom.org.uk>, <www.sccyp.org.uk>, <www.nickey.org>.

⁸⁹ “The website has to be a critical tool for engaging children and young people,” Scotland’s Commissioner for Children and Young People, *Annual Report 2007–2008*, op. cit., p. 24.

⁹⁰ <www.sindic.cat/ca/page.asp?id=113>.

⁹¹ <www.11million.org.uk/issue_room_list.cfm#row1>.

⁹² <www.11million.org.uk/youth/worries_and_wishes/>.

⁹³ Children’s Commissioner for England, *Annual Review 2007/08*, op. cit., p. 13.

⁹⁴ Scotland’s Commissioner for Children and Young People, *Annual Report 2007–2008*, op. cit., p. 10.

⁹⁵ *Ibid.*; “Next year SCCYP will launch our revamped website, which will be segmented into two sections, young people and adults. It will have more interactive possibilities and we hope to develop our use of the comments function and voting mechanism as consultation tools. We are particularly keen to make sure we are as accessible as possible to young people with additional support needs. One way we are doing this is by offering work experience placements to young people with particular needs. Last year we welcomed two young people from the Royal Blind School who made a valuable contribution to our website as well as helping us in other ways. This year we will be focusing on a different communication need,” *ibid.*, p. 24.

Table 3.3: Examples of the involvement of children in the work of IHRICs

Type of child involvement	Country	Specific activities
1. Taking part in recruiting head of IHRIC and staff	Ireland	<ul style="list-style-type: none"> • Involvement of children in the overall process of recruitment of Ombuds and senior management staff.^a
	United Kingdom (England)	<ul style="list-style-type: none"> • 100% of permanent staff recruited with the involvement of children and young people.^b
2. Advising on functioning, management, office space and websites	Ireland	<ul style="list-style-type: none"> • Children’s involvement in designing participation space, space of office (to make a more colourful and friendly place) and its website.^c • Logo chosen with the help of children (shamrock design with faces picked by children and a designer).^d
	United Kingdom (England)	<ul style="list-style-type: none"> • A new website for children of all ages and abilities was created with the help of children and young people, who interviewed and chose a web design agency and then worked with us to implement their ideas.^e
3. Participation in planning and prioritizing	Ireland	<ul style="list-style-type: none"> • Youth Advisory Panel (YAP).^f • Consultation with children to seek children’s views. • Children’s involvement in identifying priority areas of work of Ombuds’ office (e.g. Big Nationwide Children Ballot). • Children’s involvement in designing educational workshops for students from primary and post-primary schools.^g
	United Kingdom (England)	<ul style="list-style-type: none"> • At the annual summer three-day event held in August 2007, 90 children and young people aged 9 to 18 chose the theme of violence, abuse, bullying, respect and discrimination as the one they wanted the Children’s Commissioner for England to work on in 2008/09. The event was called Shout Out.^h
	United Kingdom (Scotland)	<ul style="list-style-type: none"> • “The ‘Safe, Active, Happy’ Action Plan was built upon a consultation with children and young people that identified ‘Things To Do’ as their main priority. The Detective Kit and the No Balls Game project are designed to involve children and young people in taking that issue forward.”ⁱ

4. Involvement in organization of activities and consultation about key issues	Macedonia	<ul style="list-style-type: none"> The Ombuds organized an anonymous survey of 4500 pupils from fifth to eighth grade about violence in schools^j and informed the Ministry of Education and Science and the Government about the outcome.
	Slovenia	<ul style="list-style-type: none"> In October 2001, following the decision to devote more attention to children's rights, the Human Rights Ombudsman organized an Open Day for a short chat with children. He told them about his work and asked them to actively cooperate in raising awareness of their rights and exercising them, as well as in formulating solutions when these rights are infringed.^k
	United Kingdom (England)	<ul style="list-style-type: none"> The Children's Commissioner for England worked with over 200 children and young people of all ages and backgrounds to explore the choices they want in and out of school. Children's views have influenced the provision of extended services in Birmingham's Perry Beeches Schools Cluster.^l The Office set up a project team of 70 children and young people to work with the Children's Commissioner on violence, abuse and bullying. Children and young people asked the Office to focus on gun and knife crime. The work is aimed at bringing forward children's views and coming up with recommendations to inform policy debate.^m Children and young people were consulted about their views on play.ⁿ
	United Kingdom (Wales)	<ul style="list-style-type: none"> The Young People's Advisory Groups helped plan and run the launch event of free phone and free text service and helped develop the promotional materials, DVD and leaflets.^o
5. Contribution to monitoring children's rights and the CRC ^p	Denmark	<ul style="list-style-type: none"> Supported the publication of child-written alternative report to CRC Committee ('Children Vision').
	Finland	<ul style="list-style-type: none"> Collected children's opinions and included them in alternative report to the CRC Committee.

Notes to table 3.3

^a The Irish Ombudsman for children welcomed the "model of participation used in the recruitment and appointment process for her position" and the senior management team of her office, see Ombudsman for Children (Ireland), *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland's Second Report to the Committee*, Apr. 2006, pp.15–16. For an overview of the activities of the Irish Ombudsman for Children related to the involvement of children in the functioning of the institution, see *ibid.*, pp. 16–17. "Emily was appointed Ombudsman for Children in December 2003, although she didn't take up the role until March 2004. The selection process was very innovative. Only

three adults were involved in the process. The other 15 people were under the age of 18. These young people were involved right from the beginning. Their ideas were included in the job description and they helped design the job advertisement. The advertisement was so good it won a prize. The young people made recommendations to the Minister of State with special responsibility for Children, Brian Lenihan TD, about the appointment of the Ombudsman for Children. Minister Lenihan and the Oireachtas agreed that Emily was the right person for the job. Emily was then appointed by Her Excellency, President Mary McAleese in December 2003,” *Information Pack: Ombudsman for Children: An independent voice for children and young people*, p. 2,

<www.oco.ie/aboutUs/information_pack.aspx>.

^b Children’s Commissioner for England, *Annual Review 2007/08*, p. 4,

<www.11million.org.uk/resource/w25igu2zliy93yzfylvbkhdpb.pdf>.

^c Ombudsman for Children (Ireland), *Report of the Ombudsman for Children to the UN Committee*, op. cit., p.

16; “We wanted to make sure that our website was interesting and relevant to young people, so we ran a competition looking for ideas for the new OCO site. The winners met with a web design company and came up with ideas for what the site would look like and for different webpages. We asked three more groups of young people to help us write ‘youth friendly’ content and then we checked out all of this with even more young people until the new site was ready to go live,” *Information Pack*, op. cit., p. 22.

^d <www.oco.ie/gettingInvolved/participation.aspx>.

^e Children’s Commissioner for England, *Annual Review 2007/08*, op. cit., p. 13.

^f Additional information <www.oco.ie/gettingInvolved/young_persons_reference_group.aspx>;

<www.oco.ie/aboutUs/youth_advisory_panel.aspx>.

^g Ombudsman for Children (Ireland), *Information Pack*, op. cit., p. 22.

^h Children’s Commissioner for England, *Annual Review 2007/08*, op. cit., pp. 3–4 and 13.

ⁱ Scotland’s Commissioner for Children and Young People, *Annual Report 2007–2008*, June 2008, p. 20,

<www.sccyp.org.uk/webpages/pr_single.php?article=Annual%20Report%202007-2008%20&id=140>.

^j Ombudsman (Macedonia), *Annual Report 2007*, p. 4,

<www.ombudsman.mk/comp_includes/webdata/documents/Izvestaj-2007-ang.pdf>.

^k ‘Ombudsman for Children’, news article, 15 Jan. 2002, <[www.varuh-rs.si/index.php?id=106&L=6&tx_ttnews\[tt_news\]=1463&tx_ttnews\[backPid\]=878&cHash=aed6029c5e](http://www.varuh-rs.si/index.php?id=106&L=6&tx_ttnews[tt_news]=1463&tx_ttnews[backPid]=878&cHash=aed6029c5e)>.

^l Children’s Commissioner for England, *Annual Review 2007/08*, op. cit., p. 10.

^m *Ibid.*, p. 15.

ⁿ Children’s Commissioner for England, “‘Fun and freedom’ What children say about play in a sample of Play Strategy consultations”, <www.11million.org.uk/resource/7u6oy0vcbwmb008v7knj5ayp.pdf>.

^o Children’s Commissioner for Wales, *Annual Review 2006–2007*, p. 6,

<www.childcom.org.uk/publications/Annual_Review_e07.pdf>.

^p “The Committee recommends that independent national human rights institutions and or children’s ombudsmen or commissioners ensure that children are given easy access to raise their concerns and that adequate resources are dedicated to involve children in their monitoring of the implementation of children’s rights,” CRC Committee, Report of Day of General Discussion on the Right of the Child to be Heard, 29 Sept. 2006, para. 27; “The Committee encourages the direct involvement of children in monitoring the implementation of all rights enshrined in the Convention,” *ibid.*, para. 31.

Overview of child involvement in the functioning of IHRICs

Ensuring effective accessibility of IHRICs to children and adolescents is undoubtedly a key issue, since the impact, credibility and legitimacy of these institutions are at stake. Accordingly, it is relevant to identify how children are involved in the work of IHRICs. How can IHRICs facilitate children’s participation in their work? How do they manage to create an adequate, safe, stimulating and child friendly environment and climate conducive to child participation? Are IHRICs providing the necessary support to enable children to express their views? Are marginalized or vulnerable children involved in the work of IHRICs? How are IHRICs addressing the complex issues of maturity and evolving capacities?

According to the CRC Committee, IHRICs “should devise specially tailored consultation programmes and imaginative communication strategies to ensure full compliance with article

12 of the Convention.”⁹⁶ In Trond Waage’s opinion, to be “a children’s champion and representative implies also having a future-oriented view, in line with children’s thinking, and being innovative, creative, non-bureaucratic and flexible.”⁹⁷ The Irish Ombudsman for Children commissioned the Children’s Research Centre at Trinity College Dublin to assist in the development of a model of participation for her office.⁹⁸ In its annual report of activities, the Welsh Ombudsman for Children stated that they were “grateful once again to all the children and young people who have worked with us during the year, whether as members of our Advisory Groups, actors in our DVD, pavement art designers, school ambassadors, Backchat members, and young journalists or as participants in our consultations, events or reviews.”⁹⁹

The general objective of table 3.3 is to analyse different means of child involvement in Ombuds’ work. As indicated there, child involvement in the functioning of IHRICs may be classified into five different aspects: (1) taking part in recruiting head of office and staff; (2) advising about functioning, management, office space and websites; (3) participating in planning and prioritizing; (4) involvement in the organization of activities and consultations about key issues; and (5) contribution in monitoring children’s rights and the CRC. Table 3.3 is just an indicative compilation of examples; however, it seems that there may be more active children’s involvement in UK and Scandinavian IHRICs. A number of factors may explain this trend, including the current perception of childhood in those countries, mutual influences facilitated by cultural similarities and regional networks, and substantial budgets. For the Scandinavian countries, the fact that some of these institutions are pioneers in the setting up of the model of ombuds may influence this specific area.¹⁰⁰

In this context, have IHRICs adopted and followed ethical standards for children’s participation? Ethical standards could be regarded as appropriate safeguards in order to avoid exposing children and adolescents to unnecessary or disproportionate risks. Up to now, there is very little information available on this sensitive issue. Nevertheless, for instance, in Northern Ireland, the Commissioner for Children and Young People has set up an Ethics Committee.¹⁰¹

⁹⁶ Committee on the Rights of the Child, General Comment No. 2, op. cit., para. 17.

⁹⁷ Waage, Trond, ‘Lo sviluppo di istituzioni nazionali indipendenti’, op. cit.

⁹⁸ Ombudsman for Children (Ireland), *Report of the Ombudsman for Children*, Apr. 2006, op. cit., p. 16; in Luxembourg, in its 2004 Annual Report, the Ombuds-Committee for the Rights of the Child expressed its will to discuss models of participation of children in all matters affecting them (school, social, political and family contexts), Ombuds-Committee for the Rights of the Child (Luxembourg), *Rapport Annuel 2004 au gouvernement et à la chambre des députés*, p. 72, <www.ork.lu/PDFs/rapport2004.pdf>.

⁹⁹ Children’s Commissioner for Wales, *Annual Review 2006–07*, op. cit., p. 1.

¹⁰⁰ “[T]ampoco es raro que exista alguna diferencia entre dichas instituciones europeas que en cierto modo venga explicado por el contexto social y grado de bienestar relativo de cada Estado, como sucede en todo estudio comparado. Así, por ejemplo, es de destacar en los países nórdicos – pioneros en la implantación de la figura – una búsqueda mas activa de la participación de los niños en el debate público para su influencia sobre la política tanto nacional como regional y comunitaria. Actuación está muy importante no sólo para un mejor resultado en la elaboración de políticas del menor que realmente recojan la problemática del menor de primera mano. Para ello también es cierto que cuentan con unos presupuestos más elevados que el resto de países,” Crespo González, Jorge et al., *La figura del Defensor del Menor*, op. cit., p. 449.

¹⁰¹ “NICCY’s Ethics Committee continues its work, providing guidance in maintaining safe working practices when dealing with young people. The role of this Committee is to ensure that all research/reviews undertaken by, or on behalf of, NICCY are conducted in an ethical manner, and to promote innovative ethical practice. The

Participation of marginalized and excluded groups

Article 2 of the CRC establishes the enjoyment of human rights without discrimination, and the need for special measures to combat potential discrimination in participation.¹⁰² According to the CRC Committee, IHRICs, in the spirit of article 2,

should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education.¹⁰³

Moreover, article 7(3) of the United Nations Convention on the Rights of Persons with Disabilities adopted on 13 December 2006 provides that

States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

In this context, IHRICs should also adopt a gender sensitive approach, in order to ensure that girls and boys enjoy equal opportunities to participate. The issue of gender discrimination and other forms of discrimination should inform the daily work of these institutions.

During the day of general discussion on the right of the child to be heard, the CRC Committee stressed

that appropriate measures need to be undertaken in order to address discrimination of vulnerable or marginalized groups of children such as those affected by poverty or armed conflict, children without parental care, including children in institutions, children with disabilities, refugee and displaced children, street children and children belonging to indigenous and minority groups, in order for all children to enjoy the right enshrined in article 12.¹⁰⁴

Accordingly, IHRICs should be aware that particular groups of children are experiencing additional barriers to enjoying their participatory rights, including children belonging to minority groups (such as Roma children in Poland) or indigenous peoples (such as Sami children in Nordic countries), children with HIV/AIDS, children with mental health problems, children with disabilities,¹⁰⁵ internally displaced children, children in conflict with

work of this Committee is carried out within NICCY's Ethical Guidelines framework. NICCY has in place a robust Child Protection Policy to assist NICCY staff and volunteers in the protection of children by identifying clear instructions in accordance with the legislative framework of the Children (NI) Order 1995, and the Regional Area Child Protection Committee Procedures 2005," Commissioner for Children and Young People for Northern Ireland, *Annual Report and Accounts*, op. cit., p. 19.

¹⁰² UNICEF, *Implementation Handbook*, op. cit., p. 159.

¹⁰³ Committee on the Rights of the Child, General Comment No. 2, op. cit., para. 15.

¹⁰⁴ Committee on the Rights of the Child, Day of General Discussion on the Right of the Child to be Heard, 29 Sept. 2006, para. 8.

¹⁰⁵ Franklin, Anita and Patricia Sloper, 'Participation of Disabled Children and Young People in Decision Making within Social Services Departments: A survey of current and recent activities in England', *British*

the law,¹⁰⁶ children at risk, homeless children or street children, children with special needs, migrant children,¹⁰⁷ asylum seeking children and victims of trafficking, etc.¹⁰⁸ In this context, it is noteworthy that the Irish Ombudsman for Children is planning to develop partnership arrangements with organizations working with marginalized and vulnerable children in order to ensure that these children have a meaningful involvement in the future work of the office.¹⁰⁹ In addition, some places on the Irish Youth Advisory Panel are reserved for marginalized groups of young people to ensure inclusion and diversity.¹¹⁰ According to the information currently available, so far there are very few European IHRICs that explicitly address the complex issue of participation of marginalized or excluded children and young people.

Youth advisory body: a model for child participation?

One way to institutionalize child participation within European IHRICs has been to set up youth advisory bodies.¹¹¹ Currently a variety of models of youth advisory bodies exists, with

Journal of Social Work, Vol. 36, No. 5, 2006, pp. 723–741; “Disabled children and young people are much less likely than those without disabilities to participate at any level, particularly those with complex needs or with only non-verbal communication. Research has shown only a small number of disabled children are involved in decisions about their care. Many professionals lack understanding, hold assumptions and/or underestimate disabled children’s competence and ability to participate,” UK Children’s Commissioners’ Report, June 2008, op. cit., para. 71.

¹⁰⁶ “Having listened to children and young people with experience of the criminal justice system, we represented their views in ministerial meetings and consultation responses. We voiced our concerns about the overuse of physical control and restraint being used against children,” Children’s Commissioner for England, *Annual Review 2007/08*, op. cit., p. 9.

¹⁰⁷ “Y nuevamente debemos apuntar las dificultades añadidas que presenta la presencia de los menores de origen extranjero para el ejercicio con plena capacidad de su derecho a la participación y en definitiva para poder expresar libre y adecuadamente su opinión. En absoluto se trata de falta de consideración hacia ellos. Por lo recogido a lo largo del proceso de investigación, el origen de estas dificultades añadidas para los menores extranjeros podría situarse en dos circunstancias: a) por un lado, la falta de adaptación y reajuste a sus peculiaridades con el fin de facilitarles la comunicación de sus pareceres y necesidades; una vez más el idioma y diferencias culturales juegan un papel decisivo a la hora de escucharles, b) por otro lado, para participar y expresarse es necesario conocer y es, precisamente el escaso o inadecuado conocimiento que estos menores y sus familias tienen de la sociedad que les recibe, otra de las circunstancias que les dificultan el acercamiento a procesos e instancias de participación y expresión que podrían ser utilizados,” Gimenez Romero, Carlos et al., *La integración de los menores de origen*, op. cit., p. 452; “Otro de las dificultades que podrían encontrar, según un entrevistado, es el desconocimiento del idioma (si se diera), la escasa información sobre espacios públicos de participación y las difíciles relaciones con la población autóctona sobre todo en la adolescencia” (ibid., p. 461); “La participación plena de los niños extranjeros en los espacios públicos de ocio y tiempo libre y en actividades culturales adquiere especial importancia para iniciar o consolidar el proceso de integración,” ibid., p. 474.

¹⁰⁸ “We have become a powerful voice for asylum seeking children, especially those who are here alone without their families. [...] Using his statutory powers, the Children’s Commissioner visited an asylum screening unit and a residential home. Since then we have seen concrete examples of change,” Children’s Commissioner for England, *Annual Review 2007/08*, op. cit., p. 8.

¹⁰⁹ Ombudsman for Children (Ireland), *Report of the Ombudsman for Children*, Apr. 2006, op. cit., pp.16–17.

¹¹⁰ Ombudsman for Children (Ireland), *Information Pack: Ombudsman for Children: An independent voice for children and young people*, p. 21, <www.oco.ie/aboutUs/information_pack.aspx>.

¹¹¹ Examples of youth advisory bodies established by European IHRICs include the National Council’s Children’s Panel (Denmark), Comité Consultatif de Jeunes (France), Youth Advisory Panel (Ireland), Ombudsman’s Youth Council (Norway), Consejo de Participación Infantil del Defensor del Menor (Spain, Madrid), Consejo Asesor Joven (Spain, Catalonia), Youth Panel (United Kingdom, Northern Ireland), Reference Group (United Kingdom, Scotland), and Young People’s Advisory Groups for North Wales and for South Wales (United Kingdom, Wales).

differences in names, establishment process,¹¹² composition, mandate, elections and functions. We can assume that these differences may influence the degree and level of child interaction within each office. Generally speaking, common features are a broad mandate, flexibility and broad representation. Taking a comparative perspective, it might be asserted that the youth advisory bodies in Ireland, Northern Ireland, Scotland and Wales are formally more powerful and active.

In Norway,

the Ombudsman's youth council was launched during the fall of 2005. Through the 'Klar melding' [Speak your Mind] the Ombudsman receives questions related to children and young people. To a large extent, these questions are related to a difficult daily situation. The ombudsman wanted to establish a further dialogue with young people on issues that are of the Ombudsman's concern, and it was decided to establish a youth council consisting of young people from various schools in the Oslo-region.¹¹³

Scotland's Commissioner for Children is one of the institutions that is working in partnership with various support groups of children and young people:¹¹⁴ the Reference Group;¹¹⁵ the Care Action Group, initially set up as a consultation group to provide personal experiences and expertise of living in residential, foster, secure or respite care (12 members); and the Young People's Health Advisory Group, in partnership with NHS Education Scotland, with a specific policy focus on health (8 members), in order to provide a young people's perspective on health-related matters. The latter group identified as a top priority the issue of mental health among young people. In addition, the Ombuds is working in partnership with the Children's Parliament to gain access to the insights of younger children aged 8–13.¹¹⁶

The functioning of youth advisory bodies within European IHRICs is still very recent; therefore, it is still very difficult to express an opinion on their effectiveness and value added. In this context, it may be interesting to undertake an impact assessment of this model of child involvement within an official assessment of the effectiveness of Ombuds' work and activities.

What is the practical impact and the added value of the active involvement of children and adolescents from various backgrounds in the functioning of European IHRICs? IHRICs and children are mutually benefiting from close and active interactions. From the IHRICs' point

¹¹² Resolución de 5 de diciembre de 2006 del Defensor del Menor en la Comunidad de Madrid, por la que se crea el Consejo de Participación Infantil del Defensor del Menor, <www.defensordelmenor.org/documentacion/consejo_participacion.php>.

¹¹³ Ombudsman for Children (Norway), *Annual Report 2006*, p. 8, <www.barneombudet.no/sfiles/0/05/7/file/annual-2006.pdf>.

¹¹⁴ Scotland's Commissioner for Children and Young People, *Annual Report 2007–2008*, op. cit., pp. 7 and 21.

¹¹⁵ "The Reference Group is undergoing a formal evaluation that will inform its future direction. This year staff will be discussing with them what that future direction should be. Some young people are interested in shaping the office through involvement in governance issues, while others prefer a more concrete policy focus. We need to take account of the implications of sheer physical distance, and also the fact that our young members have other interests and commitments, including studying and exams. We have to get the right balance between involving them in lots of things, and involving them more meaningfully in a few things; between organisational issues and very concrete policy and practice issues that are relevant to their lives," *ibid*.

¹¹⁶ *Ibid*.

of view, children's participation helps Ombuds for children receive and gather first-hand information and the perspective of children on how they are experiencing their daily life and which human rights violations they are facing. Neglecting the importance of child participation may make it very difficult for ombuds institutions to become child-focused and child-sensitive independent bodies.

Furthermore, effective participation mechanisms enable IHRICs to play a crucial role in bringing children's views to the attention of decision makers, and in addressing issues that are affecting children in a broader way. According to the Irish Ombudsman for Children,

While many of these issues have been raised and resolved on an individual basis, there are significant areas of concern which have wider implications. These are issues that my team and I will explore further: the mechanisms used in the public sector to deal with inappropriate behaviour towards children; the protection of all children in State care; support to parents and families of children with chronic illness and or disabilities.¹¹⁷

In Malta,

The Commissioner for Children can also receive individual complaints as long as local existing remedies have been exhausted. This has been instrumental in slowly getting together a bird's eye view of the situation of children and young people in Malta, particularly those gaps in the system which are lacking or not being catered for.¹¹⁸

In the opinion of the English Children's Commissioner, the Office has used its knowledge and experience to change children's lives for the better.¹¹⁹

From a comparative point of view, some IHRICs show more proactiveness than others in ensuring the participation of children and young people in their functioning. It may be argued that their openness to working in partnership with children and young people depends on various factors, including their mandate, understanding and interpretation of their role and functions, human and financial resources, expertise and experience in the field of child participation and perception of childhood. These same factors also have an impact on the extent to which IHRICs advocate for child participation within the society at large. Are European IHRICs effective and active ambassadors of article 12 of CRC at national level?

¹¹⁷ Ombudsman for Children (Ireland), *Annual Report 2007*, op. cit., p. 11.

¹¹⁸ Commissioner for Children (Malta), Annual Update for 2006 ENOC Meeting, in 2006 ENOC Report, p. 95.

¹¹⁹ Children's Commissioner for England, *Annual Review 2007/08*, op. cit., p. 5.

4. IHRICS: ACTIVE ADVOCATES FOR CHILD PARTICIPATION IN ALL MATTERS AFFECTING THE CHILD?

IHRICs should play a proactive role in several major areas, especially in the area of child participation, in order to promote ethical and meaningful children's participation in all relevant arenas of children's lives and to promote and build on children's competence in national and local policy planning. In 2002–2005, the Swedish Children's Ombudsman ran a project, *The Right to be Heard*, whose aim was to find ways of communicating children's and young people's views to decision makers in a representative and understandable manner. This project proposed an information system called the Children Condition Index.¹²⁰

The questions addressed below are twofold: In which areas of children's lives are IHRICs promoting the implementation of article 12 of the CRC? How are European IHRICs advocating for child participation in all matters affecting the child?

Are IHRICs influenced by CRC Committee's recommendations related to respect for the views of the child in COBs? It is a very complex question, in the sense that there are multiple factors that might explain why IHRICs address specific dimensions of child participation. The CRC Committee's concluding observations could be one factor, but not the only one. The greater the interaction between IHRICs and the CRC Committee the more the Committee's influence is likely to be.

In which areas of children's lives are IHRICs promoting child participation?

In accordance with article 12 of the CRC, IHRICs should advocate for children's participation in all matters affecting the child and in relevant decision-making processes, including in a large variety of contexts, such as in the family, the home, alternative care, health care, education, play and recreation, the workplace, the community, and in situations of emergency or armed conflict. IHRICs should also consult with children and adolescents whether and how they would like to be involved in developing the agenda and the priority areas of the institution, including the staff and resources needed.

¹²⁰ "It is a project testing a new system for monitoring children's well being in Sweden and in five pilot countries, representing different development and transition cultures. Five pilot countries were selected in cooperation with Swedish International Development Cooperation Agency (Sida). The aim was to test the method in different environments. Countries on different development level as well as transition countries on different continents were selected. Other criteria used in the selection were experience of war and disasters, multi-ethnicity, migration, level of democracy and institutional capacity. Following countries participated beside Sweden: Bosnia Herzegovina (B a H), Peru, Sri Lanka, Tanzania and Vietnam. The information system the project proposes is called the Children Condition Index (CCI) and this index is based on the general Living Condition Index (LCI). The survey content has been adapted to each country after the LFA-workshop that started the project in each country. The survey content contains several standard (comparable) questions. CCI can generate easy accessible and useful information of children's satisfaction in total and by component. The impact of each component on the total satisfaction is also presented," Report from the Children's Ombudsman (Sweden), *The Right to be Heard*, op. cit.

Table 4.1: Examples of activities of IHRICs promoting child participation

Areas of children's lives	Country	Specific activities
1. Criminal proceedings/ Juvenile justice	Ireland	<ul style="list-style-type: none"> Promotion of child participation and understanding of any child of 10 or 11 years of age exposed to criminal proceedings.^a
2. Civil and administrative proceedings (divorce, custody, alimony, adoption...) ^b	Luxembourg	<ul style="list-style-type: none"> Advice to take better account of the best interests of the child and respect for his/her view in divorce proceedings.^c
3. Political life/ Decision-making process/ Local government	Finland	<ul style="list-style-type: none"> Promoted actions by municipal decision makers to promote children's participation.^d Advocated greater opportunities for participation for Sami children and young people, in order for them to influence language and cultural matters in school, local municipalities and in the Sami Parliament.^e Sent a letter to 1500 people in positions of influence in Finland, reminding them of children's right to be heard and to participate, and explaining the CRC.^f
	Luxembourg	<ul style="list-style-type: none"> Promoted the establishment of municipal councils of children.^g
	Norway	<ul style="list-style-type: none"> Promoted initiative to lower voting age to 16 years in local and regional elections.^h
	United Kingdom (England)	<ul style="list-style-type: none"> Promoted child influence over national and local policy; 39 children involved in the Happy and Healthy project shared their views with the Secretary of State and 34 children shared their experience and views with 28 parliamentarians.ⁱ
	Sweden	<ul style="list-style-type: none"> Provided guidelines for auditors at local and regional levels to apply a child perspective and ensure accessibility and child participation.^j
4. Schools/ Educational systems	Slovenia	<ul style="list-style-type: none"> Promoted respect for the right of children to free expression of their opinions in schools and educational institutions.^k
	Spain (Madrid)	<ul style="list-style-type: none"> Promoted participation in school life in 2006 annual report.^l
	Spain (Basque Region)	<ul style="list-style-type: none"> Promoted participation in school life in 2007 annual report.^m
	United Kingdom (England)	<ul style="list-style-type: none"> Promoted child involvement in school councils.ⁿ

	United Kingdom (Northern Ireland)	<ul style="list-style-type: none"> Launched Democra School programme, which is designed to support and encourage the development of meaningful school councils and the practice of democracy in the school environment; the Office is developing a guidance pack that shows how practical steps can be taken to involve pupils in school councils.^o
5. Cultural life	Luxembourg	<ul style="list-style-type: none"> Promoted child participation in cultural and artistic life.^p
6. Health care, health services, health planning	United Kingdom (Scotland)	<ul style="list-style-type: none"> Set up a Young People's Health Advisory Group in order to provide a young people's perspective on health-related matters (in partnership with NHS Education Scotland)
7. Child care and protection systems	United Kingdom (Scotland)	<ul style="list-style-type: none"> Set up a Care Action Group to provide child expertise on the system for children in care.

Notes to table 4.1

^a "As regards the European Convention on Human Rights (ECHR), while the European Court of Human Rights in the cases of T and V v. the UK (Bulger Case) held that a minimum age of criminal responsibility of 10 years of age was not, in and of itself, a violation of the Convention, it held that the failure to adapt the court proceedings to ensure the child's right to participate effectively in his trial did violate the Convention. It should be noted that any child of 10 or 11 years of age exposed to proceedings in the criminal courts of this State in which their effective participation and understanding is not guaranteed could find the required ECHR procedural requirements lacking," Advice of the Ombudsman for Children (Ireland) on the proposed changes to the Children Act, 2001, Apr. 2006, p. 9, <www.oco.ie/whatsNew/advice_to_government.aspx?article=38c60fb4-cb35-469f-8900-7dcb0ad63a64>.

^b "The Committee reminds States parties that the right of the child to be heard in judicial and administrative proceedings applies to all relevant settings without limitation, including children separated from their parents, custody and adoption cases, children in conflict with the law, children victims of physical violence, sexual abuse or other violent crimes, asylum seeking and refugee children and children who have been the victims of armed conflict and in emergencies," CRC Committee, Report of Day of General Discussion on the Right of the Child to be Heard, 29 Sept. 2006, para. 39.

^c "Aussi l'ORK déplore que la nouvelle procédure ne prévoit pas, outre le fait que le juge puisse entendre les enfants mineurs sur leur demande et s'il l'estime nécessaire, de quelle façon les enfants mineurs peuvent, sans être parties au procès, intervenir formellement dans la procédure pour se faire entendre en étant notamment assisté d'un avocat pour enfants," Avis sur le projet de loi sur la réforme du divorce (projet de loi no. 5155 portant réforme du divorce), Luxembourg, 4 Dec. 2007, p. 2.

^d Press release 8/2008, 'Yearbook of the Ombudsman for Children stresses children's rights of participation', 17 June 2008, <www.lapsiasia.fi/en/current/press_releases>.

^e Press release, Inari, 21 Apr. 2008, 'Ombudsman for Children wants to see more opportunities for participation for Sami children', <www.lapsiasia.fi/en/current/press_releases>.

^f Press release, 19 Nov. 2007, 'Adults need to devote time to children's participation', <www.lapsiasia.fi/en/current/press_releases>.

^g *Annual Report 2005*, p. 24.

^h Ombudsman for Children (Norway), *Annual Report 2006*, p. 9, <www.barneombudet.no/sfiles/0/05/7/file/annual-2006.pdf>.

ⁱ Children's Commissioner for England, *Annual Review 2007/08*, p. 7, <www.11million.org.uk/resource/w25igu2zliy93yzfylvbkhdpb.pdf>.

^j "Children and young people or representatives of children and young people must be considered experts on matters that concern this specific target group," Office of the Children's Ombudsman in Sweden, 'Prepared for Audits: The UN Convention on the Rights of the Child as a tool for auditors in local authorities, county councils and regions', p. 3, <www.crin.org/docs/Prepared%20for%20Audits_2007.pdf>.

^k "[w]e are working to make learning about children's rights part of the regular curriculum of all schools, and we are also cooperating with the School for Head Teachers, which trains teaching staff. Among the latter, the

belief that children's rights are more of an obstacle in the teaching process than an essential part of it is more widespread than it should be. [...] In general we can say that in Slovenia the opinion that a child is, above all, the object of education, and thus the object and not the subject of rights, is slowly changing. Among pupils, the process of gaining self-confidence and greater awareness about their rights – and obligations – is changing slowly and gradually,” Conference in Thessaloniki, 1 Oct. 2005, Tone Dolčič, Deputy Human Rights Ombudsman, ‘The Right of Children to Free Expression of their Opinion in Schools and Educational Systems in the Republic of Slovenia’, <www.varuh-rs.si/index.php?id=966&L=6>; “The Human Rights Ombudsman has directed a lot of attention towards direct contact with youth and their teachers since the Department for Children’s Rights was established,” Human Rights Ombudsman (Slovenia), *Annual Report 2006*, p. 78.

^l “La importancia de las decisiones y las medidas que se adoptan en el centro (los criterios de distribución del alumnado por clases, la utilización formativa de las actividades extraescolares, la participación del alumnado en la vida y organización escolar, el procedimiento de actuación ante el incumplimiento de las normas de convivencia...) son determinantes de muchos de los problemas de relación que se presentan posteriormente. Las prácticas escolares que se caracterizan por incrementar el protagonismo del alumnado en la construcción de conocimientos y valores, la organización de la enseñanza en equipos heterogéneos de aprendizaje, la promoción del asociacionismo juvenil y de las familias [...] promueven el desarrollo de conductas prosociales de colaboración y, en definitiva, el aprendizaje de la convivencia,” Defensor del Menor de la Comunidad de Madrid, *Informe Anual 2006*, pp. 163–166,

<www.defensordelmenor.org/upload/documentacion/informes/informeAnual2006.pdf>.

^m Ararteko (Basque Region), *Informe al Parlamento Vasco 2007*, pp. 414–416 <www.ararteko.net/RecursosWeb/DOCUMENTOS/1/1_1214_3.pdf>.

ⁿ Children’s Commissioner for England, *Annual Review 2007/08*, op. cit., p. 10; “The participation of children and young people at both a local and national level, for example, through Funky Dragon and through school councils which are a statutory requirement in schools,” UK Children’s Commissioners’ Report to the UN Committee on the Rights of the Child, June 2008, p. 5.

^o <www.niccy.org/democra.aspx?menuid=620>.

^p *Annual Report 2005*, p. 24.

Consequently, children might contribute to shaping policies, procedures, practices and services that interest and affect them. Are IHRICs also promoting the specific right to be heard in any judicial or administrative proceedings affecting children? In which proceedings (civil proceeding, juvenile justice system, child protection systems, immigration and asylum proceedings, seeking redress and remedies)? Which level of participation is promoted by European IHRICs?

According to the Irish Ombudsman for Children, “the range of areas of children’s lives examined through participation activities to date has been focused around what might be termed the softer issues such as play or recreational spaces.”¹²¹ The distinction between softer and harder areas for child participation is a very useful theoretical tool in this area.

Table 4.1 provides particular examples of advocacy activities for child participation that have been carried out by IHRICs in Europe. As depicted there, no specific advocacy or promotional work of IHRICs regarding child participation has been found in the areas of law reform and immigration and asylum procedures. That does not mean that European IHRICs are not working on these issues, since the table is not an exhaustive compilation. In light of the information available up to now, a breach might be detected between the theory and the practice of IHRICs in Europe, in the sense that IHRICs are prioritizing some areas for advocating child participation and neglecting or ignoring others. For instance, promoting child participation within schools is a very common topic for European IHRICs. One reason

¹²¹ Ombudsman for Children (Ireland), *Report of the Ombudsman for Children*, Apr. 2006, op. cit., p. 15.

for that might be that it is a ‘softer’ and more consensual subject than child participation in detention centres, for instance. In this context, the dimensions of the perception of childhood, the proactiveness of ombuds, and their individual personalities may play a significant role. Furthermore, there are very rare specific examples of IHRICs’ advocacy work concerning marginalized or excluded children and adolescents, and very young children.

How are IHRICs promoting child participation?

In light of the specific examples gathered throughout the drafting of this paper, it seems that IHRICs are advocating for child participation directly and indirectly by a variety of means, including by handling individual and collective complaints; undertaking research and investigation; performing advisory functions and promoting children’s rights – and examples have also been given of how children and adolescents are consulted and involved in the design of those functions and events. In several annual reports of activities, European IHRICs place special emphasis on the specific issue of children’s participation. Examples include the 2008 annual report of the Finnish Ombudsman for Children, and one section of the 2005 annual report of activities submitted by the Luxembourg Ombuds-Committee for the Rights of the Child.¹²²

Consequently, there is currently a wide range of activities supportive of children’s participatory rights. The methods and tools that are promoted by IHRICs are various, including play consultations, formal structures, and training and capacity-building activities. In a 1999 comment, the CRC Committee

recalls that dissemination and awareness-raising about the rights of the child are most effective when conceived as a process of social change, of interaction and dialogue rather than lecturing. Raising awareness should involve all sectors of society, including children and young people. Children, including adolescents, have the right to participate in raising awareness about their rights to the maximum extent of their evolving capacities.¹²³

According to the Slovenian Human Rights Ombudsman, the promotion of children’s rights is one of the ombudsman’s most important tasks.¹²⁴

Table 4.2 gathers some specific examples of training activities that are designed for children and adolescents.

¹²² *Rapport Annuel 2005 au gouvernement et à la chambre des députés*, pp. 22–24, <www.ork.lu/PDFs/rapport2005.pdf>.

¹²³ Committee on the Rights of the Child, Tenth Anniversary Commemorative Meeting, op. cit., para. 291k.

¹²⁴ Tone Dolčič, Deputy Human Rights Ombudsman, ‘The Right of Children to Free Expression of their Opinion in Schools and Educational Systems in the Republic of Slovenia’, Conference in Thessaloniki, 1 Oct. 2005, <www.varuh-rs.si/index.php?id=966&L=6>.

Table 4.2: Examples of training/capacity-building activities for children and adolescents

Country	Specific activities
Ireland	<ul style="list-style-type: none"> • Hosted a range of educational and other activities supportive of children’s rights and participation.^a • Organized ‘Lab’, a set of education workshops directed at students from primary and post-primary schools and members of youth groups for learning about children’s rights (focus on CRC and Ombuds’ Office).^b
Malta	<ul style="list-style-type: none"> • Organized children’s rights course for children and young people (13–16 years old) based on the CRC.^c
Scotland	<ul style="list-style-type: none"> • Members of the Children’s Commissioner’s young people’s groups helped choose an illustrator to produce two versions of each of the 42 rights in the Convention (one version for children and one for young people), and a summary of the main principles in the CRC.^d
Slovenia	<ul style="list-style-type: none"> • The Human Rights Ombudsman joined the My Rights project, which was launched by several NGOs in Slovenia. It is a nationwide project aimed at raising awareness of children’s rights among children. To inform children, organizers have compiled a kit consisting of a CD-ROM and flash cards, designed with the participation of children.^e

^a Ombudsman for Children (Ireland), *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland’s Second Report to the Committee*, Apr. 2006, p. 16.

^b Ombudsman for Children (Ireland), *Information Pack: Ombudsman for Children: An Independent voice for children and young people*, pp. 21–22, <www.oco.ie/aboutUs/information_pack.aspx>.

^c Commissioner for Children (Malta), *Annual Report 2006*, p. 14, and Annual Update for 2006 ENOC Meeting, in 2006 ENOC Report, pp. 93–94.

^d Scotland’s Commissioner for Children and Young People, *Annual Report 2007–2008*, June 2008, p. 10, <www.sccyp.org.uk/webpages/pr_single.php?article=Annual%20Report%202007-2008%20&id=140>.

^e “‘My Rights’ Project to Raise Awareness of Children’s Rights”, news article, 30 Sept. 2003, <[www.varuh-rs.si/index.php?id=106&L=6&tx_ttnews\[tt_news\]=1507&tx_ttnews\[backPid\]=878&cHash=60fe2cfbc0](http://www.varuh-rs.si/index.php?id=106&L=6&tx_ttnews[tt_news]=1507&tx_ttnews[backPid]=878&cHash=60fe2cfbc0)>.

In a conference devoted to the right of children to free expression of their opinion in schools and educational institutions in Slovenia, held in October 2005 in Thessaloniki, the Slovenian Human Rights Ombudsman honestly acknowledged the following:

I should end by admitting that even at the Human Rights Ombudsman’s office we have still not found an effective way of encouraging children and adolescents to exercise their right to express their own opinion in the sense that the ombudsman can listen to them and react appropriately. Children and adolescents rarely apply to the ombudsman, and only in cases of specific violations of their rights in relation to education (assessment of knowledge, questions of status). To date, we have dealt with no complaints alleging a violation of the right to express one’s opinion. This of course does not mean that such violations do not occur, but it probably does mean that other rights are more important to children and adolescents, or that they are not even aware of this right. In the ombudsman’s conversations with children, the latter tend to open up and talk about their problems when teachers are not present. When teachers are present, they talk about other topics and issues.¹²⁵

¹²⁵ Ibid.

5. CONCLUDING REMARKS AND RECOMMENDATIONS

According to the CRC Committee, “in the early years of the Convention, NGOs played a notable role in pioneering participatory approaches with children.” What about IHRICs in Europe? Are European IHRICs champions of a culture of participation? What are the learning points from this paper?

To voice the opinions of children and adolescents, to incorporate children’s views into their daily work, to set the priorities and develop the plans and strategies of IHRICs all constitute increasing concerns and challenges for most of the IHRICs in Europe. However, there is a notable diversity between institutions in Europe; indeed, the degree of maturity, expertise and experience concerning child participation greatly varies between European IHRICs. Reasons that might explain these differences include legislation and mandate, know-how, the experience, seniority and personality of the head of office, financial resources, perceptions of childhood and children’s rights, the proactiveness of the civil society and children themselves in advocating for their involvement, etc.¹²⁶ IHRICs’ structure, functioning, priorities and activities implicitly reflect the Ombudsperson’s own approach, perception and perspective related to childhood and children’s rights. Indeed, the “ombuds’ perception of childhood is crucial for her work for and with children.”¹²⁷

By spreading the word as to how they actively involve children in their own functioning, IHRICs are advocates for a culture of children’s participation in all matters affecting them. Legislation is not enough to change mindsets; there is a need for an array of strategies to change traditional attitudes and practices within families, schools and communities, among decision makers and within some IHRICs themselves.¹²⁸ IHRICs are increasingly demonstrating that there are many ways for children to be able to have a say, but without accessibility and a child friendly structure, no meaningful participation is possible. The understanding of children as social actors and active players should provide additional reasons to argue that ombuds for children should be accessible to children and young people and work in partnership with them.¹²⁹ As highlighted by Trond Waage, “children are the agent for change and the ombudsman should act as their ambassador.”¹³⁰

In light of the information available, it appears that, generally speaking, separate models of ombuds for children are more active in the issue of child participation than integrated ones.

¹²⁶ “L’action conjuguée du Défenseur des Enfants, de responsables politiques et de nombreuses associations ont contribué, sur de nombreux points, à une évolution des travaux législatifs, réglementaires ou des mentalités en faveur du respect des droits des enfants. Ces résultats ont été favorables et ont permis des progrès,” Avis du 26 avril 2005 de la Défenseure des Enfants, ‘Six ans au service des enfants et adolescents’, <www.defenseurdesenfants.fr/avis.php#Avis%20du%2026%20avril%202005>.

¹²⁷ Waage, Trond, ‘Lo sviluppo di istituzioni nazionali indipendenti’, op. cit.

¹²⁸ UNICEF, *Implementation Handbook*, op. cit., p. 161.

¹²⁹ See Draft Report: Consultative meeting with Professor Dion Summer, op. cit., p. 4.

¹³⁰ Waage, Trond, ‘Lo sviluppo di istituzioni nazionali indipendenti’, op. cit.; “En contra de lo que parece, los jóvenes de hoy tienen capacidad para ilusionarse por los valores ‘con mayúscula’. Distintas experiencias han puesto de manifiesto que los jóvenes son capaces de comprometerse si disponen de un marco donde puedan expresar sus anhelos y necesidades, y de un mayor espacio para participar de manera continuada,” Defensor del Menor de la Comunidad de Madrid, *Informe Anual 2006*, op. cit., p. 221.

This finding might supply an additional argument for advocating for the creation of separate institutions rather than integrated ones.

Advocating for child participation and actively involving children in their work and activities are challenging tasks for IHRICs. It is a way for them to fight against the traditional invisibility that negatively affects children and adolescents in most parts of the world. As stressed by the Norwegian Office of the Ombudsman for Children,

children often get lost in the political shuffle. Invisible in most societies, children have no vote, voice or avenues to demand their rights. Their interests are rarely represented in political processes or decision making, and despite rhetoric to the contrary, children are not a high priority in policy making or in the allocation of budgetary and other resources. Children need a force that can magnify their voices, so that their views and interests are effectively represented to Government and broader society. Therefore, special arrangements are needed to ensure the effective promotion and protection of children's rights. In countries which are seeking to develop a human rights culture overall, establishing an office focused on the human rights of children can be a logical start.¹³¹

Regional networking and organizations, such as ENOC, should constitute an appropriate space to share experience, to promote capacity building on child participation and to share good practices related to child participation, as well as to discuss and adopt common guidelines about ethical and meaningful child participation.¹³² ENOC could be an efficient channel in advocating for the image of the ombuds for children as champion, promoter and facilitator for the participation of all children and adolescents (of whatever gender, age, nationality, etc.) through an inclusive and non-discriminatory approach.

These are some recommendations based on the good practice identified in this research paper:

- IHRICs to ask children and young people (of different ages and from different backgrounds) whether and how they would like to be involved in the various activities

¹³¹ <www.barneombudet.no/english/about_the_/why_an_omb/>; “Children are largely invisible in law and policy and in decision-making due to the lack of integrated structures to hear children’s views, the absence of mechanisms to child proof law, policy and budgets, and the absence of effective structures to co-ordinate the implementation of children’s rights which cut across areas of government responsibility. To address this barrier, children’s voices must be integrated into mainstream political and administrative decision-making structures at local and central levels, and consideration given to introducing a legal duty to incorporate children’s views into decisions that affect them,” ‘Barriers to the Realization of Children’s Rights’, op. cit., Executive Summary, 29 Aug. 2007, in Ombudsman for Children (Ireland), *Annual Report 2007*, op. cit., p. 53.

¹³² “Future possibilities that will be explored this year include the Swedish model of ‘contact classes’ as a vehicle for consultation. This involves selected schools agreeing to facilitate on-line consultations with pupils twice per year. SCCYP is exploring what added value we can give to the very promising UNICEF Rights Respecting Schools project. [...] We will be preparing the ground for our next national consultation with children and young people, scheduled for 2009. In doing so, SCCYP staff will learn from the experience of colleagues in England, Wales, Northern Ireland and the Republic of Ireland. Together we form BINOCC – The British and Irish Network of Ombudsmen and Commissioners for Children. The offices are constantly learning from and overtaking each other in terms of good practice. In particular, the Republic of Ireland recently ran a very successful referendum for children that SCCYP will be examining closely to see what we can learn from it,” Scotland’s Commissioner for Children and Young People, *Annual Report 2007–2008*, op. cit., p. 23.

relating to the mandate of the IHRICs. Based on their responses a strategy for child participation could be developed.

- IHRICs to press for the financial resources needed to promote ethical and meaningful child participation, for instance, to
 - build the capacity of their staff on how to consult with and involve children;
 - develop child friendly structures and mechanisms for children and young people from various backgrounds to access the office – and for the IHRIC office to reach children (in person and through new technologies such as the internet);
 - develop child friendly material, together with children and young people, on the role of the IHRICs and on how children can be involved;
 - evaluate the impact of child participation in the IHRIC offices (including the impact of youth advisory councils), document good practice and design further actions according to the outcome of the evaluation.
- Child participation in the office of the IHRICs to be institutionalized, through legislation and awareness raising. Child participation to become an integral part of the mandate, vision, strategies and plans of the IHRICs.
- IHRICs to develop structures for involving children in the recruitment of staff and in the physical design of the office, etc.
- IHRICs to promote and advocate for children’s meaningful involvement in policy making and in governmental decision-making processes, in areas which affect children and in which children would like to be involved.
- IHRICs to promote children’s participation in CRC reporting and monitoring.
- IHRICs to pay specific attention to address the gaps identified in this paper, that is, to find ways of consulting and involving children in law reform and immigration and asylum procedures and to promote the participation of marginalized or excluded children and adolescents, as well as children from the very youngest age group.
- Governments, UN agencies, NGOs, children and young people to inform the public about the role of IHRICs and press the IHRICs to further strengthen their child participatory approaches.