European Network of Ombudspersons for Children
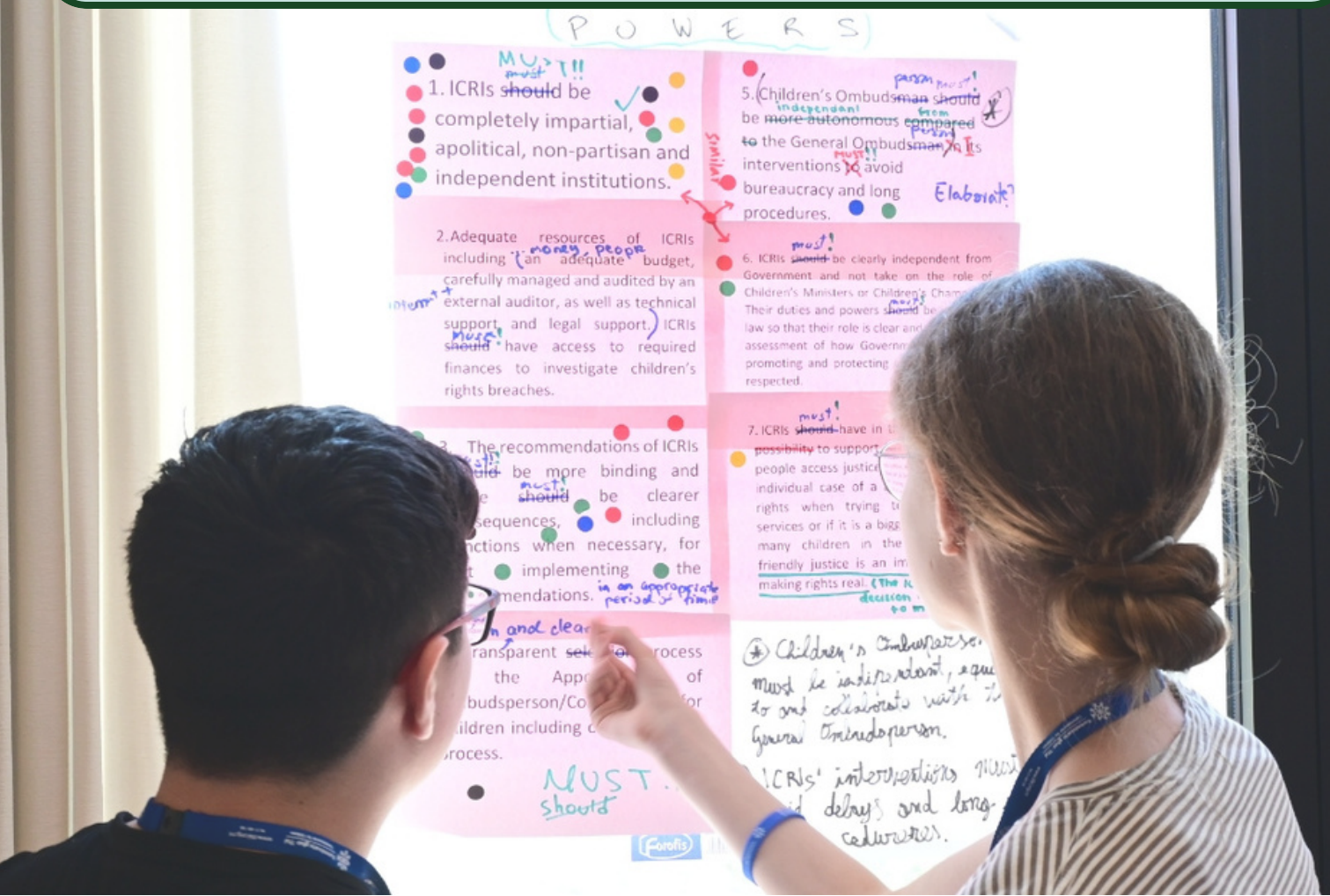
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# ENOC SYNTHESIS REPORT

## INDEPENDENT CHILDREN'S RIGHTS INSTITUTIONS:
## Current strategies, approaches and challenges in protecting and promoting Children's Rights

# Research commissioned by the European Network of Ombudspersons for Children (ENOC)

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Institutions for Children's Rights: A study of Good Practices for Protecting and Promoting Children's Rights

# 1 Introduction

1   The UN Convention on the Rightsof the Child (CRC) (UN, 1989) is the leading international instrument on the rights of the child, recognising children as rights holders across all areas of their lives (Liefaard and Kilkelly, 2009). According to the CRC, states parties to the Convention must ensure that children receive care and protection necessary for their well-being (Art. 3, CRC), must assure their rights to every child without discrimination (Art. 2, CRC) and ensure to the maximum extent possible, the survival and development of the child (Art. 6, CRC).  Having regard to their special vulnerability, the CRC provides that in all actions concerning children, national bodies must regard the child's best interests as a primary consideration (Art. 3, CRC) and assure to every child capable of forming a view the right to be heard and have their views taken into account in all matters affecting them (Art. 12, CRC).

2   Children under 18 years are frequently vulnerable to rights abuses and lack both the political power and the legal standing to access justice and remedies for breaches of their rights. As a consequence, they are frequently dependent on the support of adults to ensure that their rights are protected, promoted and fulfilled. In this respect, it is relevant that Article 4 of the CRC requires states parties to take all appropriate measures at national level to ensure that children effectively enjoy their rights and the extent of this obligation has been elaborated by the Committee on the Rights of the Child (CRC Committee) – the body that monitors implementation of the CRC – in its monitoring and standard setting work (CRC Committee, 2003).

3   The CRC Committee has recognised that Independent Children's Rights Institutions (ICRIs) are integral to the implementation of the CRC (CRC Committee, 2002). In this regard, the Committee has highlighted that such institutions should have the necessary form, powers and resources to protect and promote children's rights effectively, including the power to receive complaints, and a particular role in promoting respect for the child's views in matters that affect them (CRC Committee, 2002). The CRC Committee's standards in this area build on the Paris Principles on national human rights institutions (UN General Assembly, 1993) which set out the main criteria that all national human rights institutions, including ICRIs, must meet with respect to their independence, autonomy, resourcing, form, mandate and legal standing. Together, these instruments provide important guidance to states parties and ICRIs themselves with regard to how in their form and function, ICRIs should work to protect and promote children's rights.

# 1  Introduction

4  In the decades since the CRC was adopted, ICRIs have been established around the world. Europe has been a clear leader in this development evident from the fact that the world's first Ombudsman for Children was established in Norway in 1981. Since that time, institutions, both fully independent or integrated with National Human Rights Institutions (NHRIs) or Ombudspersons' Offices, have been established in most of the states of the Council of Europe (Kilkelly and Logan, 2021).

5  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 the child, set out in the CRC (UN, 1989). ENOC aims to establish links and share information and strategies with Independent Children's Rights Institutions – including Ombudspersons and Commissioners for Children, focal points on children's rights in NHRIs and general Ombudspersons' Offices – to stimulate contacts and support with other ICRIs and networks and to ensure that European-wide bodies promote a child-rights based approach to their work[1]. ENOC currently consists of 44 institutions in 34 countries within the Council of Europe[2].

6  ENOC members – and ICRIs generally – take very diverse forms, with varying powers, size and scale, resources and aims. Although they have much in common – including their mandate to promote and protect the rights of the child – each ICRI operates in its own national context with political, social, cultural and resource considerations. Although their authority and powers vary from one institution to another, ENOC members share a determination to use their powers and resources effectively to advance children's rights and the implementation of the CRC at the national level.

7  ICRIs have been the subject of research and academic inquiry in light of their importance to the implementation of the CRC and the protection and promotion of children's rights more broadly (Kilkelly and Logan, 2021; Lansdown, 2020; Lux and Gran, 2022; Klep et al., 2022). At the same time, although 37 members of ENOC were surveyed in 2010, in a study that sought to document their independence and powers and their visibility, relationships and influence, there has been no survey of ENOC members since then; nor has there been any comprehensive study of the structure and powers of ENOC members or their use of their powers.

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[1] The aims of ENOC are set out at: https://enoc.eu/who-we-are/about/
[2] ENOC Membership is limited to institutions in the 46 member states of the Council of Europe: https://enoc.eu/

# 1 Introduction

8    It is the aim of this study to provide an up-to-date picture of ENOC members, to map their key elements and common characteristics and, viewed against the international standards on ICRIs, to illustrate their approaches to their work. The methodology for this small study involved a desk-based review of the literature on children's rights institutions, a comprehensive survey of all ENOC members to form a base-line of information on their powers and standing, and a number (nine) of one-to-one interviews with a diverse sample of ENOC members to explore their strategic approaches to and challenges experienced in their work.

## 1.1    Aims of the Research

9    The aim of this research is thus to present a high-level view of ENOC institutions, identifying strategies, approaches and learnings to share among ENOC members. It presents a contemporary overview of the structure, standing and powers of ENOC members, including the strategies they employ and the challenges they face in their work to advance children's rights. The study also informed the 2023 ENOC Position Statement on ICRIs.

## 1.2    Methodology

10    The study was undertaken by Ursula Kilkelly and Katrien Klep, experts in the field of children's rights and ICRIs, with the support of Clara Paul, under the remit of an ENOC Working Group comprising representatives from the ENOC Secretariat, several ENOC members and chaired by the current ENOC Chairperson, Caroline Vrijens, the Flemish Commissioner for Children's Rights.

11    Ethical approval for the research was granted by the Social Research Ethics Committee of University College Cork in May 2023.

12    There were two elements to the study. The first element was a detailed, online survey designed to collect relevant data on the current powers, mandate and structure of ENOC members, viewed against the backdrop of the Paris Principles, General Comment No. 2 of the CRC Committee and ENOC Standards for ICRIs (2001). The survey, developed in light of those international standards, gathered data on the institutions' establishment, resources, independence, powers and functions. Qualtrics was used to disseminate the survey to all members (44 institutions in 34 countries) via the ENOC Secretariat. A total of 35 institutions responded (79,5%) – see Appendix 1.

# ① Introduction

13    The second element of the study was a series of nine in-depth interviews with ENOC members which sought to discuss their use of their powers and authority, the strategies they use to promote and protect children's rights and areas of challenge and concern. The interviews sought to understand some of the limitations on the work of the ICRI, how these limitations are managed and to identify learning to be shared among ENOC members, including newly appointed Office holders, as to how these matters can be addressed.

14    Of the 22 institutions who volunteered to participate in the interviews, nine were selected based on diversity in geography, Office type, experience and focus. The interviews were conducted on Microsoft Teams, transcribed and then analysed to identify key themes and issues. Anonymous quotes – some of which have been modified to ensure clarity of meaning and to protect anonymity - have been used in this report. A similar approach was taken to the use of material drawn from the answers provided to the open questions in the survey.

15    A note on terminology: the term 'Independent Children's Rights Institutions (ICRIs)' is used throughout this study as a general designation for all forms of institutions that advocate for children's rights at the national or regional level. They include Independent Human Rights Institutions for Children (e.g. Ombudspersons for Children, Children's Commissioners, etc.) and Offices or departments within general Human Rights Institutions dealing specifically with children's rights. Regardless of their name or designation[3] and although the 'independence' or the 'rights focus' of the institution may vary, 'ICRI' is considered an umbrella term denoting all the institutions that belong to ENOC.

## 1.3    Limitations of the Study

16    This is a study undertaken over a short time frame, in the first half of 2023. While it presents as comprehensive an overview of the powers, structure and resources of ENOC members as possible, this study is not an evaluation of individual Offices; nor does it seek to critique or compare the institutions' approaches or relative effectiveness.

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[3] From the 35 ENOC institutions that participated in the survey, 17 have 'Ombudsman' in their name, 10 have the name 'Commissioner,' others have 'Defender' in their name or are a Council or an Authority (see the full list of names in the appendix).

# 1  Introduction

17   Through the survey and the follow-up interviews, the study presents a snapshot of the participating ENOC institutions and how they operate at the time of the study. The survey relies on the self-reporting of participating institutions and as such, the information provided by each institution is taken at face value.

18   In a study of this kind, it is important to take into account that ICRIs operate in a complex landscape of political, social and private actors (Thomas et al., 2011). ICRIs engage with many different stakeholders, including children themselves, local and national Governments, ministries and inspectorates, non-Governmental organisations (NGOs), private youth care organisations, parents, schools and media. Such bodies are subject to unique pressures and challenges, frequently understood and experienced only by ICRIs themselves. While the research takes account of this wider context, it does not directly address the implications of this environment for their work.

## 1.4    The Structure of the Report

19   This Report is divided into several sections. Following a brief survey of the literature and international standards on ICRIs, the report then presents the findings of the empirical research, drawing on the survey and interview data. Part 1 of the report presents details of the establishment of the ICRIs included in the study, gaps in their mandate and factors impacting their independence and autonomy including staffing, policy decisions and resources. Part 2 then considers the powers of the institutions, including powers of advocacy, law and policy reform, international monitoring and complaints. Particular consideration is given to the participation of children in the institutions' work, including accessibility and communication. The final section presents some high-level findings, relating to strategies and challenges before making some concluding observations in Part 3 of the report. To begin, the next section presents a summary of the international standards on ICRIs, which form the backdrop to the study.

## 1.5    International Standards on ICRIs

20   With the ratification of the CRC, states parties commit to take all appropriate measures to implement the CRC (Art. 4, CRC) and to safeguard children's rights in all areas of their lives and in society (CRC Committee, 2003). While the responsibility for implementation falls to Government, it is the role of National Human Rights Institutions (NHRIs) to monitor independently state compliance with the CRC and progress made towards implementation and to 'do all it can to ensure full respect for children's rights' (CRC Committee, 2002, para. 25). The establishment, resourcing and powers of ICRIs are thus key to the successful implementation of the CRC at national level (Kilkelly and Logan, 2022).

# 1 Introduction

21  Although the CRC does not contain an obligation to establish an Independent Children's Rights Institution, as noted above, the CRC Committee has encouraged state parties to establish such institutions, underscoring their importance to the implementation of the CRC. The Committee has emphasised that ICRIs should be accessible, proactive (especially for the most vulnerable children), and hear and take into account the views of children (CRC Committee, 2002, paras. 15-17;2009, para. 49). Moreover, it has stipulated that such institutions 'must' have the power to consider and investigate individual complaints and petitions and carry out investigations 'including those submitted on behalf of or directly by children' (Committee on the Rights of the Child, 2002, para. 13).

22  The CRC Committee's General Comment No. 2 on the role of independent NHRIs in the promotion and protection of the rights of the child builds on the UN Principles relating to the status of National Human Rights Institutions (the Paris Principles), a primary set of international standards for the mandate, function, composition, operations and competencies of National Human Rights Institutions or NHRIs  (UN, 1993). General Comment No. 2 adapts the Paris Principles to the child rights framework of the CRC and gives specific consideration to how NHRIs should work so as to take account of the particular vulnerabilities and needs of children (CRC Committee, 2002, para. 4; See also Sedletzki, 2012, p. 9). The different legal status of children and the CRC principles of best interests, evolving capacities and their right to express their views require ICRIs to adapt in design and orientation (Lansdown, 2020). Accessibility to children is key, according to the CRC Committee, which has emphasised that the child's right to express their views should be applied to the 'establishment, organisation and activities' of such institutions who must ensure they have 'direct contact with children and that children are appropriately involved and consulted' (CRC Committee, 2002, para. 16).

23  According to the CRC Committee, the core features of ICRIs are: a solid legal foundation and mandate, the capacity to monitor all relevant public and private authorities, an individual complaint mechanism and accessibility, proactivity and the capacity to express the views of children and make them heard (CRC Committee, 2002). To fulfil their mandate, ICRIs should undertake a wide variety of activities, such as promoting the harmonisation of legislation, keeping the effectiveness of law and policy under review, promoting public awareness of the importance of children's rights, formulating programmes for the integration of children's rights into school and professional curricula and undertaking visits to residential homes and places of detention to ensure children are receiving appropriate care and protection (CRC Committee, 2002, para. 19). It is noteworthy that in addition to requiring that ICRIs have the power to receive complaints and conduct investigations, thereby going beyond the Paris Principles, the CRC Committee suggests that ICRIs should also be involved in taking legal proceedings or engaging in mediation to vindicate children's rights (CRC Committee, 2002, para. 19).

# 1 Introduction

24 Independence from Government is fundamental to NHRIs, including ICRIs, as highlighted by the three main international legal instruments in this area – i.e. the Paris Principles (1993), the CRC Committee's General Comment No. 2 (2002) and the Venice Principles on the Protection and Promotion of the Ombudsman Institutions adopted by the European Commission for Democracy through Law and endorsed by the Council of Europe Committee of Ministers (2019).

25 According to the CRC Committee, 'every State needs an *independent* human rights institution with responsibility for promoting and protecting children's rights' (CRC Committee, 2002, para. 7) [emphasis added]. Stopping short of requiring a fully autonomous children's rights institution, however, 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' (CRC Committee, 2002, para. 7) [emphasis added].

26 Although the CRC Committee does not require states parties to create a separate children's rights institution, therefore, it notes that additional justifications exist for ensuring that children's rights are given special protection (CRC Committee, 2002, para. 6). While the effective use of limited resources may justify the establishment of a broad based NHRI, the Committee nonetheless recommends that such an entity should include 'within its structure either an identifiable Commissioner specifically responsible for children's rights, or a specific section or division for children's rights' (Committee on the Rights of the Child, 2002, para. 6). The Committee's emphasis is clearly on the requirement to allocate sufficient resources for the protection and promotion of children's rights (CRC Committee, 2022, para. 12; CRC committee, 2023, para. 12).

27 Significantly, Article 4 of the Statutes of ENOC (2006) laying down the criteria for membership emphasizes independence through legislation from Government and refers explicitly to the Paris Principles and ENOC's standards (2001) which in turn include the CRC Committee's General Comment No 2. In particular, Article 4.3 reads: 'Institutions may be constituted separately or may form part of an independent national or regional human rights institution. In all cases they must meet the above criteria.' This suggests that the question of form (i.e. whether an Office is separate or integrated with a larger body) is distinct from whether that Office is independent from Government.

28 In the same way, it is important to look beyond the formal, legal independence of a public organisation to understand the different dimensions of its autonomy. The four elements of autonomy are: managerial, policy, structural and financial autonomy (Klep et al., 2022). *Managerial autonomy* refers to the level of discretion an Ombudsperson has with respect to staffing and such matters. *Policy autonomy* refers to the extent to which the Office can make choices regarding matters of agenda setting and communication.

# 1  Introduction

Even where an Ombudsperson has a high level of managerial and policy autonomy, decisions can still be influenced by Government or external parties. *Structural autonomy* refers to the extent to which the Office holder is shielded from influence by the Government through lines of hierarchy and accountability (Verhoest et al., 2004, p. 105). Finally, *financial autonomy* concerns the extent to which the Ombudsperson can decide on financial issues and is responsible for its own potential losses. This perspective provides a useful backdrop to the challenges faced by ICRIs in this study.

29  Based on the UN Handbook on National Human Rights Institutions, ENOC emphasise, on their website, that besides the ICRI's establishment by legislation, the independence and autonomy of ICRIs should be assured by several key factors. First, reflective of operational autonomy, institutions must be able to set and pursue their own agenda, and conduct their own affairs independently of any other individual, organisation, department or authority; second, relating to financial autonomy, the institution needs to be financially capable of performing its functions, and as far as possible finance of the Office should be removed from political control, and be guaranteed for a reasonable period, and third, in the method of appointment and dismissal of key staff, the process should be transparent, as far as possible independent of Government, preferably by a representative body such as Parliament, and should involve independent bodies including NGOs concerned with the human rights of children (www.enoc.eu).

30  Research highlights that ICRIs can face many challenges in the exercise of their functions and that their effectiveness can be influenced by a range of social, political and economic factors. Commonly addressing politically and/or socially sensitive issues, they must often navigate complex governance systems and sometimes hostile political environments (Kilkelly and Logan, 2021). Even institutions with a strong legal foundation, protected independence and institutional resources can have their performance tested by other matters such as reputation, profile and authority (Sedletzki, 2012).  While ICRIs are diverse in form, powers and resourcing, research has found that integrity and credibility are both critical, and together with leadership, they grant the institution 'soft power', on top of the express legal powers they possess (Kilkelly and Logan, 2021). Given that the demands on a national institution will always exceed resources, being strategic and targeted in approach, and using these soft powers, is vital to the effectiveness of the Office (Kilkelly and Logan, 2021; 2022; Lux et al., 2022). Against this backdrop, this study seeks to present the different strategies employed by the ENOC institutions to maximise their impact on the rights of children.

# 1   Introduction

31   In summary, while international standards highlight the key features of ICRIs (summarised below), academic literature has begun to shed light on the complex landscape in which they operate. In addition, what emerges from this analysis is an appreciation that while ICRIs have much in common with general NHRIs, they also face unique challenges arising from the particularity and breadth of their mandate to promote and protect children's rights.

## Summary: Key International Standards for ICRIs

·**ICRIs must be**
- autonomous and independent from Government
- able to independently and effectively monitor, promote and protect children's rights regardless of form
- legislatively mandated, ideally constitutionally protected.

·**ICRIs should**
- be established according to a process that is consultative, inclusive and transparent
- work in accordance with the general principles of the CRC, and thus respect children's right to enjoy their rights without discrimination (Art. 2), their right to be heard and have their voice given due weight (Art. 12) and regard the child's best interests as a primary consideration principle (Art. 3)
- be geographically and physically accessible to all children
- have the power to submit recommendations/reports to Government, Parliament and any other competent authority, promote and ensure harmonisation and implementation of children's rights, encourage ratification of relevant international human rights instruments, contribute to reports to UN and regional bodies; cooperate for the protection and promotion of children's rights, assist in the formulation of children's rights education and research and take part in their execution, and raise awareness on children's rights
- have the power to support children taking cases to court
- consult and cooperate with relevant national, regional and international bodies and institutions on children's rights issues.

·**ICRIs must**
- have the competence to consider and investigate individual complaints and petitions, and conduct investigations, including those brought forward on behalf of or by children
- have the right to report directly, independently and separately on the state of children's rights to the public and to Parliament.

# PART I
## ICRIs: ESTABLISHMENT, FORM AND INDEPENDENCE

32    The first part of this report presents the findings from the study regarding the establishment of ICRIs, including their legislative mandate, their form as an integrated or independent body and matters impacting their independence and autonomy including staff, resources and location.
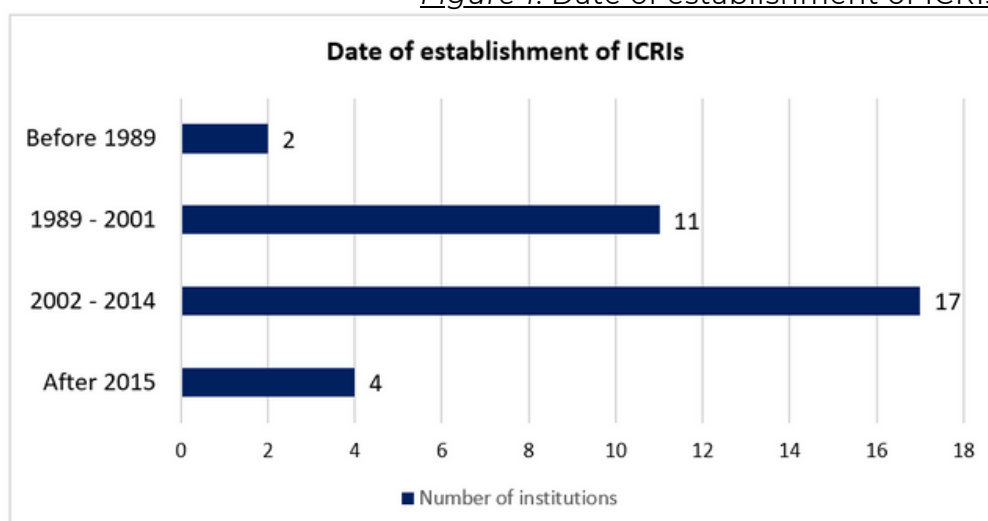
## 2   Establishment, Form and Independence

33    The survey requested some profile information on each ICRI, including information on its establishment, budget and staff. It also sought information on the existence of other Ombudspersons or NHRIs, and the relationship between the ICRI and these other bodies. While the data gathered does not enable direct comparisons between the institutions, due to differences in population size etc, the 35 responses to the survey reveal a clear diversity among ICRIs in terms of both budget and staffing. Relevant to the requirement of independence, the institutions also experience varying levels of autonomy over those budget and staffing decisions, which is explored in the sections below.

## 2.1    Date of establishment

34    While the first Ombudsman for Children was established long before the CRC was adopted, in Norway in 1981, Figure 1 shows that most ENOC institutions were established after the CRC came into force, indeed after the CRC Committee adopted its General Comment No. 2 in 2002. Although this increased attention to ICRIs at international level undoubtedly prompted the establishment of these Offices, it is likely that many factors at a national level influenced the timing and nature of their establishment.

*Figure 1*: Date of establishment of ICRIs

# 2  Establishment, Form and Independence

## 2.2   Legislative footing, mandate and standing

34   The survey established that most ICRIs were underpinned by legislation, in line with international standards, that sets out their specific functions, powers and duties. While many share common powers, as set out in Figure 2 below, there is no one power that all 35 respondents share in their legislation. This underscores the diversity of the institutions.



*Figure 2*: ICRI powers provided by legislation
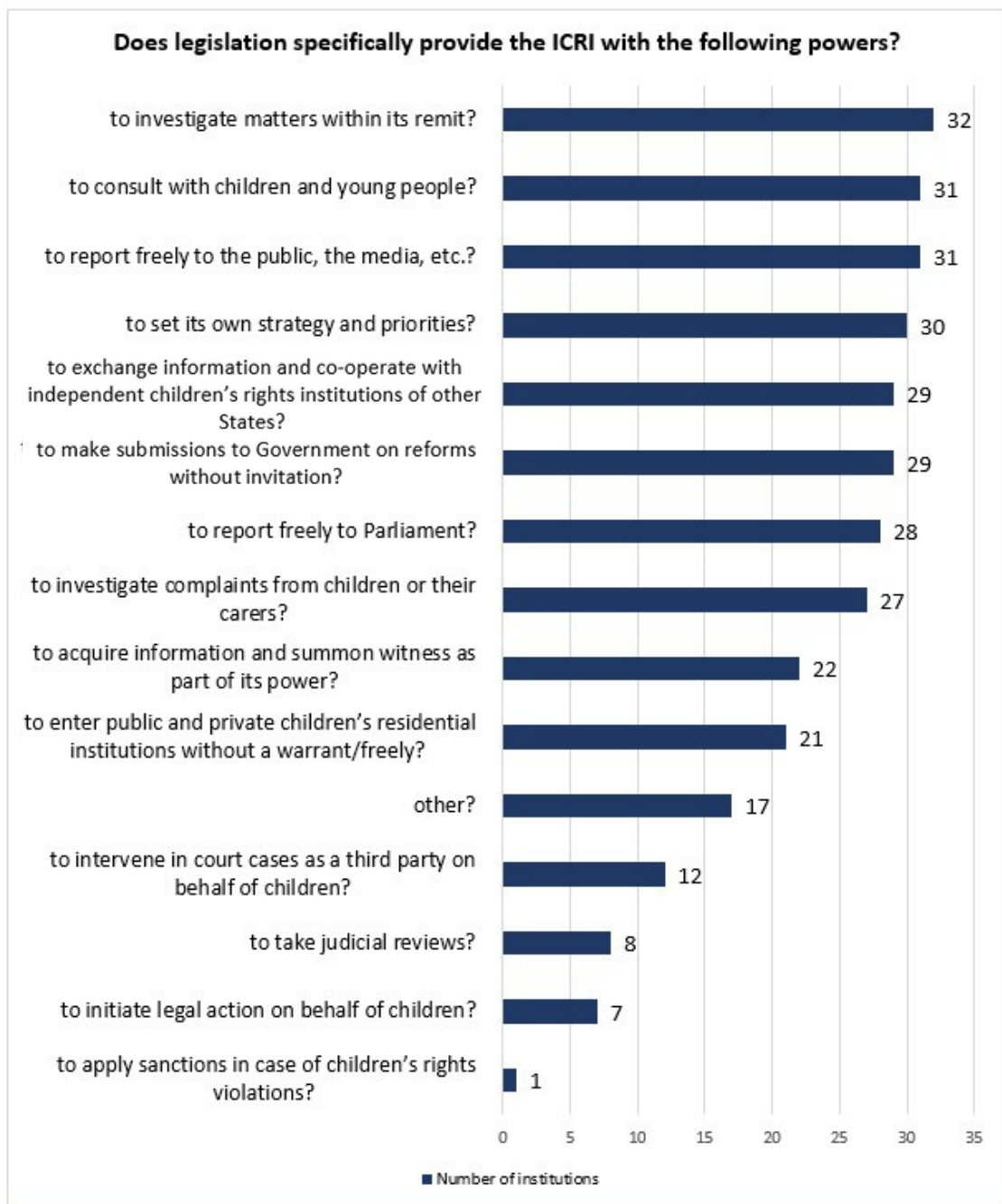
36   Figure 2 shows that the institutions have relatively similar powers in relation to law and policy making: in particular, 29 institutions can make submissions to Government, without invitation.

37    Importantly, given the international standards in this area, not all institutions have a complaints mechanism. Twenty seven out of 35 institutions have the legislative power to receive complaints. By contrast, most institutions (32) have the power to investigate matters within their remit, although their exact powers differ. In relation to legal action, relatively few institutions have such powers in their legislation. Only seven can initiate legal action on behalf of children and only one has the power to apply sanctions in the case of children's rights violations.

38    It is noteworthy that most institutions, but not all (31), have the power in their legislation to consult with children and young people. This reflects the role of the ICRI to ensure the views of children are taken into account in all matters that affect them under Article 12 CRC.

39    In relation to their independence, most institutions have the power to set their own strategy and priorities (30), to report freely to the public and media (31) and to report freely to Parliament (28). These are important provisions that aim to protect the ICRI from political and public attack.
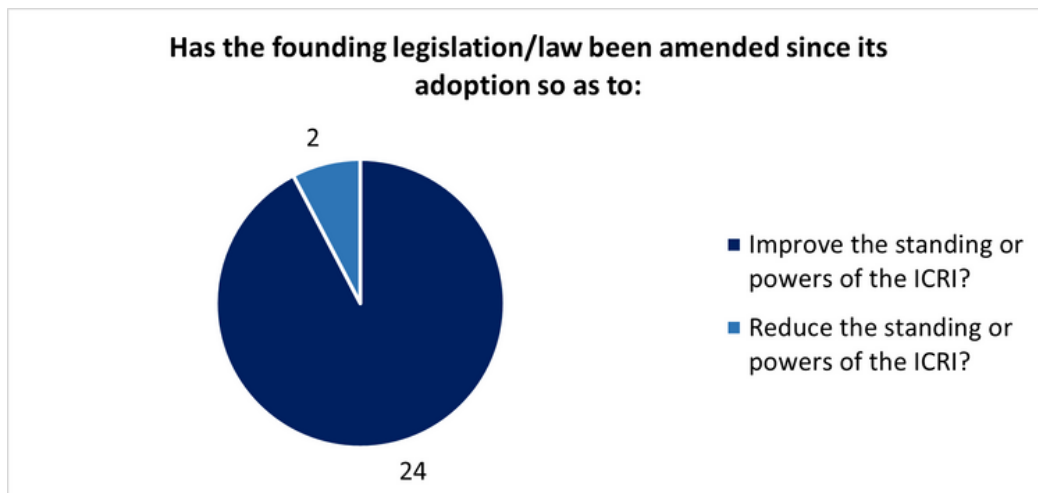
_Figure 3_: Exceptions or gaps in ICRIs' founding legislation
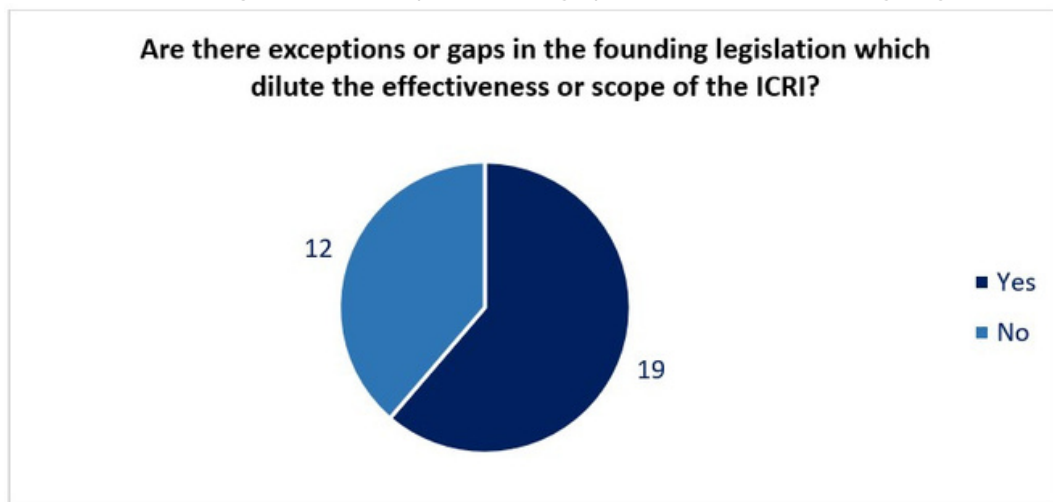


40    The survey asked about gaps in ICRIs' founding legislation in order to identify any limitations that may impact on the institution's remit in practice. Almost two thirds of respondents reported 'exceptions or gaps' that they considered dilute their effectiveness or scope, many of which reflected the requirements of the international standards. For example, one ICRI shared: 'We have no rights of entry and are reliant upon consent to enter residential establishments. We have no powers to enforce findings from investigations and some service providers have at times ignored our correspondence.' Some expressed frustration about the non-binding nature of their recommendations, along with the concern that Governments are not always obliged to consult the ICRI on measures affecting children. These findings demonstrate the practical challenges faced by some ICRIs as a result of perceived limitations in their legislative mandates.

# 2  Establishment, Form and Independence

**Has the founding legislation/law been amended since its adoption so as to:**



- ■ Improve the standing or powers of the ICRI?
- ■ Reduce the standing or powers of the ICRI?

41   Since their establishment, many ICRIs' founding legislation has been amended, with two institutions indicating that these amendments reduced their standing or power. One ICRI stated that their standing or powers were reduced as a result of amendments that diminished their independence. Importantly, however, others reported improvements to their standing and powers, through legislative amendment, including an extension of their powers, the incorporation of the institution's mandate in legislation, increased guarantees of independence, explicit mandate for the implementation of the CRC, or the introduction of a Children and Young People Advisory Group.

## 2.3   Separate or Integrated Form

42   As highlighted above, although independence from Government is a key feature of ICRIs, international standards do not require states to establish a children's rights institution independent from a more broad based NHRI or Ombudsperson (CRC Committee, 2002, para. 7). It is interesting therefore to look at which form is most common among ENOC members.

_Figure 5_:
Status of ICRIs as separate and independent or integrated/nested



**Is the institution for children's rights separate and independent or part of a national Ombudsperson, general human rights body or NHRI?**
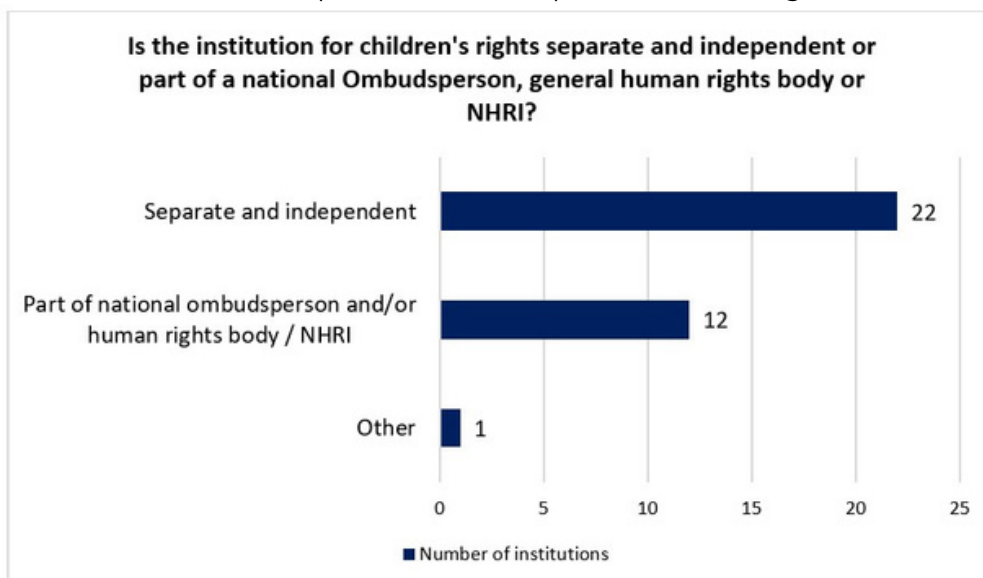
# 2   Establishment, Form and Independence

43   Figure 5 highlights that 22 institutions identified as separate and independent; 12 identified as part of a national Ombudsperson, general human rights body or NHRI; and one identified as other (integrated as part of a regional Ombudsperson). The fully separate and independent form is clearly the majority form among ENOC members who completed the survey.

44   As to whether those 12 Offices that are part of a general Ombudsperson or NHRI found this status to limit or empower them in the protection and promotion of children's rights, nine reported that it empowered them, one suggested that it might affect the visibility of the ICRI, while another remarked that it depends on the guarantees set in legislation. Another institution shared that it can be limiting. Some institutions had a nuanced approach, and two institutions shared that it can be both empowering and limiting. Clearly the impact is mixed and no doubt dependent on a range of factors, including practical matters such as working relationships.

45   Respondents were prompted to identify why they considered being part of a general Ombudsperson or NHRI to be empowering and those that did gave reasons including that it gave them the potential to have wider reach and competence, to enjoy collaboration with other departments and experts and to leverage the profile and the budget of a larger institution. Conversely, those who found it limiting referred to their limited visibility, their weaker accessibility to children, limits in budget and other resources, and divergent approaches. It is useful to cross reference these findings with the legislative powers set out in Figure 2.

46   As one responded explained, the nesting of an ICRI in a more general institution can result in children's rights receiving less public attention:

*"When the General Ombudsperson speaks to a journalist the first question is always about the rights of everybody in the country. And children are part of it, they are not the main subject. The legislation gave a lot of power to the General Ombudsperson and sometimes the Children's Ombudsperson is not enough known."*

**ENOC Member Interview**

## 2.4 Autonomy: staffing, policy decisions, Office holder appointment and budget

47    Independence and autonomy – in staffing, policy decisions and budget – have real import on 'the independence and effective functioning' of ICRIs according to the international standards (CRC Committee, 2002, para. 10). Among ENOC members, the experience of autonomy is not clear cut and limitations are experienced both by ICRIs that are separated and those that are integrated with larger institutions. These issues are now explained with reference to the institutions' power to make independent staffing, budget and other decisions.

### 2.4.1 Staffing

48    It is clear from this research that an ICRI, as a specialist institution, must have staff with the necessary experience and qualifications to perform the role. Stable staffing is also necessary to enable the ICRI to function effectively, and to maintain continuity and organisational memory of the Office, especially when the Office holder – like a Commissioner or Ombudsperson for Children – is a fixed term appointment. Many respondents in the study commented on the importance of continuity and expertise in staffing, noting also their dedication and commitment to their work. One interviewee also highlighted that the staff should evolve with the institution and its strategic goals. The research indicated that various approaches to staffing are used: staff are allocated from Ministries, appointed on a temporary basis or trained to work in any department of a national Ombudsperson or NHRI.

49    Whether or not an institution can hire its own staff is an important question related to its autonomy. This has two tiers: the first relates to being able to hire staff independent from Government, and the second relates to being able to hire staff, independent from the national Ombudsperson.

50    When asked if the institution 'hires its own staff', the majority of respondents to the survey responded positively. From the data, it is apparent that institutions with an integrated form usually have staff assigned to the children's rights unit after they are first hired by the general NHRI. As one institution explained: 'The staff are hired by the General Ombudsperson and then express their interest to be hired in the Children's Section'. Another responded similarly: 'The staff are dedicated to the Ombudsperson for Children but hired by the institution of the National Ombudsperson.' The survey also asked if decisions to hire or replace staff are subject to external approval. Of the 34 respondents, 28 institutions responded 'No' and six institutions responded 'Yes'. For the latter, ICRIs mostly need Government approval of one form or another, for example from a Ministry.

**Staff strengths**

*"The strengths of our Office are persistence and creativity and for the staff I would add a third one, that is dedication. That is dedication to death. They live and breathe for children's rights."*

**ENOC Member Interview**

# 2  Establishment, Form and Independence

51  Staffing emerged in the study as an area of major challenge to the autonomy and the effectiveness of ICRIs. As noted below (see Figure 7), 17 institutions indicated in the survey that they face challenges to their staffing both with respect to their lack of autonomy and resourcing. Some of these problems emanate outside the institution, for example restrictions on employment that apply to all public bodies. Other issues are related to the configuration of the legislation or the structure of the institution and in some instances, they raise a perception of deliberate under-resourcing of staffing. This is highlighted from the following contributions:

**Staffing - a significant practical issue**

*"The director of the administration of the General Ombudsperson decides. I cannot choose the people I work with."*

*"We no longer need to work with temporary staff. In previous time my staff was only with commanded personnel, coming from various ministries. They were temporary. Now, they work only for this institution."*

*"Understaffing is another part of our concern, because the children's rights department for example is the only one that has eight senior investigators while other departments, even with less promotional obligations, less reports and complaints in some cases, have 15 staff members or so."*

**ENOC Member Interviews**

52  These responses reveal a significant concern about ICRI effectiveness, which is underscored by the international standards i.e. the importance of ensuring that the institution has sufficient resources, including staffing, to carry out its mandate. While size, structure and staffing levels clearly differ amongst the Offices of ENOC members, the nature of the challenge also highlights the extent to which these more typical management issues concern the ICRI in day to day operations. While these matters are not unique to ICRIs, it is clear that they are pertinent to the effectiveness of the Office and should, perhaps, be taken into account in the development of the Office structure and/or the appointment of the Office holder.

## 2.4.2 Office holder: appointment and term of the Office

53  It is clear from this research that the personality, integrity and expertise of the Office holder is an important consideration in any study of ICRIs. Although the international standards are silent on the professional background of the Office holder, they do require a process that is independent, inclusive and transparent.

# 2 Establishment, Form and Independence

The survey addressed the appointment of the Office holder in this respect asking if there were such procedures in place governing the appointment of the Office holder. Interestingly, two institutions replied 'No'. The other institutions all referred to the national law which sets out who appoints the Office holder.

54      Several institutions reported that the appointment of the Office holder is made either by Parliament or by the Government. The question that arises, however, is what process precedes the selection of the person for Parliament or Government approval. This research indicates that there is some variety in this, ranging from a rigorous multi-stage recruitment process, to a more limited selection procedure.

55      The role of children in the appointment process is also very diverse, ranging from none at all to input on the skills and qualifications of the future Office holder for example. This diversity raises a question as to what weight is attached to the requirements of Article 12 of the CRC in the establishment of the appointment process.

### A Rigorous Selection Process

*"I was appointed by the Parliament but before the Parliament took the final decision of appointing the Commissioner, there was a quite heavy selection procedure. It started with an online exam on different topics relating to children's rights in a big room with hundreds of candidates. The second phase was an assessment by a professional assessment centre. After this phase there were five candidates left. We had to present ourselves to a jury of eight people including academics, people from children's rights organisations, and the president of the Youth Council."*

**ENOC Member Interviews**

56      The survey asked whether the term of the Office holder was fixed or renewable. Thirteen institutions reported having a fixed term, 21 renewable, and one institution did not reply. There are potential benefits to these different scenarios. On the one hand, a longer mandate recognises that the advancement of children's rights takes time and as such, a long term can help to depoliticise the Office, taking the appointment of the Office holder 'off the table' for a period of time. On the other hand, a shorter term keeps the Office holder fresh, ensures an urgency to the delivery of strategic options and avoids an Office losing momentum. A single, non-renewable term is arguably the most consistent with the independence of the institution as it protects the Office holder from public or political pressure that might impact their re-appointment.

57      In some cases, the mandate of the Office holder is linked to the term of the general Ombudsperson. This is a vulnerability for a variety of reasons, including where there is a vacancy in this Office, or a delay or change in its appointment. Overall, where the term of the ICRI Office holder is dependent on the term of the general Ombudsperson, this can weaken the independence of the ICRI.

## 2.4.3 Policy decisions: agenda setting and communication

58    Autonomy in the setting of the institution's agenda or strategy is important to its effectiveness, as the international standards above explain. In the survey, 30 institutions answered that the founding legislation specifically provides the ICRI with the power 'to set its own strategy and priorities' and separately, 31 institutions answered that they had the power 'to report freely to the public, the media, etc.'. Both factors indicate a level of independence in the exercise of their powers (see Figure 2). However, during the interviews, some institutions acknowledged that they encountered limitations exercising this power in practice.

59    One issue that arises is how institutions working in an integrated Office can effect policy decisions. This was explained by one of the institutions in the survey as follows:

*'Forming part of a general Ombuds-institution entails both advantages and disadvantages. On the one hand, it limits the independence and autonomy of decisions to set out the Department's own strategy since it has to go in line with the larger institution and its budget. On the other hand, it allows the Department to reach out to further audiences and to work on synergies with other departments and experts.'*

60    In the interviews, two respondents working in integrated institutions reported that for certain high-level communications, for example with the Minister, approval or even the presence of the National Ombudsperson is required. This has clear potential to impede the ICRI's power to develop its own agenda and to make the role and powers of its Office/department known, as is central to fulfilment of the ICRI mandate to promote the rights of the child.

## 2.4.4 **Budget**

61    The international standards make clear that ICRIs must have sufficient resources to enable them to fulfil their functions. Autonomy over these resources is also important and as a result, the study considered an institution's independence with regard to how its budget is allocated. The survey indicates that this process is problematic for many ICRIs, with 21 indicating that they faced challenges in this respect (Figure 7).

62    The survey asked institutions whether their budget was provided by Parliament, Government or a Government department, or other. Thirteen institutions replied that it was awarded by Parliament, 12 by Government or Government department, six by both of the above, and four replied 'other'. Examples of other included: financed by the state budget, through a proposal of the general institution, or allocated by the budget of a ministry.

*Figure* 6: Body allocating the ICRIs' budget
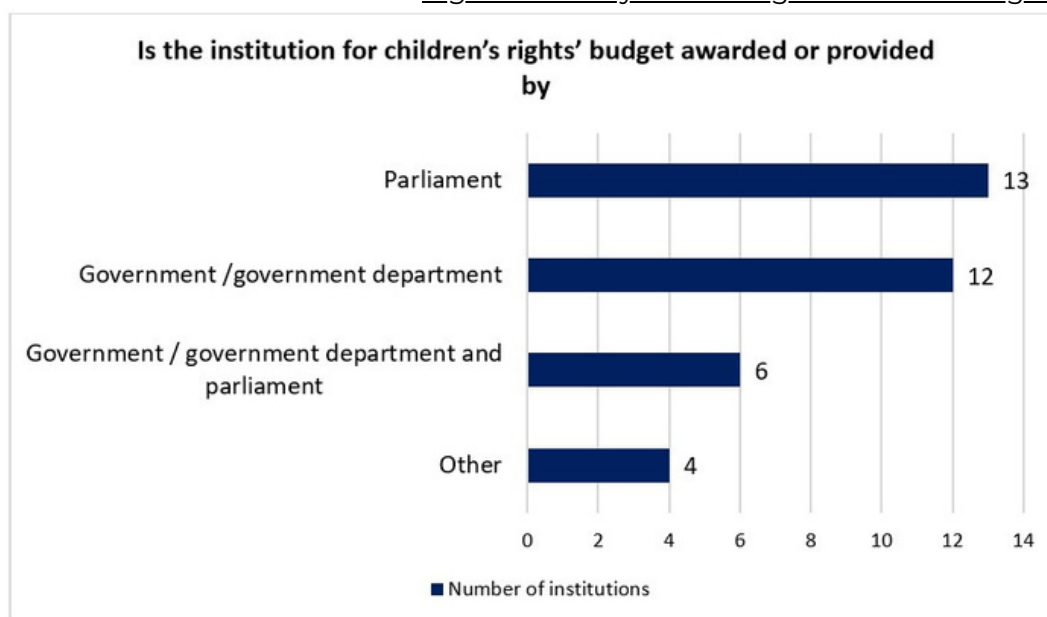


63    Accountability for an institution's budget was also identified as a means for external stakeholders to steer the work of the institution. For example, one institution noted in the survey that '*if the Office was underperforming it would need to justify and explain this to the […] Parliament. It may have its budget reduced, or external staff may be asked to review/ undertake some of the functions of the Office*'. In this regard, how the ICRI's budget is awarded is integral to its independence. Having the budget allocation set in legislation can serve to underscore its independence, limiting the risk of the ICRI's budget being used as a political tool.

## 2.4.5 Location of the Office

64    An interesting element that came up in the interview is the location of the ICRI. This is important as proximity to Government and to relevant stakeholders, including accessibility to children and young people, is important to how the ICRI fulfils its mandate. For example, relevant factors that send out particular signals include: having adequate child-friendly facilities, enabling uncontrolled access to the general public or nesting the ICRI as part of another institution, like the Parliament.

**Location of ICRI Office**

*"Our institution was moved from the capital out to a city quite far away from the capital. That has made some things more difficult and complicated because we have some travel time."*

**Alternatively:**
*"Our Office is very near to the Parliament. …so, when we send our recommendations for instance on new legislation to the Parliament representative, we see the week after that that they use them to ask questions to the minister, to the cabinet."*

**ENOC Member Interviews**

## 2.4.6 Challenges

*Figure 7*: Challenges faced by ICRIs
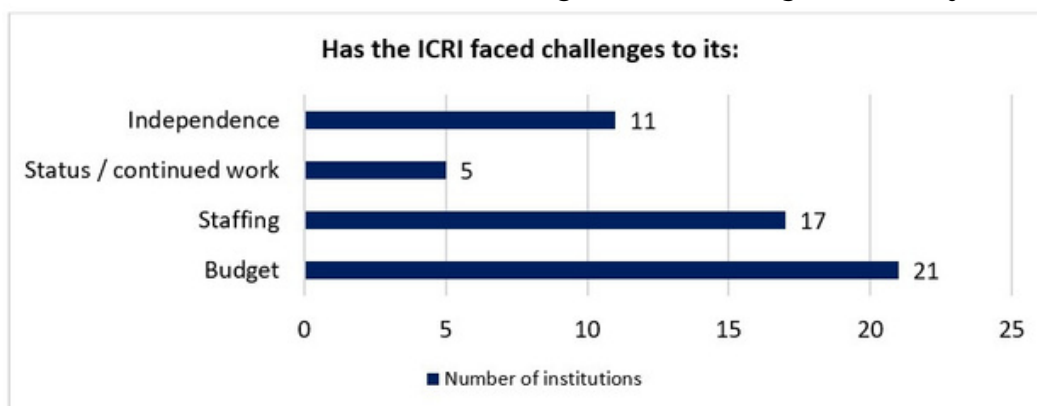


65    The survey prompted ICRIs about the challenges they face and 27 ICRIs responded identifying the most common challenge was with their 'budget'. This is not surprising, as ICRIs need funding to enable them to fulfil their functions, and the extent of their mandate means, in many cases, that their resources will never be sufficient. This pressure may relate to the fact that many Offices have powers that are 'reactive', where workload can be more difficult to predict or to plan. This is particularly relevant to the 27 Offices that have a complaints function (Figure 2) (Kilkelly and Logan, 2021). A separate but related finding is that 17 institutions noted 'staffing' as one of their challenges, a factor that undoubtedly relates to the issues discussed above.

# ② Establishment, Form and Independence

66    It is significant that 11 Offices reported challenges to their 'independence' in the survey. In this respect, five respondents reported that their status / continued work was being challenged, highlighting that these ICRIs consider that their institutions are under threat. Challenges could span from a threat to their status as an ICRI, to the risk of interrupted or reduced levels of activity or productivity. This is discussed further below.

*Figure 8*: ICRIs' biggest challenges to fulfilling their mandate
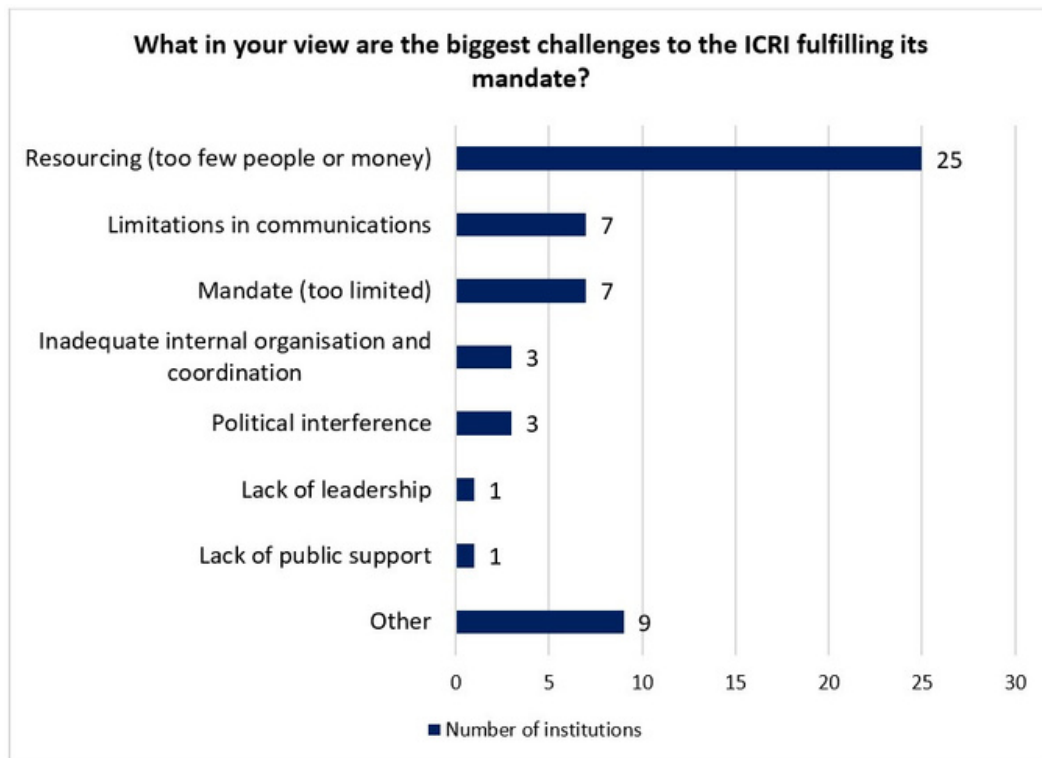


67    With a view to exploring the challenges currently experienced by ICRIs, the survey asked respondents to identify the greatest challenge they face in the fulfilment of their mandate. Here, the large majority of ICRIs (25 out of the 30 institutions that answered this question) identified 'resourcing', both in terms of staffing and money, as one of their biggest challenges. After that, seven institutions noted that limitations in communication – understood in the survey as 'lack of child-friendly forms of communication, restrictions because of communication strategy of the general institutions', etc. – and 'a too limited mandate' as one of the biggest challenges they face. Other challenges that were put forward by the ICRIs were: slow rate of change within the public service, lack of awareness about the ICRI and their rights, lack of support from Parliament in relation to budget, lack of implementation or follow-up of their recommendations, lack of adequate spaces, or more general lack of adequate powers. Being part of a broader organisation was also identified as a challenge, as well as the threat a separate institution may face to integrate with a broader human rights institution. Overall, these findings shed light on the complexity of the landscape in which the ICRI operates, as well as the importance and the breadth of its mandate.
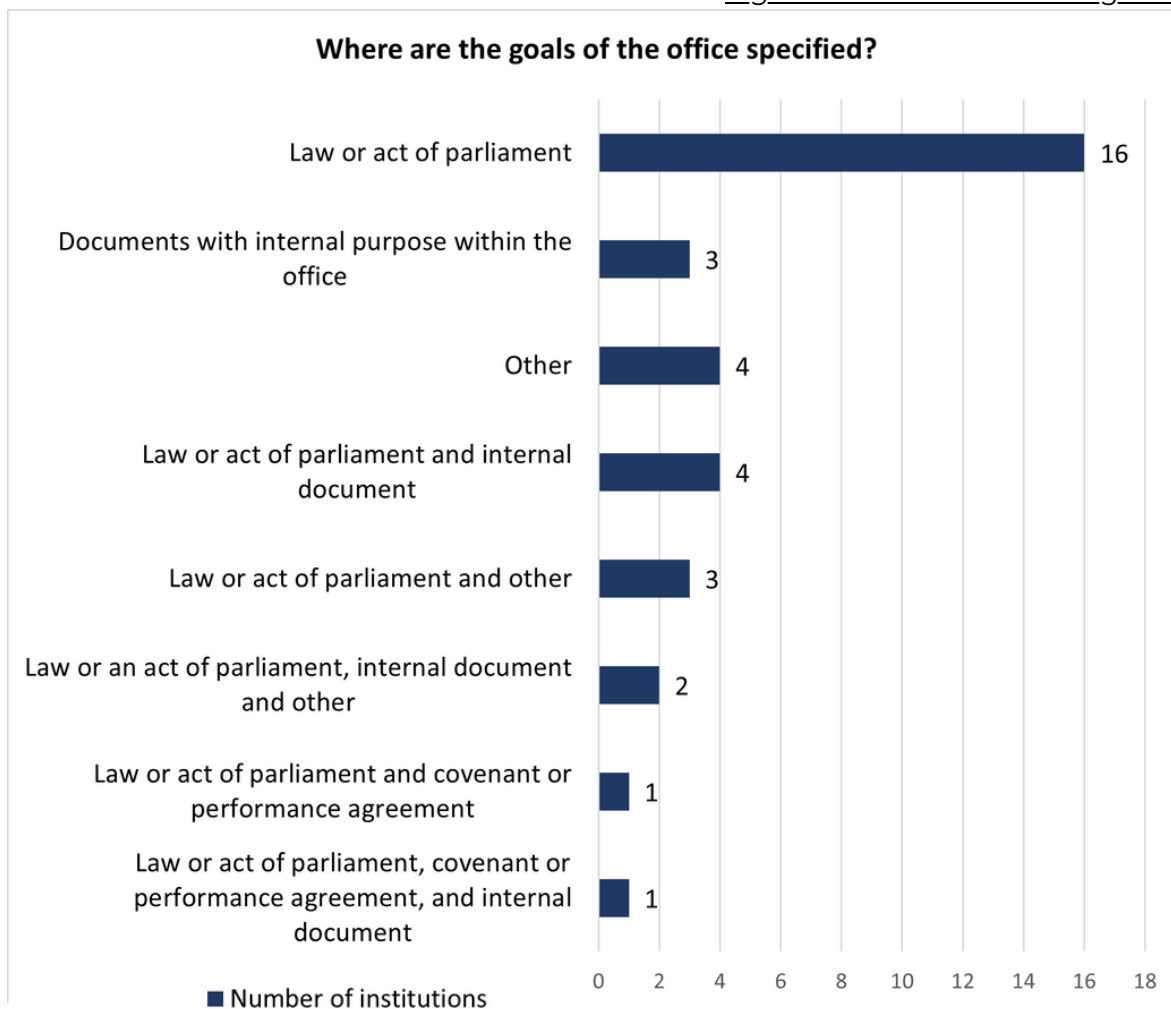
# 2 Establishment, Form and Independence

## 2.5 Evaluation of the ICRI: accountability and assessment

68   Similar to other public bodies, ICRIs must be held accountable for their own actions and performance, while preserving their independence (Sedletzski, 2012, p. 17). The ICRI must be accountable to Government and Parliament, as well as to the children for whom the institution was established (UNICEF Innocenti, 2001, p. 9). Mechanisms to deliver such accountability can include: written reports of activities to Parliament, Government or the public, information to the general public, monitoring by civil society or as part of a network membership, or assessment by international monitoring bodies (Sedletzski, 2012, p. 18).

### 2.5.1 Goals and indicators

69   According to the CRC Committee, it is 'essential' that ICRIs remain 'entirely free to set their own agenda and determine their own activities' (CRC Committee, 2002, para 25).  From the survey data, we can see that most of the institutions have their goals set, completely or in part, in a law or an act of Parliament as the following graph shows, thereby protecting their independence in the exercise of these powers in practice.

*Figure 9*: Source of ICRIs' goals



**Where are the goals of the office specified?**

| Category | Number of institutions |
|---|---|
| Law or act of parliament | 16 |
| Documents with internal purpose within the office | 3 |
| Other | 4 |
| Law or act of parliament and internal document | 4 |
| Law or act of parliament and other | 3 |
| Law or an act of parliament, internal document and other | 2 |
| Law or act of parliament and covenant or performance agreement | 1 |
| Law or act of parliament, covenant or performance agreement, and internal document | 1 |

■ Number of institutions

70      Sixteen institutions shared that their goals were set in a law or act of Parliament only, three were set out in documents internal to the Office, and four in 'other' documents. For the other institutions, the goals were set in a combination of documents (law or act of Parliament, internal document, covenant or performance agreement and/or other). It is noteworthy that, in total, 27 of the institutions have their goals set out in law or an act of Parliament, either solely or in combination with other sources. Reflecting the international standard in this area, this is an important mean of preserving the independence of the institution. For 21 institutions (out of 33 that responded to this question), these goals include measurable targets or performance indicators. This question of how to appropriately balance public accountability with independence of the institution is worthy of more detailed analysis.

## 2.5.2  Evaluation

71      Regarding the evaluation of the Office's non-financial performance goals, 26 of the 28 institutions that replied to the survey indicated that the Office itself, solely or in combination with other parties, undertakes this process. For 15 institutions, this evaluation is conducted solely by the Office itself. For the other 11 institutions, the following bodies also evaluate the institution's performance: a supervisory authority (six), a third party by order of the Office itself (three), a third party by order of the supervisory authority (two) and 'other' (six). One institution shared that it was evaluated by the supervisory authority and 'other', and another only by 'other'. 'Other' includes Parliament, Advisory Panels or a general human rights institution.

72      Regarding whether the impact of the work of the institution is evaluated by an external body, it is interesting to note that half of the institutions shared that it was, and the other half that it was not.

73      During the interviews, one institution mentioned that they are trying to increase the participation of children in the evaluation process, although this process seems to be relatively underdeveloped.

## 2.5.3  Reporting

74      The main stakeholders to whom ICRIs report on their activities is the Parliament. After that, the most common authority to which ICRIs report is the Government. Two institutions commented that they do not have reporting obligations to an external authority – it is done for internal purposes only.

75      The most common way in which ICRIs report on their results and achievements of goals is through the publication of annual reports. For many, this represents both public accountability of the Office and a self-evaluation of the activities and achievements of the Office.
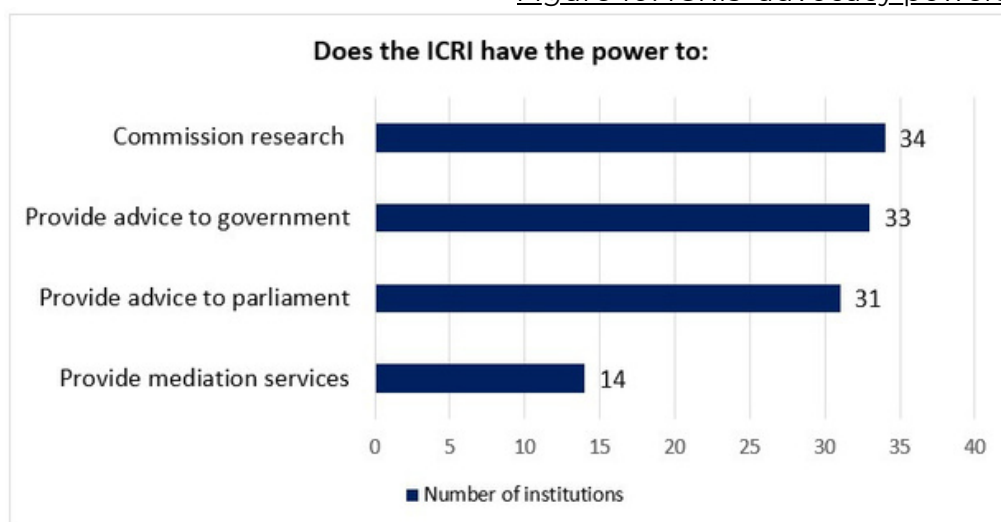
# PART II
## ICRIs: SCOPE AND EXERCISE OF THEIR POWERS

76    As indicated above, ICRIs have a diverse range of powers in line with international standards and the scope of their mandate. This section presents the findings of the research on the following key powers: advocacy, law and policy reform, international reporting and complaints handling. It also discusses the participation of children and young people in the work of the institution.

## 3  Advocacy

### 2.1    Advocacy powers

77    A range of powers can be said to fall within the broad scope of 'advocacy'. Most ICRIs have the following advocacy powers:
- to commission research (e.g. research on a specific children's rights issue in the country, on children's views or perspectives etc.) (34),
- to provide advice to Government (33) and
- to make submissions to Parliament (31).

78    Interestingly, only 14 of the institutions have the power to provide mediation services (see CRC Committee, 2002, para 19).

79    Further advocacy activity is captured below (Figure 10) with respect to stakeholder engagement.

*Figure 10*: ICRIs' advocacy powers

# 3 Advocacy

## 3.2 Stakeholders

80 How the ICRI engages with wider society and with particular groups who have a stake in their work is crucial to the fulfilment of their mandate. This is especially important given that although their independence must be carefully guarded, ICRIs must work with other bodies and individuals if they are to maximise their effectiveness. In this regard, almost all institutions indicated that children and young people were their primary stakeholders. Interestingly, only 21 and 19 ICRIs respectively indicated that adults/ the public and the media were their primary stakeholders, highlighting a potential difference in approach. Other stakeholders included: academia, legal professionals, social workers and other professionals.

*Figure 11*: ICRIs' primary stakeholders
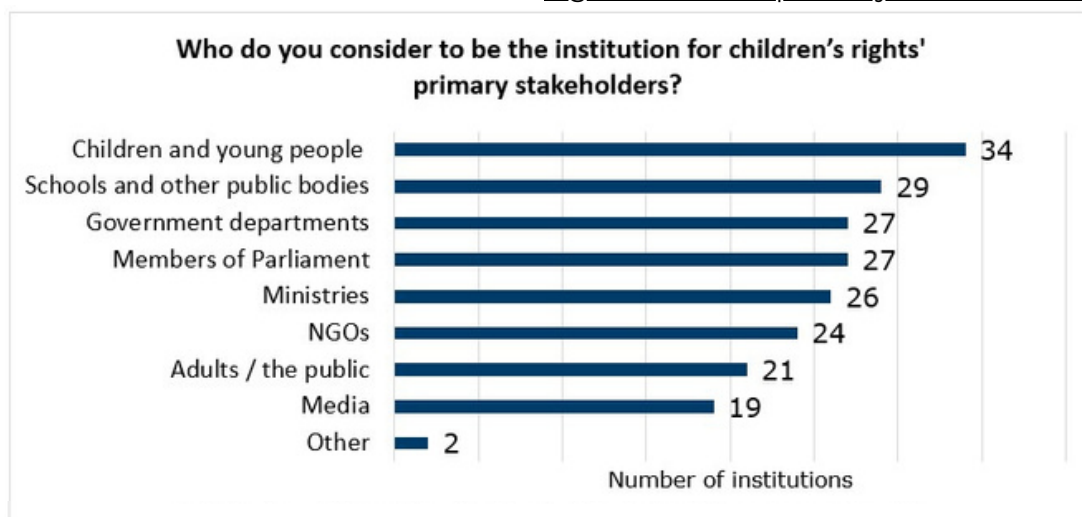


**Working with external stakeholders:**

*"When we recognise an issue that is a general problem in the country, we make a recommendation to the different stakeholders. But we also speak about that problem through the media, through the campaign, through the different meetings with different people with different experts."*

*"We work with other stakeholders. Even with ministries. We are trying to participate in different working groups, for instance if they would initiate a working group on a draft law, our institution is always involved. We try to participate in every way and to observe in every way, especially now that it is possible to do so remotely. So, it's much quicker but we are trying to be everywhere … when it covers children's rights, children's issues … we are trying to just get all the information. And NGOs, we also invite them to our working groups or in relevant discussions and we try to just meet them everywhere possible."*

**ENOC Member Interviews**

# 3 Advocacy

## 3.3    Approaches to Advocacy

81    When asked about their approaches to advocacy, 33 institutions answered that they most commonly used media, networks such as ENOC, and the participation of children in their work. Thirty-one institutions answered: civil society and 29 answered: international or regional human rights mechanisms. Other mechanisms which were mentioned were different networks (Eurochild, Association des Ombudsmans et Mediateurs de la Francophonie, British and Irish Network of Ombudspersons and Children's Commissioners), activities with academic partners, awareness activities and training. One institution also mentioned involvement in the CRC Committee's reporting mechanism as a form of advocacy. These answers show the importance of international networks for ICRIs, especially given that their independence from Government and civil society can mean they operate in isolation at a national level.

*Figure 12*: ICRIs' advocacy mechanisms
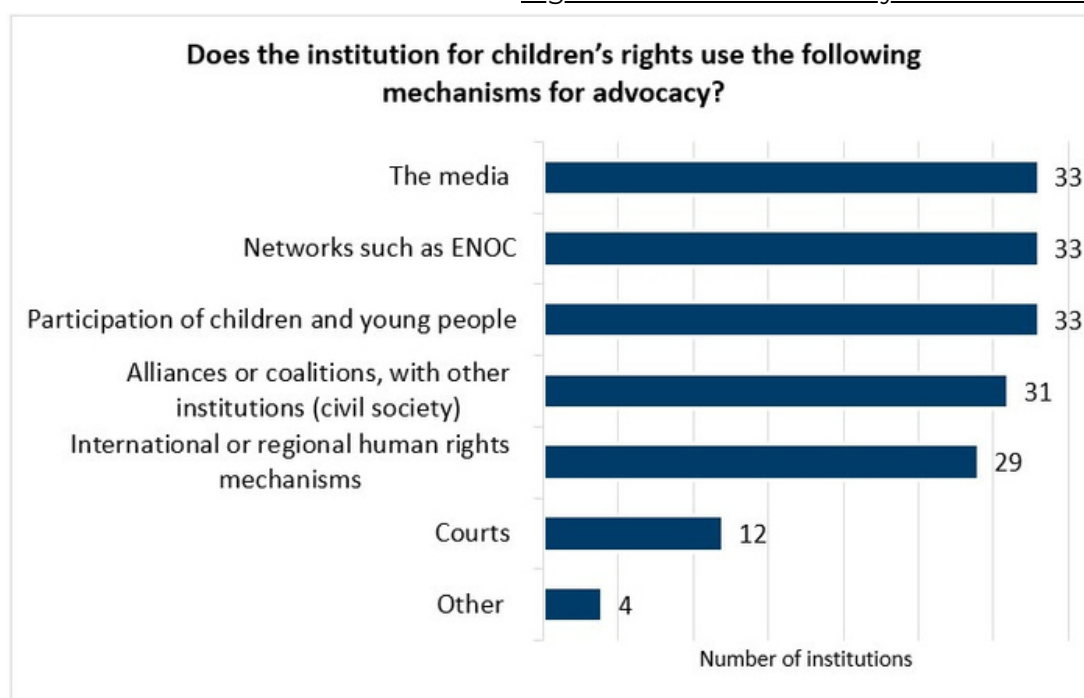


82    Considering that 33 ICRIs indicated that they use media for advocacy, it is interesting to study how ICRIs describe their work with the media. Twenty-two ICRIs (out of the 35 institutions that responded to the survey) consider that their media work is a 'substantial' part of their work, while nine shared that it was only a 'minor' part of their work. Moreover, 26 viewed their engagement with the media as reactive, and 24 as proactive.

# 3  Advocacy

*Figure 14*: ICRIs' engagement with the media
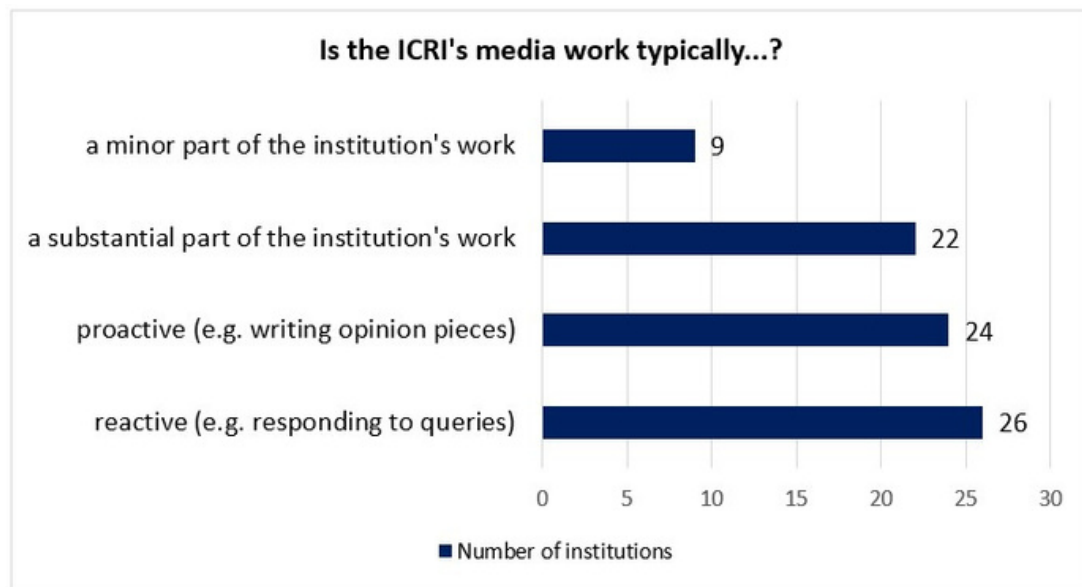
83    Advocacy can target different stakeholders. From the interviews, it is clear that ICRIs use a variety of different approaches to target different audiences. Advocacy is often linked to another power such as law and policy reform, for example, and reflecting the earlier findings, only 12 ICRIs use the courts for advocacy.

# 4  Law and policy reform

## 4.1    Proposals for law and policy reform

84    Monitoring implementation of the CRC, promoting harmonisation of law and policy with the CRC and ensuring children's rights are protected in legislation are all important activities for ICRIs according to the CRC Committee (2002, para. 19). As noted above (Figure 2), the power to make recommendations to Government is provided in legislation for many of the ENOC members. In this regard, all but one of the ICRIs which replied to the survey have made proposals to Government to reform law and/or policy in line with children's rights. Most added that the Government follows these recommendations, at least sometimes, although one indicated that the Government does not. One institution noted that it had to be borne in mind that the ICRI's recommendations may align with recommendations made by other stakeholders, and that it was thus not always possible to draw a direct causal link between the impact of the ICRI and the reform achieved.

# 4  Law and policy reform

85    The research indicates that ICRIs use different strategies in seeking to advocating for law and policy reform.

**Proposal for reform after inquiries:**

*"The Ombudsperson has proposed reformed legislation in many areas. But normally the Ombudsperson doesn't pursue investigations in a way that enables the Government to adopt a legislation without first initiating a Government inquiry or equivalent. Many times, a reformed legislation is the result of a long time of efforts from many institutions/organisations/ others, including the Ombudsperson."*

**ENOC Member Survey Response**

86    However, institutions identified the challenge associated with proposing law and policy reform, while maintaining a constructive relationship with the Government. This can be a difficult relationship to manage, combining factors of independence and influence, as the following quote illustrates.

**Challenges in proposing law and policy reform:**

*"Sometimes it's really a delicate topic, in which the media is very interested and is jumping on it and in which the Parliament is interested and is taking something to ask difficult questions to the ministers. And (with) those topics, I feel that I have to be careful. I think that we do our job in a good way, in the sense that we don't allow people to make us shut up, I think I can say this. But sometimes we have to pay attention in the way we bring it or in who we talk to or in the way we talk."*

**ENOC Member Interview**

## 4.2    Consultation on law and policy reform

87    The survey asked whether Government is required to consult the ICRI when undertaking law reform. Twenty-one institutions (Figure 14) said 'No', 12 institutions said 'Yes' and two did not reply. For ICRIs whose Government is required to consult them when undertaking law reform, 75% answered that the Government takes their advice into account frequently, 17% occasionally and 8% rarely. This relates to a range of complex factors, which may include the legislative standing of the ICRI, its reputation among Government and other stakeholders, the capacity of the ICRI to develop proposals for reform and the willingness of Government to take the ICRI guidance into account.

## 4  Law and policy reform



*Figure 14*: Governments' obligations to consult the ICRI for law reform
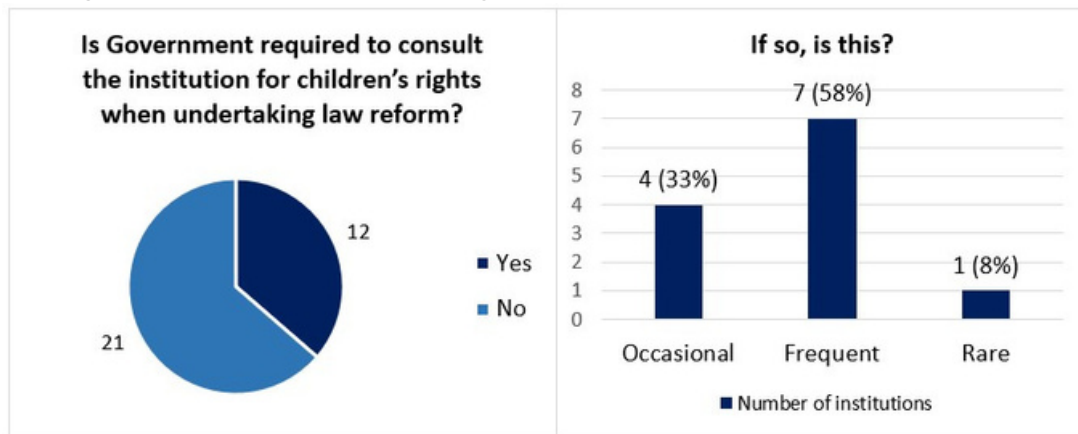
88    When the Government consults the ICRI (as opposed to receiving the advice of the institution unsolicited) nine institutions considered that their advice is frequently taken into account, while two reported that this takes place only occasionally (Figure 15).
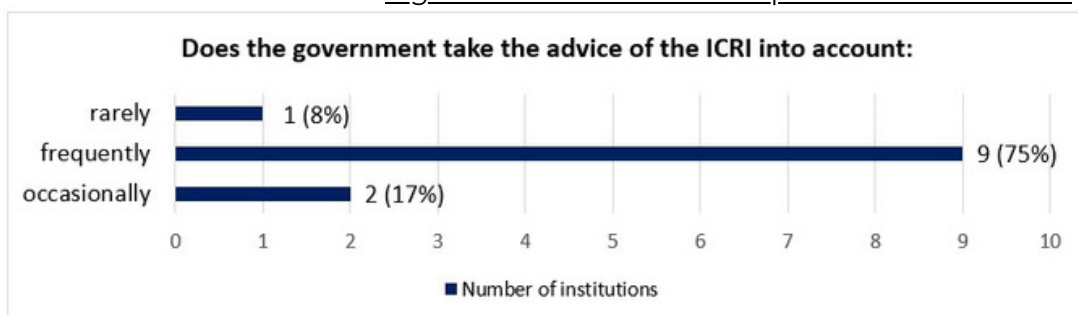
89    Often, even though Government is not required to consult the ICRI, the ICRI tries to influence the process and sometimes does so successfully, especially if they can mobilise their networks.



*Figure 15*: Government response to ICRI advice

**Communicating with Government:**

**"*Government and Parliament often … ask our opinion, but they are not obliged to ask or to do what we want. … We [tell them what we think] with the recommendation. We write a lot to them; we take public positions, and we send to Parliament and Government some recommendations asking to do this, this and this.***

*… For instance, [for a particular group of children], we have a very important law concerning them. I asked the ministry of the interior many times to do something to ensure sufficient funding for [programmes for these children]. I was successful because a decree was issued that provided funding for [the programmes] and some funds, for the most difficult situations.*"**

**ENOC Member Interview**

# 4 Law and policy reform

90    Generating law and policy reform depends also on the institution having the knowledge as to how law and policy making works. The research indicated that Office holders who have former experience in Government have an advantage in that area.

91    Separately, institutions strengthen their impact by engaging with stakeholders via site visits, for example to municipalities or schools, where they speak with 'everybody', observe and assess what is (politically) sensitive. The ICRI can sometimes present itself as a bridge, as an institution that exists to help people.

### Engaging with external stakeholders:

*"With the broader investigations it requires a lot of media work which is quite effective so we would always publish in media on our recommendations, and we would also work directly with any public bodies that were impacted by the recommendations and do follow up over a period of time and monitor that."*

**ENOC Member Interview**

92    To influence law and policy reform, another strategy that has been used by ICRIs is to bring in advocacy for example through international actors, such as the CRC Committee. Even if Governments are not obliged to react, ICRIs can develop practices that nudge (or push) the Government to react.

### Engaging with the Committee on the Rights of the Child:

*"We have very very strong connections to the UN Committee and do a lot of work with the UN committee, particularly around concluding observations, but also on general comments as well. We've also successfully encouraged committee members to engage in specific issues. … For example, on the age of criminal responsibility, we had members of the UN Committee directly engage with the […] Parliament on it, as well as the Council of Europe Commissioner of Human Rights. So, we found the UN Committee to be a really strong ally on our strategic issues."*

**ENOC Member Interview**

# 4 Law and policy reform

## 4.3 Child Rights Impact Assessment

93    Related to the ICRI power to influence law and policy reform is the process of undertaking chid rights impact assessment as a mechanism for reviewing the compatibility with the CRC of reform proposals. Increasing number of ICRIs undertake this activity, which is also protected by legislation in many cases.

*Figure 16*: ICRIs' power to undertake child rights impact assessment
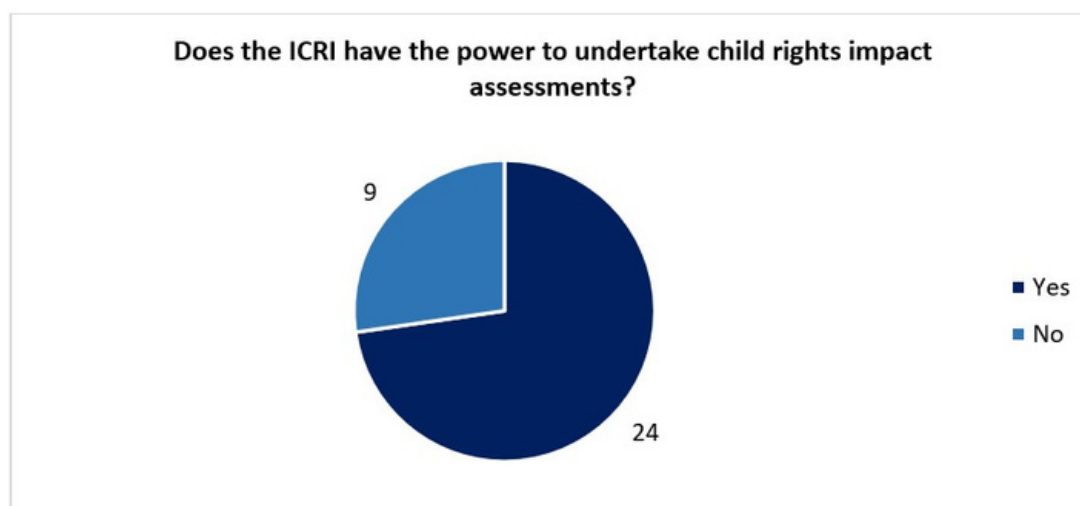


94    Twenty-four ICRIs indicated in the survey that they have the power to undertake child rights impact assessments. Nine do not, and two did not answer the question. This power is not guaranteed in legislation in all ICRIs; instead, they derive this power from other sources. For example, one of the institutions noted that they exercise this power by virtue of Article 4 of the CRC, and others shared that the broad legal mandate of their institutions (for example, one which includes the power to advise Government on law and policy) can allow them some flexibility in this respect.

# 5 International Monitoring

95    From the perspective of the CRC, ICRIs are an important bridge to the national level, playing a strategic role in the treaty monitoring process and engaging with the international community in standard setting. This role is specifically highlighted by the Committee as important to help maintain the integrity of the CRC reporting process (CRC Committee, 2002 para. 20). It is thus important that 32 ICRIs (out of 33 who replied to this question) indicated that they have the power to review state parties' implementation of the CRC.

# 5 International Monitoring

**Does the ICRI have the power to review the State's implementation of:**

- the CRC — 32
- its Optional Protocols — 28
- the CRC Committee's Concluding Observations — 29

■ Number of institutions
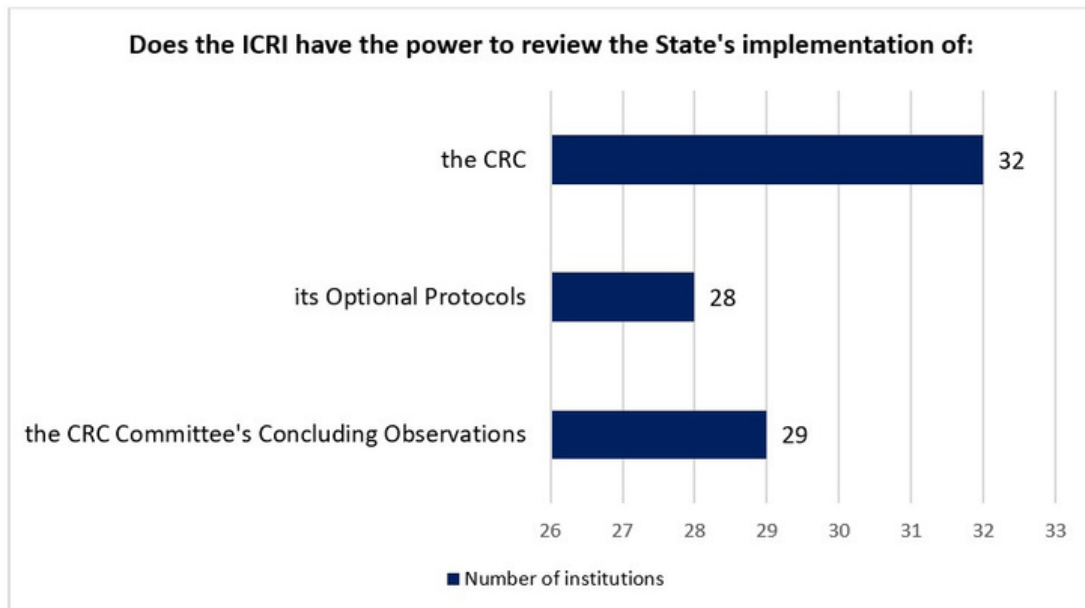
96    Moreover, 30 ICRIs (out of 30 that replied to this question) shared that they reported directly to the CRC Committee, highlighting their strong involvement in the international monitoring process. Twelve ICRIs indicated that they also report to other treaty bodies. This shows that, even though other treaty bodies are also relevant to children's rights, there is less engagement with these, a factor which may also relate to the budget constraints of the institution. Interestingly, engagement with the Council of Europe bodies did not feature strongly.

*Figure 18*: ICRIs' reporting to UN treaty bodies



**Has the ICRI reported independently to:**

- the CRC Committee — 30
- other treaty bodies — 12

■ Number of institutions
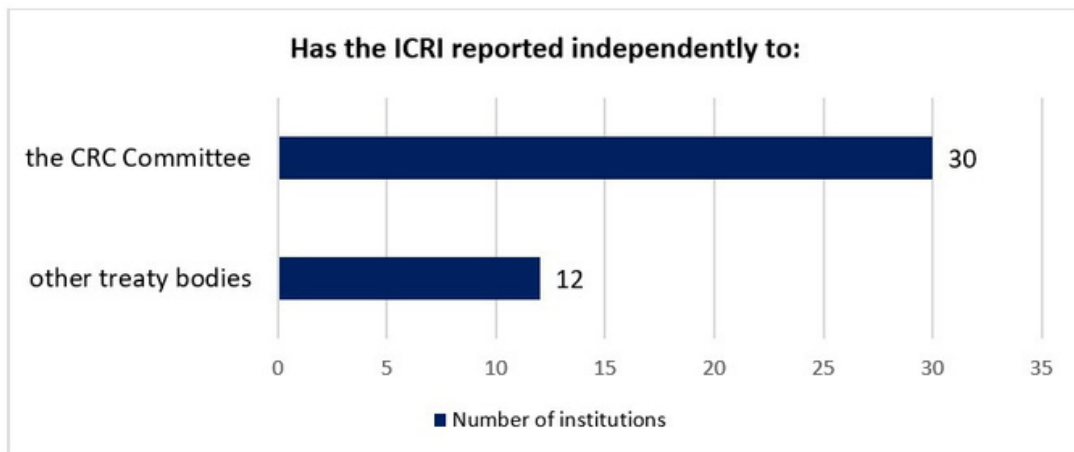
97    In this regard, the survey asked whether the institution had reported independently to the CRC Committee, to which 30 institutions replied positively. Twelve ICRIs reported that they also engaged with 'other treaty bodies'. However, not all ICRIs that report to the CRC Committee involve children in their process.

## 5 International Monitoring

98    Separately, 29 respondents said that they have the power to review the state party's implementation of the CRC Committee's Concluding Observations, 32 review the state party's implementation of the CRC and 28 the Optional Protocols to the CRC. This indicates a high level of engagement with the CRC reporting process and the monitoring of state party implementation at a national and an international level.

## 6 Complaints and Investigations

### 6.1   Complaints

99    As noted above, international standards require ICRIs to have the power to consider complaints and undertake investigations regarding the breach of children's rights, including with the involvement of children themselves. For this reason, the research considered the powers of the ICRIs in relation to complaints handling and investigations.

100    The following table considers the powers to receive complaints from children and others (Figure 19). It is recalled that the CRC Committee considers it essential that ICRIs have the power to consider complaints from children (2002, para 13.)

# 6   Complaints and investigation

**Does the ICRI have the power to receive**

| | Number of institutions |
|---|---|
| individual complaints from children and young people? | 28 |
| collective complaints, i.e. those brought by or on behalf of a group of people? | 27 |
| complaints from children's representatives on their behalf? | 29 |
| complaints from children's organisations or others? | 26 |

101   Complaints can be an important driver in the advancement of children's rights helping to promote children's access to an effective remedy, while holding the responsible public or private actor accountable. As Figure 19 shows, the majority of ICRIs have the power to conduct complaints and investigations. In total, 29 out of 35 institutions indicated in the survey that they have the power to receive one of the above types of complaint from or on behalf of children. Twenty-nine institutions have the power to receive complaints from children's representatives on children's behalf, 28 can receive individual complaints from children themselves, 27 can receive collective complaints and 26 can receive them from children's organisation or others. Children are not required to have legal representation to bring their complaints in any of the ICRIs. Six institutions did not indicate that they have any of the above-mentioned powers.

*Figure 20*: Appeal against the ICRI's handling of a complaint

**Is there an appeal system against the ICRI's decisions or handling of a complaint?**

- Yes: 7
- No: 23
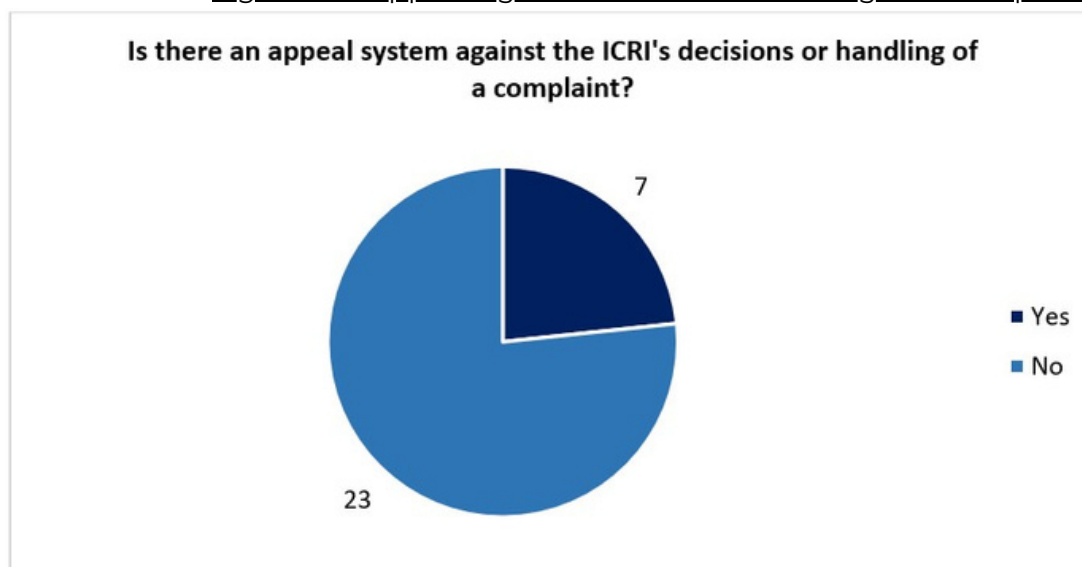
# 6 Complaints and investigation

102     Twenty-three institutions indicated that their decisions or handling of a complaint cannot be appealed. It is not clear whether this relates to the ICRI's limited budget.

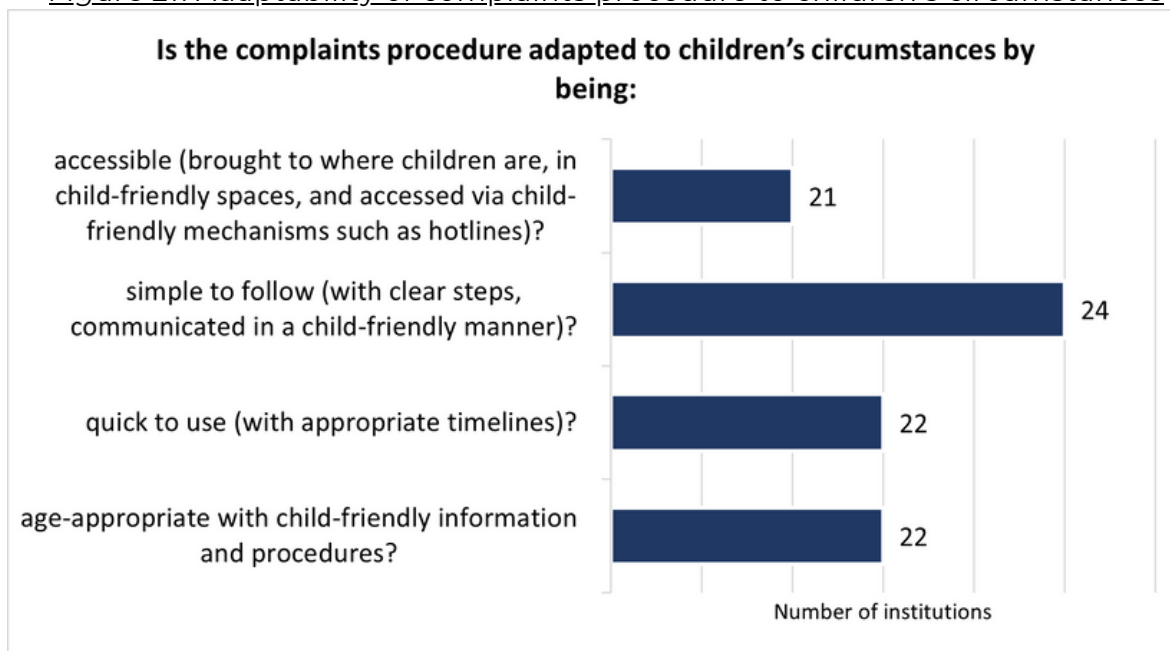*Figure 21*: Adaptability of complaints procedure to children's circumstances



**Is the complaints procedure adapted to children's circumstances by being:**

- accessible (brought to where children are, in child-friendly spaces, and accessed via child-friendly mechanisms such as hotlines)? — 21
- simple to follow (with clear steps, communicated in a child-friendly manner)? — 24
- quick to use (with appropriate timelines)? — 22
- age-appropriate with child-friendly information and procedures? — 22

Number of institutions

103     Twenty-four institutions reported that their complaint procedure is adapted to children by being 'simple to follow (with clear steps, communicated in a child-friendly manner)'. There was agreement that accountability to children was important.

**Feedback to children and young people:**

*"Yes, accountability towards children is one of the basic principles of our work and keeping them informed from step one to when the proceeding has concluded is our priority. Also, the preferred means of communication by children is taken into account and if a child desires to receive written information it is written in a child- friendly manner."*

**ENOC Member Survey Response**

*"When a parent or professional contacts our complaints line on behalf of children, we always ask to speak directly to the child as well. We look for a time and modality where children feel safe and their privacy is respected. For example, we have telephone contact after school at a time when they can retreat to their room, or visit them at their home or their youth care institution where we speak to them in private, or we go for a walk with the youngster when the sun is shining so that they can tell everything in complete safety."*

**ENOC Member Interview**

# 6 Complaints and investigation

104    Not all institutions that have an individual complaint mechanism for children consider that the mechanism is adapted to their needs and circumstances. As one interviewee said: 'The complaint procedure is not as accessible as we would wish for. However, children are given feedback throughout the procedure.' (ENOC Member Survey Response).

105    Most of the institutions consider that the complaints procedure is somewhat adapted to children's circumstances, and they all mention that they offer some form of feedback.  However, where complaints are brought by children's parents or carers, rather than the child, this can lead to less direct contact with children and naturally, less accountability towards children. ICRIs try to find solutions to this. One solution can be to get feedback from children themselves on the complaint line, and ask them if the complaint line is accessible and child-friendly enough and what can be done to improve the process.

106    However, as one institution noted, where the majority of complaints are brought by children's parents or carers, the feedback is provided to the person who filed the complaint – i.e. the parent – rather than the child. This clearly diminishes the impact of the institution's direct engagement with children where feedback is not provided to the child even though the complaint is submitted on their behalf.

## Promoting accessibility:

*"We are trying to go out there as much as possible but apart from that, there are other tools that are less effective like media exposure. For example, recently, I was interviewed by a children's newspaper […] We are sharing the result with all the children … we participate in other kind of activities such as artistic contests for children and …, letting children know we are out there, and that the Ombudsperson can take complaints without the mediation of an adult and so on."*

**ENOC Member Interview**

107    The research indicates that the ICRIs analyse their complaints in order to identify trends and patterns, in some instances leading to further research, advocacy, or agenda-setting. It is not clear whether Offices undertake such an evaluation on a systematic or strategic basis, but is clearly important that the complaint process is used, not just to remedy individual violations, but to explore opportunities for more proactive and systemic reform.

# 6 Complaints and investigation

108    Concerns have been expressed about the impact on an ICRI of a busy complaints function (Kilkelly and Logan, 2021), a factor which appeared to resonate with interviewees. It is notable in this respect that one third of the respondents do not publish the outcomes of their complaints. Although the reasons for this approach are not clear, it may relate to limitations of staffing and resources.

109    In terms of review, 15 (out of 26) of the institutions indicated that their complaint mechanisms had never been independently reviewed, whereas 11 replied that they had. Moreover, eight (out of 29) institutions noted that the outcomes of the examination or investigation of a complaint were not published.

## 6.2   Investigations

*Figure 22*: ICRIs' investigative powers – types of bodies
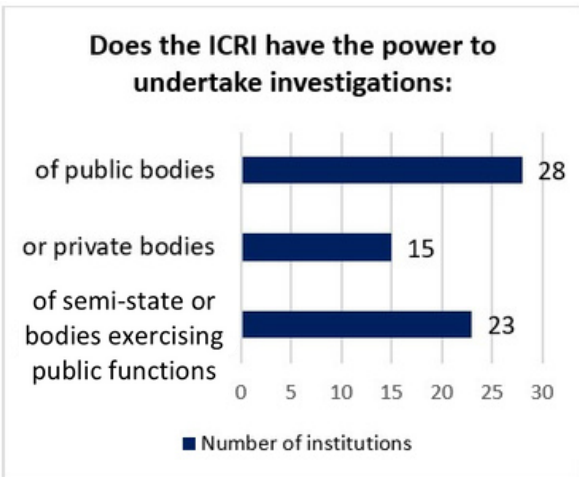
*Figure 23*: ICRIs' investigative powers – exceptions
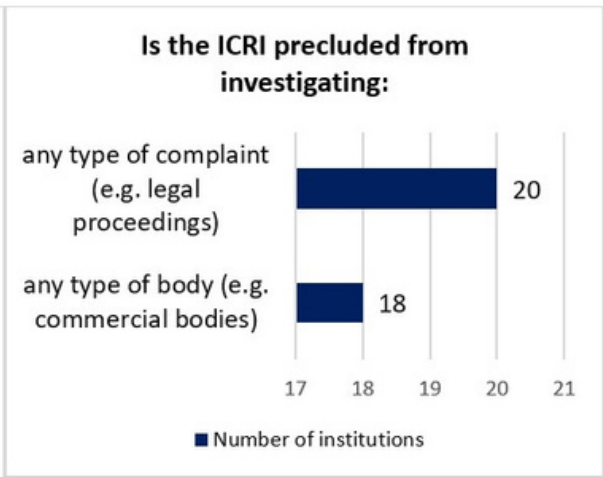


110    The power to undertake investigations is also considered integral to the role of an ICRI, in vindicating children's rights (CRC Committee, 2002, para. 13). The 28 ICRIs that replied to this question shared that they had the power to undertake an investigation of public bodies. Twenty-three have the power to investigate semi-state or bodies exercising public functions, and 15 have the power to investigate private bodies. It is noteworthy that this power has limitations for 24 ICRIs: 20 institutions stated that they are precluded from investigating some types of complaints and 18, some types of bodies. Such limitations can relate to legal proceedings, court judgments, individual complaints between a child and their parents, or matters that are outside of their competence. Bodies that can fall out of the scope of investigation include: judiciary, senior Government officials, the armed forces and private or commercial bodies. It is interesting to compare this data with the findings relating to the limited powers of ICRIs in the legal sphere, as discussed further below.

## 6 Complaints and investigation

## 7 Awareness Raising and Visibility

111    The power to raise awareness about children's rights is held universally by all members of ENOC who responded to the survey, indicating that this activity is considered important to all ICRIs, whether integrated or independent in form.

*Figure 24*: ICRIs' power to raise awareness about children's rights
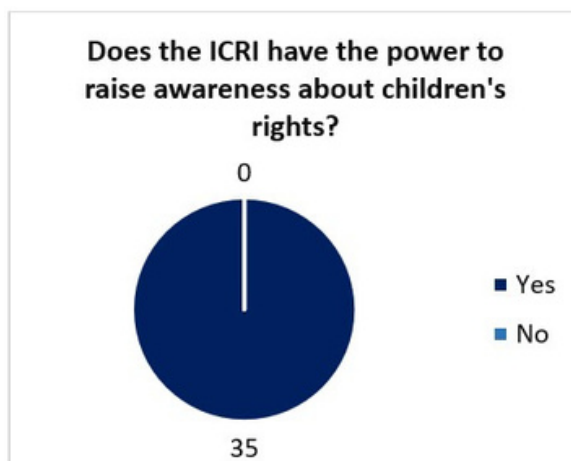
*Figure 25*: ICRIs' role in encouraging the Government to raise awareness of children's rights.
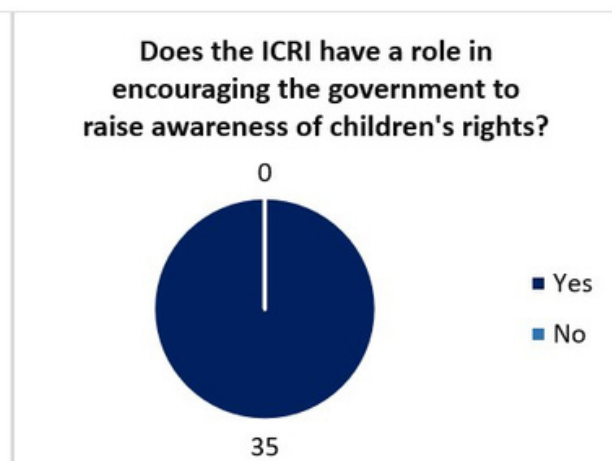


112    Even though all ICRIs reported that they have the power to raise awareness about children's rights, one institution stated that this power is not guaranteed in legislation. In addition, they all stated that they have a role in encouraging the Government to raise awareness of children's rights, reflecting the explicit duty on states parties under Article 42 of the CRC in this regard.

# 7 Awareness Raising and Visibility

*Figure 26*: Public information or education campaign on children's rights
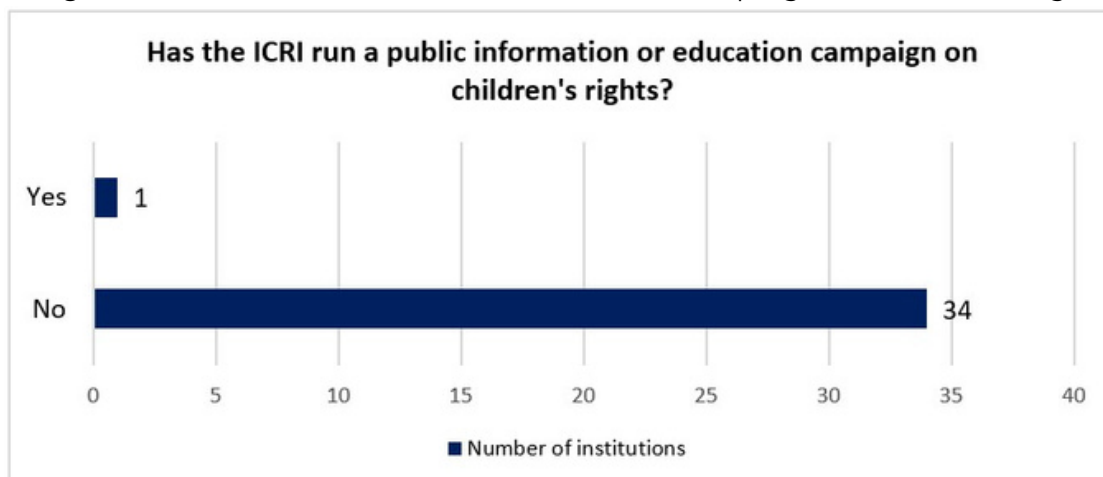


113    Conversely, however, few institutions have themselves been involved in running public information or education campaigns on children's rights with only one institution answering this in the affirmative (Figure 26). No explanation was provided as to why this is the case, but it may relate to factors such as the explicit nature of the state's duty, resource limitations and the relevance of other media and public engagement activity.

*Figure 27*: ICRIs' part in raising awareness about the role of its
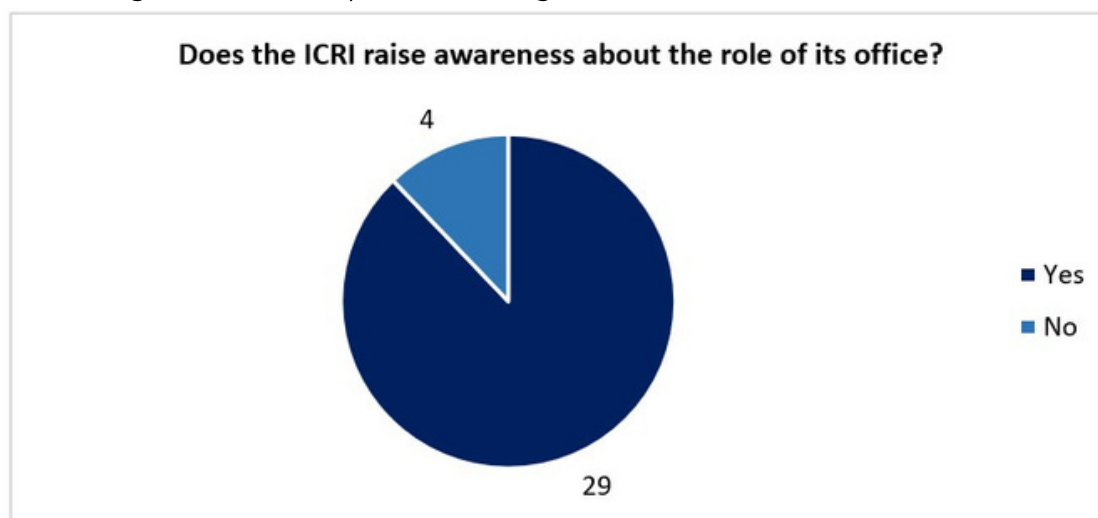


114    ICRIs are clearly involved in a wide range of awareness raising activities, some of which are set out below. Interestingly, four institutions stated that they do not raise awareness about the role of their Office.

# 7 Awareness Raising and Visibility

## Examples of awareness raising activities

- Organisation of events
- Promotion of tools and activities (helpline, chats)
- Visits and campaigns in schools
- Information in curriculum
- Visits in child protection centres
- Public events, conferences, workshops, seminars, trainings
- Media and social media
- Website
- Publications
- Consultations with children
- Children's visits to the institution
- Reaching parents and professionals
- Networks of cooperation (NGOs,public service)

115   The level and variety of such approaches indicate the priority being given by ICRIs to awareness raising activity by, but also about their Office. This highlights the extent to which visibility is a goal in itself, both with respect to the public, specifically children, and with regard to Government/Parliament.

**Visibility:**

*"We are trying to maintain… open channels of communication with schools, with school units and other educational structures that are supervising school units. And we are trying to see each year what are the gaps there. And this year I think that another important tool to measure the effectiveness is the work I have been doing with the young advisory board, our young council, regarding the visibility of the institution. Apart from their role of ICRI's, we also trying… to evaluate the visibility of the institution."*

**ENOC Member Interview**

116      Despite the guidance from the CRC Committee that ICRIs should have the power to support taking children's cases to court (CRC Committee, 2002, para. 14), the ICRI power that is least widespread among ENOC members surveyed relates to the use of the law to advance children's rights. ICRIs' direct involvement in litigation is relatively uncommon, a factor that may relate to Government reluctance to give ICRIs the power to take legal action against the state. This may also relate to choices regarding how resources are allocated.

*Figure 28*: ICRIs' power to support children to take legal action
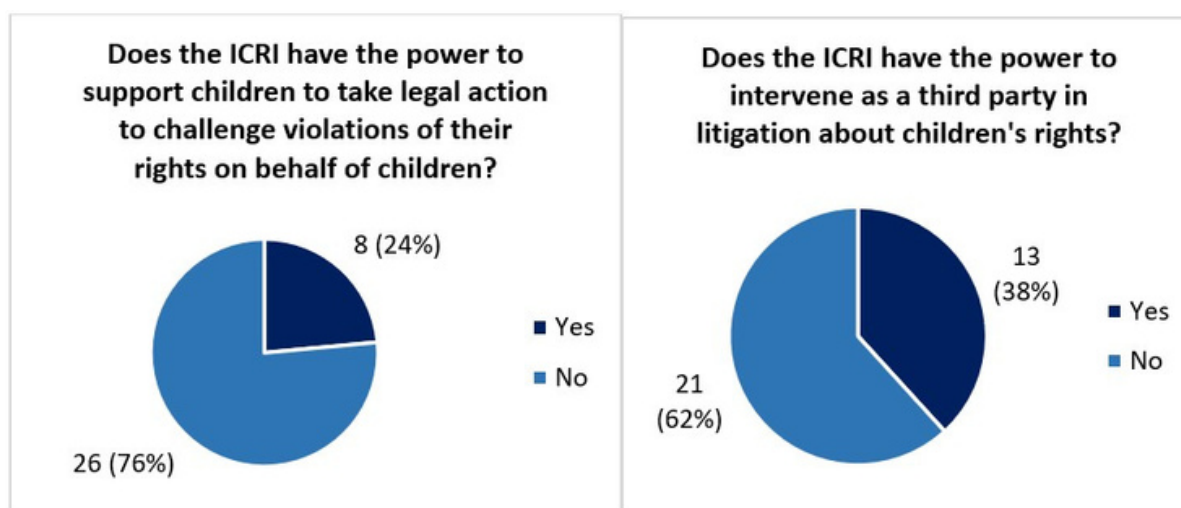
*Figure 29*: ICRIs' power to intervene as a third party in litigation about children's rights

**Does the ICRI have the power to support children to take legal action to challenge violations of their rights on behalf of children?**

8 (24%)

■ Yes
■ No

26 (76%)

**Does the ICRI have the power to intervene as a third party in litigation about children's rights?**

13 (38%)

■ Yes
■ No

21 (62%)
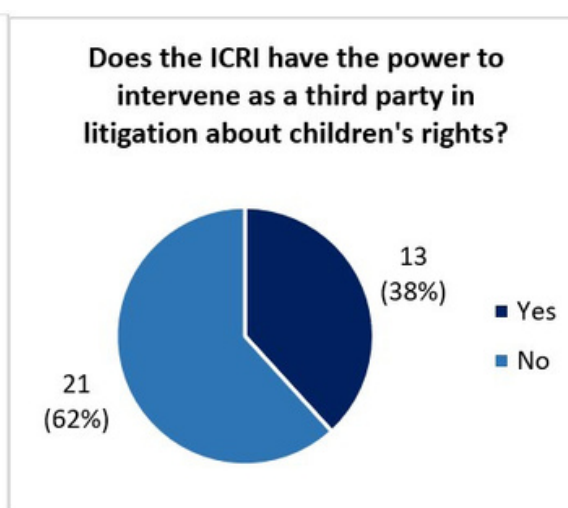
117      As the data indicates, the large majority of ICRIs (26) do not have the express power to support children to take legal action to challenge violations of their rights on children's behalf. Just eight respondents to the survey stated that they have this power (one institution did not respond). For one of the eight institutions that has this power, it is not guaranteed by legislation. Several ICRIs have the power to intervene as a third party in litigation about children's rights: 13 have the power to do so, whereas 21 do not.

*Figure 30*: ICRIs' evaluation of their powers in relation to litigation

**Has the use of this power been independently evaluated?**

2

■ Yes
■ No

24
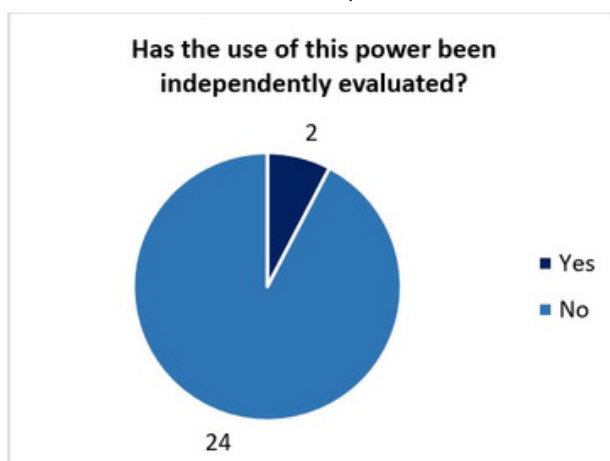
# 8 Litigation

118    Out of 26 institutions, 24 indicated that the use of this power has not been independently evaluated.

119    The use of the *Amicus Curiae* power is an important way to strengthen the role of an ICRI, to ensure its relevance in the legal process on behalf of children. It is also a way to achieve reform without being involved in strategic litigation as that can weigh heavily on an Office's resources given the particular expertise and resources it requires.

*Amicus Curiae:*

*"I think our Amicus Curiae (is the power we have used most successfully). We can make observations in courts for instance in the context of the violation of rights of unaccompanied minors and foreign minors in administrative detention centres. We are followed in 80 percent of these cases by the court."*

**ENOC Member Interview**

# 9 Participation of Children

120    International standards indicate that ICRIs have a responsibility to involve children and young people in their work, requiring that measures be adopted to make the institution accessible to children. This is also important to the credibility of an institution which purports to hold Government to account for the implementation of Article 12 of the CRC and the CRC more broadly.

## 9.1    How ICRIs involve children in their work

121    As the information below indicates, there are a wide variety of ways in which ICRIs involve young people in their work and this is an area of increasing innovation and importance given their unique mandate to protect and promote the rights of the child.

# 9 Participation of Children

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## Child participation mechanisms

- Young Advisors/ Child Advisory Board
- Children's Council
- Parliament for Children and Youth
- Youth Panel
- Young Ambassadors' network
- ENYA (European Network of Young Advisors)
- Visits and meetings (e.g.schools, residential institutions, service centres)
- Consultations, surveys
- Involvement of CYP in meetings / conferences / choice of research
- Children's Working Group
- Complaints

</div>

122    In terms of an ICRI hearing directly from children, 32 institutions replied that the views of children are taken into account by the ICRI and included in the institution's work. One institution shared that this was in progress, whereas another stated that their views were not currently taken into account. For some institutions, the possibility to engage in visits to places where children live or are detained is an important way to stay informed about children's lived experiences of their rights.

*Figure 31*: ICRIs' inclusion of children and young people's views

# 9 Participation of Children
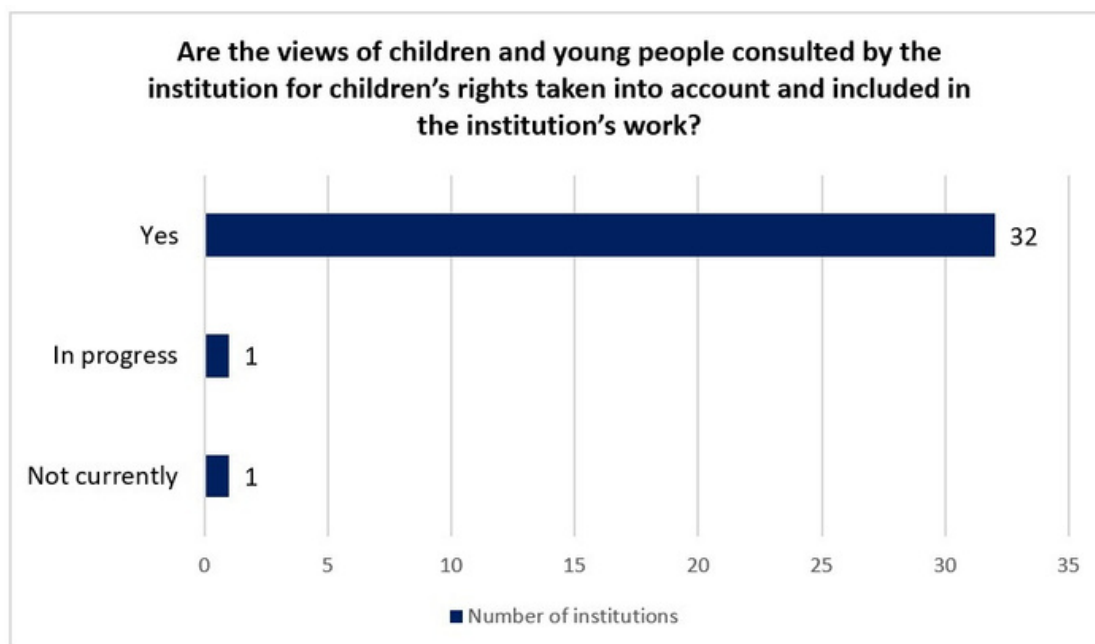
**Importance of child participation:**

*"...my big piece of advice, would be embedding participation as a core value across every aspect of your work, not just if you are doing some research or something, but actually thinking about how you set your strategic plan and how you do your annual reporting, how you do your evaluation, etc."*

*"These direct contacts with children are very important for me and they give me an opportunity to find how do they live, how are they in schools, how satisfied they are with the conditions in their environment, what are their thoughts and positions about children in society."*

**ENOC Member Interviews**

123    The study highlighted the range of approaches ICRIs use in engaging with, consulting and involving children and young people in the work of the Office.

**Strategies of consulting with children:**

*"The [Office holder]'s advisers consult with children through the Advisory Committee comprised of young people and by listening to children with particular life experiences. Consultations with children have concerned issues like healthcare, working conditions, digital world and climate justice. The Office has organised a photo hunt to collect children's observations of problems at their local communities, and a creative writing of 'recipes' what kind of parents children need.*

*We also have regular meetings with major child and youth led organisations in [the country]. Part of the mandate of the [Office holder] is to carry out inspection visits to substitute homes for children deprived of parental care, but also places of detention such as establishments for children needing special treatment due to behavioural problems, psychiatric wards for children and also in prisons there are a few minors. During the inspection visits, counsellors of the [Office holder] carry out interviews with the children living at that place.*

*If necessary, we involve experts (eg. child psychologists to interview children with disabilities or very young children). The aim is to talk to as many children as possible living at the place of inspection, in order to guarantee anonymity. If we have to make a selection, we take into account balance of gender, age, ethnicity, special needs, etc. We ask each child if he/she agrees to talk to us and explain that the interview is voluntary."*

**ENOC Member Interviews**

# 9 Participation of Children

## 9.2    Providing Feedback to Children

124    In line with the CRC and guidance from the CRC Committee (2012, para. 45), it is important that ICRIs provide feedback to children regarding how their views are taken into account. In the survey, 33 ICRIs replied that feedback is provided to children and young people on how their views are taken into account. One institution indicated that they do not do this, and one did not reply.

*Figure 32*: ICRIs' feedback to children and young people on how their views are taken into account
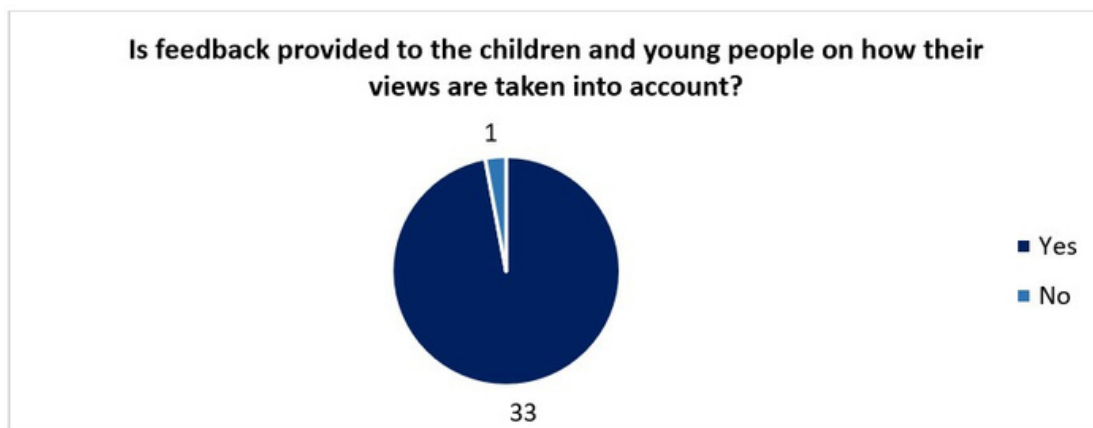


125    This indicates that feedback is an important priority for ICRIs and no doubt many institutions do this well. At the same time, without institutional evaluation that hears directly from children about their experiences, it is not possible to fully understand how effective this is from the child's perspective.

> **Feedback to children:**
>
> *"The Ombudsperson provides feedback to children throughout the process. Directly after the consultation, the children are given oral feedback. When the project is finished, the children receive a letter and a copy of the report. In some cases, the information is also given orally if that is considered appropriate. (Sometimes children are invited to participate in a meeting with for example a minister in connection to the Ombudsperson's presentation of the report.)*
>
> *De-brief sessions. Our Office follows Laura Lundy's Model of Participation, we ensure we go back to children and young people who have participated to ensure they are aware that their participation was valued/ where the project has developed to and if there is anything else."*
>
> **ENOC Member Interviews**

# 9   Participation of Children

126   Overall, the results from the survey show a high level of commitment to participation, and to the involvement of children in the everyday work of the institution. While the Offices clearly engage in this activity proactively, more research is required in order to understand how systematic or strategic this is.

## 9.3   Advisory Groups

127   International standards highlight the importance of ensuring ICRIs are pluralistic and represent the diversity of children impacted by their work. In this respect, it is important to ensure that the children and young people who participate in the ICRIs are diverse and representative, including those from vulnerable and marginalised backgrounds. This can be done for example by taking an inclusive approach to the selection process of Children and Young People Advisory Groups. Some ICRIs select children through children's organisations, networks of organisations and institutions that work with children (e.g. school, institution), open applications, or through a random selection. One ICRI shared that their recruitment is an open process, where people can apply directly but that, when they see gaps in representation, they reach out to organisations that might help them reach certain children and young people.

128   Although Advisory Committees are increasingly common among ENOC members, they are not uniform as some Offices choose to seek children's views through stakeholder organisations who may be closer to especially vulnerable children. It is also challenging for ICRIs to involve a sufficiently diverse group of children in their advisory structures and this has led some to take a more ad hoc approach.

**Ensuring Inclusivity:**

*"We have an open recruitment process for anyone to join. Where we see we have some gaps in representation (eg gender, geographical location), we reach out to stakeholder organisations to help us recruit young people. We make available any support required to ensure disabled young people don't face additional barriers to join our Young Advisors Group."*

**ENOC Member Interviews**

## 9.4   Accessibility to Children and Young People

129   When asked 'Does the institution for children's rights have appropriate physical space and Office location to enable the participation of children and young people?', 20 institutions replied that they did. Two institutions mentioned that such space was currently being developed. Others noted that they either did not have such a space, or that the available space was inadequate or inaccessible. As a result, some institutions need to meet with children and young people in spaces outside their Offices, that they sometimes need to rent. This can have a direct impact on the accessibility of the Office to children.

# 9   Participation of Children

130   As noted in the international standards, accessibility to children can also be achieved by ensuring the ICRI has adapted communication strategies and tools to enable them to engage with children directly. In the survey, 22 institutions (out of 34) replied that they have a specific and independent communication strategy for children and young people. All such institutions reported having a website dedicated to their work on children's rights that is directly accessible (without going through the home page). Of the institutions with an integrated form, three have a website on children's rights that is directly accessible and the other integrated institutions have a webpage or website within the website of the broader organisation.

*Figure 33*: Specific communication strategy for children and young people
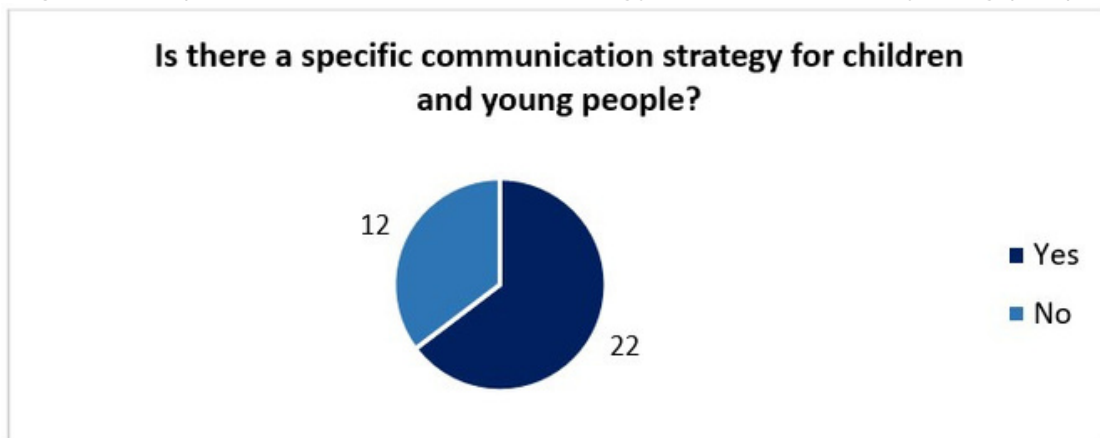


> **Example of a child-friendly communication strategy:**
>
> *"The communication strategy for children includes: (a) A child-friendly version of the documents prepared in cases that those will be read or are of interest to children. (b) Systematic consultations with the Young Advisory Team all year round. (c) Communication with children's groups (Children's Parliament, Pancyprian Student Coordination Committee) on a regular basis. (d) Focus groups with specific groups of children based on various themes that bother them or the [Office holder] wants to investigate. (e) School visits and programs and discussions with students and educators. (f) Any other mean considered essential to communicate with children."*
>
> **ENOC Member Survey Response**
>
> *"We are trying to go out there as much as possible but apart from that, there are other tools that are less effective like media exposure. For example, recently, I was interviewed by children's newspaper… we are sharing the result with all the children … we participate in other kind of activities such as artistic contests for children and …, letting children know we are out there, and that the Ombudsperson can take complaints without the mediation of an adult and so on."*
>
> **ENOC Member Interview**

# 9   Participation of Children

131   Going beyond child-friendly communication, it is interesting to note that communication and visibility is an important concern for ICRIs. In fact, as highlighted above, seven institutions (out of the 30 institutions that answered this question) identified limitations in communication as one of their biggest challenges. This included the lack of child-friendly forms of communication or restrictions because of communication strategy of the general institutions.

# PART III
## STRATEGIES AND CONCLUSIONS

# 10   Strategies

## 10.1   Maintaining a proactive strategic focus

132   This research sought to document the existing powers of ENOC members while also to explore the kind of strategies they employ in the pursuit of their mandate. In this regard, two kinds of strategies came through the study – the first were strategies used by ICRIs to mitigate any constraints or challenges that face, and the second concerned proactive approaches that seek to maximise their use of their powers in the pursuit of their goals.

133   From the study, it is clear that many Offices are impeded by the constraints under which they operate, which can make adopting a proactive strategic approach to their work difficult. At the same time, many prioritise setting a strategic agenda for their Office (or the term of the Office holder), in order to ensure that certain clear priorities are achieved. This enables ICRIs to target and mobilise their powers and their resources (staff and budget) towards the achievement of those goals. This proactive, strategic approach helps ICRIs to avoid a purely reactive approach where the focus is on complaint handling or responding to issues that arise, day by day. It also enables ICRIs to adopt an integrated way of working – whereby multiple powers are combined to achieve a singular goal.

134   Several Office holders highlighted that strategic plans and annual reports are effective tools to assess their institution's impact. A strategic plan allows the institution to focus its limited resources in a definite manner, whereas the presentation of annual reports to Parliament is a useful public means of demonstrating that impact. Others reported that the impact of the strategic plan was usually assessed internally by ICRI staff, although the importance of evaluating the impact of ICRI strategy warrants further analysis.

# 10 Strategies

## 10.2 The Role of the Office Holder

135 It has already been noted above that the background and expertise of the Office holder can heavily influence the way the ICRI's power is exercised. As other research has found, the integrity and creativity of the Office holder can allow them to wield 'soft power', in addition to the legislative authority vested in the institution (Kilkelly and Logan, 2022). Although the international standards are silent on the preferred background of an ICRI Office holder, it is evident from the requirement for a rigorous appointment process that this is intended to be a high calibre individual with a strong commitment to children's rights and a capacity to fulfil the mandate of the ICRI.

136 From this study, it appears that the particular strategy adopted by an ICRI is often informed by the experience, profile, network or knowledge of the Office holder, and also of the ICRI staff. For instance, Office holders with expertise in child protection tend towards this area of focus, those legally trained tend towards a more legal focus, whereas those with a track record of working in children's rights or in human rights organisations seek to emphasise the importance of the ICRI holding Government to account. This underlines the relevance of the background or profile of the Office holder which, although not referenced in the international standards, can impact the effectiveness of the ICRI, influencing the institution's leadership and strategic priorities in a very concrete way.

**The Background of the Office Holder:**

*"We issue recommendations and send them to Parliament and Government. We take public positions as well. And I go and speak to the Minister directly."*

*Interviewer: "And does it help that you used to work in the administration?"*

*"A lot, a lot. It was very useful for me to know how laws are enacted."*

**ENOC Member Interview**

**The Background of the Office Holder:**

*"We have a strategic plan for six years. …And it's crucial for us I think because you really need the strategic plan to choose your priorities because otherwise you are too overwhelmed, it's too much. Beside these strategic priorities, during the year we do ten other things because there are a lot of needs. But we choose in our strategy to really put a big effort in specific research. I think it's absolutely necessary to have this strategy and to have it completely worked with your team. That everybody understands and supports the strategy and the priorities because every time we come back to this, every time we do our planning, we come back to this essential first strategy."*

**ENOC Member Interview**

## 10.3   Engagement and Partnership

137    From the research, it is clear that ICRIs focus a lot on media engagement, publicity and events, and throughout the interviews, many Office holders stressed the importance of reaching specific audiences – children, parents and the public- highlighting the value of stakeholder engagement and media work.

138    Clearly, the challenge for the institutions is to have a strategic approach while, at the same time, having the room to be opportunistic and open to emergency action. Partnership is also a key strength of many ICRIs, who work collegially with civil society and other NGOs. This sharing of a public platform can be useful to enhance visibility and concern about a children's rights issue at a national level, and it is an important way also to strengthen ties between those across the children's sector with common goals around children's rights. Partnership at the international level is also important and in this regard, the role of ENOC was specifically called out during the research as very important. Here the opportunity to network, share experiences and leverage expertise – including during times of crisis both internationally such as during COVID-19, and nationally, where the independence or resourcing of an Office is threatened – can be invaluable.

139    When asked what makes their Office particularly effective or influential, participating institutions gave a number of suggested replies. They included a commitment to the integrity and autonomy of the Office – a fearlessness to stand up on behalf of children and being able to criticise those in authority. Others described the value placed on persistence and creativity, being able to work together with other professionals, and using a variety of new and innovative approaches. Important too was the value of international connections and networks, of the rights framework under the CRC from which many Offices draw their ultimate authority. Advice they would offer to others included: to listen more to the views of children, to work to be stronger individually and collectively, and to gain integrity by speaking with authority. Respondents discussed being creative also with existing powers – using soft power and operating at the margins of these powers to advance children's rights.

140    As one ENOC member said: ***"Use your powers to the fullest; even if it is not in your legislation, try it out anyway and see how far you get [...]."***

# 11 Conclusions

141   This snapshot study of 35 ENOC institutions clearly demonstrates that ICRIs across Europe are very different, with varying powers, structures, remits and resources. This final section brings together some of the key themes of the study with some recommendations for further consideration.

142   First, the research has shown the importance to its independence of the ICRI's founding legislation, its organisational structure and the appointment of the Office holder, in form and substance. Some Offices clearly enjoy greater autonomy and independence than others – in staffing and budget decision-making, strategic priorities and more practical day to day matters. Even where an Office is established with a framework of legal independence or autonomy, however, there can be no guarantee that this arrangement will endure. This necessitates continuous monitoring of the indicators of autonomy by the ICRI.

143   Second, it is clear that visibility and communication are important organisational priorities for many if not all ICRIs. For those in integrated institutions, the need to maintain a presence and public profile, to articulate and advocate specifically on behalf of children is especially important. Although this work is crucially important - for some it is existential in so far as it is linked to a continued necessity to prove their worth – the continuous need to stay in the public eye can present a direct challenge to the long term, more strategic approach. It can also command significant resources.

144   Third, it emerges from this study that all institutions feel threatened in their existence in one way or another. Many share constraints or limits regarding resources (budget and staff), mandate or impact. At the same time, although some Offices encounter constraints in their ability to communicate and strategise, all Offices demonstrate remarkable creativity in working around these constraints and limits. This includes the use of strategies to shape the work of the institution, the partnership approach to work across the sector on common goals and leveraging the international children's rights community to support national objectives. Interestingly, all institutions – no matter the form – experience the limitations of resourcing, prompting a necessary focus on visibility and communication to maintain the relevance and currency of the institution.

# 11 Conclusions

145    Fourth, the question of impact and effectiveness requires further consideration. While all Offices involved in this study clearly engage in self-reflection and analysis, weighing up approaches and reporting on their activities through annual reports and other communications, greater consideration might be given to the adoption of more formal or strategic approaches to evaluating effectiveness, either at an Office level or with respect to individual powers or on particular issues. Ensuring children's participation in these processes should be a priority, along with embedding the participation of children in the institution more formally. Overall, sustainability of the institution is best served by approaches that are rooted in a rights-based approach, drawing on international networks and the legal standing of the CRC itself. As this research shows, finding ways to share successes, including among ENOC members, testing the limits of soft power and embedding participation in the everyday activities of the institution are key hallmarks of an influential approach.

**On the basis of these conclusions,
this research supports the following actions:**

- Institutions should carefully guard their independence while advocating for greater autonomy. Particular regard should be had to ensuring autonomy in budget and staffing decisions, rigour in the appointment of the Office holder and independence in the areas of strategy and communications.

- Participation of children should be a priority for every institution, ensuring that the views and experiences of children are embedded in the institution's decision-making processes at every level, including the appointment of the Office holder and day to day decisions as appropriate.

- Every institution should consider a process of strategic review, considering both the existing use of the institution's powers and the powers not or seldom used. Consideration should be given to adopting creative approaches, testing the limits of the institution's mandate and partnering with the academic community with a view to creating a space for evaluating the institution's impact and role in the (inter)national landscape.

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# APPENDIX 1:
## LIST OF PARTICIPATING ICRIs (SURVEY)

1. **Albania**, Section for the Protection and Promotion of Children's Rights, Ombudsman of Albania (Avocati i Popullit)
2. **Armenia**, Office of the Human Rights Defender of the Republic of Armenia
3. **Basque country** (Spain), Children and Youth Rights Department, Ombudsperson of Basque Country (Ararteko)
4. **Belgium**, General Delegate for Children's Rights, French Community (Délégué général aux droits de l'enfant de la communauté française de Belgique)
5. **Belgium**, Office of the Flemish Children's Rights Commissioner
6. **Bulgaria**, Ombudsman of the Republic of Bulgaria
7. **Catalonia**, Office of the Catalan Ombudsman/Deputy Ombudsman for Children's Rights (Síndic de Greuges de Catalunya)
8. **Croatia**, Ombudsman for Children
9. **Cyprus**, Commissioner for the Protection of Children's Rights
10. **Denmark**, Danish Council for Children's Rights
11. **Estonia**, Children's and Youths' Rights Department, Office of the Chancellor of Justice
12. **Finland**, Ombudsman for Children
13. **France**, Children's Rights Defender (Défenseur des enfants)
14. **Georgia**, Public Defender's (Ombudsman's) Office of Georgia
15. **Greece**, Office-Department of the Deputy Ombudsperson on Children's Rights, the Greek Ombudsman
16. **Iceland**, The Office of the Ombudsman for Children
17. **Italy,** Independent Authority for Children and Adolescents
18. **Ireland**, Ombudsman for Children's Office (OCO)
19. **Jersey**, Commissioner for Children and Young People Jersey
20. **Kosovo**, Ombudsperson Institution of Kosovo
21. **Lithuania**, Ombudsperson for Children's Rights
22. **Luxembourg**, Ombudsman for Children and Adolescents (Ombudsman fir Kanner a Jugendlecher - OKaJu)
23. **Malta**, Office of the Commissioner for Children
24. **Northern Ireland,** Northern Ireland Commissioner for Children & Young People
25. **Norway**, Ombudsperson for Children
26. **Poland**, Ombudsman for Children
27. **Republic of Serbia**, Deputy Ombudsman for Children's Rights, Protector of Citizens
28. **Republic of Srpska** (Bosnia and Herzegovina), Ombudsman for Children of Republic of Srpska
29. **Scotland**, Children and Young People's Commissioner Scotland
30. **Slovak Republic**, The Commissioner for Children
31. **Sweden**, The Ombudsman for Children
32. **The Netherlands,** The Ombudsperson for Children
33. **United Kingdom**, The Children's Commissioner for England
34. **Ukraine**, Representative of the Ukrainian Parliament Commissioner for human rights for the Rights of Children, Family, Youth and Sports
35. **Wales**, Children's Commissioner for Wales

## Institutions for Children's Rights: A study of Good Practices for Protecting and Promoting Children's Rights

**Introduction**

The aim of the survey is to provide updated information on institution for children's rights independence, powers, complaints and monitoring functions, visibility, relationships and influence.

This survey has been prepared by Professor Ursula Kilkelly, School of Law, University College Cork and Leiden University, and Dr Katrien Klep, Department of Child Law, Leiden University, on behalf of the European Network for Ombudspersons for Children. This survey has been developed in compliance with ethical approval provided by University College Cork.

The survey should take no longer than 30 minutes to complete. While you are completing the survey, it will be possible to pause and resume at a later time. You will also have the option to go back on your answers until you have sent in all your responses.

Thank you for your cooperation.


**Section 1: Profile information**

This questionnaire is addressed to institutions for children/children's rights. The term "institution for children's rights" will be used as a general designation for all possible forms of institutions that advocate for children, such as independent children's rights institutions, independent human rights institution for children, national human rights institutions for children (e.g. Ombudsperson for Children, Children's Commissioner), and offices or departments within general independent and/or national human rights institutions dealing specifically with children's rights.

Name of the Institution for Children's Rights:
Country:
Email address:
Region (if applicable):
Percentage of 0-17 year olds in the country:

Please describe the independent children's rights institution, including the date it was established, its annual budget for 2023 and number of staff in the institution, the existence of other Ombudspersons or National Human Rights Institutions, and the relationship of the institution with these other bodies.

Please share the website of all institutions mentioned above, if available.

**Section 2: Legislative footing, mandate and standing**

1. When was the institution for children's rights established (year)?

2. Has the institution for children's rights been established in:
    a. legislation (give details)?
    b. the Constitution (give details)?
    c. neither legislation nor the Constitution (give details)?

3. If the institution for children's rights is part of a general human rights institution, has that general institution been established in
    a. legislation (give details)?
    b. the Constitution (give details)?
    c. neither legislation nor the Constitution (give details)?

4. Are the powers of the institution for children's rights' explicitly set out in the law?
    a. If so, please give details

5. Does legislation specifically provide the institution for children's rights with the following powers:
    a. to set its own strategy and priorities?
    b. to investigate matters within its remit?
    c. to investigate complaints from children or their carers?
    d. to acquire information and summon witness as part of its power?
    e. to report freely to the public, the media, etc.?
    f. to report freely to Parliament?
    g. to make submissions to Government on reforms without invitation?
    h. to enter public and private children's residential institutions without a warrant/ freely?
    i. to initiate legal action on behalf of children?
    j. to intervene in court cases as a third party on behalf of children?
    k. to apply sanctions in case of children's rights violations?
    l. to take judicial reviews?
    m. to exchange information and co-operate with independent children's rights institutions of other States?
    n. to consult with children and young people?
    o. other?

6. Are there exceptions or gaps in the founding legislation which dilute the effectiveness or scope of the institution for children's rights? If so, please provide details.

7. Has the founding legislation/law been amended since its adoption so as to:
    a. Improve the standing or powers of the institution for children's rights?
       If so, how has it been improved?
    b. Reduce the standing or powers of the institution?
       If so, how has it been reduced?

**Section 3: Integration**

8. Is the institution for children's rights
   a. Separate and independent?
   b. Part of a national Ombudsperson?
   c. Part of a general human rights body/national human rights institution?
   d. Other?

9. If relevant, does forming part of a general Ombudsperson or national human rights institution limit or empower the institution for children's rights in protecting and promoting children's rights? Please explain.

10. If relevant, does its status as part of a general Ombudsperson or national human rights institution limit or empower the institution for children's rights in any of the following ways:
   a. setting its own strategy and priorities in protecting and promoting children's rights?
   b. setting and spending its own budget
   c. investigating matters concerning the protection and promotion on children's rights, from a child's perspective?
   d. commissioning or undertaking research on the protection and promotion of children's rights, from a child's perspective?
   e. protecting and promoting the best interest of the child?
   f. reporting freely to the public and the media etc. concerning the protection and promotion of children's rights?
   g. reporting freely to Parliament about protecting and promoting children's rights?
   h. making submissions to Government on law reform to protect and promote children's rights?

**Section 4: Independence**

11. Is the institution for children's rights' budget awarded or provided by
   a. Parliament?
   b. Government or Government Department?
   c. Other (explain)

12. Does your institution have reporting obligations to ensure compliance with legal, staffing and financial obligations (Corporate Service type functions)?

13. If so, to whom does the institution report?
   a. Parliament
   b. Government or Government Department
   c. Other, please specify

14. Does the institution for children's rights hire its own staff

15. Are decisions to hire or replace staff subject to external approval? If so, by whom?

16. Does the institution for children's rights outsource child-related services (such as participation officers, facilitators, etc.)? If so, please provide details.

17. Are there independent and transparent procedures in place governing the appointment of the office holder (if appropriate?)

18. If applicable, is the term of the Office holder (e.g. the Ombudsperson or Commissioner for Children)
    a. Fixed/Limited (if so, how many years)?
    b. Renewable (if so, how many times)?

19. If applicable, does the law provide the office holder (e.g. the Ombudsperson for children) with
    a. protection from summary dismissal?
    b. protection from reduced powers, budget or standing?

21. Has the institution for children's rights been subjected to external review by Government, or Parliament, or any kind of external control mechanism? If so, please provide details.

22. Who do you consider to be the institution for children's rights primary stakeholders?
    a. Ministries
    b. Members of Parliament
    c. Government departments
    d. Schools and other public bodies
    e. NGOs
    f. children and young people
    g. adults/the public
    h. media

22. What is the primary form of engagement with stakeholders?
    a. Public events for professionals (e.g. seminars, conferences, etc.)
    b. Public events for children and young people, parents (e.g. festivals, open days, etc.)
    c. Traditional media (e.g. tv, radio and print)
    d. Social media
    e. School visits
    f. Visits to children's residential institutions
    g. Information campaigns
    h. Consultation/invited submissions
    i. Complaints handling
    j. Networks of actors and NGOs
    k. Other (please give details)

23. Is the institution for children's rights' media work typically:
    a. A substantial part of the institution's work?
    b. A minor part of the institution's work?
    c. Reactive (e.g. responding to queries)?
    d. Proactive (e.g. writing opinion pieces)?

24. Is there a specific communication strategy for children and young people? If so, please describe.

**Section 5: Assessment of the institution**

25. Where are the goals of the office specified?
    a. A Law or act of Parliament
    b. A covenant or performance agreement
    c. Documents with only internal purpose within the office
    d. Other documents, please specify.

26. Does the office have measurable targets or performance indicators?

27. If so, how are non-financial performance goals set?

28. If relevant, to which body does the institution for children's rights report on the results and achievement of goals, and how frequently?

29. Who evaluates the achievement of (non-financial) performance goals by the office?
    a.The office itself
    b. The supervisory authority
    c. Third parties by order of the supervisory authority
    d. Third parties by order of the office itself (i.e. consultants, accountants)
    e. Other, please specify here
    f. Not applicable

30. Are there rewards or sanctions in case of (not) achieving (non-financial) performance goals for the office? If so, please provide details.

31. Does the institution for children's rights have procedures and methods to evaluate the impact of its own work, such as through child rights impact assessment? (Please give details).

32. Do external bodies evaluate the impact of the work of the institution? (Please give details)

**Section 6: Advocacy**

33. Does the institution for children's rights have the power to:
    a. Provide advice to Government
    b. Make submissions to Parliament
    c. Commission research (e.g. research on a specific children's rights issue in the country, on the perspective of children on a problem, etc.).
    d. Provide mediation services.

34. If applicable, is Government or Parliament bound to respond/comply with the advice provided? What are the consequences if such advice is not complied with?

35. Does the institution for children's rights use the following mechanisms for advocacy:
    a. Courts
    b. The media
    c. Alliances or coalitions, with other institutions (civil society)
    d. International or regional human rights mechanisms
    e. Participation of children and young people (such as through an advisory board or other representative body)
    f. Networks such as ENOC
    g. Other (please explain)?

**Section 7: Law and policy reform**

36. Has the State party incorporated the Convention on the Rights of the Child into domestic law? If so, has the institution played a role in the incorporation? If not, is it campaigning for it?

37. Has the institution for children's rights made proposals to government to reform law and/or policy in line with children's rights? If so, has the government adopted these proposals? (provide example)

38. Does the institution for children's rights campaign for:
    a. Harmonisation of domestic law with the CRC (please give examples)
    b. Incorporation of the CRC into domestic law
    c. Ratification of the Optional Protocols (please give examples)
    d. Ratification of other international instruments (please give examples)
    e. Human rights education
    f. Children's rights budgeting

39. Has Government responded positively to these campaigns? If so how?

40. Is Government required to consult the institution for children's rights when undertaking law reform? If so, is this
   a. Rare
   b. Frequent
   c. Occasional

41. If so, does the Government take the advice of the institution for children's rights into account?
   a. Rarely
   b. Frequently
   c. Occasionally?

**Section 8: Monitoring**

42. Does the institution for children's rights have the power to review the state's implementation of
   a. the CRC
   b. its Optional Protocols
   c. the CRC Committee's Concluding Observations?

43. Does the institution for children's rights have the power to undertake child rights impact assessments? If so, is this power guaranteed in legislation?

44. Has the institution for children's rights reported independently to
   a. the CRC Committee (if so, please explain whether children are involved in this process)
   b. other treaty bodies? (please specify)

**Section 9: Complaints and investigations**

45. Does the institution for children's rights have the power to receive
   a. individual complaints from children and young people?
   b. collective complaints, ie those brought by or on behalf of a group of people?
   c. complaints from children's representatives on their behalf?
   d. complaints from children's organisations or others?
If so, is this power guaranteed in legislation?

46. If applicable, is legal representation required for children to bring complaints to the institution for children's rights?

47. Is the protection of the best interests of the child and other children's rights the primary concern when investigating a complaint or are other human rights also involved?

48. Is the complaints procedure adapted to children's circumstances by being
    a. accessible (brought to where children are, in child-friendly spaces, and accessed via child-friendly mechanisms such as hotlines)?
    b. simple to follow (with clear steps, communicated in a child-friendly manner)?
    c. quick to use (with appropriate timelines)?
    d. age-appropriate with child-friendly information and procedures?

49. Are children provided with feedback throughout and at the end of the complaints procedure?

50. Has the complaints procedure ever been independently evaluated? (provide details)

51. Does the institution for children's rights have the power to undertake investigations:
    a. Of public bodies?
    b. Of private bodies?
    c. Of semi-state or bodies exercising public functions?

52. Is the institution for children's rights precluded from investigating
    a. Any type of complaint (e.g. legal proceedings) or
    b. Any type of body (e.g. commercial bodies)

53. Is there an appeal system against the institution for children's rights decisions or handling of a complaint?

54. Are the outcomes of the examination and/or investigation of a complaint published?

55. If applicable, is the complaints and investigation procedure known and accessed by children, particularly children in vulnerable situations, and adults?

**Section 10: Awareness raising**

56. Does the institution for children's rights have the power to raise awareness about children's rights? If so, is this power guaranteed in legislation?

57. Does the institution for children's rights have a role in encouraging the government to raise awareness of children's rights?

58. Has the institution for children's rights run a public information or education campaign on children's rights?

59. Does the institution for children's rights raise awareness about the role of its office? (Please give details)

**Section 11: Research**

60. Does the institution for children's rights have the power to conduct research on the protection and promotion of children's rights (any type of research outside of complaints, such as scientific research, qualitative research, quantitative research, etc.)? If so, is this power guaranteed in legislation?

61. If applicable, does the institution for children's rights involve children in its research?

62. Does the institution
    a. Conduct its own research or
    b. commission research
    c. both

**Section 12: Litigation**

63. Does the institution for children's rights have the power to support children to take legal action that challenge violations of their rights on behalf of children? If so, is this power guaranteed in legislation?

64. Does the institution for children's rights have the power to intervene as a third party in litigation about children's rights? if so, is this power guaranteed in legislation?

65. Has the use of this power been independently evaluated?

**Section 13: Participation of children and young people**

66. How does the institution for children's rights involve children and young people in their work (e.g. children and young people's advisory body, regular consultations, etc.). Are any of these processes required by legislation?

67. If the institution for children's rights has a children and young people's advisory board, what is its composition and selection procedure?

68. If applicable, how is diversity and representation of the most vulnerable groups of children in the advisory body ensured?

69. Does the institution for children's rights have appropriate physical space and office location to enable the participation of children and young people?

70. Are the views of children and young people consulted by the institution for children's rights taken into account and included in the institution's work? Please give examples.

71. Is feedback provided to the children and young people on how their views are taken into account? If so, how?

72. Does the institution for children's rights regularly participate in ENOC's ENYA project?

**Section 14: Challenges for the institution for children's rights**
*NB: Responses to this section of the questionnaire will be kept confidential. The researchers will ensure that any information from this section that is included in the report is non-identifiable.*

73. Has the institution for children's rights faced challenges to its
   a. independence,
   b. status/continued work
   c. staffing
   d. budget?

74. Has the institution for children's rights even been prevented from speaking out on any matter concerning children's rights:
   a. Directly?
   b. Indirectly?

75. What in your view are the biggest challenges to the institution fulfilling its mandate
   a. Resourcing (too few people or money)?
   b. Mandate (too limited)?
   c. Political interference?
   d. Lack of public support?
   e. Lack of leadership?
   f. Inadequate internal organisation and coordination?
   g. Limitations in communications (lack of child-friendly forms of communication, restrictions because of communication strategy of the general institution, etc.)?
   h. Other (please explain).

**Concluding Section**

77. Do you have any final comments you would like to make about any of the matters in this survey?

78. Would you like to be provided with any follow up information in relation to any of the matters in this survey?

79. Would you like to participate in our 1-1 follow up interviews?

Thank you for your co-operation.