

**ENOC**

European Network of Ombudspersons for Children

# **The role and mandate of children's ombudspersons in Europe:**

## **Safeguarding and promoting children's rights and ensuring children's views are taken seriously**

**ENOC SURVEY 2010**

**Prepared by RACHEL HODGKIN and PETER NEWELL**

**December 2010**

**REPORT**

“It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights”. Committee on the Rights of the Child, General Comment No. 2, 2002



## **The European Network of Ombudspersons for Children**

### **(ENOC)**

The European Network of Ombudspersons for Children (ENOC) is a not-for-profit association of independent children's rights institutions (ICRIs). Its mandate is to facilitate the promotion and protection of the rights of children, as formulated in the UN Convention on the Rights of the Child:

- to serve as a forum of colleagues for the exchange of information, capacity-building and professional support among the members;
- to promote and safeguard children's rights and to work on strategies for the fullest possible implementation of the Convention on the Rights of the Child;
- to promote the establishment of independent children's rights institutions (ICRIs) in countries worldwide and offer support to such initiatives;
- to stimulate contacts and support with and among other ICRIs worldwide and their networks.

ENOC was established at a meeting in Trondheim, Norway in 1997, when an initial group of 10 institutions met, together with UNICEF (UNICEF's regional office for Western Europe in Geneva agreed to provide a Secretariat for ENOC for the first 10 years. In 2008 ENOC established an independent Secretariat in Strasbourg, with office accommodation provided by the Council of Europe). ENOC holds an annual meeting each year. By 2010 it had grown to include 37 institutions in 29 countries, including in 19 of the 27 EU member states. The Network adopted detailed "Standards for independent children's rights institutions" in 2001.

There are two categories of membership of ENOC – full and associate. Full membership is open to independent children's rights institutions within the 47 Council of Europe member-states which meet certain criteria, including being established through legislation with the function of protecting and promoting children's rights. Where the Bureau of ENOC decides that these criteria are not fully met, the institution may be considered for associate membership, if it demonstrates it is actively seeking to meet the criteria. Associate members are able to attend ENOC meetings and participate fully in ENOC activities and information-sharing.

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## INTRODUCTION

The 2010 work programme for ENOC includes a survey to identify how ENOC member-institutions (full and associate members) could be further strengthened in order to better protect children's rights and make children's voices more widely heard. The results also identify challenges to which members should consider responding collectively.

By May 31 2010 (last update October 2010), 27 of ENOC's 37 members (see list on page 30) had responded to 80 questions. This report provides a summary and illustrations from the responses, presented at ENOC's special meeting in Malta – June 6-7 - and used in discussions to develop recommendations and a position statement.

For the sake of brevity and ease of reading the full titles of the institutions are not used in the report; instead, the name of the institutions' country/city/region is given, or sometimes we refer to an unspecific "children's ombudsperson" or "institution".

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## **Section 1 – Is the legislation establishing the institution adequate?**

In answer to the last question in this group, **“Have weaknesses in the legislation which limit the effectiveness of the institution been identified?”**

Thirteen institutions answered “yes”, and twelve “no” (but only six without qualification). It seems clear that the legislation establishing these relatively new institutions is increasingly under scrutiny to review whether it is adequate to promote children’s rights effectively. Some institutions have themselves commissioned expert evaluations of the legislation and some have submitted proposals to their government or parliament or both. Several have raised the issue in their reports to the Committee on the Rights of the Child and in some cases the Committee has made specific recommendations for strengthening of legislation in its examination of states’ reports under the CRC.

Ireland has consistently highlighted certain deficiencies in the Ombudsman for Children Act since it laid its first annual report before Parliament. Its response identified the main areas of concern as: “limitations to the investigatory mandate of the Office; the existence of a ministerial veto on investigations; and the fact that our budget comes under the same subhead (vote) as the Department of Health and Children, rather than an independent vote”. Ireland has also raised its concerns with the Committee on the Rights of the Child. The Committee, in its 2006 concluding observations on Ireland’s most recent CRC report, welcomed the establishment of the Ombudsman for Children but made specific recommendations, drawing attention to its General Comment No. 2: “... The Committee recommends that the State party, together with the Ombudsman for Children, review and propose amendments to the specific provisions which limit the scope of the Ombudsman’s Office investigative powers with a view to eliminating possible gaps which may result in a violation of children’s rights... In order to ensure the independent functioning of the Office of the Ombudsman, the Committee recommends that the State party seek ways and means to provide the Office of the Ombudsman with financial resources directly through the Oireachtas (National Parliament) and the Department of Finance....”. (CRC/C/IRL/CO/2 September 2006, paras. 13 – 15)

In Wales, there was a detailed independent evaluation of the law in 2007, identifying weaknesses and making many recommendations, taking account in particular of the legislation establishing similar institutions across the UK, the international guidance including the Paris Principles, CRC GC No. 2 and ENOC’s Standards, and the experience of the Commissioner’s office over the first six years. (Report available at: [http://www.assemblywales.org/vc7\\_-\\_children\\_s\\_commissioner\\_for\\_wales.pdf](http://www.assemblywales.org/vc7_-_children_s_commissioner_for_wales.pdf))

When the UK was last examined by the Committee on the Rights of the Child in 2008, the four Commissioners for England, Northern Ireland, Wales and Scotland submitted a joint report, noting that the mandates, independence and funding arrangements of each Commissioner vary considerably and expressing concern that no Commissioner’s office fully complies with the characteristics of national human rights institutions set out by the Committee or with the Paris Principles.

The report recommended that the UK Government and devolved administrations should ensure that each Commissioner is compliant with the Paris Principles and that,

as national human rights institutions, the Commissioners are accountable to their respective Parliament or Assembly rather than a government department; while acknowledging the need for limits on overall funding, the UK Government and devolved administrations must permit the Commissioners to set their own staffing levels and structure their own budgets in terms of the substantive work to be carried out without interference or conditions imposed by government, adding other recommendations.

In its October 2008 concluding observations, the Committee welcomed the establishment of the four Commissioners, but expressed concern “that their independence and powers are limited and that they are not established in full compliance with the Paris Principles. The Committee recommends that the State party ensure that all four established Commissioners be independent, in compliance with the Paris Principles and mandated, *inter alia*, to receive and investigate complaints from or on behalf of children concerning violations of their rights. These bodies should be equipped with the necessary human and financial resources in order to carry out their mandate in an effective and coordinated manner so that the rights of all children in all parts of the State party are safeguarded.” (CRC/C/GBR/CO/4, October 2008, paras. 16 and 17)

Similarly, following examination of France’s fourth CRC report in June 2009 (and before the current threat to the Défenseur des Enfants), the Committee recommended that France should “make further progress in enhancing the role of the Children’s Ombudsperson, in particular with respect to its individual complaint mechanism and provide it with adequate financial and human resources to carry out its mandate effectively...”. (CRC/C/FRA/CO/4, June 2009, paras. 16 and 17)

Azerbaijan, while stating that the legislation does not necessarily limit the effectiveness of the institution, and that children can lodge complaints with it, noted that as a general ombudsman office it lacks specific provisions on children’s rights which should be in the law. Another limitation – common to many of the general ombudsman institutions – is that it is established “to restore human rights and freedoms violated by governmental and municipal bodies and officials of the Republic of Azerbaijan. But it is a known fact that the rights of children are violated in their homes, schools, streets, communities, workplaces etc. as well” (see also section 5, page 17).

Azerbaijan also noted the recommendation of the Committee on the Rights of the Child following its examination of Azerbaijan’s second report under the CRC: “The Committee recommends that the State party, taking into account the Committee’s general comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (CRC/GC/2002/2), include within the Office of the Ombudsman either an identifiable commissioner specifically responsible for children’s rights or a specific section or division responsible for children’s rights. Furthermore, it should be provided with adequate human and financial resources, deal with complaints from children in a child-sensitive and expeditious manner and provide remedies for violations of their rights under the Convention”.

The French Community of Belgium noted that “For the moment, the institution is established by a decree of the Parliament, but is under the authority of the Government”. A draft decree which would move authority to the Parliament is under discussion now.

Finland’s legislation is only five years old and has not been evaluated, but the response suggests that a right to report to the parliament directly about the activities in general would be of some help.

Croatia raised a specific gap in the legislation – that it is not clear that the Public Prosecution Office (PPO) is obliged to submit any reports to the Ombudsperson, as all other institutions are (except for courts); the PPO is a very important link in the chain of providing effective protection against violations of children's rights.

As noted in answer to question 1a, the staff of a number of institutions are seconded from or provided by government departments (civil service). Cyprus reported that this raised certain problems “such as lack of willingness of services to ‘loan’ officers; risks in relation to the accumulation of experience within the Institution; restricted career prospects for the staff; difficulties to attract competent staff for secondment to the Office”.

Cyprus also raised a problem of budgetary independence: despite legislation asserting the independent status of the institution, the Ministry of Finance had decided that the necessary budget should be incorporated in the budget of the Office of the Law Commissioner, because for the time being the holder of the two Offices is the same person. This compromises the principle of the Institution’s financial independence, supposedly safeguarded by the Paris Principles and the founding law.

Hungary reported that the powers to follow up proposals were not strong: “he/she can only follow them up, and if there is no positive change, he/she can criticize the investigated organ, or continue the investigations later”.

**Answers to the other questions in section 1 of the survey – summarised briefly below - provide more detail on the adequacy of the legislation in relation to particular powers or processes:**

**1a) Appropriate safeguards for appointment/dismissal of ombudsman and staff?**

Surprisingly no institutions stated that there were not appropriate safeguards, while 24 thought their law was satisfactory (with one “yes and no” and two no response).

Norway stated that it hoped for a review of the appointment process; there has been a change in the mandate period, from two periods of four years to one period of six years, proposed by the Ombudsman.

The Committee’s General Comment No. 2 states : “NHRIs should have appropriate and transparent appointment procedures, including an open and competitive selection process.” (para.12). ENOC’s Standards echo this, adding a proposal that children should be involved: “A transparent procedure for appointments should be established,



for example including advertising the appointment publicly and/or establishing an appointments committee including, eg, children, children's NGOs, governmental representatives, etc.”

A minority of ombudspople/commissioners are appointed simply by government, by a designated minister. Malta's is appointed (and may also be suspended or dismissed for reasons listed in the law) by the Prime Minister after consultation with the Social Affairs Committee of the House of Representatives. Sweden reports: “The Children's Ombudsman is appointed by the Swedish government for a term of six years. There is an open recruitment for appointment of both ombudsman and staff... There are appropriate and sufficient safeguards for both appointment and dismissal of ombudsman and staff.” In Finland, appointment is made by the Council of State (Government), with an open recruitment process.

The appointment process in separate institutions varies widely.

In Lithuania, appointment is by the Parliament on the recommendation of the Speaker of the Parliament. The legislation provides six possible reasons for dismissal, including that more than half of the total number of members of the Parliament have expressed no-confidence.

In Ireland, the Ombudsman for Children is appointed by the President following a resolution of both Houses of the Oireachtas (Parliament). The Ombudsman can only be removed from office on a number of grounds specified in section 4 of the Ombudsman for Children Act 2002, and then only by the President with the agreement of both Houses of Parliament.

In Cyprus, the Commissioner is appointed by the Council of Ministers and requirements include being recognized for academic and professional knowledge and experience in matters concerning children. The appointment requires children's participation: “provided that before any decision is taken, the Council hears the views of the children, as expressed through the Pan-Cyprian Coordinating Students' Committee and the Children's Parliament, concerning the skills and the qualifications the children expect the Commissioner to have”. Similarly in Wales, regulations require that “the views of relevant children as to any candidates interviewed for the appointment” are taken into account. (See also section 7, relationships with children)

In Scotland, the Commissioner is nominated by the Scottish Parliament and appointed by the Queen for a period of five years (this is about to change from a maximum of two terms of five years to a single term of office of eight years). In practice, interviews are held before a panel of seven Members of the Scottish Parliament (MSPs) of all major parties, including the Parliament's Presiding Officer (no party affiliation). The Commissioner may be removed if the Scottish Parliament passes a no confidence resolution voted for by not less than two thirds of those voting (this is about to change to a requirement for no less than two thirds of members of the Scottish parliament to vote in favour of removal - 87 out of 129 MSPs).

In Croatia, appointment/dismissal is by the Parliament on the recommendation of the Government. The institution comments: “We believe it would be better for the Government not to be involved in this process, since it shortlists candidates and

proposes only one person, about whom Parliament then gives an opinion.” There is also concern about one of the grounds which can be used to justify premature termination of the mandate of the Ombudsperson and her Deputy: “the non-acceptance of the annual report, which may affect the level of criticism expressed in such reports”.

Most general ombudspeople appear to be appointed by Parliament, by a majority of members varying from a half, to three fifths (Catalonia); to two thirds (Hungary, Portugal). The process often begins with a parliamentary committee, with a recommendation put to the full parliament.

Where there are Deputy Ombudspersons responsible for children’s rights within general ombudsman offices, in some cases the appointment of the deputies is simply internal. In others it is subject to parliamentary oversight. In Catalonia, the Deputy Ombudsman for children is proposed by the general ombudsman and approved by a Parliamentary Ombudsman Committee. In Greece, Deputy Ombudspersons, including the one for children’s rights, are appointed by decision of the Minister of Interior, Public Administration and Decentralization on the recommendation of the Ombudsman: “The Deputy Ombudsmen shall be relieved of their duties by decision of the Minister of Interior, Public Administration and Decentralization, on the recommendation of the Ombudsman, for physical or mental incapacity to perform their duties or inadequacy in executing their duties.” In Serbia and its Province Vojvodina, the Deputies, including the one responsible for children’s rights, are appointed by a majority of members of the National Parliament/Provincial Assembly, on the recommendation of the Ombudsman.

Terms of appointment also vary, and a majority may be reappointed for a second term. The shortest term appears to be Malta’s – three years with possibility of re-appointment. France has a single non-renewable term of six years; also Sweden.

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| <b>1b) Rights to set its own agenda and establish priorities and activities independently?</b> |
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There was unanimity that the legislation in itself is adequate (one institution did not respond) – although as noted above and in other sections, there are other ways in which institutions’ independence is threatened. Most institutions have legislation which explicitly defends their autonomy.

Malta commented that while the law states that

“...over these last 6 years it was felt that the amount of funds allocated in the subvention was not enough so the Ministries responsible for social policy and education supported the office by assigning officers through secondment while seeing to their salaries. This situation may lead to the presumption that their first loyalties would be to the respective Ministries and not to the Office of the Commissioner. However, it has to be noted that the personnel chosen have to have the approval of the Commissioner for Children. At the same time Art 13. does protect confidentiality ...This situation is also bound to change as from the next financial year, as it is being envisaged that the funds necessary for the present complement of seven employees will be directly credited to the Office of the Commissioner for Children.”

**1c) Rights to investigate?**

25 institutions found their powers to investigate adequate. Several institutions reported they had no right to carry out investigations into individual cases or complaints: Denmark's Executive Order states that "The National Council for Children cannot take up specific complaints for consideration"; Sweden can require information from national and local governmental bodies but is barred from interfering in individual cases. Similarly, Scotland's power of investigation cannot relate only to a particular child or young person and England is also barred, except that "where the Children's Commissioner considers that the case of an individual child in England raises issues of public policy of relevance to other children, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues".

Finland's Ombudsman for Children does not investigate cases of individual children or families: "This duty belongs to the General Parliamentary Ombudsman that acts as a supervisory institution also in the field of the rights of children. There are also other institutions that can investigate and deal with cases (the ombudsman for minorities, the Chancellor of Justice, the provincial state authorities)".

In Malta, the legislation states: "The Commissioner shall not carry out investigations concerning specific, individual conflicts between a child and its parents or guardians, or between the parents and guardians including matters concerning the exercise of parental responsibility and any other matter that falls within the competence of any court or tribunal established by law and in any such case the Commissioner shall submit to the complainant, the reason for the refusal."

Several institutions are barred from investigating a matter that is before a court of law. As noted elsewhere (section 5), some general ombudsman offices can only investigate complaints relating to governmental services or actions and others have powers of investigation limited to listed services and bodies.

**1d) Rights to acquire information and summon witnesses?**

24 institutions reported they have these powers, only Denmark – with no power to carry out investigations – answered "no". Most institutions appear to have strong powers.

**1e) Rights to report freely to the public, the media, etc?**

All institutions responded "yes", with no restrictions reported.

**1f) Rights to report freely to Parliament?**

Here too all institutions responded "yes". Some noted their obligation to make an annual report to parliament; many appear able to approach parliament or particular parliamentary committees.

**1g) Rights to enter children's institutions freely?**

20 institutions reported that they have this right, although in some, e.g. in France, Malta, Sweden and others, it is not included as a right in the law, but in practice there has been no obstruction. Scotland, Denmark and Ireland reported they had no right.

**1h) Rights to initiate and/or support legal action and to intervene in court cases on behalf of children?**

Just seven of the responding institutions have these powers, with 19 stating that they do not.

The Committee on the Rights of the Child's General Comment No. 2 states clearly:

“NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children's issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case.” (para. 14).

And an indicative list of the types of activities which institutions should carry out includes: taking legal proceedings to vindicate children's rights or providing legal assistance to children; engaging in mediation or conciliation processes, where appropriate; providing expertise in children's rights to the courts, in suitable cases as *amicus curiae* or *intervenor*... (para. 19(p), (q) and (r)).

The Paris Principles, while requiring that NHRIs “shall be vested with competence to promote and protect human rights” and “shall be given as broad a mandate as possible”, do not explicitly require that institutions have the right to initiate or pursue legal action.

Northern Ireland's Commissioner is able, subject to the leave of the court, to intervene in proceedings relating to a child or young person where the criteria set out in the legislation are satisfied. The Commissioner is also able to initiate court proceedings on behalf of an individual child or young person; also can act in the role of *amicus curae* or friend of the court, providing advice and assistance in respect of cases. But the Commissioner is concerned that she does not have the necessary “victim” status to challenge the legality of corporal punishment through the courts.

In Hungary and Serbia, the Ombudsman can make a motion to the Constitutional Court to examine the unconstitutionality of a legal act; in Hungary the institution can also refer issues to the public prosecutor's office, the Law Commission and the Parliament. Also in Portugal, while the Ombudsman does not intervene in court proceedings, nor support legal action, he can request the Constitutional Court to consider issues of unconstitutionality, pursuant to a complaint or on his own initiative. He can inform complainants of remedies available to them, and refer matters to the Public Prosecutor.

Belgium French Community has no formal power to initiate legal action on behalf of children but can support them to ensure the appointment of attorney.

Catalonia has no power to initiate legal action or to intervene in court cases, “but in cases where children’s rights might be violated and the state might have failed in protecting them, the cases are sent to the prosecutor”.

Also in Croatia: “If the Ombudsperson for Children... obtains knowledge that a child is being subject to physical or mental violence, sexual abuse, maltreatment or exploitation, negligence or careless treatment, he or she shall immediately file a report with the competent Public Prosecution Office, inform the competent centre for social welfare and propose measures for the protection of the rights and interests of the child”.

Similarly in France, the Défenseure may not intervene in any proceedings before a court nor may she question any court ruling. But she may make written observations to the Procureur de la République or to the Procureur Général (Attorney General), who relays the observations and informs the Ombudsperson of the results. She may also inform courts of dysfunctions in the legal system detrimental to children.

## Section 2 - Assessing institutions' independence

**Is the institution in reality free to act and speak out on any matter concerning children's human rights (all children, all rights – economic, social and cultural as well as civil and political)?**

All but one respondent institution confirmed that they are in reality free to act and speak out on any matter concerning children's human rights – all rights, all children - although some institutions qualified this by adding, for example “for the time being, although government bodies are not happy with that” (Serbia). Croatia similarly stated: “so far”, adding: “There have always been individuals and groups who do not agree with [the ombudsperson's] opinions, comment on and discuss them, and sometimes try to exert pressure on the institution”.

Malta, which answered neither yes nor no, stated: “Legislation ensures the independence of the Commissioner for Children. It has to be noted that along the years the Commissioners have carried out a number of investigations on matters concerning all children and all rights...”

There are limitations for some of the institutions working in countries which have partially but not completely devolved government. So “... while the Commissioner in Wales can speak out about non-devolved issues, he is unable to exercise all his functions in relation to them and therefore acts in conjunction with the Children's Commissioners for England, Scotland and Northern Ireland on non-devolved issues: for example on asylum issues...”.

A majority feel their independence is strong and accepted: “The institution has succeeded in achieving genuine freedom to act and speak out on a high level. It has been embedded in the conscience of the State and the wider society, and it has been recognised for the actions and initiatives developed... the institution has established its freedom to speak out freely and, most importantly, to be heard by all competent bodies” (Cyprus).

“Yes, absolutely”, responded Scotland: “The current and previous Commissioners have spoken out about a range of issues covering all children and all rights. Speaking out about some issues will lead to controversy in the media and amongst politicians, but there is no bar to the Commissioner raising any matter”.

Twenty three institutions stated that government ministers or officials or other bodies are unable to control any aspect of the institution's agenda or activities, but with some minor reservations.

Those indicating some control included Belgium's French Community, where for each period of the mandate, the Parliament provides a “non-exhaustive list of priority fields”, within which the general delegate carries out his mission: “But in fact the General Delegate has never seen his calendar and activities limited by Parliament”. Several institutions mentioned budget restrictions as a form of control (discussed in more detail below). “One potential problem, and the only way in which our plan and activities might be ‘controlled’, is budget restrictions, which are set annually by the Ministry of Finance. The Act is rather terse on the financing of the Office. There is no

guarantee of the level of budget allocation.” (Croatia). Ireland noted that the Minister for Health and Children can veto the Ombudsman carrying out an investigation, although this veto, confirmed in legislation, has never been used. The Government does set the overall budget for the institution. In Northern Ireland, the “sponsoring body” – the Office of the First Minister and Deputy First Minister - must approve the Commissioner’s corporate and business plans for the year – “potential for interference, although to date no substantive changes have been made, rather clarification sought etc. on matters outlined”.

Malta responded that “the Act guarantees that the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority. However, the office of the Commissioner for Children is very much dependent on the Government for funding, so activities may be curtailed owing to insufficient funding but not due to other pressures. At the same time the office is not precluded from tapping funds through other organisations...”

In Sweden, the Ombudsman is given “standing instructions” by the Government on an annual basis. “Usually these are ‘left open’... When given certain instructions, we usually have a dialogue with the Government in advance, which gives us the possibility to influence the instructions”. In Vojvodina, “the provincial MPs can state their opinions on some of the ombuds-activities. A certain amount of influence is possible with the adoption of the institutional budget...”.

Wales reports no control. But there are regular “liaison meetings” between key government departments and the Commissioner so that each is aware of the activities being undertaken – “however no influence on the Commissioner’s activities or agenda is sought. A protocol on the engagement of Government officials with the Commissioner is being finalized.”

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| <b>Adequate and secure resources, including appropriate and sufficient staffing and adequate premises?</b> |
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17 institutions responded “yes” and seven “no”, with three answering “yes”/“no” or not answering. Sweden, which thinks its resources are adequate and secure to carry out its mandate, made the obvious comment: “Of course, with a larger budget we could do even more to promote rights and interests of children and young people”.

Portugal notes the positive protection of its law which on the budget states that the Office of the Ombudsman shall have administrative and financial autonomy, its own premises and staff, as well as an annual budget, in compliance with its Organic Law. Specifically, the budgetary appropriations of the Office of the Ombudsman shall be contained in the budget of the Parliament. For the purpose of authorising expenses, the Ombudsman shall have powers similar to those of a Minister.

In Scotland too the budget is controlled by a parliamentary body: the Scottish Parliamentary Corporate Body (SPCB). Current legislation requires the SPCB “to pay the Commissioner any expenses that have been properly incurred in the exercise of his functions; in reality, our office makes an annual budget submission to the SPCB, and the SPCB has some leeway to approve (or otherwise) the full amount requested. Imminent changes to the legislation will formalise this process and require SPCB

approval of our annual spending plans. While we anticipate no interference with the Commissioner's right to choose his own activities and priorities, it will restrict the level and cost of activity that can be undertaken by the Commissioner's office... the SPCB has until now been respectful of the Commissioner's independence. There are some indications that the tone may change in the next few years, as the Parliament will be under further pressure to reduce its budget in the face of the fall-out of the recession. Our premises are adequate. Staff numbers can be, and have been set by the SPCB, and a recent request for an increase of one staff member has been refused."

Two other institutions mentioned the impact, or future impact, of the recession: "The current situation of recession in the country and the world is a matter of concern, and there is concern that resources for the future may not be available for all activities envisaged." (Croatia); "Funding of the Institution is not sufficient (especially during the economic crisis) and it cannot ensure proper organization of Ombudsman activity..." (Lithuania)

In Malta, inadequate premises and staffing puts constraints on the office in carrying out its mandate: "The office is not in a position to move out independently because of lack of funding... With regards to staffing, during the past six years the number of people giving service to the office has increased from one to the present eight... However, it is felt that more technical and professional support staff are required as full timers with the office, especially in the Health and Legal sectors. At the same time, the office does have the services of a legal adviser"

Vojvodina noted a lack of staff and limited workspace; as did Finland, but added "premises are perfect". Georgia lacks human and technical resources.

Two institutions which form part of a general ombudsman institution noted the – potential – difficulties this could cause.

In Greece: "The Ombudsman has rather adequate resources to carry out its duties. The Children's Ombudsman, however, being a part of the general ombudsman, has often to make special efforts to secure its resources internally. A good relationship of the general ombudsman with the deputy ombudsman for children's rights has so far allowed for a rather strong department, staff with 15 members with no serious financial problems. However, I would favour a reference in the law regarding a minimum number of members of staff and adequacy of premises".

And Hungary: "It's an independent organ, but it's a part of the main budget, so the financial conditions are limited to the measures of the budget". The institution reports that the number of complaints to investigate is increasing "because of the proactive behaviour of the Ombudsman", so more staff are needed.

Belgium – French Community noted that its general resources were adequate. "However, concerning our mission of promotion and information on child's rights, we only have a specific budget since one year. And this budget is largely insufficient." And Northern Ireland noted that a current total staff of 28 limited its ability to carry out certain functions, such as investigations. In Ireland too: "While the Office is able to carry out its core functions, the increasing volume of complaints being received has not been matched by an increase in the number of staff handling those complaints.



The Office has had a number of cuts to its budget in the last 18 months but has managed to maintain its programme of work in spite of this”.

Two institutions referred to finding additional non-government funding: the Défenseur des Enfants in France “encounters no major difficulties in carrying out her mandate. She has, however, had to seek additional resources from public and private partners in order to develop her mission of promoting child rights”. And Serbia noted it was satisfied with its resources, “especially because we have support of international organisations in running projects (OSCE, EC, etc.)”.

**Does forming part of a general ombudsman or human rights institution in any way limits the institution’s independence?**

Nine of the 27 responding institutions form a part of a general institution. None finds this to limit their independence.

Greece commented: “The department of children’s rights’ independence so far is achieved through a good personal agreement between the ombudsman and the deputy ombudsman. Activities regarding children are planned solely at the department level, and the Ombudsman is only informed on particular public events.

However this is a little risky, as it has been achieved on a personal agreement level and not on a provision of the law.”

Serbia explained that in the “Collegium” (Ombudsman and four deputies, among them the deputy for children’s rights) if the deputy explains a need for some extra activity on children’s rights, based on or linked to defined needs and priorities, none of the members will be against it: “On the contrary, it is expected from Department for the Rights of the Child to act as much as possible in promoting child rights, respecting the need to respond and resolve complaints in this area as soon as possible”.

**Has there been an independent evaluation of the institution?**

Eight of the 27 respondents reported an independent evaluation (Norway’s took place in 1996; in Finland one is pending after five years’ operation).

Croatia’s evaluation report states: “After five years of activity, the role of the Ombudsperson for Children is today incontestable, recognised by society at large, effective and with the perspective to develop further. We think she needs increased support in society as a whole, particularly in terms of her authority, since she is unfortunately not always perceived as a guardian of the best interests of children, as expressed in Article 3 of the Convention on the Rights of the Child. The existence of the Office (also at regional level) has been adequately recognised, as is clear from the number of cases dealt with and the growth in the number of cases. However, we would suggest increasing intervention in state structures, in the sense of recognising the Ombudsperson for Children as a body which is completely independent, yet above all, from local to state level, from the lowliest competent body to the highest ministry. It should not happen that petitions or questions submitted by the Ombudsperson for Children remain unanswered, and that there is no reaction or activity on the part of the body concerned.

“On the whole, we have gained the impression that the Ombudsperson for Children, systematically, on a daily basis, in a multidisciplinary and polyvalent way, monitors children's rights in the Republic of Croatia and the ways in which they are actually or potentially threatened. It is astounding that such a small number of people have been able to deal with such a broad scope of tasks, with such enthusiasm and legal expertise...”.

Northern Ireland's legislation requires that every three years a review of the office must be carried out by an external body on behalf of the sponsoring body. The office is currently undergoing such a review.

Portugal refers to annual parliamentary scrutiny of activities of the Ombudsman in a report submitted by the institution: “This report includes quantitative and qualitative analysis of the work carried out by the Ombudsman in his various fields of competence - including children's rights - and provides, inter alia, data on the duration of proceedings, the type of intervention of the Ombudsman (essential, non-essential, etc.) and the success rate of such intervention in the context of those proceedings”.

In addition, in 2005 a study was carried out by professionals external to the Office of the Ombudsman, on the basis of the Annual Reports of the Ombudsman, as well as 6373 anonymous questionnaires filled out by complainants, both relating to the period between January 2001 and September 2004. The aim was to analyse the functions and expression of the exercise of the right of complaint, as well as the reasons leading respondents to consider this institution as the most adequate one to defend the interests underlying their complaints. The results of this study were published by the Ombudsman (available online at:

[http://www.provedor-jus.pt/restrito/pub\\_ficheiros/ExercicioDireitoQueixa.pdf](http://www.provedor-jus.pt/restrito/pub_ficheiros/ExercicioDireitoQueixa.pdf)).

These are some conclusions:

- Overall, the available data reflected a growing and already significant recourse by citizens to the Ombudsman, namely since 1995;
- The indicators that attest to the success of the action of the Ombudsman reveal the effectiveness of this institution, notably in its role as a social mediator who is able to ensure the defence of the rights of citizens to a larger extent than could be achieved by direct complaints to the authorities concerned;
- The image of the Ombudsman before society is that of impartiality and ability to act;
- The perception which citizens have of the Ombudsman varies according to how integrated they are in society. For example, for young unprotected citizens the Ombudsman represents the opportunity to uphold those rights which they could not make prevail through any other means;
- In any event, the Ombudsman is seen as an important element of social cohesion.

In Wales, an innovative independent evaluation of the Children's Commissioner for Wales was carried out in 2007 by a team involving 10 young people and three adults. A foreword explains: “This report is the work of a group of young people and adults. We all contributed to the research, and we all agreed what would go into this report... We think this is the first time anyone has studied a Children's Commissioner anywhere in the world – certainly the first time it has been done by children and

young people”. The evaluation was published in December 2008, together with a response from the current Commissioner; generally accepting its recommendations see:

<http://www.childcomwales.org.uk/uploads/publications/126.pdf>

and the Commissioner’s response at:

<http://www.childcomwales.org.uk/uploads/publications/76.pdf>

### Section 3 - Monitoring implementation of children's rights

#### Persuading the state to act

Two roles are arguably central to the role of all children's ombudspersons – ensuring that children's rights are respected and ensuring that children's voices are heard. Without the Convention on the Rights of the Child such institutions would be put in an impossible position when faced with conflicting interpretations of children's best interests or the politically expedient decisions of the government in power. With the Convention, the ombudsperson can point to a higher authority – international law – against which all policies, laws and practice can be tested.

For this reason all but three of the institutions confirmed that they review and pursue the state's compliance with the CRC, its Optional Protocols and other international human rights instruments. The two that did not were Hungary, which is part of a general office on civil and constitutional rights rather than a dedicated children's institution and Slovak Republic, also a general institution with no special part dealing exclusively with children; so in the Slovak Republic this task is the responsibility of the Slovak National Centre for Human Rights (one respondent did not answer). A significant number of respondents pointed out that their founding statutory instrument explicitly requires them to monitor compliance with the CRC and other human rights.

The survey also asked whether they had effectively promoted the harmonisation of domestic laws with the CRC – the majority said “yes”, and it was clear that those who said “no” did so because they felt their work had been ineffective, not because they had not tried. A number claimed successes, and Croatia gave a precise account: “In the period between 2003 and mid-2008, the Office was involved in the adoption of 26 legal regulations, of which 22 were laws. In connection with this, the Office generated 86 specific proposals. Of these, 24 were fully and one was partially accepted. Twenty-four proposals are still in process, while 39 were rejected.” Ireland commented that it was often not possible to quantify the role of the institution given so many others are also working for the same goals, and Lithuania that some legal reforms of necessity took a long time. Others, naturally, said that their effectiveness varied depending on the issue. Sweden said it is investigating the possibility of incorporation of the Convention in their national law. The four UK Commissioners have given support to incorporation into UK law.

The institutions are also active in improving their government's own monitoring of implementation. The quasi-official status of these offices often means that they have greater credibility with civil servants and politicians than ordinary NGOs, and are therefore more likely to be consulted or included in government committees and task forces. A number of respondents confessed that getting the government to take responsibility for the CRC was uphill work, and often unsuccessful.

They were also asked about their role in encouraging the government to raise awareness of children's rights. All but one said they were taking active measures in this respect and provided illustrations of successes – for example a number had persuaded their government to include children's rights in the school curricula and in

higher education, the training of judges, lawyers, police etc. Norway noted that there was still a lot of work to be done and that “with our decentralised educational system it is still difficult to dictate the school curriculum.” However Sweden said it has persuaded its government to fund publications on the CRC being distributed to all Swedish school children aged between six and 15, and Wales has encouraged government to include references on children’s rights and the wider human rights framework within the curriculum for Personal and Social Education for 7 - 19 year-olds.

### **Awareness-raising by the institution**

More energy, however, is expended by the institution itself raising awareness of children’s rights. All confirmed this was a key element of their work. The institutions run training courses for children, parents and professionals, produce pedagogic toolkits, use all forms of media (including computer and board games), organise conferences and roadshows and mount publicity campaigns. As Portugal pointed out, the simple fact of the Ombudsman’s existence raises awareness of children’s rights, and so in one sense all his activities contribute to that end.

### **Persisting violations of children’s rights**

The survey asked if there were some key rights for some or all children whose rights continue to be violated despite the best efforts of the institution and others. Four respondents said there were not (though presumably this meant that the institution had not as yet failed to remedy identified violations of rights, rather than that there were no persisting rights violations in the country).

The following is a list of topics (in no particular order) where the respondents identified persisting, systematic violations of children’s rights (a number also referred us to material in reports such as their shadow report to the Committee on the Rights of the Child, which we have been unable to analyse in the time available):

- Treatment of asylum seeking and unaccompanied child migrants; other children without permanent residence permits
- Abuse, including sexual and emotional
- Bullying
- Corporal punishment and other forms of violence
- Detention of children: inadequate rehabilitative treatment, detention with adults
- Low ages of criminal responsibility
- Justice for children in conflict with the law
- Invasions of privacy – e.g. retaining DNA samples
- Institutional care, including for children with special needs
- Discrimination – e.g. against Roma children; asylum-seeking children; children with disabilities; geographical discrimination (between local municipalities)
- Inadequacy of complaints procedures
- Children’s rights in divorce
- Domestic violence
- Early marriage

- Exploitation
- Health – e.g. lack of paediatricians/child psychiatrists
- Parenting inadequacies
- Participation and failure to respect the child's views
- Play
- Poverty
- Failure to integrate children with disabilities
- Access to and adequacy of special education
- Trafficking

## **Section 4 – Ensuring effective remedies for breaches of children’s rights**

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The survey asked whether the institution had documented the availability of effective remedies for the many and varied rights violations experienced by children. Some respondents misunderstood and answered in terms of their own institution’s investigation of complaints, discussed in the next section.

Others told us about work they had done on available remedies:

Cyprus, for example, told us that they had discovered that there were no complaints procedures for children whose rights were violated in school or for children living in children’s homes;

Finland is planning a project on making complaints proceedings more child-friendly;

Belgium French Community has produced a report on difficulties Belgian children had in making applications to court, instructing lawyers or becoming parties to civil actions concerning them,

and Norway has recently published two reports about weaknesses in the school and child welfare systems.

The institutions were also asked if they supported children’s legal actions challenging violations of their rights. As noted in section 1, few institutions have powers to do so. Some thought the question referred to their own capacity to investigate cases rather than to intervene or take legal action elsewhere. Some institutions had legal powers to provide or arrange representation for children in courts or tribunals. The Cyprus Commissioner is empowered to apply for a special representative for children where it appears there is a conflict of interest between child and parent. Serbia said that, while the Ombudsman had no mandate to take or intervene in court proceedings, he had an active role mediating in family and criminal cases to resolve matters.

## Section 5 – Individual complaints

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This section looked at how the institutions responded to complaints made to them by individual children. Six institutions – Denmark, England, Finland, Norway, Scotland and Sweden – said that they were not permitted to investigate individual complaints. The remaining (21) respondents gave information about their procedures. The Slovak Republic, Slovenia and some other general ombudsman institutions are limited to investigating breaches of children's rights which are perpetrated by state authorities. Slovenia noted that by the Constitution, the Human Rights Ombudsman is limited to dealing with violations of any right arising from a holder of authority.

The survey asked if the procedure is known about by children, particularly children in difficult situations (such as those in detention or seeking asylum). This appears to be difficult to assess. France and Portugal have determined that only one in ten complaints originate from children themselves (and Wales even fewer), but this might only mean that children preferred to have their parents or adult friend seek help on their behalf. Most described the efforts they had made to disseminate information about the service – through posters and brochures, items and advertisements in children's magazines and TV programmes, training days in schools and institutions, websites and hotlines and free text services. As regards reaching children in difficult circumstances, many admitted that this was not easy. Madrid said that, as well as responding to individual complaints, it sometimes has to undertake proactive investigations in order to uncover violations of rights, and Northern Ireland mentioned the importance of whistleblowing by professionals or other concerned adults in bringing to light hidden abuse.

By and large the institutions were confident that the procedure, once known about, was easily accessible by children. Some mentioned having regional drop-in branches, others making their materials (including on the Internet) available for blind people, and some run toll-free hotlines.

As regards access by adults, no institution thought that their complaints procedure was poorly publicised to parents or professionals. France provided a break-down of the adults complaining on behalf of children: 77% are family members or friends (mostly parents) and 11% come from NGOs or professional bodies. Given concerned adults may have conflicting views about what is best for children (mother against father, professional against professional and so forth), the institutions were also asked how they ensured that the complaint was in the best interests of the child concerned. Some simply relied on the good judgement of the Commissioner or designated staff members trained in pedagogy or social work. Others had more formal procedures. For example France told us that "Complaints are individually assessed the moment they are received by a multidisciplinary committee (a jurist, social worker, psychologist, former judge) to determine how it should be handled in the best interests of the child." The child's view is seen as crucial. Northern Ireland said that they always checked with adult callers that the child knew about the approach, and that on one occasion a young boy ensured that he, not his parents, gave the instructions. Madrid and Serbia pointed out that the important thing was that the institution was able to reject parents' and other adults' viewpoints if it did not consider these to be in



the child's interests. Slovenia noted: "The best interest of the child is always considered, but there is no special process to ensure that".

The survey asked: "Can the complaints procedure provide an effective remedy for children?" In one sense, of course, no ombudsperson can guarantee an effective remedy since as Catalonia pointed out: "the Ombudsperson can only suggest or recommend to the public administrative or government body. It's up to them, then, to accept these recommendations or not." In other words, the institutions do not have legal powers to make legally binding orders like a court, although they sometimes have powers to require their decisions to be publicised and reconsidered, to negotiate settlements through mediation, and many have strong investigative powers, to access institutions and interview witnesses, etc. Ireland said that it was entitled to lay a report before Parliament if its recommendation was rejected by a public body, though it has yet to use this power. Nonetheless, the majority of respondents (17) were satisfied that, in practice, their interventions are effective and that, with some exceptions, their resolutions are accepted. Four complaints procedures have been evaluated (though in Northern Ireland this is done by way of anonymised feed-back forms from complainants rather than independent assessment).

Finally, institutions were asked whether there was any appeal against the institution's decisions or handling of a complaint. Only four said "yes", of which Azerbaijan and Georgia said that the appeal would go to the Commissioner or Ombudsman which seems strangely circular (though Georgia also said there was provision to apply to court). Northern Ireland said there is an informal process, should the need arise and Wales said there is a procedure allowing for independent investigation, with both an informal and formal stage. Lithuania said that though there was no form of appeal, some of the Ombudsman's decisions had been taken to court.

## **Section 6 – Methods of campaigning for children’s rights**

### **Political and parliamentary lobbying**

The institutions were asked if they used – and felt confident in using – a range of advocacy methods, including political and parliamentary lobbying.

While the majority are active and effective in parliament, often meeting and briefing parliamentarians on a regular basis, some felt uncomfortable about using the word “lobbying.”

Ireland, for example, said that it had to be “mindful of its obligation to remain apolitical and if it wishes to raise specific policy questions with parliament, it will generally do so with all the parties.”

Wales stressed that its independence and apolitical integrity meant that the Commissioner “sought to influence through open discussion and presentation of the arguments in the public domain.”

Portugal said that, though lobbying was not the appropriate concept, the Ombudsman’s mandate included awareness-raising and the promotion of children’s rights. The Ombudsman has the power to point out shortcomings in legislation, making recommendations concerning its interpretation, amendment or revocation, or suggestions for the drafting of new legislation, and he can also participate in parliamentary committees – if he deems it convenient and at their request - for the purpose of dealing with matters falling within his competence.

The same possibilities regarding proposing amendments to legislation and new laws apply to Serbian Ombudsman/Deputy for Children’s Rights, which has already pursued several initiatives for legislative changes in the Serbian Parliament.

### **Child impact analysis**

Whether respondents answered “yes” or “no” to this question was not always relevant. Hungary, for example, ticked the “no” box but commented:

“The office does not employ a standardised tool for child impact analysis but all of its legislative advice is based on an assessment of the probable effect of the legislation on children, as well as an evaluation of its compliance with international standards to which the State is party”

This is as good a description of child impact analysis as any. Only one institution, Scotland, has developed a systematic “Children’s Rights Impact Assessment tool,” but around half the institutions appear to be operating some form of impact analysis, or commissioning academic bodies to do so.

### **Children’s views and experiences**

The survey investigated both the use of children's voices and of adult research into children's experiences. Most organisations sought to discover children's opinions, some on a nation-wide basis. For example France and Scotland have organised national consultations with 2,500 and 16,000 children respectively and then advocated the children's ideas. Others said they tried wherever possible to hear from children affected by particular issues, - for example Finland has sought Sami and Roma children's view of their experiences and Ireland has published the life-stories of asylum-seeking children. A number hold children's conferences and workshops or maintain online surveys. Denmark said that the institution has established a representative panel of approximately 2000 twelve-year-old children who complete on-line questionnaires three or four times a year, the results of which are used for campaigning.

Examples of research include children's alcohol consumption (Srpska and Croatia), children's knowledge of rights (Vojvodina), child carers (Wales), foster and residential care (in Portugal through a series of inspection visits; also in Malta), children with imprisoned parents (Denmark), television-watching (Madrid) and "teenagers in pain" (France). As regards academic research, some institutions commission studies by external bodies while others conduct this in-house.

⇒ **Using the courts:** As discussed in section 1, a majority of institutions do not have powers to take cases to court, or are limited to certain proceedings such as constitutional challenges. Almost all said they did not go to court, or only very rarely. Only Northern Ireland had been involved in a number of cases – for example, challenging the law on corporal punishment, on children's rights to be heard in schools and on the use of precautionary suspensions.

⇒ **Using the media:** The media are seen as one of the institutions' main advocacy tools. All respondents said they used newspaper and magazine articles, press conferences, TV and radio, posters, calendars, bookmarks, stickers, publications and the range of internet media to get across their children's rights messages.

They were also asked if opinion-leaders or celebrities had taken part in their campaigns. Most said they did not. A few mentioned consulting with experts; one had invited famous artists to judge a children's drawing exhibition.

⇒ **Forming alliances:** Most children's rights campaigns generally attract alliances of NGOs and professional bodies, with the issue being given priority by one or two of these organisations, supported by the others. Children's Ombudspersons are faced with a choice: either to join such alliances and add to their strength of numbers, resources and range of expertise, or to keep a distance on the ground that the Ombudsperson's independence and statutory basis is more effectively deployed separately from coalitions. Some respondents raised the latter argument and said that their institutions had a general policy of not joining alliances or signing petitions; others said that, while this was not normal practice, they were prepared to make exceptions. A couple reported joining alliances with government ministries over public health and welfare campaigns.

- ⇒ **Using international or regional human rights mechanisms:** Elsewhere the survey asked about the institutions' involvement in the CRC's reporting system, but here it raised the use of international and European human rights mechanisms, since these have proved excellent advocacy tools for bringing about change for children. As well as the CRC, respondents mentioned the usefulness of the Universal Periodic Review process of the Human Rights Council and other UN treaty bodies - Committees on Economic, Social and Cultural Rights, the Elimination of Racial Discrimination, the Protection of the Rights of all Migrant Workers and the Committee Against Torture.

## Section 7 - The institution's visibility, relationships and influence

### Children

- ⇒ **Visibility to children:** Although the majority of respondents answered “yes” to the question asking if children “generally knew about the institution,” it was clear that their replies rested more on hope than certainty. The six who had formally evaluated children’s knowledge found that, despite their best efforts, many children were ignorant of their existence. Only Sweden, the second oldest children’s ombudsperson institution in the world, was confident about its familiarity to Swedish children (greater, indeed, than the children’s knowledge of the Convention).
- ⇒ **Accessibility:** Most offices were based in their capital city and about half had made arrangements to reach children in the rest of the jurisdiction, for example setting up local branches, running media buses (Belgium French Community) or video conferencing facilities (Wales). Others admitted there were greater difficulties in accessing children in remote locations. Although the majority were confident that their offices had “appropriate opening hours” it should be noted that at least five of these described normal office hours, which are not particularly appropriate for children who may need to contact them outside school. Azerbaijan was the only institution that maintained a 24 hour hot-line. No organisation had the funds to cover all children’s travel costs, but many offered free telephone lines. Some claimed they provided cost-free access through the Internet (Norway closing down its freephone because 95% of Norwegian children have internet access), though the Internet cannot be wholly adequate since not all children have unsupervised access to computers and others are not literate. All but three offices were accessible to disabled children.

One question asked whether the premises were “child-friendly.” Some respondents took this to refer to the warmth of the atmosphere whereas others understood it to mean the physical design of the office, the presence of toys and books etc. Scotland told us that their office had a child-sized door, designed and painted by nursery children, for their youngest visitors. Slovenia commented: “Visits from children are very rare and we have no special child-friendly room”. The survey also asked if documents were published in child-friendly form. Some institutions did this to a limited extent, others had made it a priority. Wales reported it was under a legal duty to ensure that its printed or electronic material was understandable by children.

- ⇒ **Children’s involvement:** Do the institutions have advisory boards of children to secure regular direct contact with at least some children? Fourteen said they did. Azerbaijan, for example, meets with a group of children every Sunday; the Cyprus Commissioner maintains a standing group of 13-17 year-olds who are carefully selected to reflect diversity and special interests; Wales annually recruits its advisory group from a different region to secure full geographic coverage. Some offices use pre-existing groups, such as youth parliaments, and a number reported that they are currently setting up their own panels of advisers. Scotland’s new Commissioner, however, has decided not to continue its specialist panels but

“instead to nurture partnerships with agencies who directly work with children and young people.”

Unsurprisingly all the institutions had organised some form of contact with children – visits to schools and institutions, using email, websites and social networking systems and embarking on nationwide consultations with children. Some had recruited individual children to act as “ambassadors”, investigators or advocates. However, only seven institutions systematically involve children in the appointment of the ombudsperson, in selecting members of staff or in evaluating their work (though a number commented that they sought unofficial feedback from children). Virtually all respondents said that children’s views influence their priorities and activities, though obviously some were more heavily influenced than others. The advisory groups were identified as an important source of children’s views, along with specialist or national surveys or conferences, complaints systems and websites.

The survey asked: “How does the institution ensure it is aware of breaches of the human rights of babies and very young children?” Some respondents frankly admitted that this difficulty had not yet been solved for them; three (Cyprus, Sweden and France) had developed a special project, for example by prioritising visits to nurseries or employing experts in early years. Norway told us that violence towards babies is a central theme for their ombudsman, and they are engaged in a project on measures to combat sudden infant death syndrome. Otherwise the offices said that they relied on parents, NGOs and professionals to keep them abreast of the needs of the very young.

### Government

The institutions were asked if their government listened to and responded to their proposals. No institution responded “no” (though Madrid pointed out that its relationship is with the regional government); however many added that the responsiveness of government varied across departments – proposals relating to government budgets, for example, seem less likely to be heard.

There was less unanimity over whether government departments actively sought their input. Some – for example Cyprus, Finland, Malta, Scotland, Slovak Republic and Sweden – were confident that the government routinely asked for their views; others said that this was variable and for some it was a dishearteningly rare event. Azerbaijan provided over 70 examples of recommendations made to government.

Twenty institutions reported directly to Parliament, all through a statutory annual report. Of the seven that did not, three said that they nonetheless often did communicate with Parliamentarians but not on a regular or statutory basis. All respondents were confident that their institution was influential with politicians and that their recommendations had been taken up by Parliamentarians – at least to some extent. Almost all also confirmed that they had “easy access” to senior political figures when necessary, though some added that this did not extend to all people in power (for example the Prime Minister) or that a change in government had decreased or eliminated their access.

The survey also asked about the institution's influence on local decision-making. Some (Madrid and Vojvodina, for example) are primarily working at regional/city level; others told us that they were developing regional or local advocacy. Others mentioned the difficulty of relating to many different municipalities which are increasingly being granted more autonomy over children's matters, for example Norway said "as there are 430 municipalities in Norway with a large degree of self-government in many issues concerning children, this influence is of course limited."

#### **Council of Europe and EU institutions**

Sixteen institutions said they had a useful relationship with the Council of Europe, a number specifically naming Elda Moreno and the CoE programme *Building a Europe with and for children*, or saying they are helping to develop Europe-wide strategies on violence, participation, child-friendly justice etc. Fewer had a meaningful relationship with the European Union, though a number mentioned attending EU child right forums or liaising over EU directives. Serbia and Azerbaijan had participated in the EU "twinning programme".

#### **Parents, the public and the media**

Almost all respondents thought that they were well known among parents, the general public and the media, although many acknowledged that there was room for improvements and only eleven had undertaken formal evaluations. Croatia: "... although we are recognised as an institution to be consulted if children's rights are violated, the public is not fully clear about the role of the Office, nor does it really understand our actual spheres of competence and methods of working." France reported a UNICEF survey which showed the office had the support of 78% of the population, but nonetheless said there was no evaluation of how well-known it is.

The media is clearly seen as key to the institutions' success: 24 respondents considered they are well-known to the appropriate media, including that used by children. Most mentioned newspapers, magazines and TV/radio programmes; a few also added internet publicity through, for example, YouTube, messaging and websites. Less than half have commissioned formal evaluations, though obviously media coverage is monitored internally on a continuing basis.

#### **Other human rights institutions and NGOs**

All but five institutions had systematically identified the other bodies and organisations that could help contribute to advocacy of children's rights, and most claimed to have developed an effective and positive relationship with all of the following:

- Other human rights institutions
- Children's rights NGOs
- Child- and youth-led organisations
- Youth organisations
- Professional/academic bodies
- Church/faith groups

## ➤ Other elements of civil society.

There was strong consistency about which bodies the institution did *not* have an effective relationship with: 13 said they had a weak relationship with church and faith groups and seven – rather surprisingly – said they did not relate well to child- and youth-led organisations and youth organisations, sometimes because of resource limitations and sometimes because such organisations were thin on the ground. Greece explained that they faced difficulties with the Greek Orthodox Church over the Ombudsman’s suggestion that children should be allowed to request exemption from religious instruction. England also said it did not have a strong relationship with other human rights institutions.



## **Section 8 – Contributing to the CRC reporting process and other human rights procedures**

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The Convention on the Rights of the Child offers two important opportunities for highlighting deficiencies in a state's laws and practices.

The first is when the state submits its periodic report to the Committee on the Rights of the Child (at five yearly intervals after the first report). The survey therefore asked whether the institution had **“contributed independently and effectively”** to this reporting process.

Almost all respondents said that their institutions had been involved. Of the five that did not, Croatia said that it had not been in existence when the Government had last submitted a report; Catalonia and Vojvodina explained that this was because their mandate was provincial rather than national and Slovak Republic said it was not the responsible body (but that it was asked to make comments on the state report); the fifth (Hungary) offered no comment. Otherwise, reporting to the Committee appears to have become a customary part of the children's ombudsperson's role, often accompanied by attendance at a pre-meeting in Geneva to brief the Committee in person. Ireland has also organised a visit to the country by two Committee members, and Scotland said it was planning to produce a “mid-term” shadow report. Portugal reported it did not make a separate submission but rather contributed to the State's own report. Though it said that this was done “with the necessary independence, drawing solely from the experience and views of the Ombudsman on the issues under consideration”, the Committee's advice in its General Comment No. 2 is emphatic: NHRIs should contribute independently (para. 20). A number had also reported under the two CRC Optional Protocols.

The second opportunity for advocacy is when the Committee issues its concluding observations on the state report, which invariably include a number of concerns and recommendations for change.

The survey asked if the institutions had been **“effectively involved in follow-up to the concluding observations.”** Again, a large majority said that they had, often energetically.

Azerbaijan pointed out that its Child Rights Centre had been established as a result of a Committee recommendation, and that much of its work was focussed on other parts of the concluding observations.

Others said that the concluding observations had given momentum to many of their proposals for change, or had inspired the formation of coalitions and alliances. The Ombudsman took a leading role in implementing the Committee's recommendation that Serbia should adopt a comprehensive Children's Act. The Ombudsman established an expert group to prepare the Draft Law on the Rights of the Child. The Draft is in the final phase of preparation.

As well as the Convention on the Rights of the Child, states have usually ratified other human rights treaties which offer opportunities to report and advocate improvements to children's rights. Just under half the institutions said they had been involved in

these processes, though it seems that this is often in terms of contributing to the State's own report rather than submitting an independent view.

Of those that said "yes", the following were mentioned:

- Universal Periodic Review process at the Human Rights Council
- Committee on Economic, Social and Cultural Rights
- Committee on the Elimination of Discrimination against Women
- Committee on the Elimination of Racial Discrimination
- Committee Against Torture
- Committee on the Protection of the Rights of all migrant workers and members of their family

Finland said it had also reported directly to the UN special rapporteur on indigenous people's rights; Wales said it might do so in future – for example under the new Convention on the Rights of Persons with Disabilities.

Only three of the institutions, however, had contributed to the reporting process under the European Social Charter/Revised Social Charter, and none of the three appeared to have done so independently or systematically. The survey also asked about the European Court of Human Rights – did they monitor and follow up judgements that were relevant to children's rights? Most said they did not. Of those that did, it appears that some only consider the occasional judgement made against their own state, although European Court judgements can be used in respect of all the member states of the Council of Europe. Portugal however noted that "the Ombudsman benefits greatly from receiving regular selections of information on ECHR judgements provided both by the Council of Europe and by the European Group of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights". Norway mentioned a Norwegian legal handbook that analyses relevant Court judgements that is useful for their work.

Not all European states have ratified all human rights treaties, and when they do, they sometimes enter declarations or reservations that have negative implications for children's rights. The institutions were asked if they had encouraged their governments to withdraw such declarations or reservations, and whether they had encouraged them to sign and ratify relevant instruments (such as the CRC Optional Protocols).

Most respondents replied to the first question in the negative simply because their Governments had not entered reservations. The UK Children's Commissioners have jointly and successfully called for withdrawals of reservations relating to refugee children and children in detention. As regards the ratification of treaties, this was something on which a number of institutions have energetically lobbied, particularly as regards the two Optional Protocols of the CRC and the new Convention on the Rights of Persons with Disabilities. Norway also mentioned the proposed Optional Protocol to provide a communications/complaints procedure for the CRC.

Other instruments which institutions have urged their states to ratify include:

- Convention of the Council of Europe on the Protection of Children from Sexual Exploitation and Abuse.
- UNESCO Convention against Discrimination in Education;
- Protocols 12, 14 to European Convention on Human Rights;
- Optional Protocol to the UN Convention against Torture;
- UN Convention against Corruption;
- Revised European Social Charter;
- ILO Convention on Social Security (Minimum Standards);
- ILO Convention 156 on "Equal opportunities and equal treatment for men and women workers: workers with family responsibilities";
- The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption;

## **Section 9 – Compliance with Paris Principles and ENOC Standards**

Asked whether **the institution and its legislation is fully compliant**, 19 institutions responded “yes” and six “no”, with one not answering – no evaluation yet (Slovak Republic); also one “yes”/“no”.

Portugal reports full compliance with the Paris Principles but some discrepancy in relation to ENOC’s Standards (see below).

Slovenia reported: “Fully compliant with the Paris Principles and not with ENOC’s Standards (there is no special Ombudsman or Deputy Ombudsman elected by Parliament only for children)”.

Cyprus, confirming compliance, reviewed in detail in its response the various elements of the Paris Principles. Twelve institutions answered “yes” without comment.

Azerbaijan and Portugal are both accorded “A” Status by the International Coordination Committee of National Human Rights Institutions, confirming their full compliance with the Paris Principles. Azerbaijan notes: “The discrepancy with ENOC’s Standards is that as our legislation is supposed for protection and promotion of human rights in general, it does not include provisions setting out specific functions, powers and duties relating to children and their rights and is not linked explicitly to promoting implementation of the Convention on the Rights of the Child. But because children’s rights are an integral part of human rights and are in the jurisdiction of the Commissioner for Human Rights (Ombudsman) of Azerbaijan, children can lodge a complaint with the Commissioner” (see also section 10 below).

Portugal requests further consideration of certain provisions in ENOC’s Standards and criteria for full membership of the Network, which require provisions in the legislation establishing the institution, explicitly setting out specific functions relating to children and their rights, and also require that the institution includes or consists of an identifiable person/persons which is/are concerned exclusively with the promotion of children’s human rights: see section 10 below. But Portugal’s response also recognises that it is important “to continue to develop efforts as regards certain areas relevant to the Standards - namely, the increase of the knowledge and use of this Institution by children themselves; the development of more child-friendly outputs; and the strengthening of interaction, specifically on children’s rights issue, with other public and private entities at national and international level”.

France reports that the institution and its legislation complies in all essential respects: “In some areas, however, there remains progress to be made:

- accessibility for children (there is no public telephone line and no toll-free number; no premises dedicated specifically to receiving children),
- process for nominating the Ombudsperson for Children does not involve a public call for candidates, and no specific committee, with or without the representation of children, has been charged with or consulted on the selection process,
- the Office publications are not all rewritten in language appropriate for children.”

Hungary noted “more or less compliance”, but “we could not guarantee the direct participation of youth in our decision-making”.

Malta’s institution “fails to be fully compliant due to its reliance on the Government for funding, and its inability to be fully accessible to children in the sense that most children would have to catch two buses to reach its offices”.

Georgia answers “yes” but notes “Certain limitations exist in their implementation in practice”.

Northern Ireland notes that an independent evaluation in 2006 had found the institution not to be in compliance with the Paris Principles. Currently the institution is awaiting the results of a review of their legislation in respect of making it compliant with the Paris Principles and clarifying its ability to pursue violations of children’s rights in the courts (the issue of victim status).

Sweden, answering “yes”, summarises the institution’s powers: “The Office of the Ombudsman is guaranteed by law. The Ombudsman has an independent role to follow up the implementation of the CRC. The Ombudsman has legal power. The Ombudsman can give advice to children and young people on their rights and the CRC. We can also inform them where they can turn for more help and support. The Ombudsman shall report to the social services committee without delay if in the course of his or her work he or she receives information to the effect that a child is abused at home or it must otherwise be assumed that the social services committee needs to intervene to protect a child”.

## Section 10 – Should ENOC review its Standards?

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Seven respondents believe there should be a review: France, Greece, Ireland, Norway, Portugal, Sprska and Wales. Wales noted: “In view of the fact that the standards are now nine years old it would make sense to review them to see if they are still relevant”. Two were not ready to express a view (Cyprus and Georgia), five expressed no view and 13 do not regard review as needed.

Finland responded: “ENOC standards are OK but the Paris Principles should pay better attention to the child perspective. We should be able to mainstream a child rights perspective to the UN human rights work and guidelines so that all human rights institutions in the future should be designed so that they are child friendly”.

Ireland noted that ENOC’s Standards do make reference to the work of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and the work of the Credentials Committee. This suggests that ENOC should consider developing a similar accreditation process. It would be useful to explore this possibility and review the whole issue of accreditation for children’s ombudspersons at multilateral fora (particularly UN bodies), as well as liaising more directly with the coordinating committee for NHRIs, based in Geneva.

France commented: “The Committee on the Rights of the Child [General Comment No. 2] asks that ‘Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. Children’s councils, for example, could be created as advisory bodies for NHRIs to facilitate the participation of children in matters of concern to them. ‘ENOC might complete these standards by including in them the need for all members to prove their aptitude to work directly with children, to organize periodic consultations on issues that concern them directly or indirectly, and to expand activities related to information and promotion of child rights in the eyes of children themselves.”

Sprska proposed: “We believe that under the ‘Methods of operation’, the second item should be amended to specifically emphasize that the child’s voice should be heard, so that the child’s right to express its opinion would be respected.”

Greece proposed, as examples, the following changes:

- “In the chapter on “Composition and independence” I would suggest the addition of a phrase on the contribution of children and NGOs working with children in the appointment of ombudsperson. Could be something like: ‘The procedures of appointment of persons in charge, should allow for the consideration of the opinion of children and organisations working with and for children, regarding their skills to communicate with children’.
- In the chapter on “Hearing and considering complaints”, perhaps some more references should be made to the methods of investigation and possibilities to refer the case to other competent authorities.
- In the chapter on “Designing human rights institutions for children”, a stronger reference could be added to regularity of visits in schools and institutions and meeting with pupils and professionals, as well as to the procedures of constantly

considering the opinion of children either via the establishment of advisory panels, or via the operation of electronic forums, organisation of regional consultation meetings with children, and organisations working with children, etc, Perhaps somewhere it should be mentioned that appropriate funding and staffing of the institutions should be available to allow them to develop such functions. Also it would be good to add that in the case of national ombudsman institutions, in order to offer accessibility and closer contact with children who live in various areas of the country, the establishment of district offices or the appointment of contact persons should be considered.”

Portugal proposes there should be discussion on two requirements currently included in the ENOC Standards and also in the ENOC membership criteria in article 4 of ENOC’s Statutes. These are:

- “1. The need for provisions, included in the legislation establishing the institution, which **EXPLICITLY** set out specific functions, powers and duties relating to children and their rights, as well as a link to the Convention on the Rights of the Child;
- 2. The need for the institution to include or consist of an identifiable person/persons which is/are concerned **EXCLUSIVELY** with the promotion of children's human rights.”

“The Ombudsman certainly agrees that the establishment of independent intuitions which are, in reality, able to ensure an effective protection and promotion of children's rights must remain a fundamental goal of the Network. However, this should be without prejudice to the different institutional models that may exist among the various States, provided that such models effectively ensure the attainment of that goal. Specifically, the Portuguese Ombudsman does not consider it essential for an institution’s legal framework to contain specific, explicit provisions regarding children’s rights. What is important, from the Ombudsman's perspective, is that an institution does, in reality, undertake the protection and promotion of such rights, and that this is included (whether explicitly or implicitly) in its mandate, as constitutionally and/or legally defined.

“Further to this, the Ombudsman agrees that such work should be carried out with a specific focus, through specialised structures and members of staff. He also agrees that it is important to have a person holding a high position within the Institution (a Deputy Ombudsperson, for example) specifically in charge of supervising this work. This not only ensures closer attention and guidance on an internal level, but also reinforced visibility on an external level. However, the Ombudsman considers that it should be sufficient that this person is specifically – but not necessarily ‘exclusively’ – dedicated to the area of children’s rights, and that the general public is made aware of this status. Suppressing the ‘exclusively’ requirement would allow for institutions with a broader mandate, such as the Portuguese Ombudsman, to maintain their focus on children’s rights issues, while also taking into account the situation of other selected groups of citizens, which share with children a particular vulnerability and need for special protection.”

## Section 11 – Current external challenges and threats

Seven institutions identified current threats, 17 no threats and three did not answer.

France, where the office of the Défenseur des Enfants is facing an immediate threat to its independent existence through legislation creating a “Defender of Rights”, stated:

“There appears to be a great temptation in a number of countries, as is the case in France at the present time, in the name of simplification of public bodies, to group all independent institutions responsible for defending the rights of those living in the country, regardless of their specificity. The challenges therefore are:

- The visibility in the eyes of children and those close to them of a defender of their specific rights, particularly with reference to the CRC;
- Effective access on the part of children to the institution defending their rights;
- Maintaining and developing independent national or regional initiatives to promote child rights and working toward full implementation of the CRC;
- The ongoing need to work directly with children, organize periodic consultations on issues that concern them directly or indirectly, and to expand activities related to information and promotion of child rights in the eyes of children themselves.”

Greece also commented generally on current threats:

“The Children’s Ombudsman (as a separate institution or as a Department in General Ombudsman) has been accepted positively by the majority of societies where it has been created. However, under the recent pressure of financial cuts, in many European countries, the institution is in danger. If its function is not sufficiently supported by institutional and legislative guarantees, if there is not enough building of social allies and supporters, and if its effectiveness in the protection and promotion of children’s rights is not sufficiently documented and promoted in public opinion, there is a danger that it may be considered as a ‘luxury’ and parliaments may reduce public investment...”.

A recommendation to subsume Ireland’s Ombudsman for Children into a larger Ombudsman office was made last year by a Government-appointed review group examining public expenditure, but not ultimately implemented by Government:

“The Ombudsman for Children has received affirmation of the future of the Office through two recent political actions: the inclusion of support for the office in achieving its statutory function in the revised programme for government and the reappointment by Parliament for a second term of the present Ombudsman for Children. In relation to the budget cuts which the Office has experienced to date, these are not unusual and are consistent with budgetary restraint throughout the public sector.”

Sweden reported a similar proposal for merger which had been dropped:



“On January 1 2009 the Equality Ombudsman was formed, when the four previous anti-discrimination ombudsmen were merged into a new body. At the same time, a new comprehensive Discrimination Act, which covers more areas than before, came into force. When the discussions took place on the merger of the four anti-discrimination ombudsmen there was a proposal in the Parliament that the Children’s Ombudsman would also be included in the agency. Due to different reasons it was decided that the Children’s Ombudsman would not merge with the other ombudsmen. The main reason for this was that Sweden does not have a specific Discrimination Act for children and young people and the fact that the CRC is broader in comparison with the Discrimination Act. Another reason was that Children’s Ombudsman does not represent individual children - which the anti-discrimination agency does”.

Similarly in Scotland, a proposal to merge the Commissioner’s office with the newly-established Scottish Human Rights Commission has been dismissed “for the time being” by a parliamentary review committee, a current Bill in the Scottish Parliament “will implement other proposals made by the committee (regarding office location, service sharing, budget processes, etc.) which will give the Scottish Parliamentary Corporate Body (SPCB) a potent mixture of powers over certain aspects of the office. These do not amount to a power of direction of any sort, but there is scope for greater interference with the office’s independence through, e.g., the budget-setting process.”

In addition, recently passed legislation in Scotland (the Public Services Reform (Scotland) Act 2010) hands the Scottish Government wide-ranging powers to make significant changes to upwards of a hundred public bodies by order (albeit under a new ‘enhanced super-affirmative procedure’). In relation to ‘parliamentary’ bodies, including the Commissioner’s office, the power was tempered so as to require the SPCB to formally request any changes to the office’s institutional setup before the Government can take any action.

Scotland also noted that the recession may well pose a threat to the office in the future, as public sector budgets will be cut drastically over the coming years. As noted in section 2 above, the independence and/or effectiveness of several institutions are threatened by funding cuts – mentioned in answer to this question also by Lithuania and Northern Ireland, which also noted:

“There is increased external pressure to reduce the number of non departmental government bodies in Northern Ireland”.

Slovenia reported that in 2008 salaries of Human Rights Ombudsman and their Deputies were lowered “noticeably”. And several institutions mentioned current or forthcoming elections and possible changes of government as potential threats, one noting that in their country “unfortunately, everything is politics”.

Another institution reported confidentially a current proposal for a merger of ombudsperson and human rights institutions, starting with rationalisation of premises and services. The institution states that it considers that this kind of merging could have great negative impact specifically for protection of children’s rights.

### Could collective action by ENOC help?

The question was aimed at institutions facing particular threats, but 14 responded that there should be collective action – either generally or specifically to challenge threats to a particular institution. Only one institution responded negatively.

France suggested: “ENOC should, in the name of respect for the commitments inherent in ratification by the States of the CRC, be able to issue and circulate widely strong recommendations to see that no ground is lost as a result of any reform of their NHRIs [National Human Rights Institutions], particularly with respect to the challenges mentioned above.

“It would also be desirable for ENOC, with the support of its members, to reinforce its efforts at communication to make the essential role and place of the Ombudsperson for Children better known and more visible on all levels: national, regional and local.”

Croatia believes that “the importance and relevance of separate, independent children’s ombuds institutions should be emphasized” and: “We should point out our main specificity: direct contact with the children (children’s voice and participation)”.

More generally, Madrid stated that “Yes, of course. ENOC could be an important collective to action in order to improve the safeguarding and promoting children’s rights”. And Azerbaijan suggested various collective activities: “We can effectively fulfil our mandate to promote and protect child rights by working jointly within ENOC; by exchanging of views and best practices on how to better protect and promote the rights; by exchanging information about the main challenges faced in our activities; by sharing experiences and reaching common solutions; by developing recommendations; by creating an international network of children and youth and giving them a say”.

An emphasis on applying the Standards was proposed by Sprska: “Collective action by ENOC can always help and it should be its priority in the sense that the establishment of the institution and its operation must be in accordance with the ENOC Standards. To [associate members] ENOC should give support in every way, while also highlighting that institutions which do not meet the standards must do so, in the given time limit...”

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### ENOC 2010 survey

#### **Responses received from:**

|                          |           |
|--------------------------|-----------|
| Azerbaijan               | France    |
| Belgium French Community | Georgia   |
| Catalonia                | Greece    |
| Croatia                  | Hungary   |
| Cyprus                   | Ireland   |
| Denmark                  | Lithuania |
| England                  | Madrid    |
| Finland                  | Malta     |

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Northern Ireland  
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Portugal  
Scotland  
Serbia  
Slovak Republic  
Slovenia  
Srpska  
Sweden  
Vojvodina  
Wales

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**No response from:**

Andalusia  
Armenia  
Austria  
Belgium Flemish Community  
Galicia  
Iceland  
Luxembourg  
Moldova  
Poland

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