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12	<b>Introduction</b>	12
13		13
14	What roles do independent children’s rights institutions (ICRIs) play in	14
15	implementing the CRC? After discussing what an ICRI is and the different types	15
16	of ICRIs, this chapter will examine their objectives, their formal powers, their	16
17	independence, and the resources they use to reach their objectives. Those resources	17
18	include the circumstances in which ICRIs work to implement the CRC.	18
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21	<b>What is an ICRI?</b>	21
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23	Before proceeding to an analysis of the roles of ICRIs in implementing the CRC,	23
24	a discussion of what exactly ICRIs and the CRC are will be useful. The CRC is	24
25	the chief international treaty on children’s and young people’s rights. Adopted in	25
26	1989, and with nearly universal ratification, it is among the most widely ratified	26
27	and most accepted of all human rights treaties.	27
28	An ICRI is a type of independent institution that concentrates on monitoring,	28
29	promoting and protecting children’s rights (Borgen 1996, Davidson, Cohen and	29
30	Girdner 1993, Flekkoy 1991, Lansdown 2001a, 2001b, Melton 1991, UNICEF	30
31	Innocenti Research Centre 1997). Although the first ICRI was set up over	31
32	32 years ago, since 2000 these institutions have been widely established, although in	32
33	33 different shapes and sizes. However, with their increasing numbers, differences in	33
34	34 their organisational features have become noticeable, resulting in debates over their	34
35	35 efficacy. The CRC Committee, which is charged with monitoring governments’	35
36	36 efforts at implementing the CRC, has strongly influenced what makes an ICRI.	36
37		37
38		38
39	1 The author thanks Jane Williams for her guidance and generous suggestions. He also	39
40	40 thanks Robin Shura and Lynn Falletta for their assistance in gathering data for this project.	40
41	41 The author is especially grateful to the ICRIs who have participated in his international	41
42	42 study. Much of this chapter arises from an international project the author is directing on	42
43	43 ICRIs. Data for this chapter are from interviews conducted with ICRIs during ENOC annual	43
44	44 meetings, and from research on the four UK ICRIs, including interviews with those ICRIs,	44
	44 their staff, NGO representatives and government officials.	44

1 As part of its work, the CRC Committee publishes General Comments in an 1  
2 effort to encourage States Parties to advance young people's rights. These General 2  
3 Comments are designed to help States Parties and others interpret the provisions 3  
4 of the CRC. The CRC Committee has published a dozen General Comments from 4  
5 2001 to 2009, with topics ranging from health to unaccompanied children. 5

6 The second General Comment (CRC/GC/2002/2, 15 November 2002) 6  
7 ('General Comment No. 2') published by the Committee focused on '[s]pecialist 7  
8 independent human rights institutions for children, ombudspersons or 8  
9 commissioners for children's rights ...' (para. 6). The Committee (para. 1) said it 9  
10 welcomed the 'establishment of NHRIs<sup>2</sup> and children's ombudspersons/children's 10  
11 commissioners and similar independent bodies ...'. The general idea of such an 11  
12 institution is that it is to be 'an independent institution for the promotion and 12  
13 monitoring of implementation of the Convention' (para. 1). The CRC Committee 13  
14 further states (para. 3) that the UN General Assembly and the Commission on 14  
15 Human Rights have 'repeatedly called for the establishment' of these institutions 15  
16 and that through periodic reporting, States Parties are expected to report on these 16  
17 institutions. 17

18 In its General Comment (at paras 3–4), the CRC Committee refers to the 18  
19 Vienna Declaration and Programme of Action (United Nations General Assembly 19  
20 1993) generated in 1993 at the World Conference on Human Rights. According to 20  
21 the United Nations, the Vienna Conference was held to assess progress towards 21  
22 universal human rights. Held 25 years after the International Year of Human Rights, 22  
23 the Vienna conference was attended by over 7,000 participants, representatives 23  
24 of over 800 non-governmental organisations and representatives of 171 national 24  
25 governments (United Nations General Assembly 2010). 25

26 The Vienna Declaration emphasised that national human rights institutions 26  
27 (NHRIs) 'uphold the rule of law and democracy, electoral assistance, human rights 27  
28 awareness through training, teaching and education, popular participation and civil 28  
29 society' (para. 34). It further emphasises that the important roles of national human 29  
30 rights institutions are to promote and protect human rights (para. 36) and says that 30  
31 these institutions are to advise 'competent authorities', such as a government or 31  
32 parliament, remedy violations of human rights, and distribute information on and 32  
33 educate about human rights. 33

34 In its General Comment No. 2 (at para. 4), the CRC Committee refers to the 34  
35 Paris Principles. The Paris Principles were adopted in December 1993 by the 35  
36 UN General Assembly, the 'chief deliberative, policymaking and representative 36  
37 organ of the United Nations' (United Nations General Assembly 2010). The Paris 37  
38 Principles state that a national institution shall promote and protect human rights, 38  
39 and shall be independent of government. In doing its work, the Paris Principles 39  
40 state such a national institution should have as its objectives lobbying on and 40  
41 publicising human rights issues, including human rights violations, monitoring 41  
42 and lobbying for human rights legislation, and educating about human rights. 42

43 \_\_\_\_\_ 43  
44 2 National human rights institutions. 44

1 The Council of Europe has taken a strong interest in ICRI. In 2003, 1  
2 its Parliamentary Assembly made a recommendation on 'the institution of 2  
3 ombudsman', for which it seemed to have in mind human rights ombudspersons 3  
4 (Council of Europe 2003). It noted three purposes of national human rights 4  
5 ombudspersons: protecting human rights, promoting the rule of law and ensuring 5  
6 the proper behaviour of public officials. The Council of Europe said the central 6  
7 work of an ombudsperson is to be an intermediary between 'administration' and 7  
8 'individuals'. Through this Recommendation, the Council of Europe notes that 8  
9 circumstances particular to each country will shape what its ombudsperson is 9  
10 expected to do. This Recommendation also notes how others are to work with the 10  
11 ombudsperson. It states that officials should turn to the ombudsperson when dealing 11  
12 with a particularly grave situation when normal procedures are ineffective. 12

13 However, the Council of Europe Assembly envisions an ombudsperson with 13  
14 limited powers. In their 2003 Recommendation, they hold that the ombudsperson's 14  
15 enforcement powers should be limited to moral persuasion through 'public 15  
16 criticism'. The Recommendation indicates this public criticism should be made 16  
17 through reports on 'maladministration', which the Assembly expects will result 17  
18 in the Council of Europe's 'political condemnation'. Given its vision of limited 18  
19 powers, the Assembly's Recommendation expects an ombudsperson would only 19  
20 access courts to ask for interpretive judgments of legal questions needed to fulfil 20  
21 its work, including an investigation, or for purposes of representing an individual 21  
22 who has 'no direct access' to court (even then, the Assembly states it is best for 22  
23 an individual to go directly to courts without help from an ombudsperson). The 23  
24 Council of Europe expects an ombudsperson would only ensure 'the procedural 24  
25 efficiency and administrative propriety of the judicial system'. Indeed, the 25  
26 Assembly recommends that the ombudsperson should not be able to initiate, 26  
27 intervene, or reopen judicial cases, with the exception of representing an individual 27  
28 who is without access to court. 28

29 Other definitions of ICRI structure how ICRI are established and how existing 29  
30 ICRI implement the CRC. Membership requirements can shape the organisation 30  
31 and work of ICRI. Probably the predominant network of ICRI in the world is the 31  
32 European Network of Ombudspersons for Children (ENOC, formerly the European 32  
33 Network of Ombudsmen for Children). ENOC recently updated its membership 33  
34 guidelines. It designates two kinds of membership: full and associate. For an ICRI 34  
35 to be a full member, its government must be a member of the Council of Europe. 35  
36 Compared to the European Union, which has 27 members and is a governing 36  
37 structure, the Council of Europe has 47 members. Thus, this first membership 37  
38 criterion means ENOC membership is open to a broad group. 38

39 The second criterion to be a full ENOC member requires that the ICRI must 39  
40 have been established via parliamentary legislation. Third, this legislation must 40  
41 indicate the ICRI is independent (although in form and practice, even with a 41  
42 statement of independence, many ICRI are encumbered with formal qualities 42  
43 that weaken their independence). Fourth, this legislation must indicate the ICRI 43  
44 has, at a minimum presumably, two functions: the first is to protect children's 44

1 rights and the second is to promote children's rights. Fifth, conversely, the 1  
2 legislation establishing the office cannot limit the ICRI in pursuing the functions 2  
3 of protecting and promoting children's rights. Sixth, the legislation cannot limit 3  
4 the ICRI's ability to pursue 'core' functions outlined in the Paris Principles (it is 4  
5 not clear what those core functions are, but they are most likely the two functions 5  
6 noted above). Seventh, the legislation cannot limit the ICRI's ability to pursue 6  
7 these functions. This criterion downplays, if not ignores, limitations found in full 7  
8 members' legislation, which will be discussed below. Eighth, acknowledging that 8  
9 some ICRI's are part of human rights institutions, and sometimes are organised 9  
10 differently, ENOC requires that an official within the ICRI can be identified as 10  
11 exclusively devoted to protecting and promoting children's rights. Thus, a NHRI 11  
12 without an official wholly focused on children's rights will not meet this criterion. 12  
13 Finally, ENOC requires that processes for appointing new officials associated with 13  
14 an ICRI be set out in legislation. This legislation must identify the ICRI's length of 14  
15 term, and if another term may be served, how the renewal process works. 15

16 An associate ENOC member is an ICRI that does not fulfil a criterion. 16  
17 According to the ENOC website, numerous ENOC members are associate 17  
18 members. In fact, of the 36 ENOC members, eight are associate members: 18  
19 Andalusia of Spain, Georgia, England, Hungary, Portugal, Slovak Republic, 19  
20 Slovenia, and Styria of Austria. Associate status is sometimes given to encourage 20  
21 reform of the legislation governing an ICRI. In the case of the establishment of the 21  
22 Children's Commissioner for England, ENOC leadership hoped this ICRI would 22  
23 enjoy greater independence. 23

24 It should be noted that ENOC's membership guidelines raise questions of 24  
25 arbitrariness. An example is independence. Merely stating 'independence' in 25  
26 legislation ignores crucial features of ICRI's that undermine independence. 26  
27 Numerous ICRI's are accountable, directly or indirectly, to government officials. 27  
28 Similarly, the budget of many ICRI's is not automatically provided via legislation 28  
29 and instead, executive government officials control their budgets, determining 29  
30 increases and cuts. For example, the Prime Ministry of Iceland controls its ICRI's 30  
31 financial affairs. 31

32 Another example of arbitrariness concerns the ENOC membership criterion 32  
33 requiring that an ICRI's legislation cannot limit its ability to pursue the core 33  
34 functions of protecting and promoting children's rights, as this criterion ignores 34  
35 other ways ICRI's are impeded in their work. For instance, ENOC does not address 35  
36 what level of resources are needed for an ICRI to do its work. The staff of the 36  
37 English Commissioner numbers approximately 25, but this ICRI is expected to 37  
38 serve over 9 million children (Office for National Statistics 2010). In contrast, 38  
39 the staff of the Norwegian ICRI is about 15 (Barneombudet 2010), but it serves 39  
40 854,000 children (CIA 2010). 40

41 From these comparisons, certain qualities begin to emerge regarding what 41  
42 is important in defining an ICRI. An ICRI is a specialist institution possessing 42  
43 extraordinary powers because children are outside normal politics. In contrast 43  
44 to some conceptions of an ombudsperson, an ICRI does not exist to point out 44

1 extraordinarily awful situations, or maladministration, but because young people 1  
 2 cannot enforce their rights like adults. For this reason, an ICRI maintains some 2  
 3 degree of independence so that it can monitor what its government does and does 3  
 4 not do in promoting young people's rights. It must be able to decry the failings of 4  
 5 government and society to its young people. 5

6 Some definitions expect an ICRI will work towards CRC implementation, but 6  
 7 not all. Indeed, while ENOC expects its members to pursue full implementation, 7  
 8 this is not a condition of ENOC membership. Across these definitions are different 8  
 9 visions of how an ICRI will pursue implementation of the CRC. 9

10 10

11 11

## 12 **Why an ICRI, rather than an IHRI?** 12

13 13

14 Why establish an independent *children's* rights institution? Why isn't an 14  
 15 independent *human* rights institution good enough? This question seems 15  
 16 especially relevant when national economies are under significant pressures and 16  
 17 government's budgets are facing cuts. In France, for example, just such a situation 17  
 18 may result in the closure of the French ICRI, despite the CRC Committee calling 18  
 19 for its strengthening (CRIN 2009). Is, therefore, a separate independent institution 19  
 20 for children's rights necessary? 20

21 A variety of answers have been given to this question. The CRC Committee, 21  
 22 through its General Comment No. 2, calls for separate ICRI's because children 22  
 23 are different from adults. According to the Committee, children need their own 23  
 24 independent rights institution due to their development and different statuses 24  
 25 in major social, economic and political structures. Because children are still 25  
 26 developing (Lansdown 2001a, 2001b), the Committee (UN Committee on the 26  
 27 Rights of the Child 2002: 2) states they are 'particularly vulnerable to human 27  
 28 rights violations ...'. Moreover, due to the way most societies are organised, in 28  
 29 general young people are less likely to be heard. The CRC Committee's reasoning 29  
 30 is that in very few places can young people effectively participate in political 30  
 31 systems and legal systems. Likewise, only in rare circumstances can young people 31  
 32 effectively work with organisations that might promote and protect their rights. 32

33 As a consequence, in para. 5 of General Comment No. 2, the CRC Committee 33  
 34 points to several reasons why an ICRI is needed, as opposed to *only* a NHRI, 34  
 35 but implicitly asks whether an ICRI based in a NHRI can serve as a voice in the 35  
 36 political process and legal system for young people. In para. 6 of the General 36  
 37 Comment, the CRC Committee seems to indicate a preference for an ICRI over an 37  
 38 ICRI based in a NHRI when it says: 38

39 39

40 Where resources are limited, consideration must be given to ensuring that the 40  
 41 available resources are used most effectively for the promotion and protection of 41  
 42 everyone's human rights, including children's, and in this context development 42  
 43 of a broad-based NHRI that includes a specific focus on children is likely to 43  
 44 constitute the best approach. A broad-based NHRI should include within 44

1 its structure either an identifiable commissioner specifically responsible for 1  
 2 children's rights, or a specific section or division responsible for children's 2  
 3 rights. 3

4 4  
 5 Yet it is important to note that the CRC Committee does approve here of 5  
 6 governments that establish ICRI based in NHRIs. The Committee states that 6  
 7 if within the structure of an independent human rights institution there is an 7  
 8 'identifiable commissioner' that is responsible for children's rights, the CRC 8  
 9 Committee is satisfied. The CRC Committee is implicitly saying that an ICRI 9  
 10 based in a NHRI should be able to use resources for children's rights effectively, 10  
 11 and that it should have a specific focus on children. 11

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### 14 **Kinds of ICRI** 14

15 15  
 16 As the various definitions suggest, there are different kinds of ICRI, among whom 16  
 17 appear the titles ombudsperson and commissioner. Historically, these ICRI can 17  
 18 trace their roots to the first ombudsperson, the Swedish Parliamentary Ombudsman, 18  
 19 established in 1809. Gellhorn (1966: 195, 202) states that this ombudsman had the 19  
 20 job of ensuring royal officers did not ignore the law, and refers to the Swedish 20  
 21 Constitution's statement that the ombudsman must be an individual of 'known 21  
 22 legal ability and outstanding integrity'. In his study Gellhorn refers to the work 22  
 23 of Jägerskiöld (1961), who relates the history of a series of European national 23  
 24 governments establishing ombudspersons after Sweden. This ombudsperson was 24  
 25 also expected to hold Swedish governmental bureaucracy accountable. 25

26 Currently, the Parliamentary Ombudsman (Chapter 12, Article 6 of the Swedish 26  
 27 Constitution) is elected by Parliament and numbers four: the Chief Parliamentary 27  
 28 Ombudsman and three Parliamentary Ombudsmen. The Riksdag Act of 1974 28  
 29 (Article 11) states that terms are for four years, although an Ombudsman may 29  
 30 be removed from office if Parliament carries out a vote of no confidence. The 30  
 31 Parliamentary Ombudsman can institute criminal proceedings and can be present 31  
 32 at court and administrative hearings. The Ombudsman has access to court records 32  
 33 and other documents on request, and may also request assistance from a public 33  
 34 prosecutor, which must be provided. 34

35 In general, some of these characteristics of the first Ombudsman are found in 35  
 36 ICRI, but many are not. The point is that what are now called ombudspersons, 36  
 37 whether children's ombudspersons or other types of ombudspersons, only faintly 37  
 38 resemble the Swedish Parliamentary Ombudsman. For instance, the Swedish 38  
 39 Children's Ombudsperson, Barnombudsmannen, is appointed by government for 39  
 40 six years. Governed by the Children's Ombudsman Act of 1993, the children's 40  
 41 ombudsperson cannot institute criminal proceedings, but she or he can request 41  
 42 reports from administrative authorities and officials of municipal and county 42  
 43 governments on children's rights issues, to which they must respond. In addition, 43  
 44 the children's ombudsperson can request meetings with these administrative 44

1 authorities and government officials. Thus, while the Parliamentary and Children's 1  
2 Ombudspersons share similarities, they are distinct in important ways, particularly 2  
3 in terms of legal authority. 3

4 Some ICRI's are called children's commissioners. How does a children's 4  
5 commissioner differ from a children's ombudsperson? A commissioner is typified 5  
6 as having the primary responsibility of advocacy, which a children's ombudsperson 6  
7 does not. On the other hand, an ombudsperson is characterised as being able to 7  
8 hear and act on an individual's complaint. A children's commissioner cannot. 8  
9 Empirically, however, the labels 'ombudsperson' and 'commissioner' seem 9  
10 interchangeable at this point (SPICe 2001, UNICEF Innocenti Research Centre 10  
11 2001). For instance, some commissioners, such as the Children's Commissioner 11  
12 for Wales, are empowered to investigate individual cases. 12

13 The form an ICRI takes is sometimes tied to its governmental system. For 13  
14 example, ICRI's based in federal governmental systems are often set up at 14  
15 subnational levels, such as the state. For instance, two ICRI's exist in Belgium, one 15  
16 in the Walloon region, and the other in the Flemish region. Similar arrangements 16  
17 are found in other countries whose national government systems are federal, 17  
18 including the United States, where almost half of the 50 states have ICRI's. In the 18  
19 United Kingdom, separate ICRI's exist for England, Northern Ireland, Scotland 19  
20 and Wales. 20

21 21  
22 22

23 **How do Independent Children's Rights Institutions Implement the CRC at 23**  
24 **the National Level?** 24

25 25  
26 Various factors are at play in the work of implementing the CRC at the national 26  
27 level, including ICRI's legislative objectives. Indeed, an ICRI's legislative authority 27  
28 may not even indicate one of its objectives is to ensure national implementation 28  
29 of the CRC. A second critical factor is whether the ICRI possesses the necessary 29  
30 powers to ensure the CRC is implemented at the national level. 30

31 To identify differences among ICRI's in this regard, this chapter will contrast 31  
32 seven offices: three commissioners – Malta, Wales and the ICRI of the Australian 32  
33 state of Tasmania (Table 10.1); three ombudspersons – Norway, Belgium and 33  
34 the ombudsperson of the US state of Rhode Island (Table 10.1); and the Danish 34  
35 Council of Children's Rights, whose distinct arrangement sharply contrasts with 35  
36 the other six ICRI's. 36

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1 **Table 10.1 Examples of independent children's rights institutions (ICRIs)** 1

	<b>National</b>	<b>Devolved</b>	<b>State</b>
Commissioner	Malta	Wales	Tasmania
Ombudsperson	Norway	Belgium	Rhode Island

9 *Formal Objectives* 9

11 Let us first examine the legislative objectives of each of these seven ICRIs. 11  
 12 Objectives of the Malta ICRI, established in 2003, emphasise civil and social 12  
 13 rights. Thus it has several objectives to fulfil, the first being advocacy of children's 13  
 14 rights and interests. A separate but related objective is to promote compliance 14  
 15 with the CRC, as well as with other international treaties. With regards to young 15  
 16 people's civil rights, the Malta ICRI has the tasks of ensuring that young people 16  
 17 can express their opinions, that government agencies and voluntary organisations 17  
 18 take young people's rights and viewpoints into account, and of securing their 18  
 19 protection from harm and exploitation. Furthermore, the Malta ICRI is expected 19  
 20 to ensure institutions comply with the CRC. Its legislation also indicates that it 20  
 21 will 'promote the highest standards' of social, education and health services, and 21  
 22 it is further obligated to ensure that appropriate agencies prevent and mitigate 22  
 23 poverty and the social exclusion of children. A focus on families sets the Malta 23  
 24 Commissioner apart from many ICRIs. Indeed, it has the objective of advocating 24  
 25 for the protection of the family, an objective reflected in the expectation that the 25  
 26 Malta ICRI will advocate on behalf of parents in the raising of their children, 26  
 27 as well as improving 'alternative care' for young people. This ICRI also has the 27  
 28 objective of promoting high quality services to pregnant women. Moreover it is 28  
 29 expected to promote 'special care and protection', including legal protection, to 29  
 30 fetuses and infants. 30

31 The objectives of the Children's Commissioner for Wales, the first ICRI to 31  
 32 be established in the United Kingdom, also emphasise social and civil rights, 32  
 33 including safeguarding and advancing young people's rights and protecting and 33  
 34 promoting the welfare of children in Wales. However, it does not have the objective 34  
 35 of promoting compliance with the CRC, although it does have the statutory duty of 35  
 36 considering the CRC in its work. In addition to its work for *all* children in Wales, 36  
 37 this ICRI has goals that are focused on children in care, particularly monitoring 37  
 38 arrangements, ensuring service providers respond to complaints and providing 38  
 39 information about children who are in care. The Welsh ICRI also has the objective 39  
 40 of providing assistance and representation to young people in legal proceedings 40  
 41 involving care arrangements. 41

42 Objectives of the Tasmania ICRI emphasise social rights, chief among which 42  
 43 is raising public awareness of children's well-being. Tasmania is a state in the 43  
 44 federal structure of Australia and its ICRI is not tasked with promoting compliance 44

1 with the CRC. Moreover, many objectives of the Tasmania ICRI, for example 1  
2 making an inquiry into a matter involving the welfare of children, may only be 2  
3 pursued at the request of the Minister for Health and Human Services, though the 3  
4 ICRI may advise the Minister on its own prerogative about an issue concerning 4  
5 young people's well-being. This latter objective explicitly applies to children in 5  
6 government custody or guardianship. 6

7 Established in 1981, the Norwegian ICRI has among its tasks that Norway 7  
8 complies with the CRC. As a result, its objectives incorporate civil, political, 8  
9 social and economic rights as their focus. Among its chief objectives is improving 9  
10 the conditions in which young people grow up. It is obligated to reduce conflict 10  
11 between young people and society, as well as to promote young people's safety 11  
12 through laws. A further objective is the protection of young people's interests as 12  
13 they pertain to planning by public and private authorities. In turn, the Norwegian 13  
14 ICRI is expected to provide information to public and private actors regarding 14  
15 young people's rights and interests. 15

16 Similar to Wales in relation to the United Kingdom, the Flemish region of 16  
17 Belgium possesses devolved powers, while some are reserved to the federal 17  
18 government of Belgium (Vandekerckhove 2001). The Flemish ICRI is an 18  
19 ombudsperson that is different from many ICRI's in that it is obligated to 'defend' 19  
20 young people's rights. Similar to the Norwegian ICRI, the Flemish ICRI is expected 20  
21 to ensure, within the Flemish community, that government legislation conforms 21  
22 to the CRC. Consequently, this ICRI's objectives emphasise civil, political, 22  
23 social and economic rights. Furthermore it is obligated to act as an advocate for 23  
24 young people's rights, interests and needs, and to do so, it is expected to analyse, 24  
25 even evaluate, and then make public the state of the living conditions of young 25  
26 people living in Flanders. In addition, the Flemish ICRI is obligated to distribute 26  
27 information about the CRC to people, including young people, living in Flanders. 27

28 In the United States, the first children's ombudsperson to be established was 28  
29 that in the state of Rhode Island. Called the Office of the Child Advocate, this ICRI 29  
30 was established in 1979, approximately two years before the Norwegian ICRI. 30  
31 Given the US government has not ratified the CRC, this ICRI is not obligated to 31  
32 take the CRC into account. The Rhode Island ICRI's objectives emphasise civil 32  
33 and social rights, but its focus is on children whose lives are directly affected 33  
34 by the Rhode Island Department of Children, Youth, and Families. Among these 34  
35 objectives, the Rhode Island ICRI aims to ensure that any young person in state 35  
36 care is aware of her rights and hence conducts investigations of children needing 36  
37 assistance who have been placed in institutions by a Rhode Island Family Court 37  
38 or the Department. This ICRI also has the objective of monitoring these facilities 38  
39 and their procedures. A further objective of this ICRI is to conduct reviews of 39  
40 procedures of the Department of Children, Youth, and Families, including 40  
41 reviewing any situation involving the death of a child who received Department 41  
42 services. The ICRI is also obligated to review Family Court orders pertaining to 42  
43 young people, and to train and offer technical assistance to guardians *ad litem* and 43  
44 other advocates in Family Court proceedings. 44

1 Denmark's Børnerådet (translated as the National Council for Children) 1  
 2 (Børnerådet 2010), established in 1998, provides an interesting approach to an 2  
 3 ICRI. Governed by six members, with another member serving as its chairperson, 3  
 4 its overarching objective is to ensure young people's rights, as well as to promote 4  
 5 attention to children's well-being. To this end it aims to assess the conditions in 5  
 6 which young people live, particularly in comparison to the CRC, as a result of 6  
 7 which, its objectives emphasise the civil, political, social and economic rights of 7  
 8 Danish young people. Furthermore the Danish ICRI advises authorities on the 8  
 9 conditions in which young people live and on what children's perspectives are 9  
 10 of the work of those authorities. Furthermore, as one of its critical objectives is 10  
 11 monitoring and publicising the circumstances of young people, it is expected to 11  
 12 identify problems in laws and administrative practices that conflict with children's 12  
 13 rights. The Danish ICRI is also obligated to distribute information about young 13  
 14 people, including debates on issues involving them, and to strive to give young 14  
 15 people opportunities to participate in and shape Danish society. 15

16 Table 10.2 summarises the objectives of these seven ICRIs. 16

17  
18  
19 **Table 10.2 Objectives of ICRIs** 19

	Civil rights	Political rights	Social rights	Economic rights
22 Malta	•	•	•	•
23 Wales	•	•	•	•
24 Tasmania			•	
25 Norway	•	•	•	•
26 Flanders (Belgium)	•	•	•	•
27 Rhode Island (United States)	•		•	
29 Denmark	•	•	•	•

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31  
32  
33 *Formal Powers* 33

34  
35 To reach their objectives, the ICRIs must possess legal powers. These can be 35  
 36 separated into powers to change young people's circumstances, and powers to 36  
 37 change how children are affected by others. The former consists of investigating, 37  
 38 gathering evidence, providing legal assistance and removing children, while the 38  
 39 latter consists of monitoring, researching, shaping opinion and lobbying. 39

40 The Malta ICRI has significant powers enumerated in its legislation. It can 40  
 41 monitor, research, shape opinion and lobby. It can initiate measures promoting 41  
 42 young people's rights and interests. It can gather evidence, as well as investigate 42  
 43 violations of children's rights. It is also obligated to investigate deaths of children. 43  
 44 Furthermore, it has the power to establish standards for government institutions in 44

1 order for them to evaluate whether their processes respond to complaints involving 1  
2 young people; it then has the power to monitor whether those institutions are 2  
3 meeting those standards. This ICRI also has the power to monitor the work of 3  
4 social welfare services for young people. It also has powers to collect information 4  
5 and conduct research. It can shape opinion through public education. And it can 5  
6 lobby, including by preparing and submitting legislation. However, this ICRI can 6  
7 neither provide legal assistance nor remove a child from a dangerous situation. 7

8 The Children's Commissioner for Wales also possesses significant powers. 8  
9 It has the power to monitor arrangements and to gather evidence about the well- 9  
10 being of young people in care. If information on these arrangements indicates 10  
11 illegal or dangerous behaviour, the Welsh ICRI has the power to ensure remedies 11  
12 are taken. In addition, the Welsh ICRI has the power to provide advice and 12  
13 information. These efforts extend to providing assistance and representation in a 13  
14 proceeding involving problems with in-care arrangements. It also has the power 14  
15 to make reports; it can acquire evidence, including the provision of information 15  
16 and examination of witnesses under oath. Moreover, it possesses the power to 16  
17 review extant or proposed legislation, policy, practice or service as it pertains to 17  
18 all children in Wales. Indeed, the Welsh ICRI can make representations to the 18  
19 Welsh Assembly on 'any matter affecting the rights or welfare of children in 19  
20 Wales'. This ICRI does not have the power to remove a child from a dangerous 20  
21 situation. 21

22 The ICRI of Tasmania, the Commissioner for Children, has the power to 22  
23 compel a person to answer questions or produce documents relevant to child 23  
24 abuse and protection. It also has the power to shape opinion and offer advice. 24  
25 If we broadly construe the powers of the Tasmania ICRI, it can also monitor, 25  
26 research and lobby. However, like others, its powers are in some respects 26  
27 limited. For example, its power to conduct an investigation may only be 27  
28 exercised when directed by the Minister of Health and Human Services (unless 28  
29 it involves a court). Similarly, the ICRI can only monitor impacts of legislation, 29  
30 policy or practice if requested by the Minister. Additionally, the Tasmania ICRI 30  
31 can gather evidence and it can compel a person to provide evidence for its work 31  
32 on child abuse and protection. However, it cannot provide legal assistance or 32  
33 remove children. 33

34 The Norwegian ICRI has the power to investigate and to gather evidence. 34  
35 Indeed, all institutions for children in Norway, whether public or private, are 35  
36 obliged to provide information to the ICRI to enable it to perform its tasks. As 36  
37 well as having the power also to monitor public and private institutions, it can 37  
38 conduct research, shape opinion and lobby public and private institutions. In some 38  
39 situations it can respond to individual complaints of a child, but it cannot provide 39  
40 legal assistance or remove children. 40

41 The Flemish ICRI of Belgium has powers similar to those of the Norwegian 41  
42 ICRI. The Flemish ICRI possesses powers to monitor and publicise the living 42  
43 conditions of young people. Furthermore, it can conduct or sponsor studies, and 43  
44 disseminate information about children's interests. This set of powers includes 44

1 investigating complaints about violations of the CRC, but this power is constrained 1  
 2 by the ICRI's inability to carry on the investigation when a judicial or administrative 2  
 3 proceeding is underway. Nevertheless, the Flemish ICRI has the power to gather 3  
 4 evidence, including documents from public officials, and can access government 4  
 5 buildings. The ICRI can also evaluate national reports to the CRC Committee. It 5  
 6 cannot provide legal assistance or remove children. 6

7 The powers of the Rhode Island ICRI, whose objectives are comparatively 7  
 8 narrow, are at the same time weak. It has the power and responsibility to care 8  
 9 for a child's estate while the child is in state custody, and it is able to receive a 9  
 10 petition from a foster home that wants a child to stay with the home while its 10  
 11 licensing process is completed. The ICRI also has the power to monitor foster care 11  
 12 arrangements and to investigate when concerns arise. Moreover, it has the power 12  
 13 to investigate the fatality of a child in the in-care system. In that role, the ICRI can 13  
 14 collect evidence. However, this ICRI cannot remove a child from the system or 14  
 15 from elsewhere. Nor can it offer legal assistance. 15

16 The Danish ICRI, the National Council of Children, can monitor, research and 16  
 17 publicise circumstances in which young people live. It can also lobby government 17  
 18 and others for changes to legislation and other practices. Furthermore, it can 18  
 19 investigate and collective evidence. The Danish ICRI cannot, however, provide 19  
 20 legal assistance or remove children. 20

21 The powers of each of these ICRI's are summarised in Tables 10.3 and 10.4. 21  
 22 22  
 23 23

24 **Table 10.3 Powers of ICRI's to influence the circumstances of young people** 24  
 25 25

	Investigate	Collect evidence	Provide legal assistance	Remove children
28 Malta	•	•		
29 Wales	•	Limited	•	
30 Tasmania	Limited	•		
31 Norway	•	•		
32 Flanders (Belgium)	Limited	•		
33 Rhode Island	•	Limited		
34 (United States)				
35 Denmark	•	•		

36 36  
 37 37  
 38 38  
 39 39  
 40 40  
 41 41  
 42 42  
 43 43  
 44 44

	Monitor	Research	Shape opinion	Lobby
Malta	•	•	•	•
Wales	•	•	•	•
Tasmania	•	•	•	•
Norway	•	•	•	•
Flanders (Belgium)	•	•	•	
Rhode Island (United States)	•			
Denmark	•	•	•	•

A review of Tables 10.3 and 10.4 suggests that many ICRI's possess more powers to affect others than to influence the circumstances of young people. With the exception of Rhode Island, an ICRI endowed with limited powers, the ICRI's examined in this chapter tend to have fewer powers to shape the situations in which young people live.

*Informal Powers*

Another key aspect of an ICRI's make-up is its informal powers. Informal powers can be thought of as tools an ICRI possesses that are not set out in legislation or in another legal document. An international study of ICRI's I am directing indicates the informal power of communicating with the media is a powerful tool. Working with the media enables an ICRI to express opinions on children's rights, on how government and private institutions, including international ones, are treating children's rights and approaching children's interests. Results from this study indicate working with the media is strongly valued by many ICRI's. The legislation of none of the seven ICRI's compared in this chapter prohibits working with the media.

**Independence**

The ability to work with other institutions raises questions of the independence of ICRI's. All ICRI's have relationships with their governments, and many cooperate with private entities; some are located within national human rights institutions (NHRIs). What factors are important to an ICRI's independence? Does independence matter to an ICRI's work?

Studies of the independence of ICRI's have not been published and scholarly work on issues surrounding the independence of ICRI's is not available. Consequently, this chapter will turn to signals from the CRC Committee and other

1 institutions for factors important to an ICRI's independence, then examine the 1  
2 qualities of independence of the seven ICRI's examined here. Paragraph 7 of the 2  
3 CRC Committee's General Comment No. 2 clearly articulates the Committee's 3  
4 viewpoint on the importance of independence to an ICRI: '... every State needs 4  
5 an independent human rights institution with responsibility for promoting 5  
6 and protecting children's rights. The Committee's principal concern is that the 6  
7 institution, whatever its form, should be able, independently and effectively, to 7  
8 monitor, promote and protect children's rights.' Thus, from the CRC Committee's 8  
9 standpoint, an ICRI's independence is crucial. 9

10 The CRC Committee refers to the Paris Principles and the Vienna Declaration 10  
11 as the sources of its ideas on ICRI's. The Paris Principles indicate factors to 11  
12 consider in evaluating the independence of an ICRI. Does the ICRI have adequate, 12  
13 stable funding it can use to advance children's rights? Does the ICRI have its 13  
14 own staff with premises that are identifiable as separate for children and young 14  
15 people? Questions can be drawn from the Vienna Declaration, such as whether 15  
16 relationships with other institutions hinder the ICRI from advising competent 16  
17 authorities, remedying children's rights violations, distributing information about 17  
18 children's rights, and taking an educational role in regards to children's rights. 18

19 As mentioned above, one question regarding independence revolves around the 19  
20 idea of having an ICRI located in a NHRI. The CRC Committee points to several 20  
21 reasons why an ICRI is needed, as opposed to *only* a NHRI. These factors do not 21  
22 demand a separate ICRI, but point to concerns regarding the independence of an 22  
23 ICRI based in a NHRI. While paragraph 5 of General Comment No. 2 implicitly 23  
24 asks whether an ICRI based in a NHRI can serve as a voice in the political process 24  
25 and legal system for young people, paragraph 6, by emphasising that an ICRI 25  
26 based in a NHRI should not only have a specific focus on children but also be able 26  
27 to use resources for children's rights effectively, raises questions of whether an 27  
28 ICRI located in a NHRI can maintain independence in its work. 28

29 Many ICRI's are labelled 'independent', and of the seven ICRI's examined 29  
30 here, only the Rhode Island ICRI does not carry the 'independence' label. Labels 30  
31 of independence in charter or legislation, for instance, may seem like form over 31  
32 substance, but the ability to refer to this label may be an important resource for the 32  
33 institution. Yet the label of independence may be weakened by the formal qualities 33  
34 of an ICRI. 34

35 Given the paucity of studies and commentary, research on other independent 35  
36 institutions may suggest important qualities for an ICRI's independence. For 36  
37 example, research on central banks has tended to focus on four components of 37  
38 independence. The first component is the label of independence, which, as stated, 38  
39 six of the seven ICRI's studied in this chapter possess. The second component 39  
40 entails independence in doing work, which includes deciding on what work to 40  
41 undertake and how to conduct this work. Can another institution shape what work 41  
42 the ICRI undertakes? The third component relates to how the individual enters 42  
43 and exits the institution. Does another institution, such as government, influence 43  
44 how an individual takes and leaves the office of ICRI? Finally, control of the 44

1 office's management and functioning once an individual holds an office is the 1  
2 fourth important component of independence. If a government official can control 2  
3 management of the ICRI office, this official may effectively stop or hinder the 3  
4 ICRI from reaching its goals. 4

5 5  
6 6

7 **Resources** 7

8 8

9 ICRI's do not operate in a vacuum. Rather, ICRI's are located within a framework 9  
10 of other organisations, norms and resources, all of which may hinder or promote 10  
11 implementation of the CRC. Among the most crucial features of the children's 11  
12 rights landscape is the governmental system and leadership. If government 12  
13 responds to popular opinion on children's rights, the ICRI will, all things being 13  
14 equal, enjoy a significant advantage. Popular support of children's rights is also a 14  
15 critical factor. Another indicator of support is the number and strength of NGOs 15  
16 working to promote children's rights. Of course, strength of the civil society in 16  
17 which the ICRI functions shapes the efforts of the NGOs. And the legal system 17  
18 shapes civil society. Thus, the legal system, particularly its effectiveness, will affect 18  
19 the popular support of rights. If courts do not function, rights may be regarded as 19  
20 not worth pursuing. Overall, available resources are central to an ICRI's work 20  
21 of implementing the CRC. While a variety of resources shape the goals and 21  
22 functioning of individual ICRI's, both supporting and limiting their work, their 22  
23 budgets and staff sizes certainly are critical. 23

24 24

25 25

26 **How Do ICRI's Set Their Agendas?** 26

27 27

28 Given the vast differences in legislative objectives, legislated powers, independence, 28  
29 resources and other factors, including informal powers, how ICRI's go about 29  
30 setting their agendas is quite complicated. To a significant degree, the agendas of 30  
31 many ICRI's are set by their legislative schemes. However, the independence of 31  
32 an ICRI also shapes its agenda setting, and some ICRI's are bound to respond to 32  
33 requests from government officials. Not surprisingly, though, all ICRI's respond 33  
34 to issues, even crises, facing children and young people in their own countries. 34  
35 Finally, attitudes and beliefs about children, parents and other parts of society 35  
36 shape ICRI's' agendas. 36

37 We would expect that the objective of implementing the CRC to also be a 37  
38 critical component of any ICRI's agenda. For example, in Norway, despite the 38  
39 Norwegian ICRI having been established in 1981, eight years prior to the CRC, 39  
40 following CRC ratification the Norwegian government took steps to modify the 40  
41 legislation regulating the ICRI so that the office is tasked with ensuring Norwegian 41  
42 law and administration 'are in accordance with Norway's obligations according 42  
43 to the UN Convention on the Rights of the Child'. Given the United States has 43  
44 not ratified the CRC it is not surprising that a similar mandate does not affect 44

1 the Rhode Island ICRI. What is surprising is that some ICRIs whose national 1  
 2 governments have ratified the CRC are not obligated to help implement the CRC. 2  
 3 While the United Kingdom ratified the CRC in 1991 and each of the four ICRIs 3  
 4 in the United Kingdom – that is, England, Northern Ireland, Scotland and Wales 4  
 5 – have a (differently expressed) obligation to pay ‘due regard’ to the CRC and all 5  
 6 emphasise in their publications the importance of the Convention to their work, 6  
 7 only the Northern Ireland and Scottish ICRIs have specific duties linked to CRC 7  
 8 implementation. Even then, these duties do not encompass the general monitoring 8  
 9 of implementation as such. 9

10 Independence of an ICRI also shapes its agendas, sometimes in restrictive 10  
 11 ways. The Rhode Island ICRI, for example, filed a lawsuit against the Rhode 11  
 12 Island state welfare system for purposes of reforming the Rhode Island in-care 12  
 13 system. Through the lawsuit, the Rhode Island ICRI contends children who are 13  
 14 in government care are being harmed by failures of the in-care system, including 14  
 15 poor management. When the Rhode Island ICRI’s term ended in January 2010, the 15  
 16 Rhode Island governor indicated he would not consider the current ICRI among 16  
 17 the new applicants, despite the express desire of the ICRI to serve a second term 17  
 18 (*Rhode Island News* 2010). 18

19 As mentioned above, ICRIs do respond to crises involving young people. The 19  
 20 Welsh ICRI in 2001 announced its intention to hold public inquiries into a sexual 20  
 21 abuse case involving Ysgol Gyfun Rhydfelen school. During a period of almost 21  
 22 years, a number of children had been sexually abused, an injustice that had been 22  
 23 covered up and ignored by some government officials. Whistleblowers, including 23  
 24 current and past students, called attention to the crisis at the school. The ICRI’s 24  
 25 work consisted of public inquiries and other investigations over a period of three 25  
 26 years, gaining international attention and demanding a great deal of time and 26  
 27 resources of the Welsh ICRI (Children’s Commissioner for Wales 2004). 27

28 Opinions, beliefs and attitudes can also shape the agendas of an ICRI. As 28  
 29 noted, the Malta ICRI is obligated to provide legal protection to foetuses. In 29  
 30 2005, the Malta ICRI spoke out over IVF processes, raising concerns about 30  
 31 how frozen embryos could be discarded and how research could not guarantee 31  
 32 children conceived through IVF would live healthy lives (Sansone 2009). Given 32  
 33 her legislated objectives, the Malta ICRI arguably was expected to raise such 33  
 34 concerns, despite the fact that she faced criticism from medical doctors and media, 34  
 35 among others. 35

36 36  
 37 37

### 38 **Strategies to Implement the CRC** 38 39 39

40 There are four broad strategies ICRIs take to implementing the CRC: using 40  
 41 existing legislation, calling on government to institute new legislation, working 41  
 42 with the media, and collaborating with other organisations. In relation to the first 42  
 43 of these – insisting that government officials enforce national laws – ICRIs may 43  
 44 use powers to monitor legislation, as well as to investigate and collect evidence 44

1 of maladministration of laws that harm young people's rights. For example, the 1  
 2 English ICRI publicly criticised the British government over its policies and 2  
 3 practices of detaining immigrant children in asylum detention centres, contending 3  
 4 young people held in these centres do not enjoy their rights according to British 4  
 5 law (Aynsley-Green 2010). 5

6 In relation to the second strategy, ICRIs may lobby government officials to 6  
 7 prepare and pass new laws that will implement rights identified in the CRC. For 7  
 8 example, in early 2010, the first Russian federal ICRI, the former ICRI of the city of 8  
 9 Moscow – who was fired after supporting the creation of a juvenile justice system 9  
 10 (*The Moscow Times* 2010) – had loudly raised the alarm about the deterioration of 10  
 11 children's rights in Russia over the last eight years. 11

12 In the third strategy – approaching the media to discuss how national 12  
 13 governments can further implement the CRC – an ICRI may find one of its most 13  
 14 potent powers is not in the legislation governing the office but in working informally 14  
 15 with other actors and institutions, including the media. This power may be used 15  
 16 to set agendas beyond the legislated objectives of the ICRI. For instance, an ICRI 16  
 17 may work with newspapers to set terms of public debate over issues affecting 17  
 18 young people and their rights. With the availability of this informal power, an 18  
 19 ICRI take on significant issues of national importance, or issues affecting smaller 19  
 20 groups of young people but in deeply serious ways. For example, in 2010, the 20  
 21 Norwegian ICRI pressed employers to shorten working hours for parents, citing 21  
 22 evidence of higher divorce rates among parents who work long hours and fail to 22  
 23 spend time with their children (Sandelson 2010). 23

24 The fourth strategy, which is quite commonly employed, is to work with 24  
 25 other organisations to implement the CRC. Nearly every ICRI who works in a 25  
 26 country with a strong civil society cooperates with non-profit organisations. In 26  
 27 some locations, these non-profit organisations are not local, but international. 27  
 28 An important example is ENOC, which provides various forms of support to its 28  
 29 members in their work towards CRC implementation. In many places, however, 29  
 30 ICRIs work with domestic non-profit organisations to pursue CRC implementation. 30  
 31 Iceland's ICRI, for example, works with universities to improve children's rights 31  
 32 and wellbeing (Umboðsmaður barna 2007). 32

33  
 34

### 35 **Barriers to and Successes in ICRIs' Implementation of the CRC** 35

36  
 37 ICRIs may take on a variety of roles in their work to implement the CRC. This 37  
 38 chapter has sought to demonstrate that a variety of factors shape how ICRIs go 38  
 39 about this work. It is important, however, to emphasise that not all ICRIs are 39  
 40 expected to work towards implementation of the CRC. In the United States, ICRIs 40  
 41 do not focus on the CRC and only to a limited degree do they concentrate on 41  
 42 children's rights. Even in countries whose national governments have ratified the 42  
 43 CRC, not all ICRIs are obligated to consider the CRC in their work. 43

44

1 Two primary types of ICRI, ombudspersons and commissioners, are to be 1  
 2 found, although notable exceptions, such as the Danish ICRI, do exist. Beyond 2  
 3 these differences, which may only be superficial, varying objectives and powers 3  
 4 often lead to ICRI's assuming different roles. Indeed, the objectives of an ICRI may 4  
 5 emphasise certain aspects of the CRC, while the powers an ICRI possesses may 5  
 6 enable it to pursue certain features of the CRC. Without the power to investigate, 6  
 7 for instance, a young person's freedom from imprisonment with adults is difficult 7  
 8 to evaluate. Additionally, an inability to collect evidence, particularly on a 8  
 9 sensitive issue, may weaken the position an ICRI wants to take regarding young 9  
 10 people's rights. Even with legal powers and adequate resources, compromised 10  
 11 independence may hinder an ICRI from implementing the CRC. 11

12 In the bigger picture, ICRI's are unique institutions, positioned at public– 12  
 13 private divides, between government and family and other institutions, appointed 13  
 14 to safeguard and advance young people's rights. When government officials 14  
 15 conclude young people's rights are not in their interest to pursue, or when such 15  
 16 rights are overlooked by institutions in civil society, or are not pursued by parents 16  
 17 and caretakers, advocacy and dogged pursuit by an ICRI may make critical 17  
 18 differences to young people and their rights and well-being. Thus ICRI's may take 18  
 19 leadership roles, guiding public and private institutions to implement the CRC and 19  
 20 give credence to children's rights. 20

21 21  
 22 22

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