

THE ROLES OF INDEPENDENT CHILDREN'S RIGHTS INSTITUTIONS IN ADVANCING HUMAN RIGHTS OF CHILDREN

Edited by Agnes Lux
and Brian Gran

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AND YOUTH VOLUME 28

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ABBREVIATIONS

AJBH	Alapvető Jogok Biztosának Hivatala (“Office of the Commissioner for Fundamental Rights in Hungary”)
BINOCC	British and Irish Network of Children’s Commissioners
CFR	Commissioner for Fundamental Rights, Hungary
CRC	Committee, UN Committee on the Rights of the Child
CYPCS	Children and Young People’s Commissioner Scotland
ENOC	European Network of Ombudspersons for Children
GANHRI	Global Alliance for National Human Rights Institutions
GC	General Comment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRIs	Independent Children’s Rights Institutions
LGBTQI	Lesbian, Gay, Bisexual, Transsexual, Queer, Intersex
NANHRI	Network of African National Human Rights Institutions
NCHRA	National Commission on Human Rights Act, Pakistan
NCRC	National Commission on the Rights of the Child, Pakistan
NGOs	Non-governmental organizations
NHRI	National Human Rights Institution
OPCAT NPM	Optional Protocol to the Convention Against Torture, National Preventive Mechanism
OPIC	Optional Protocol on a Communication Procedure to the Convention on the Rights of the Child
UN	United Nations
UN CRC	UN Convention on the Rights of the Child
UNCRPD	UN Convention on the Rights of Persons with Disabilities
UPR	Universal Periodic Review
US	United States

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ABOUT THE EDITORS

Agnes Lux earned degrees in Political Sciences and in Law (Eötvös Loránd University, Hungary). Her PhD thesis was about the child rights movement and independent children's rights institutions. She worked in the Hungarian Office of the Commissioner for Fundamental Rights (Ombudsman) as a Deputy Head of Department. She worked as Child Rights Education and Advocacy Director of UNICEF Hungary. She teaches at postgraduate programmes of the Eötvös Loránd University and of the Pázmány Péter Catholic University, Hungary. She is an International Consultant on Children's Rights and Human Rights. Since 2021, she is a Research Fellow at the Centre for Social Sciences, Child Opportunities Research Group, Hungary. She has published academic articles, and contributed to the UN CRC reporting process of Hungary on behalf of the coordinator of the Child Rights NGO Coalition.

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Ankie Vandekerckhove is a Children's Rights Advisor. After studying law and criminology (University of Ghent, Belgium), she started working at the Ghent Bar and at the Ghent University Centre for Children's Rights. Under the inspiring mentoring of the late Prof. E. Verhellen, children's rights entered her professional life and never left it ever since. Whether she worked on introducing the children's rights strain of thought and awareness at Child and Family (a public agency), served 11 years as the first Flemish Children's Rights Commissioner, was a Policy Advisor at the Flemish Central Authority for Intercountry Adoption or worked at VBJK on diversity and quality in ECEC. Children as rights holders on their own were always the focus of her work. She continued to do so as an independent advisor on children's rights, for example, the Council of Europe, the European Union and United Nations Children's Fund and is currently the coordinator of the brand new Flemish "Afstammingscentrum," a center where adoptees, donor children, and others can get support in their search and their right to know their origins.

Gina Wilson is the Head of Strategy for the Children and Young People's Commissioner Scotland. She oversees the review of law, policy, and practice in relation to children's human rights and the meaningful participation of children and young people in the work of the Commissioner. She joined from Scotland's college sector, where she was the Head of Innovation and Partnerships for national skills development agency CDN. Her main areas of expertise in children's rights relate to education, justice, and youthwork. Prior to CDN, she worked for the think tank Carnegie UK Trust and the national youthwork agency, YouthLink Scotland; leading national initiatives aimed at improving digital inclusion, and capacity-building youth engagement programs in public health. She is an experienced Children's Panel Member, former Independent Prison Monitor, and a Trustee of the Digital Xtra Fund.

PREFACE

Maria Herczog

In more and more countries around the world, different bodies are established to monitor and implement the rule of law, to fight injustice, to ensure good public administration, and to provide opportunities for citizens to file complaints against their governments. In many countries, these responsibilities belong to the Ombudsman office. The roles of the Ombudsman institution vary widely, with some offices covering specific issues, while others' scopes of activity are much broader and more diverse. The Ombudsman, in line with its original meaning, is representing those living in their jurisdiction. Despite the growing numbers of Ombudsmen, still only a limited number are responsible exclusively for children and prioritizing child rights.

A Children's Ombudsman, a Children's Rights Commissioner, a Youth Commissioner, a Child Advocacy Institution, or a similar body is charged with the promotion and protection of the rights of children and young people. Establishment of this kind of office is more than a symbolic expression of acknowledging the important fact that children are entitled to greater attention and visibility. Since the adoption of the UN Convention on the Rights of the Child (UN CRC) in 1989, considerable progress has been achieved at the local, national, regional and global levels in the development of legislation, policies and methodologies to promote the UN CRC's implementation of children's rights. Nevertheless, there is still a long way to go for the full acceptance of children's rights and their proper implementation.

Children's rights and interests are often overlooked. The key role of the children's Ombudsman is to speak out on the best interests of children and to ensure they can exercise their rights. A child advocate represents and gives voice to children whose interests and concerns are not being heard. A child advocate strives to obtain justice for those already suffering from any harm, ensuring access to different forms of help and support, rehabilitation and safety.

As children have the right to be heard and have their views taken into consideration, to participate in every decision-making process that may affect their lives, no matter whether local, national, regional or international level, children should be given appropriate opportunities to exercise their rights. The broader human rights system is yet to incorporate children's views and participation in its work effectively. *There is a need for advocates and also institutions supporting and demonstrating that empowering children themselves as rights defenders and strengthening the mechanisms and practices of participation not only is needed, but can and should be achieved.*

The UN Committee on the Rights of the Child (CRC Committee) in its General Comment No. 5 has highlighted that "for rights to have meaning,

effective remedies must be available to redress violations” and that “children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights” (CRC Committee, 2003, para 24). In principle, national systems could address and provide redress for children’s rights violations, but often this is not the case. Therefore, more and better mechanisms should exist at local, regional and national levels as well. Ensuring child-friendly and accessible systems that protect the rights of children where they live, providing them with remedies and strengthening the national justice systems to incorporate their rights and interests, would be the proper way to address these problems.

The Optional Protocol on a Communication Procedure to the Convention on the Rights of the Child (OPIC) elaborated by the CRC Committee entered into force on April 14, 2014. This international treaty aims to provide the opportunity for children or their representatives to submit complaints to the CRC Committee and make the States Parties more accountable. As of August 24, 2021, only 48 States have ratified, 16 have signed but not yet ratified it and 134 have taken no action.

While OPIC can enhance access to justice for children in both theoretical and practical terms, similar to human rights violations against adults, in practice the role of OPIC is first to draw attention to enhancing the possibilities to empower and strengthen local and national human rights and child rights institutions, such as the Ombudsman and Commissioners of Child Rights. These institutions can improve the procedures and bolster access for children and their representatives to file complaints about violations of children’s rights to the UN system. The CRC Committee will contact the Ombudsman, among others, to gather reliable information about the complaint, as well as to ensure a communication channel to learn more about the situation of children in a given context. However, the main role of the OPIC should be to influence the national and local child complaint mechanisms. This OPIC instrument is drawing attention to the possible procedures needed to ensure that children are aware of their rights and, when their rights are violated, opportunities to submit their complaints locally and technical assistance needed to do so. In increasing awareness about the rights of the child and supporting children and their representatives to have access in a safe and child friendly way to complaint mechanisms, child advocates, commissioners for children and Ombudsman hold eminent roles. As complaints often present sensitive issues, a specific channel to make complaints known is needed for children and their representatives. This need not only requires adequate procedures but also awareness raising campaigns, information provided to all groups of children, especially those in the most vulnerable situations with limited access to justice. Ombudspersons, Child Commissioners and Child Advocates can utilize the OPIC as a new and effective tool to enhance the active participation of children while strengthening the national provisions and implementation of the rights of the child.

The past and present activities, projects and programs of the Ombudspersons and the Commissioners for Children this book describes are excellent bases to further develop and enhance the areas covered, as well as inclusion of more and

more children themselves in advancing children's rights and interests. It seems to be an organic development to increasing involvement of children as right defenders in the work of the Ombudsman. These institutions' advocacy work can give more voice to children and provide the opportunity to be heard.

24 August 2021.

The author is a former twice-elected member and rapporteur of the UN CRC Committee, President of the Executive Committee of Child Rights Connect and currently serves as Policy Analyst at the Institute of Human Services, Columbus, Ohio.

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ACKNOWLEDGMENTS

We prepared this book to serve as a valuable resource not only for scholars and professionals but also for policy makers and leaders of institutions dedicated to children's rights and well-being. Another objective we set for this book is that it will serve as a reference point for undergraduate and graduate students whose special field is childhood, children's rights and protection of children, as well as to inspire students to pursue answers to questions around institutions, law and policy, and children's rights. We will be pleased that as a result of this book, new advocates, committed practitioners, policy makers, and researchers endeavor to study and improve institutions that advance children's rights and interests.

We thank our contributors for their extraordinary chapters. We have appreciated the privilege of cooperating with the contributors on our common field of interest, including former and current children's commissioners. We are grateful to leaders and staff of these independent children's rights institutions. We admire their commitment to advancing the rights and well-being of children across the world. Our hope is that this volume both acknowledges their hard work while encouraging their continuing service to children and their rights.

We have greatly enjoyed working with our authors, who hail from different time zones from across the world. We are grateful for their collaborations. We are especially honored that Maria Herczog, a twice-elected member of the UN CRC Committee, joined our team and provided an invaluable preface.

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Our hope is to have contributed to advancement of knowledge around childhood, children's rights, and interests.

Agnes Lux and Brian Gran