

# INFORMATION AND TRAINING PACK

Prepared by the European Network of Ombudspersons for Children for all those engaged in the development of independent statutory offices to promote the human rights of children - children's ombudspersons and commissioners for children's rights.

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## About ENOC

The European Network of Ombudspersons for Children - ENOC - is a new voice for children in Europe. It aims to improve the lives of all children in Europe by:

- encouraging the fullest possible implementation of the UN Convention on the Rights of the Child;
- supporting individual and collective lobbying for children's rights and interests to Europe-wide and international bodies;
- sharing information, approaches and strategies for the benefit of children;
- promoting and supporting the development of effective offices able to advocate independently for children.

## How to use this training pack

One of ENOC's key aims is to support the development of effective independent offices for children, in Europe and beyond.

This information and training pack is offered as one tool for fulfilling this aim. Much of its contents is also available on ENOC's website <[www.ombudsnet.org](http://www.ombudsnet.org)>, which also contains more detail about existing member-offices in Europe, ENOC policy statements and updates.

The pack is intended to provide a basis for the development of individual training materials and courses, including ideas for group discussions and exercises. It includes information sheets, discussion/work sheets and key documents and references.

<i>About ENOC</i> .....	2
<i>How to use this training pack</i> .....	2
<i>Introduction</i> .....	5
History -- the first children's ombudspersons _____	7
NGO origins .....	7
Norway's Barneombud .....	7
The development of national human rights institutions _____	8
What is an ombudsman? _____	10
National human rights institutions for children _____	11
What the Paris Principles require? .....	12
<i>Information Sheet 2</i> .....	15
The Convention on the Rights of the Child and the development of independent offices for children _____	15
Committee on the Rights of the Child recommendations .....	15
<i>Information Sheet 3</i> .....	19
Other recommendations for independent offices for children _____	19
UN Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines") _____	19
Council of Europe European Strategy for Children _____	19
ENOC's Position Statement promoting the development of new independent offices for children _____	19
<i>Information Sheet 4</i> .....	22
A summary of existing independent human rights institutions for children ____	22
<i>Information Sheet 5</i> .....	25
NGOs and independent offices for children _____	25
<i>Information Sheet 6</i> .....	26
Independent offices and individual complaints _____	26
<i>Whether or not independent offices handle individual complaints, they will inevitably get requests for advice and help from children and others, and must be equipped to respond adequately and quickly to them. Information Sheet 7 ..</i>	26
<i>Information Sheet 7</i> .....	27
What have independent offices achieved for children? Examples from ENOC member-offices _____	27
Sweden .....	27
Denmark .....	28
Iceland .....	28
Norway .....	28
Madrid, Spain .....	29
<i>Information Sheet 8</i> .....	30
Evaluations of independent offices for children: Norway and Sweden _____	30

<i>Discussion Worksheet 1</i> .....	42
Why have an independent office to promote children’s human rights _____	42
1 Why do children need special arrangements and special attention to protect their human rights?.....	42
2 Identifying how governments are failing children.....	43
3 Why have some states managed to develop a higher political priority for realising children’s rights than others? .....	44
4 A debate: the case for and against establishing an independent office for children	45
5 Identifying what sort of society we want to create for children.....	45
6 Identifying threats to advocacy of children’s rights .....	46
<i>Discussion Worksheet 2</i> .....	47
What are the aims of independent offices to promote the human rights of children? _____	47
<i>Discussion Worksheet 3</i> .....	48
Identifying institutions that exist to promote and protect the human rights of children _____	48
<i>Discussion Worksheet 4</i> .....	49
What does “independent” mean? _____	49
Appointment of ombudsperson/commissioner: .....	49
Other characteristics for independence: .....	49
<i>Discussion Worksheet 5</i> .....	51
Criteria for choosing a children’s ombudsman _____	51
<i>Discussion Worksheet 6</i> .....	52
What is advocacy? _____	52
Methods of advocacy .....	52
<i>Discussion Worksheet 7</i> .....	53
Case scenarios for consideration of strategies for advocacy _____	53
<i>Discussion Worksheet 8</i> .....	54
What sort of independent office for children should be established? _____	54
An independent office set up through legislation specifically to promote the human rights of children?.....	54
A “specialist” ombudsman or commissioner for children within a national .....	55
human rights institution? .....	55
What characteristics are needed to ensure effective work for children within a national human rights institution? .....	55
A national/federal institution or regional institution - or both? .....	56
<i>Discussion Worksheet 10</i> .....	58
Developing proposals for investigating and responding to complaints or concerns from children and their representatives concerning breaches of rights _____	58
<i>Discussion Worksheet 11</i> .....	59
Evaluating the success of an independent office _____	59

## Introduction

Independent offices to promote the human rights of children, with powers and duties set out in legislation, are now appearing in many countries in all continents (most in Europe). The first such office, Norway's Children's Ombudsman, pre-dated the Convention on the Rights of the Child by almost 10 years. But more independent offices are appearing as countries meet the challenge of implementing the Convention on the Rights of the Child and the Committee on the Rights of the Child - the international monitoring body for the Convention - consistently recommends their establishment.

While these offices are in almost all cases established by government or parliament, the essential characteristic is their independence: their ability to advocate independently for children. In responding to the Convention on the Rights of the Child, many countries have established permanent bodies *within* government to promote children's interests.

But independent offices have a different, complementary role - that of watchdog for children outside government.

Existing offices vary in their names, their aims, how they are established, the legislation setting them up, their powers, size and so on.

Offices have a variety of names - Commissioners or Commissions for Children or for children's rights, National Council for Children's Rights, Defenders of Children, Child Advocates, Child Rights Delegates. Nordic countries - Norway, Sweden and Iceland - use the title "children's ombudsman". The term "ombudsman" is a Scandinavian word for an office set up to protect the individual's rights and interests in relation to the state or government. But in every case the role of these children's ombudspersons goes beyond the traditional ombudsman role of taking up individual cases or complaints;

some are not allowed to take on individual cases at all, but are only concerned with representing the interests of children as a group.

The development of institutions to promote the human rights of children fits into the broader United Nations aim: to encourage the establishment of national institutions to promote and protect human rights generally. In some States independent offices for children operate as part of national human rights institutions. In others, separate institutions have been established to promote and protect the human rights of children.

In countries which are seeking to develop a human rights culture overall, establishing an office focused on the human rights of children could be a logical start, given the central importance of children and children's developing attitudes to creating that culture for the future. Too often, children have had to wait until last for recognition and effective promotion of their human rights.

These independent offices for children are distinguished from non-governmental organisations (NGOs) by having powers and duties set out in legislation. NGOs play a crucial role in the promotion of human rights,

generally with a high degree of independence. But they do not usually have the power, alone or together, to really shift government priorities and public attitudes. Children's ombudspersons will want to work closely with NGOs.

If an independent office is given appropriate independence - powers and duties set out in legislation and sufficient resources - it can make a big difference. It can induce populations and politicians to accept the reality of children's lives, making children more visible, providing a channel for getting children's own views to government and to the public and promoting respect for children's views throughout society. It can make proposals for change and encourage, cajole and when required, embarrass governments and others into shifting priorities, into necessary action. It can seek to ensure that all children and their representatives have access to effective means of redress when their rights are breached.

Governments should not be fearful of setting up such an office: one fact which should encourage them is that these offices, once established, tend to become extremely popular, both with children and with the public generally.

## Information Sheet 1

### *History -- the first children's ombudspersons*

This Training Pack is about the development of independent human rights institutions for children. The first of these institutions to emerge in the 1970s and 1980s in the Nordic countries were termed Children's Ombudspersons. Now they exist in many countries and take many titles in addition to ombudsman. Some are free-standing and some form part of national human rights institutions - human rights commissions or general ombudsmen. This sheet sets out their origins and discusses development and definition.

### NGO origins

As with many positive developments for children, the idea of a children's ombudsperson was first developed by non-governmental organisations (NGOs). Radda Barnen, Swedish Save the Children, established an Ombudsman for Children in the 1970s and promoted the idea internationally during International Year of the Child (1979).

### Norway's Barneombud

It was neighbouring Norway whose Government was the first to use legislation to set up an independent body for children. An Act establishing the *Barneombud* was passed by the Norwegian Parliament in 1981. In 1975 the Ministry of Justice had established a committee to look at legislation on parents and children and to consider whether there was a need for some special public body for children. The unanimous proposal of the Committee in its 1977 report was that a public, national office of Ombudsman for Children should be established. The proposal was examined by an inter-departmental committee representing the six departments with major responsibilities for children. The Act establishing the office as an autonomous body is short; the statutory duty of the *Barneombud* is to "promote the interests of children vis-à-vis public and private authorities". In 1998 the Act was amended to link the Ombudsman's functions to implementation of the Convention on the Rights of the Child.

*"Our experience with the Office of the Ombudsman has been very positive, and I truly believe that Norwegian children have derived great benefit from having an ombudsman of their own, to speak and act on their behalf."* - Gro Harlem Brundtland, Prime Minister of Norway, 1991.

*"Many nations will now find it useful to develop a mechanism to serve as a watchdog for children's rights and to monitor the evolving situation of their children against the international standards laid down in the Convention. The Norwegian Ombudsman for children experience offers one possible approach"* - James Grant, Executive Director, UNICEF, 1991.

Since the birth of Norway's pioneering institution, many other countries in Europe and beyond have accepted the need to establish independent



statutory institutions to monitor, promote and protect the human rights of children. Some have done so by creating a new, separate institution with a variety of names - Commissioners or Commissions for Children or for children's rights, National Council for Children's Rights, Defenders of Children, Child Advocates, Child Rights Delegates. Others have developed a specific focus within national or general human rights institutions. In some States these institutions are national or federal, in some regional or local.

### *The development of national human rights institutions*

The establishment of some independent offices for children, including Norway's, predated the Convention on the Rights of the Child (CRC). But since the adoption of the Convention in 1989, the development of these offices for children is most usefully considered as part of the process of implementing the CRC and alongside or in the context of the development of independent national human rights institutions. During the 1960s and 1970s, promotion of the International Bill of Human Rights (the Universal Declaration and the two Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights) led various United Nations bodies and NGOs to advocate the development of institutions to assist with the implementation of these new international standards at the national level.

A training handbook from the Centre for Human Rights, now the Office of the High Commissioner for Human Rights, outlines the development and role of these bodies.

When a state ratifies a human rights instrument like the Convention on the Rights of the Child, it either incorporates its provisions directly into domestic legislation, or undertakes to comply in other ways with the obligations to respect human rights in the instrument. "Often, however, the fact that a law exists to protect certain rights is not enough if that law does not also provide for all the legal powers and institutions necessary to ensure the effective realisation of those rights... It has therefore become increasingly apparent that the effective enjoyment of human rights calls for the establishment of national infrastructures for their promotion and protection. In recent years many countries have established institutions with the express function of protecting human rights. While the specific tasks of such institutions may vary considerably from country to country, they share a common purpose, and for this reason are referred to collectively as national human rights institutions" (paras 17, 19).

The conclusion to the handbook states:

"There are some who see no good reason for establishing special machinery devoted to the promotion and protection of human rights. They may argue that such bodies are not a wise use of scarce resources and that an independent judiciary and democratically elected parliament are sufficient to ensure that human rights abuses do not occur.



“Unfortunately history has taught us differently. An institution which is in some way separated from the responsibilities of executive government and judicial administration is in a position to take a leading role in the field of human rights. By maintaining its real and perceived distance from the Government of the day, such a body can make a unique contribution to a country’s efforts to protect its citizens and to develop a culture respectful of human rights and fundamental freedoms” (paras 298 - 299). (*National Human Rights Institutions*, Centre for Human Rights, Professional Training Series No.4, Centre for Human Rights, Geneva, 1995).

The World Conference on Human Rights in its Declaration and Programme of Action reaffirmed “... the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights...”. It also encouraged “... the establishment and strengthening of national institutions...” (Part I, para.36).

A series of workshops and seminars within the UN human rights system has led to the development of principles and guidelines for national human rights institutions which are of interest and relevance to all engaged in developing independent offices for children (“Principles relating to the Status of National Institutions” - the Paris Principles, adopted by the UN General Assembly in December 1993, 48/134).

The Principles affirm that national institutions are to be vested with competence to promote and protect human rights and given as broad a mandate as possible, “clearly set forth in a constitutional or legislative text”. Among proposed responsibilities are:

- to submit recommendations, proposals and reports on any matter relating to human rights (including legislative and administrative provisions and any situation of violation of human rights) to the Government, parliament and any other competent body;
- to promote conformity of national laws and practices with international human rights standards;
- to encourage ratification and implementation of international standards;
- to contribute to the reporting procedure under international instruments;
- to assist in formulating and executing human rights teaching and research programmes and to increase public awareness of human rights through information and education;
- to co-operate with the United Nations, regional institutions and national institutions in other countries.

All of these functions can be re-focused to relate specifically to the promotion and protection of the human rights of children:

- to submit recommendations, proposals and reports on any matter relating to the human rights of children (including legislative and administrative provisions and any
- situation of violation of their human rights) to the Government, parliament and any other competent body;
- to promote conformity of national laws and practices with the UN Convention on the Rights of the Child and other international human rights standards relating to children;
- to encourage ratification and implementation of international standards which relate to children's human rights;
- to contribute to the reporting procedure under the Convention on the Rights of the Child and reporting procedures under other relevant international instruments concerning the human rights of children;
- to assist in formulating and executing teaching and research programmes relating to the human rights of children and to increase public awareness of children's rights through information and education;
- to co-operate with the United Nations and with regional institutions and national institutions in other countries, including in particular national institutions established to promote and protect children's rights.

Many countries, in Europe and elsewhere, have developed national human rights institutions. There are two broad and overlapping categories - human rights commissions and ombudspersons. "Ombudsmen" have traditionally been associated with an emphasis on impartial investigation. The Centre for Human Rights Handbook suggests that: "Many long-established offices of the ombudsman do not concern themselves directly with human rights except in so far as they relate to their principal function of overseeing fairness and legality in public administration. Others, particularly the more recently created offices, have been given specific human rights protection mandates, often in relation to the rights set forth in national constitutions or other legislation". The Handbook acknowledges that precise classification of national institutions into categories is impossible, because "An "ombudsman", for example may be engaged in a broad range of promotional and protective activities generally recognised as characteristic of a commission. An entity identified as a "human rights commission" may be operating exclusively within the sphere of public administration - a domain traditionally associated with the office of the ombudsman" (para 44).

### *What is an ombudsman?*

The term "ombudsman" originated in Scandinavia; it originally meant something akin to ambassador; a person or office established to safeguard the rights of individual citizens, or a particular group of citizens, in relation to the powers and actions of government. An ombudsman for justice was appointed in Sweden in 1809. (Sweden now has a Consumer Ombudsman; Equal Opportunities Ombudsman, Ombudsman against Ethnic Discrimination; Children's Ombudsman, Disability Ombudsman and Ombudsman against Discrimination because of Sexual Orientation).

In the many countries which now have general ombudsman offices the most common functions are to receive and investigate complaints, to act as a spokesperson and to advocate changes to improve things for individuals or for a particular group. Many ombudsperson offices are established in relation to particular services (health, local government), or particular groups of citizens (prisoners, consumers, disabled people, minority groups). Some countries have "general" ombudsmen, covering a variety of human rights issues.

If established by Parliament, ombudsperson offices can have powers set out in an Act of Parliament, or at least some recognised official status.

### *National human rights institutions for children*

Human rights are universal, but the world community has underlined the importance of ensuring that *children's* rights are given special attention by the almost universal ratification of the Convention on the Rights of the Child.

At the World Summit for Children in 1990, 71 heads of state came together and said:

"The well-being of children requires political action at the highest level. We are determined to take that action. We ourselves make a solemn commitment to give high priority to the rights of children". And the World Conference on Human Rights asserted the principle of "First call for children" - that "the rights of the child should be a priority in the United Nations system-wide action on human rights" (Vienna Declaration, A/CONF.157/23, para 21; also see paras 45 et seq).

In most countries there are various agencies committed to monitoring, promoting and protecting the human rights of children:

- agencies forming part of government, either free-standing or a unit within a ministry or department;
- parliamentary bodies - special committees, etc;
- non-governmental organisations;
- independent human rights institutions.

This Pack is about the last category - defined by its independence and by having powers and duties to monitor, promote and protect children's rights set out in legislation.

In 1999 the European Network of Ombudspersons for Children (ENOC) agreed criteria for membership of the Network which, while acknowledging the need for flexibility and a variety of models to suit different states, stress these characteristics:

*“ENOC recognises that the concept of independent offices for children - children's ombudspersons, commissioners and so on - is a developing one, and that its criteria for membership will need to be kept under review.*

*“Membership of ENOC is open to offices within Council of Europe member-countries which meet one of the following criteria:*

- 1. Independent national or regional offices set up through legislation specifically to promote children's rights and interests;*
- 2. Independent national or regional human rights institutions set up through legislation which include a specific focus on children's rights.”*

Thus the key characteristics for ENOC are independence and establishment through legislation. For “general” national human rights institutions to qualify they must have an explicit focus on children’s rights.

### What the Paris Principles require?

The “Paris Principles” adopted by the UN General Assembly to guide the development of national human rights institutions place a particular emphasis on independence and on establishment through legislation. (The Committee on the Rights of the Child has also stressed independence, and in some cases urged governments to give established offices greater independence - see [Information Sheet 2](#)).

The Paris Principles provide a UN-endorsed selection of characteristics:

- vested with competence to promote and protect human rights;
- as broad a mandate as possible, set forth in a constitutional or legislative text, specifying the institution’s composition and sphere of competence;
- responsibilities to provide to parliament, government and other competent bodies opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights - either on request or through its power to consider matters without any higher referral;
- the right to publish such opinions, etc., independently. Matters on which the institution should express opinions, etc. include:
- any legislative or administrative provisions, including those relating to judicial organisation, intended to preserve and extend the protection of human rights:
  - the institution should examine those in force and also any bills or proposals, making recommendations to ensure compliance with fundamental human rights principles, proposing adoption of new provisions or amendments as appropriate;
  - any violation of human rights which it decides to take up;
  - preparing reports on the national situation with regard to human rights in general and on more specific matters;
  - alerting the government to violations in any part of the country, making proposals for ending violations and where necessary

expressing an opinion on the positions and reactions of the government.

- general duties and necessary powers to enable the institution:
  - to promote and ensure harmonisation of national legislation, regulations and practice with the international human rights instruments to which the state is a party, and their effective implementation;
  - encouraging ratification or accession to these instruments;
  - to contribute to the reports which states are required to submit to UN bodies and committees and to regional institutions, and where necessary to express an opinion on the subject, "with due respect for their independence";
  - to co-operate with UN and UN-related organisations and regional and national human rights institutions;
  - to help formulate programmes for teaching and researching human rights and take part in them in schools, universities and among professionals;
  - to publicise human rights and efforts to combat discrimination, by increasing public awareness - particularly through information and education and use of the media.
- Methods of operation include rights to:
  - freely consider any questions falling within its competence hear any person and obtain any information and documents necessary to assess situations falling within its competence;
  - speak out freely through the media.
- The Principles propose particular guarantees of independence:
  - powers to enable effective co-operation to be established with (or in the case of a Commission with members, through the presence of, representatives of:
    - relevant NGOs, trade unions, concerned social and professional organisations (for example associations of lawyers, doctors, journalists and eminent scientists);
    - trends in philosophical or religious thought;
    - universities and qualified experts;
    - Parliament;
    - Government departments (but if they are included, they should participate in deliberations only in an advisory capacity);
- adequate funding to enable it to have its own staff and premises, in order to be independent of Government "and not subject to financial control which might affect its independence":
  - appointment of members of the institution effected by an official act specifying the duration of the mandate (to ensure a stable mandate).

(There are additional principles for institutions which are empowered to hear and consider individual complaints and petitions - see below, page ...).

## Information Sheet 2

### *The Convention on the Rights of the Child and the development of independent offices for children*

The Convention on the Rights of the Child, adopted in 1989, symbolises a new worldwide determination to do better for children. At the World Summit for Children in 1990, the largest gathering of world leaders stated: "The well-being of children requires political action at the highest level. We are determined to take that action. We ourselves make a solemn commitment to give high priority to the rights of children".

Since 1989 when the Convention was adopted, almost all the world's countries have ratified - fully accepted - the Convention. This gives these States serious commitments under international law to respect the principles and detailed standards set out in the Convention.

The particular task of the Convention is to emphasise that children too are holders of human rights. They are not possessions of their parents or of the state. They are not simply objects of concern. They are not people-in-the-making. They are individuals now with views, feelings and rights. Implementing the Convention is not a favour open to governments to bestow on children. The Convention provides detailed obligations, voluntarily taken on by Governments, but then binding under international law.

Article 4 of the Convention requires states to "undertake all appropriate legislative, administrative, and other measures, for the implementation of the rights recognised in this Convention". And under Article 42, states must "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike".

The Convention requires "States Parties" - the 191 states which have ratified it - to report regularly to the Committee on the Rights of the Child. The Committee, established by the Convention, consists of 10 experts, elected by States Parties to monitor progress towards implementation (for a description of the Committee and its role, see UNICEF's *Implementation Handbook for the Convention on the Rights of the Child*, page 569 et seq).

As States go through the process of gathering information for these reports on how their laws, policies and practice affect children, and on the situation of children themselves, they find not just that they need new laws and new policies. They also need new mechanisms, structures and activities to promote a new priority for children.

### Committee on the Rights of the Child recommendations

The Committee on the Rights of the Child has consistently encouraged all the States whose reports it examines to establish special mechanisms, structures and activities for children (terming them "general measures of



implementation"). One of these general measures is to establish an independent human rights institution:

#### General measures for implementation proposed by the Committee on the Rights of the Child

1. ensuring that all legislation is fully compatible with the Convention;
2. developing a detailed, comprehensive national strategy or agenda for children, based on the Convention
3. developing permanent mechanisms in government to ensure effective co-ordination, monitoring and evaluation of implementation.
4. ensuring that there is a systematic process of child impact assessment
5. carrying out adequate budget analysis for children
6. ensuring sufficient data collection on the state of children
7. ensuring awareness of children's rights among adults and children and disseminating reports under the Convention
8. promoting co-operation and co-ordination with civil society - with professional associations, non-governmental organisations, children and so on
9. promoting international co-operation in implementation
10. developing independent offices to promote children's rights - children's ombudspersons or commissioners for children

The Committee's *Guidelines for Periodic Reports* seeks the following information under "General Measures of implementation":

*"Please provide information on existing or planned mechanisms at the national, regional and local levels, and when relevant at the federal and provincial levels, for ensuring implementation of the Convention, for co-ordinating policies relevant to children and for monitoring progress achieved, including information on:*

*The governmental departments competent in the areas covered by the Convention, the steps taken to ensure the effective co-ordination of their activities, as well as to monitor the progress made by them;*

*The steps taken to ensure effective co-ordination of activities between central, regional and local authorities, and where relevant between federal and provincial authorities;*

*Any governmental institutions created to promote the rights of the child and monitor implementation, and how they relate to non-governmental organisations;*

*Any independent body established to promote and protect the rights of the child, such as an Ombudsperson or Commissioner..." (CRC/C/58).*

In its concluding observations, issued following examination of states' reports, the Committee on the Rights of the Child has often commended the establishment of independent offices for children - a children's ombudsperson, commission or commissioner. Thus in its comments on

Norway's Initial Report, it noted *"that Norway was the first country in the world to establish an ombudsman working for the benefit of children. It also notes the spirit of dialogue existing between the Government, the municipalities and the ombudsman and civil society including the non-governmental community"* (Norway IRCO, Add.23, para. 3).

The Committee also welcomed the creation by the Government of Denmark of the National Council for Children's Rights, set up for a trial period in 1994 with a similar role and established permanently in 1997 (Denmark IRCO, Add.33, para. 6).

It welcomed similar developments in Portugal and Guatemala:

*"The Committee welcomes the establishment of an ombudsperson (Provedor de Justiça) and the creation in the ombudsperson's office of a focal point on children's rights"* (Portugal IRCO, Add.45, para. 6).

*"... the Committee notes with satisfaction the establishment of the Office of the Human Rights Procurator and its Children's Ombudsman"* (Guatemala IRCO, Add.58, para. 5).

In its comments on reports from other countries, the Committee has proposed development of independent offices. For example, commenting on Nicaragua's report, the Committee stated it *"would also like to express the hope that the Office of an Ombudsman for Children be created with a view to promoting and protecting the rights of the child"* (Nicaragua IRCO, Add.36, para. 29).

In its Concluding Observations on Argentina, the Committee proposed monitoring, *"including through an ombudsman"* (Argentina IRCO, Add.35, para. 15).

And to Bulgaria:

*"While encouraged by the existing national debate, the Committee is worried at the lack of an independent body to monitor observance of human rights, particularly the rights of the child..."*

*"The Committee encourages the State Party to pursue its consideration on the establishment of an independent mechanism to monitor observance of children's rights, such as an Ombudsperson or a National Commission for Children's Rights"* (Bulgaria IRCO, Add.66, paras. 10 and 23).

The Committee welcomed the establishment of a general ombudsman in Panama but still proposed a specific post for children:

*"The recent establishment of a 'People's Defender' which will monitor the enjoyment of human rights in Panama, including children's rights, is welcomed by the Committee..."*

*"The Committee recommends that the establishment of an independent body, such as an ombudsperson, be given further consideration by the Government..." (Panama IRCO, Add.68, paras. 5 and 24).*

The Committee has stressed the importance of independence from government:

*"The Committee recommends that the State Party consider the possibility of setting up an independent institution such as an Ombudsperson for children's rights. Such a mechanism can play an important role both in monitoring institutions working in the field of the rights of the child, including in the areas of welfare, education and juvenile justice, as well as in contributing to the more rapid identification of emerging problems in these fields with a view to their constructive solution" (China IRCO, Add.56, para. 26).*

*"...The Committee also encourages the State Party to consider the establishment of an independent mechanism, such as an Ombudsperson or a human rights commission, to monitor the realisation of the rights of the child and to deal with individual complaints relating thereto" (Nepal IRCO, Add.57, para. 29. See also Hong Kong IRCO, Add.63, para. 20; Mauritius IRCO, Add.64, para. 25).*

The Committee proposed to New Zealand:

*"... that the office of Commissioner for Children be strengthened and that further consideration be given to measures which would give the office increased independence and make it accountable directly to Parliament" (New Zealand IRCO, Add.71, para. 24).*

And when it examined Sweden's second report under the CRC in 1999, it reported:

*"While the Committee welcomes the establishment in 1993 of an ombudsman for children, in accordance with the Committee's recommendation, it is concerned about a number of issues raised during the dialogue with the State party concerning the role, autonomy and structural position of the ombudsman for children. The Committee welcomes the launching of an inquiry into the effectiveness of the ombudsman, carried out by a one-man committee, and encourages the State party to examine carefully its results and consider reviewing the role and autonomy of the ombudsman for children".*

### Information Sheet 3

#### *Other recommendations for independent offices for children*

In addition to the recommendations of the Committee on the Rights of the Child, various international and European bodies and instruments have advocated the establishment of independent human rights institutions for children. A selection are quoted below:

#### *UN Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines")*

These Guidelines, adopted in 1990, propose that "Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made..." (para. 57)

#### *Council of Europe European Strategy for Children*

The appointment of independent offices has been strongly promoted by the Council of Europe, whose "European Strategy for Children" (1996) proposes the appointment of "a commissioner (ombudsman) for children or another structure offering guarantees of independence, and the responsibilities required to improve children's lives, and accessible to the public through such means as local offices". The Strategy puts all its recommendations in the context of the Convention on the Rights of the Child. (Recommendation 1286 on a European Strategy for Children, adopted by Parliamentary Assembly of the Council of Europe, January 24 1996).

#### *ENOC's Position Statement promoting the development of new independent offices for children*

#### **"ENOC URGES ALL EUROPEAN GOVERNMENTS TO APPOINT OMBUDSPERSON FOR CHILDREN**

The European Network of Ombudspersons for Children (ENOC) urges the Governments of all European States to establish independent institutions to promote and protect the human rights of children. ENOC welcomes the accelerating trend towards creating special institutions - children's ombudspersons, commissioners for children's rights and so on - to monitor and support the task of ensuring full implementation of the UN Convention on the Rights of the Child (ratified by every European state) and of creating child-friendly societies.

Establishing these institutions is a demonstration by governments of good will towards children that they take seriously their commitments under the Convention and are willing to be held accountable for their treatment of children by an independent office.

It is a recognition that no government can be complacent about its treatment of children.

Offices have a variety of names - Children's Ombudsman, Commissioner or Commission for Children's rights, National Council for Children's Rights, Defenders of Children, Child Advocates, Child Rights Delegates. They share the same basic aims:

- to promote full implementation of the Convention on the Rights of the Child;
- to promote a higher priority for children and a greater visibility of children's rights, in central, regional or local government and in civil society, and to improve public attitudes to children;
- to influence law, policy and practice which will affect the human rights of children, both by responding to government and other proposals and by actively proposing changes;
- to promote proper co-ordination of government for children at all levels and ensure that the impact on children's human rights of policy proposals is assessed and given proper consideration;
- to promote effective use of scarce resources - money and other resources - for children;
- to provide a channel for children's views;
- to encourage government and the public to give proper respect to children's views;
- to promote structures which will enable children to exercise rights for themselves;
- to collect and publish data on the recognition and enjoyment of children's human rights and/or encourage the government to collect and publish adequate data;
- to promote awareness of the human rights of children among children themselves and adults;
- to conduct investigations and undertake or encourage research;
- to review children's access to, and the effectiveness of, all forms of advocacy and complaints systems, for example in detention, other institutions and schools and in relation to violence within the family, and including a review of children's access to the courts;
- to respond to individual problems or complaints from children or those representing children, and where appropriate to initiate or support legal action on behalf of children.

The structure, size and activities of offices vary according to the situation of children in particular States.

To be effective advocates for children, ENOC believes these offices must be established through legislation with guarantees of independence and

appropriate powers, linked to States' obligations to children under the Convention.

The Committee on the Rights of the Child, the international body established by the Convention to monitor its implementation worldwide, has commended States which have set up independent human rights institutions for children, and urged others to do so. In its examination of reports from States it has placed particular emphasis on the need for independence.

The appointment of independent offices has also been strongly promoted by the Council of Europe, whose "European Strategy for Children" (1996) proposes the appointment of "a commissioner (ombudsman) for children or another structure offering guarantees of independence, and the responsibilities required to improve children's lives, and accessible to the public through such means as local offices". The Strategy puts all its recommendations in the context of the Convention on the Rights of the Child. (Recommendation 1286 on a European Strategy for Children, adopted by Parliamentary Assembly of the Council of Europe, January 24 1996).

There are many reasons why children in particular need special institutions to protect their human rights: first, they have no vote and play no significant part in the political process; second, there are serious problems for children in using the legal system to assert their rights or seek remedies for breaches of their rights. Children's developmental state makes them particularly vulnerable: they are more affected than adults by the conditions under which they live, and by the actions or inaction of government.

The development of institutions to promote the human rights of children fits into a key aim of the United Nations: the establishment of national institutions to promote and protect human rights generally. In some countries, special arrangements to promote children's human rights have been developed within a national human rights institution.

ENOC believes that the special status of children demands either a separate independent institution or special arrangements within a national human rights institution, including:

- first, that the legislative framework for the national institution includes provisions setting out specific functions, rights and duties relating to children, linked to the Convention;
- second, that there is an identifiable "ombudsman" or representative for children (ideally someone who will bring status and public and political respect to the task, have a high public profile and so enhance the status and visibility of children);
- and thirdly, that this individual has appropriate staffing and a ring-fenced minimum budget...".



## Information Sheet 4

### *A summary of existing independent human rights institutions for children*

#### In Europe

**Austria:** the Youth Welfare Act 1989 promoted the establishment of local ombudspersons in each of the nine *lander* (regions) for children under the age of 18. Each lander has developed its own legislation. The nine children's ombudspersons form a "Conference of Ombudsmen" to respond on federal issues; additionally a federal children's ombudsperson (*Kinder und Jugendanwältin des Bundes*) was introduced in 1991 - an official in the Ministry of Environment, Youth and the Family.

**Belgium:** the Council of the French Community established a *Délégué Général aux Droits de L'enfant* (General Delegate for Children's Rights) in 1991. The General Delegate is appointed by the Executive of the French Community. In the Flemish Community a Decree was passed by the Flemish Parliament in 1997 establishing a Children's Rights Commissioner and a Commission (the Commissioner and staff).

**Denmark:** a National Council for Children was set up in 1994 for a three year trial period as an independent body based on the Ministry of Social Affairs. After evaluation it became a permanent body by an Order issued by the Minister. Three members including the Chair are appointed by the Minister; the remaining four by the coalition of children's NGOs.

**France:** an independent *Defenseur des Enfants* was established by an Act of Parliament passed in March 2000, responsible for promotion and protection of children's rights and receiving individual complaints of breaches from children or their representatives.

**Hungary:** within the Office of the Parliamentary Commissioner for Human Rights, the Deputy Commissioner covers children's issues and there is a small specialist staff.

**Iceland:** an Ombudsman for Children was established by statute in 1995, linked to implementation of the Convention.

**Macedonia:** a new Deputy within the Public Attorney's (Ombudsman's) Office has been designated as Ombudsperson for Child Protection.

**Norway:** the world's first legislation establishing an office of Children's Ombudsman (*Barneombudet*) was passed by the Norwegian Parliament in 1981; in 1998 the Act was amended to link the Ombudsman's work to the Convention on the Rights of the Child.

**Poland:** a Child Rights Ombudsman has been appointed (2000).



**Portugal:** The Portuguese Ombudsman for Justice (*Provedoria de Justica*) has specific staff covering children's issues and responding to children's inquiries and complaints (there is a telephone "hotline" for children).

**Romania:** The Advocate of the People (the Ombudsman) has been functioning since 1997, with a department for problems relating to child, women's and family protection in place since 1998. This department deals with individual complaints and has published a special report on the protection of children's rights.

**Russian Federation:** Five of the 89 regions of the Russian Federation - city regions or "oblasts" - have appointed children's ombudsmen or commissioners for children's rights: City of Ekaterinburg (population 1 million; child population 200,000); Kaluga Oblast (population 1 million; child population 220,000); Novgorod Oblast (population 740,000; child population 150,000); St Petersburg (population 4.7 million; child population 850,000); Volgograd Oblast (population 2.7 million; 600,000 children). These offices have been initiated through a joint project of the Federal Ministry of Labour and Social Development and UNICEF.

**Spain:** the national human rights institution includes an office for children's rights; in addition an Ombudsman for Children has been established by legislation in Madrid (*Defensor del Menor en la Comunidad de Madrid*). In the autonomous region of Catalonia a General Ombudsman was created by law in 1984 and in 1989 the law was modified to allow for the post of Deputy for Children.

**Sweden:** established the Office of the Children's Ombudsman, with statutory powers linked to the UN Convention, in 1993.

**Ukraine:** a Parliamentary Delegate for Human Rights was appointed in April 1998 and was planning to appoint a Representative for Children's Rights through a Parliamentary Decree.

In other European countries proposals for an independent office for children are under consideration by Government, including in Ireland, Latvia, Slovakia, Slovenia, Wales (UK) and Switzerland.

#### In other continents:

**Australia:** the federal Human Rights and Equal Opportunities Commission has a mandate which includes the Convention on the Rights of the Child and dedicated staff covering children's rights issues; in **South Australia** the Children's Interests Bureau opened in 1984, established under the Community Welfare Amendment Act. But in 1995 it suffered some curbs on its independence, when it was amalgamated with the Office for Families and the Domestic Violence Unit, to create the Office for Families and Children; in **Queensland** a Children's Commissioner with particular child protection functions was established in 1997 by statute; in **New South Wales** in 1998 the general Ombudsman was given some specific functions relating to child protection; in particular to oversee and monitor the handling of child abuse

investigations and convictions against employees of certain government and non-government agencies providing care and/or education for children.

**Canada:** in **British Columbia** the Ombudsman Services created a new post of Deputy Ombudsman for Children and Youth in 1987, but the specific role for children ceased to exist in 1990 and was absorbed into the general remit. In **Alberta and some other provinces** there are Children's Advocates set up under child welfare legislation to advocate on behalf of children who are receiving child protection services.

**Costa Rica:** the Ombudsman Office for Children was established under the jurisdiction of the Ministry of Justice in 1987; in 1993 the various specialised ombudsman offices were incorporated into a national independent Ombudsman Office (*Defensor de los Habitantes de la Republica*) which includes a children's unit.

**Guatemala:** the children's ombudsperson, *Defensor de los Derechos de la Ninez*, was set up as a special unit of a new government office established to investigate human rights under the constitution of 1986.

**New Zealand:** a statutory Commissioner for Children was created in 1989.

**South Africa:** the Deputy Chairperson of the South African Human Rights Commission (SAHRC) also acts as Chairperson of the SAHRC Standing Committee on Child Rights.

## Information Sheet 5

### *NGOs and independent offices for children*

In most countries non-governmental organisations (NGOs) play a key role as independent advocates for children, or for particular groups of children. Their role is recognised in the Convention on the Rights of the Child, and by the Committee on the Rights of the Child. Ratification and promotion of the Convention has led to a rapid growth in the numbers and influence of NGOs promoting children's rights; in many European countries coalitions of the NGOs working for children's rights have been formed.

NGOs' national role is not diminished - although it may be changed - by the existence of an independent human rights institution for children. Having powers and duties set out in legislation is what distinguishes these independent offices from NGOs. Where such an office exists, it is likely to develop a close and mutually supportive relationship with NGOs.

In some countries non-governmental organisations (NGOs) have styled their advocacy for children as ombudsman activities (and "ombudswork" for children is a broad term which has been adopted by some commentators to cover all aspects of child advocacy, both governmental and non-governmental). In one European country - Finland - a large and well-established NGO, the Mannerheim League, has established an office of children's ombudsman, but this has no statutory powers. Similarly in Israel, the National Council for the Child has also established an ombudsperson service.

Generally, a Centre for Human Rights Handbook states: "Additional support for implementation of international human rights standards comes from concerned community and non-governmental organisations, which have a special role to play in the development of a universal culture of human rights. Non-governmental organisations, by their very nature, have a freedom of expression, a flexibility of action and a liberty of movement which, in certain circumstances, allow them to perform tasks which Governments and intergovernmental organisations are unable or even unwilling to perform" (*National Human Rights Institutions*, Centre for Human Rights, Professional Training Series No.4, Centre for Human Rights, Geneva, 1995, para 15).

And the "Paris Principles" also acknowledge the "fundamental role" played by NGOs in expanding the work of national human rights institutions and require that institutions co-operate closely with them.

## Information Sheet 6

### *Independent offices and individual complaints*

The overall concept of ombudsperson is related in most people's minds to the investigation of individual cases. It is certainly possible to envisage an office of this kind handling the investigation of individual cases from children, and from others acting on behalf of, for example, very young children. Many of the offices which exist in European countries do handle individual cases, but others are prohibited from doing so - their role is to represent children as a group and other bodies are there to investigate individual cases.

There is clear evidence that if children are to use complaints procedures, they need to be readily accessible, i.e. local, and well-publicised. In countries with a small and concentrated population, it may be realistic to propose that a central office should receive and investigate individual complaints - but it would need expertise in the whole range of services and issues - health, education, care etc. One possibility is that an independent office has a formal "last resort" role of investigating and responding to individual children's problems when other procedures at a local level have failed to find a solution; alternatively the office could have the power - but no obligation - to take up individual cases; like when a situation affects many children, and one child's case can be taken up as a test case. There does not have to be a combination in one office of the roles of investigation of individual complaints and policy development. Certainly independent offices should have a power or even duty to seek to ensure that children do have appropriate and effective channels for raising concerns and complaints about all aspects of their lives.

And independent offices need to know what issues children are expressing concerns about or complaining about, to inform their policy work. They should therefore have the power to review existing complaints procedures and the content and results of cases (they could also, hopefully, be informed by reports from, for instance, any confidential helplines for children, on the concerns that children are raising).

**Whether or not independent offices handle individual complaints, they will inevitably get requests for advice and help from children and others, and must be equipped to respond adequately and quickly to them.**

## Information Sheet 7

### *What have independent offices achieved for children? Examples from ENOC member-offices*

In making the case for the establishment of an independent human rights institution for children, it is valuable to look at what existing offices have achieved. Of course it is difficult to identify responsibility for achieving positive change for children, given that in every state various governmental and non-governmental bodies are working towards the promotion and protection of children's human rights. This sheet gives details of some positive initiatives and changes for children in a sample of European countries which would have been unlikely to happen, or happen so quickly, without the intervention of the Ombudsperson/Commissioner.

#### Sweden

The Swedish Children's Ombudsman has had a major influence on the following developments:

- amendments to the Code of Parenthood and Guardianship, Aliens Act and Social Services Act to include provisions respecting the right of the child to express views and have them taken seriously in proceedings and inserting the basic principle that the child's best interests must be given primary consideration;
- also promoting an amendment to local government legislation to require consultation with children;
- improvements in legislation on the working environment, public health and medical care to strengthen safety, protection and security of children in child care and school activities;
- ensuring that a large number of local and regional authorities begin work on incorporating the Convention and respecting its provisions in their services and activities. A handbook and an Internet site provide advice and information for local politicians and officials;
- organising annual weeks to focus national attention on issues of child safety, and annual press seminars to increase media attention to issues of child safety;
- promoting the concept of a National Strategy for implementation of the Convention - the Riksdag (parliament) approved a Government Bill in 1998;
- coordinating work to prevent school bullying, including changes to legislation and the curriculum, media debates, additional funding for in-service training and special inspections of anti-bullying work in schools;
- developing a better child perspective in immigration and refugee policy;
- persuading the Government/Parliament to appoint special committees to look at issues of child abuse and neglect, including preventing unsuitable people working with children;
- successfully promoting a Bill to ban possession of child pornography.

## Denmark

The National Council for Children is there to advise on conditions affecting children; it must include children's point of view in its work. It is not permitted to take up individual complaints. The Danish Council has developed an elaborate form of consultation with children, establishing contacts with seven schools and a day-care institution (4 - 6 year olds) - 150 children in all.

They have agreed to consider and respond to questions and papers which the Council sends them. They discuss them with their teachers, and can then respond either individually or collectively. There have been consultations on children's employment and pay, children's use of videos and TV, children's participation in decision-making - both in the family and in local planning, and on corporal punishment in the family. The Council has also brought all the children together for residential conferences.

Current activities of the Council include a major "no smacking" campaign following explicit prohibition of all corporal punishment of children in 1997 (the Council together with Danish Save the Children lobbied extensively for this reform). All Danish parents with children in the age group 0 - 10 received a folder of materials on the law and on positive discipline. Work on anti-bullying has included promoting law reform, collection and circulation of good practice and mobilisation of children on the issue.

## Iceland

The Office prepares a "State of Iceland's Children" report; it has focused in particular on child accidents, bullying and media violence. An analysis of all Iceland's laws which affect children has been written up in an accessible form for children - a children's book of laws.

## Norway

Changes which the first Children's Ombudsman achieved during her term of office from 1981 to 1989 included:

- new regulations for hospitalised children, to contact with parents and to education;
- raising the age at which children can be imprisoned in adult prisons;
- legislation prohibiting all physical punishment of children;
- a requirement that all local planning authorities have a special official responsible for monitoring plans for their impact on children;
- legislative recognition of the right of children to know both their parents, regardless of parents' marital status;
- tighter building regulations on safety for children in the home, and accident prevention.

In recent years the Office has received over 20,000 individual approaches annually, the majority from children, by mail and phone including a free

children's line. Recent activities of the office include setting up an "Internet Parliament" with all the school democracy councils in primary and secondary schools. These electronic contacts enable the Ombudsman to consult children speedily on issues and policy proposals.

The Ombudsman is encouraging a big political debate on the future of schools, with a National Hearing for secondary school students who were asked to come up with visions and ideas for the future of the education system.

With Save the Children in Norway, the Ombudsman has set up an international network to challenge the spread of child pornography through the internet; an e mail hot line to enable people to provide information.

## Madrid, Spain

The Ombudsman has carried out a systematic programme of visits to residential institutions, day care centres and so on. Issues worked on by the Ombudsman include:

- immigrant children living in sub-standard housing; children and sects; disappeared children; adoption, simulated weapons as toys; children's leisure and free time;
- a personal identification document for children; identification of new-born babies in hospital;
- children in hospital;
- marginalised children generally;
- a study of children's consumer habits;
- placing suggestion boxes for children to use in schools and other institutions;
- development of local children's councils in districts of Madrid with child mayors and town clerks;
- promotion of a Masters Degree in children's needs and rights at Madrid University.

*More information on the activities and achievements of European offices for children can be found on ENOC's website: [www.ombudsnet.org](http://www.ombudsnet.org).*



## Information Sheet 8

### *Evaluations of independent offices for children: Norway and Sweden*

#### SWEDEN

**Evaluation of the Ombudsman:** In 1998 the Government appointed a one-man Committee of Inquiry to review the activities of the Ombudsman, with a secretariat, special advisers and experts from departments and government agencies attached to it and a reference group of young people aged 15 to 16. The intention was that the evaluation should describe how the Office of the Children's Ombudsman might be strengthened and its activities made more effective. The conclusions of this recent and detailed evaluation are of particular interest to those seeking to develop an independent human rights institution for children now.

The Committee states that the Children's Ombudsman has:

- played a significant role in the development of issues relating to children, chiefly through information and opinion-moulding activities;
- made visible the overall living conditions of children and young people and helped to create a comprehensive picture of their lives;
- brought momentum to the task of implementing the CRC;
- been most effective in upholding children's rights when she has been in a position to act as their representative and been able to refer to their experiences and views.

But the Committee also found weaknesses in the mandate and direction of work of the Ombudsman:

- no legal powers;
- limited opportunity to build up networks and contacts in her capacity as the representative of children and young people - in particular contacts with children and young people and people working with them.

The Committee suggests that the fundamental task of the Children's Ombudsman should be to represent children and young people: "That is to say, to be the "voice" of children and young people in society, to assert their point of view and insist on respect for their human rights. Children whose situation is precarious in one way or another find it particularly difficult to make themselves heard and influence their situation.

Therefore it is the view of the Committee that the Children's Ombudsman should continue to devote special attention to issues relating to disadvantaged children". The Ombudsman is representing the community's "fundamental and common interest in ensuring that all children and young people are granted the rights set out in the UN Convention on the Rights of the Child".

In order to apply a child perspective, the Ombudsman needs in-depth knowledge of the circumstances of children and the varying needs of different age groups. "In the Committee's opinion, the Ombudsman should seek knowledge as close to children and young people as possible. This means that the most important source of knowledge must be children and young people themselves, parents, personnel who work with children and young people and organisations that run activities for children and young people".

The Committee believes that the task of developing direct contacts with children and young people is so vital that it should be confirmed in legislation. A prerequisite for developing contacts with children and young people is that the Ombudsman "should be allowed greater freedom of action and more opportunities to work flexibly. It is crucial that the Office of Children's Ombudsman has the opportunity to set its own agenda.

Contacts with children and young people can never be based on the same structure as co-operation with public agencies and organisations. Such activities require great flexibility within the Ombudsman's own organisation". The Committee emphasises that the Ombudsman must be independent in relation both to Government and to political parties: "However, it is important to emphasise that a government-appointed ombudsman can never be completely independent. The law in combination with the power of the principal to make decisions about the Ombudsman's budget places certain constraints on the work of the Ombudsman".

The report looks at the possibility of making the Ombudsman accountable to Parliament rather than, as at present, to Government. In either case it is essential that the Ombudsman achieves the highest degree of independence from its principal. The Committee comes down in favour of keeping the current accountability to Government, but increasing independence by setting out the duties and functions of the Ombudsman in law rather than instructions and in particular ensuring that the Ombudsman can decide his/her own agenda rather than being set tasks with attached budgets. It believes there are advantages in the close dialogue between the Ombudsman and the Minister most directly involved implementation of children's rights. "It is more difficult to envisage a dialogue with the parliament in its role as principal, since all political parties with their various views are represented there. Since the practical implementation of the principles contained in the CRC is open to a variety of political interpretations, the Children's Ombudsman could be forced to keep a lower profile if the Parliament were its principal than if it were accountable to a Government body".

The Committee proposes that the Ombudsman should have the power to require information from agencies and local authorities and summon these bodies to talks; also a right of access to documents.

The Children's Ombudsman is the only ombudsman in Sweden which does not handle individual cases; the Committee proposes no change, on the grounds that handling individual cases "would in all likelihood make such heavy demands on the time and resources of the Office that other activities would be pushed into the background".

The Children's Ombudsman should "spearhead" work on the Convention: "Spearhead is used here to mean that the Ombudsman should be one step ahead of developments by having a cohesive body of knowledge about the living conditions of children and young people and by disseminating knowledge of best practices...". The main task should be to encourage children and young people to play an active role in the process of change: "In order to ascertain the practical effect of work to implement the CRC it will be necessary to ask children and young people if they feel that their rights are being provided for". The Ombudsman should increase efforts to ensure that "children and young people know about the Ombudsman and perceive her/him to be their own Ombudsman".

In its monitoring role, the Ombudsman should devote more time to considering how courts, public agencies and local authorities apply existing rules and regulations. (*Evaluation of the Children's Ombudsman; English summary of SOU 1999:65, available from the Swedish Ministry of Health and Social Affairs, Tel. 00468.4053333*).

## NORWAY

### 1. INTRODUCTION: APPOINTMENT OF THE COMMITTEE AND ITS TERMS OF REFERENCE

In 1993 the Storting (Norwegian parliament) asked the Ministry of Children and Family Affairs to take the initiative in evaluating the Ombudsman for Children. One of the reasons for this request was that the institution of the Commissioner for Children had been in place for almost 12 years without any studies on its objectives or impact having been made.

In September 1994, Grete Berget, Minister of Children and Family Affairs, appointed a committee to evaluate the Commissioner for Children and organizational forms for children and adolescents. The Committee consisted of the following members:

- Dr Edvard Befring, Professor at the University of Oslo (Chairman of the Committee)
- Dr Lucy Smith, Rector of the University of Oslo
- Dr Arne Vikan, Professor at the University of Trondheim
- Ms Mona Røkke, County Governor of Vestfold
- Mr Trond Waage, Research Co-ordinator, Childwatch International

The Committee was given the following terms of reference:

A) To assess the Commissioner for Children's function, role and expertise as a social institution and evaluate the Commissioner's use of tools in its work for children and adolescents, including an assessment of specific changes for children which are a direct result of initiatives taken by the Commissioner for Children.

B) To put forward proposals to consolidate organisational forms and measures which safeguard the interests of children and adolescents, including the role of the institution of the Commissioner for Children in this connection.

The Committee is to present its findings to the Ministry of Children and Family Affairs by 1 November 1995.

The Committee presented its findings in the form of an official report (Norwegian Official Report - NOU 1995:26). The report was handed to Grete Berget, Minister of Children and Family Affairs, on 4 December 1995, and submitted for comment to about 650 advisory bodies.

## 2. THE COMMITTEE'S EVALUATIONS AND CONCLUSIONS

### The function of the Commissioner for Children as a social institution

Many aspects of social change have given rise to a greater positive focus on the situation of children and adolescents. The United Nation's Convention on the Rights of the Child is an international expression of this. In Norwegian public life, it can be seen in the establishment of a separate Ministry of Children and Family Affairs, through monitoring schemes at county level, and through comprehensive youth service units in many municipalities. A further manifestation is the increased general attention in public administration with particular focus on the family and a positive trend in the work of non-governmental organisations (NGOs) for children's needs, interests and rights. All in all, there are many bodies which today wish to promote themselves as guardians of children's interests.

In the Committee's estimation, there are therefore several factors which suggest that the original institution of the Commissioner for Children should be considered in a broader perspective. However, the Committee does not find that the time is ripe to propose the abolition of the institution, even though there are arguments for the view that an institution such as the Commissioner for Children primarily has had the function of initiator and attention-generating player on the social stage.

The Committee finds that through his initiatives in the media, for example, the Commissioner for Children has helped to throw the political spotlight on children and their situation, thereby putting children on the political agenda. At the same time, we are able to register a greater general acceptance that children are entitled to be heard and have their own rights. In the Committee's view, the Commissioner for Children has been instrumental in this development. In this connection, the Committee would like to highlight the Commissioner's efforts to improve the security under the law of children in institutions, child refugees, child asylum seekers and school pupils, and also its endeavours to improve the child welfare service.

The Commissioner's information work has proven to be far more important than was anticipated in the legislative history. His work with information on children's rights in different connections has, in the Committee's opinion, helped to make the rules of law more effective. Thus, in general the Committee would draw the conclusion that through his activities, the

Commissioner for Children has been instrumental in improving the position of the child in law.

Internationally, the Commissioner for Children has been important - as a relevant export item and as a practical model. A number of countries have set up similar schemes, and several other countries are considering the establishment of commission functions. The Commissioner for Children has thus helped to put children on the international agenda too.

The Committee concludes that the Commissioner for Children has gone far in fulfilling the intentions behind the Children's Ombudsman. It is the Committee's view that in the future the Commissioner could have an important function as co-ordinator and initiator of professional and political processes and could help to form a whole in the area of policies related to children and adolescents. It is still the case that this is a very sectoral area. The institution of the Commissioner for Children should therefore be maintained as an independent national body for safeguarding the interests of children and adolescents.

From the Committee's point of view, the institution of Commissioner for Children is at a crossroads with respect to the roles and functions it is to have in the future.

The Commissioner for Children has made use of different means and methods, and some of these have without doubt proved to be both positive and effective. These include hearings, recommendations, conferences, the publication of fact sheets and projects. The last-mentioned has been a tool for consciousness-raising, commitment and change, where the process has been as important as the actual end product. The project method has proven to be successful for many of the Commissioner's initiatives, and the Committee sees this as a relevant means also in the future, especially for building bridges and involving different bodies.

Since 1989 the role of the Commissioner for Children has evolved to become more media-oriented. In this period, the media have been one of the Commissioner's principal and most used tools. We must not fail to appreciate the media's place in society.

They enjoy considerable power and a virtual monopoly on news coverage. It must therefore be seen as essential that a Commissioner for Children should be adept at handling the media, and be capable of using the media to expedite his work.

A rhetorically-gifted Commissioner who criticises and chastises would seem to express himself in the attention-holding idiom of the media. In a phase in the Commissioner's history where it has been important to establish the Commissioner for Children as a social institution, it has probably been right to use media-friendly strategies of this kind.

It has helped to make the Commissioner visible, and at the same time has been a useful instrument for influencing opinion, public administration and

decision-makers. The sharp focusing on the person of the Commissioner in the last period has without question had a positive effect in that the Commissioner had a face well-known to the general public. The role of the media has thus helped to engender confidence in the Commissioner for Children as a spokesman for children.

However, the Committee is of the opinion that in the future the Commissioner could limit the media role somewhat, as the need to make the Commissioner visible through a high profile in the media and a sharp focusing on one person is no longer as pressing as it was earlier. A limitation of the media's role would also be natural on the basis of the Committee's view that the Commissioner's role as mouthpiece, advisory body and prime mover for the promotion of children's interests should be of greater importance in the future than the role of chastiser and activist.

The Committee believes in general that the Commissioner for Children should concentrate on general cases and questions of principle, and work to a lesser extent on individual cases. The Commissioner should therefore continue to refer to and provide information about the assistance and administration apparatus already in place when responding to enquiries about individual problems. It is the view of the Committee that the institution of the Commissioner for Children should function neither as an administrative body nor as conciliation machinery in individual cases.

The Committee believes that the UN Convention on the Rights of the Child may be a useful (but not adequate) tool for the Commissioner in his task of ensuring that legislation on the protection of children's interests is complied with.

The Office of the Commissioner for Children is a place children can turn to. The two Commissioners to date seem to have approached children in relatively different ways.

The first Commissioner took telephone calls from children and also traveled extensively to meet children in their local environment. The second Commissioner has, in the main, tried to conduct his contact with children via the television, especially by using a system where children ring in with their questions or comments, and the Commissioner provides general answers in a television programme (the Klar-Melding system) (Straight Talk). Norwegian children appear to be well acquainted with the institution of the Commissioner for Children and its functions. This can perhaps be seen to some extent as a result of the two Commissioners' methods of approach. The great number of enquiries from children which have been registered with the Office is one factor which bears witness to this. Despite the Commissioner having promoted the Straight Talk system for children's everyday problems, a large proportion of the enquiries do not, however, seem to imply any expectation that the Commissioner will solve particular problems. Children seem to be just as prepared to communicate with adults who express an interest in them as to find a problem solver. When children do present specific problems, the Commissioner's answers are kept at a general level. In this way, the



Commissioner can invite children to a communication which he or she does not follow up fully.

The Committee stresses that the Commissioner's loyalty is first and foremost to children. At the same time, the Commissioner must show the necessary spirit of interaction and co-operation towards its administrative authority, the Ministry of Children and Family Affairs. Insofar as the Commissioner's relationship with the Ministry is concerned, the Committee does not find any reason to propose changes in today's organisation where the Ministry is the Commissioner's financial and administrative authority.

The Committee points to the need for a greater focusing of attention on the position of children by Norway's local governments. It must be regarded as important that the Commissioner develops a good co-operative relationship with both local and central social bodies. To ensure that the need for a greater focusing of attention is met, the Committee would propose that consideration be given to forging stronger links between the Commissioner and local government (youth services or youth coordinators).

This could involve a development of the way in which the Commissioner for Children tends towards being a network ombudsman. The Commissioner for Children would thus become more closely related to the political and professional processes which shape children's everyday life.

Furthermore, the Committee would point out that the situation of children will depend upon a whole where the various players function within a positive frame of reference characterised by responsibility, a capacity for constructive action and interaction. The question is what contribution can be made on the basis of shared responsibility to instill fundamental values, create good ideals and be conducive to positive learning. In a school context, for example, it will not be enough to exercise control in order to prevent violence, bullying and so forth. What will be crucial is the generation of positive thinking and an obligation to safeguard each child's right to security and an all-round education, that is, support and learning involving the whole child; intellectual, affectual, moral, social and behavioural functions.

### **Organisation of the care of children and adolescents**

One of the Committee's main conclusions is linked to the need for a strengthening of the holistic perspectives with respect to the conditions in which children and adolescents grow up. Children are in special need of trustworthy care-givers and inspirers. To give care implies to protect, but it also means to function adequately as a role model, helper, adviser and source of inspiration on the basis of the given learning and developmental situation children and adolescents are in.

The Committee would propose that the specialists who work in areas related to children and adolescents be challenged to find new professional approaches and images.



The diagnosis of problems, especially in day-care centres and schools should largely be replaced by a learning, supportive, stimulative and developmental way of thinking.

This is a matter of promoting an including society, and which lays the foundation for a policy on children and adolescents which rejects the two-thirds society as an acceptable vision.

Two-thirds society is used to mean a society, the contours of which are already visible in many countries, where two-thirds of the young generation gain admission to working and community life, whilst one third fall outside and are marginalised. Here, it is clearly important to work on the basis of an interactive, supportive and confidence promoting way of thinking.

The Committee has also examined the importance of the family, and has stressed the need to show parents confidence and give them the practical-financial framework conditions they need to promote their children's growth, learning and development. This report describes a tendency seen in the last two decades for families to go from a family where mother is a full-time housewife to the two-career family.

This reflects major and rapid changes for both children and adults. The essence of this development is that the modern family has increasingly become a resource base for both the parents careers and the children's growth and education. At the same time, the Committee has also underlined the great importance that parents seem to accord their children's education, welfare, schooling and opportunities for development in general.

The Committee would emphasise that the primary task of society is to support the family financially, practically, organisationally and psychologically. The main responsibility must lie with both parents, but on the clear assumption that society will in different ways be instrumental in ensuring that this responsibility is exercised in a sound manner.

The life of a modern family is demanding and often stressful. The Committee points out the general importance of giving the family a necessary vote of confidence, for example, by providing information and consulting with the family, thereby allowing the family to have influence. Here too lies a major task and challenge for the bodies and agencies which constitute the family's support apparatus (child health clinics, day-care centres, schools, child welfare service and so forth).

When really serious problems arise, the child welfare service will be a possible source of support. The child welfare service may have a double role, by being both a potential supportive agency and an intervening body. Consideration ought to be given to whether the child welfare service can be further developed to become an institution with more insight into the system, which can also monitor public and private measures and provisions, thereby safeguarding children's interests in a protective, preventive and instructive perspective.

Consideration should also be given to following up the school for parents and the children's clinics in which the Ministry of Children and Family Affairs have taken the initiative. Here, the Committee would point to the child health clinic as a relevant arena, where one can also draw in educational and psychological expertise. However, parents of older children may also need both information and encouragement. Here, the Committee is thinking especially of problems which often manifest themselves in connection with puberty. In this context, there will be a need for fresh initiative, perhaps under the auspices of local youth co-ordinators or the educational system, which ought to be examined further.

It should also be an important task to develop day-care centres in such a way that they provide well for both the individual child and the individual family. High priority must be given to creating an integrated local environment. In the Committee's opinion, daycare centres should be further developed as a flexible and secure environment for all children, which must function on the terms of the family and the child. Day-care centres should be an environment which eases the burden of parents, whilst, and primarily, they should be a stimulating and safe environment for playing and learning.

Insofar as compulsory school is concerned, the Committee proposes that more consideration be given to including this institution in a comprehensive child-youth political context. The Committee finds that school emerges as a rather closed institution.

In the same way as day-care centres, primary and lower secondary schools should be linked more strongly to the family and the local environment, and be developed into an open youth environment where the focus is on the all-round education of children and adolescents. Furthermore, consideration should be given to forging closer links between primary and lower secondary schools and children and family administration at central government level.

School stands forth as a principal custodian of culture and knowledge in our society. A school which manages to be a good educational and youth environment, thereby meeting the needs of the individual child, will be an effective means against the two thirds society. When endeavouring to develop a school of this kind, close collaboration with parents will be crucial. It is vital that the family sees school as an ally in the task of providing children with the best possible conditions in which to grow up. The task of school is to stimulate, guide and give encouragement in this process, and help to develop interest, self-confidence, self-insight, integrity and the ability to take initiative and responsibility.

It must be seen as desirable that school endeavours to prepare a scheme for each individual child. The wide variation in the pupil body must be perceived as something positive rather than a problem. Each individual child should be given the opportunity to develop a positive attitude to his own learning process, and it is essential that all children and adolescents through primary and lower secondary school have the chance to experience mastery, commitment and interest in at least one area. It is vital that school

endeavours to bring about learning and education in close contact with the local environment, various organisations and economic life.

No-one wants to end up on a slippery slope. Since nonetheless this happens far too often, it can only be explained by the fact that children end up having to make precarious choices between various evils. Many youngsters are recruited to criminal subcultures, not because this is their wish, but because they can no longer cope in their normal existence at school and at home. This has to do with ostracisation processes, and to tackle them must be a fundamental task. The individual approach to each individual child's learning, gives an indication of the direction in which the development should go.

It is essential that children's learning is given a positive direction. However, there is always the chance of the opposite happening, and the educational agents that may contribute to this have increased in number. This is attributable to the open media situation, where access to possible identification figures and so on is virtually unlimited.

It must be a major task for those involved in child-specific politics to work in close contact with those active in technological and commercial development, so that these forces can enjoy maximum interaction and cause minimum hindrance to a positive learning and developmental process. In addition to society's control measures through legislation and similar, it is important in this context to be instrumental in placing responsibility on the shoulders of the strong players in this area. Here, the Committee refers to the specialist debate on possible international agreements regarding communication through television, video, new networks and computer games.

In all cases it would be desirable to enter co-operation agreements where the major players, at least on a national level, are invited to play on the same side as the agencies, players and forces in society which are at work to create the best possible conditions in which children and adolescents can grow up.

With regard to conflicts and the resolution thereof, the Committee would point to the possibility of establishing a classmate support scheme (peer counselling) for school children. Pupils identify with one another, and schemes of this kind could be an integral part of support schemes to bolster the family. A classmate support scheme could, in the Committee's opinion, have a positive effect on, for example, the development of a sense of responsibility for one another, and help to prevent violence and bullying in a school context. Furthermore, the Committee stresses the importance of the pupils own influence and participation, and proposes that the function of pupils councils be extended so that they become advisory bodies in cases involving them.

The Committee would also highlight the importance of continuity in the transition from being a youngster to becoming an adult, and stresses the desirability of not building up unnecessary barriers for young people embarking upon working life. Today's high unemployment amongst young people must, in the Committee's opinion, be seen as an expression of the need for action on several levels. It is essential that knowledge of working life

be improved to counter the choice of occupation being based on an inadequate foundation.

The Committee would emphasise that to make adult and working life accessible is a major objective in itself. The education system may (paradoxically) have been an accessory to making formal qualification difficult, and made this route inaccessible to many.

Commerce and industry, together with the major trade unions, should consider the development of alternative systems for obtaining qualifications, where work and education can go hand in hand. Here, various forms of network-based educational schemes could also be used. But the primary concern is that young people be given opportunities to qualify for work, and that they are welcomed into working and community life. In this connection, the work placement scheme for young people, combining reduced salary with training, may be one good organisational form. In practice, the scheme has proven to give very positive results. The Committee would therefore recommend that it be developed further and that efforts be made to develop new and untraditional ways and means, both long-term and short-term, which will usher young people into working life.

It is important to focus on unemployment not only in relation to youth unemployment and preparation for working life through the school system, but also because the working situation of parents, or their lack of work, is of great significance for children and the situation in which they grow up. The Committee would therefore stress how important it is that child and youth related political planning and organisation includes the perspectives of industry and commerce and working life to a greater extent than hitherto.

The Committee would point to the importance of a study of the evaluation system which can safeguard integrity, objectivity and security under the law in a proper manner, and which can also document skills for those pupils who do not wish to or cannot manage to complete a full formal education. Furthermore, the Committee would propose that the apprenticeship scheme be extended, and that companies which take in young people for vocational training through this scheme be appreciated for their qualified effort. It must be perceived as a matter of honour to have responsibility for apprentices and other pupils, and this should be linked to a stamp of quality for work places which have this function of trust.

In Norway, the Ministry of Children and Family Affairs is responsible for the coordination of general child and youth related policies, whilst the Ministry of Church, Education and Research is responsible for education, the Ministry of Cultural Affairs for cultural provisions for the young, and the Ministry of the Environment for policies on the environment in which children grow up (planning work). The Committee would propose that consideration be given to a closer coordination of these major child and youth related areas.

Specifically, the Committee proposes that consideration be given to a common Ministry of Child Concerns and Family Affairs. It would also be natural to draw school into this consideration. An organisation of this kind

would allow for the possibility of planning and implementing a more holistic policy relating to child concerns.

Organisation will not solve everything, but it is generally acknowledged that organisational form affects which areas are viewed as having priority and importance, and which have a tendency to be pushed to one side. Organisation says something about perception of problems, priorities and understanding of connections.

A departmental co-ordination of the key figures in work related to child concerns will give the necessary stimulus and motivation to implement a more holistic policy on child concerns at a local government level.

The Committee would recommend that more local governments be encouraged to establish a youth co-ordinator with the authority to run local interdepartmental and interdisciplinary development work. In the long term, a study should be made of measures which would stimulate local authorities to find it expedient to establish separate youth bodies along the same lines as those the Committee has proposed should be investigated on a departmental and national level.

In the national and local drive to establish a more uniform and qualitative youth policy, there will be a great need for a Commissioner for Children which can be a source of inspiration and guide for national and local administration, and for politicians, professions and children.

Here, the Committee has presented some of the perspectives which should form the basis of the future organisation for children and adolescents. In this connection, the Committee would also refer to the general view that regardless of how well measures within a certain field are organised, this will merely be a starting point and an inadequate foundation for the creation of favourable conditions. To succeed, it will always be necessary to have persons who truly want good - persons who know how to, are able to and want to, and who have absolute integrity. *(Summary of the Committees conclusions from the Norwegian Official Report The Commissioner for Children, and Childhood in Norway (NOU) 1995:26)*

## Discussion Worksheet 1

### *Why have an independent office to promote children's human rights*

Human rights are universal; everyone's human rights need active protection and promotion. If we are to promote effectively the establishment or development of independent offices to promote children's human rights, we need to assemble the arguments, both general arguments and specific ones in the state or region we are working in.

This sheet is intended to fuel discussions on "Why have an independent human rights institution for children?" It provides a list of possible special justifications, a framework for considering how governments may be failing children, why children have achieved a higher political priority in some states and exercises including a debate (the case for and against establishing an independent office); identifying what sort of society we want to create for children; identifying threats to advocacy of children's rights

#### **1 Why do children need special arrangements and special attention to protect their human rights?**

*The following is an initial list of general justifications: are there any other obvious justifications? Which of these justifications is useful in convincing governments to make special arrangements for children?*

- children's healthy development and active participation are uniquely crucial to the healthy future of any society;
- children are individuals - they have equal status to adults as members of the human race - they are not possessions of parents, products of the State, not people-in-the making. Governments at all levels of societies have a moral responsibility to recognise the human rights of children as individual citizens;
- children start totally dependent. They grow towards independence only with the help of adults; their dependence, and their developmental state make them particularly vulnerable - so they are more affected than adults by the conditions under which they live, by poverty, by poor housing, environmental pollution and so on;
- children are more affected by the actions - or inaction - of government than any other group. Education policies dominate their waking hours, public health policies target their developing bodies and life styles. Child protection becomes a sizeable industry in most countries now. And almost every area of government policy affects children to some degree, either directly, or indirectly. Try and think of an area that does not;
- there are current changes in most societies which are having a disproportionate impact on children, and generally a very bad impact - changes in family structures, in employment patterns, and the introduction of market forces to public services. The state of children



is a very sensitive barometer to the effects of social and economic changes;

- children have no vote and play no significant part in the political process;
- there are particular and serious problems for children in using the legal system to assert their rights or seek remedies for breaches of their rights;
- finally: there is the negative justification - the huge costs of failing children: governments know from research beyond doubt that what happens to children in the early years, within the family, within other forms of care, and even before birth, in the womb, significantly determines their positive, or negative, growth and development. This, in turn, determines their cost or contribution to society spread over the rest of their lives.

## 2 Identifying how governments are failing children

*In making the case for establishing or developing an independent office in a particular state, we will need to analyse how government may be failing children/failing to implement the Convention effectively.*

*The following are some common areas of failure, to consider and build on in discussion (in addition, the "Implementation Checklists" in UNICEF's Implementation Handbook - for example for article 4, page 73 and article 42, page 567, provide a detailed set of questions):*

### Failure to give children a high priority:

- do political leaders, politicians and government officials demonstrate a commitment to the realisation of children's rights?
- do political leaders, politicians and government officials demonstrate an understanding of the state of children's lives?
- are children visible in government policy-making?
- in parliamentary debate?
- is there any formal process of child impact assessment and evaluation within government at any/all levels?

### Inadequate co-ordination

- Is there adequate co-ordination concerning policies affecting children between government departments, at all levels of government?
- Is there effective implementation at a local level of positive policies for children?

### Inconsistent legal reform

- Is there an on-going review of all legislation to ensure it is compatible with the Convention and promotes children's rights?

### Limited resources not used effectively



- Are children visible in national and local budgets?
- Can the costs of various services to children be identified?
- Are the best interests of children a primary consideration in budget discussion and decision-making, in the setting of priorities, etc?
- Are resources made available for preventive policies, rather than responding to problems as they emerge?

#### Failure to promote children's responsible participation

- Does government at any/all levels seek children's views on policy and take them seriously?
- Are there any formal channels for consulting children?
- Are draft policies which will affect children "translated" into forms which children can understand and respond to?
- Does legislation reflect the Convention's requirement that children have a right to express views and to have them given due consideration in all matters concerning them?
- Has there been any research to determine whether and how children are involved in decision-making?

#### Failure to disseminate information on the human rights of children

- Is there a comprehensive plan to disseminate information on children's rights to children and adults?
- Are there training programmes on rights for all those working with children?
- Has there been research to evaluate the extent of knowledge of the Convention amongst children, those working with children and the public generally?

### 3 Why have some states managed to develop a higher political priority for realising children's rights than others?

*It is plain that some states have got very much further than others in taking the protection and promotion of children's rights seriously. Why is this? What characterises such states?*

*Participants in a discussion could compare the situation in states known to them and try to identify factors which have led to a higher political priority. These are some factors associated with the development of a higher political priority for children that have been identified in similar discussions:*

- More women in government
- Developed overall culture of human rights and equality
- Recognition that children are the key to the development of a human rights culture for the future
- Commitment of a key leader to children's rights
- Particular national event, disaster, scandal involving children

#### 4 A debate: the case for and against establishing an independent office for children

*Divide into two groups: one develops the justifications for establishing an independent office to promote the human rights of children; the other develops arguments against such a proposal. The debate could be about a proposal in a particular state, or an abstract debate about the pros and cons.*

These are some of the arguments made against establishing independent offices:

- it would just create an unnecessary level of bureaucracy;
- government has obligations under the Convention - government should fulfill them itself, not set up an independent office;
- money would be better spent on direct services for children, on saving or improving children's lives;
- non-governmental organisations can do the job better and are more independent than something set up and funded by government;
- we already have a human rights commission, why do we need a special body or section for children?
- if we set up such a body for children, what about elderly people, disabled people, women and so on?
- children have needs, not rights;
- parents and ordinary services provide adequately for most children. If we need an independent office, it should be set up just for children in real need.

#### 5 Identifying what sort of society we want to create for children

*If the overall purpose of an independent office for children is to develop better societies for children, we need to have some idea what such a society will look like. What are the characteristics of a child friendly society? What would a utopian society for children look like?*

Some indicators to be developed, adapted and added to in discussion:

- children are regarded as a unique and valuable national asset
- there is clear political priority for children
- children are visible in government
- children are encouraged to express their views, and their views are taken seriously, in the family, in schools and other institutions and services, in the community, by government at all levels
- children are recognised as actors in promoting their own rights, not simply as objects of concern
- ill-treatment of children is rare and universally condemned not excused
- children are positively portrayed in the media
- children are not demonised or scapegoated
- the juvenile justice system focuses exclusively on rehabilitation and reintegration

- the rights of minority groups of children are recognised and respected

## 6 Identifying threats to advocacy of children's rights

*In developing an independent office for children we need to identify the threats to advocacy of children's human rights which exist in our society and consider how best to respond. In every society there are some traditions and some groups who oppose advocacy of children's rights. Also some broad changes in society can threaten children.*

*The following are some identified threats for discussion:*

- traditional (social, cultural, religious) views of children -
  - as possessions of their parents
  - as objects of concern
  - as possessors of needs but not rights.
- Attitudes of:
  - politicians
  - sections of the media
- Changes in societies posing a threat:
  - changes in family structure
  - economic reforms
  - privatisation of basic services.

## Discussion Worksheet 2

*What are the aims of independent offices to promote the human rights of children?*

*Inevitably and correctly, the detailed aims and priorities of independent offices for children will vary from state to state. They will vary according to differences in the situation of children and according to the variety of governmental and non-governmental institutions and structures affecting children and promoting human rights within states.*

*In developing an independent office for children, there will need to be consideration of the aims of existing offices and of national human rights institutions. This sheet provides a list of aims of existing independent offices, as a basis for discussion; not all offices pursue all these aims (in particular, offices vary according to whether or not they deal with individual cases and complaints from children):*

- to promote full implementation of the Convention on the Rights of the Child;
- to promote a higher priority for children, in central, regional or local government and in civil society, and to improve public attitudes to children;
- to influence law, policy and practice, both by responding to governmental and other proposals and by actively proposing changes;
- to promote effective co-ordination of government for children at all levels;
- to promote effective use of resources for children;
- to provide a channel for children's views, and to encourage government and the public to give proper respect to children's views;
- to collect and publish data on the situation of children and/or encourage the government to collect and publish adequate data;
- to promote awareness of the human rights of children among children and adults;
- to conduct investigations and undertake or encourage research;
- to review children's access to, and the effectiveness of, all forms of advocacy and complaints systems, for example in institutions and schools, and including children's access to the courts;
- to respond to individual complaints from children or those representing children, and where appropriate to initiate or support legal action on behalf of children.

### Discussion Worksheet 3

#### *Identifying institutions that exist to promote and protect the human rights of children*

*In making the case for an independent office for children, or in deciding on the specific role of the office in a particular state, it will be necessary to “map” relevant existing institutions and structures which are involved in, or could be involved in, monitoring, promoting and protecting the human rights of children and in each case to consider their powers and duties, scope and current activities.*

*This list is intended to help in drawing a national or regional or local “map”, which will need to identify:*

- any existing national human rights institutions;
- any structures or institutions established through the constitution or a key statute to promote and protect children’s rights;
- any structures or mechanisms established in Parliament;
- any permanent mechanisms/institutions established in central government to promote and protect children’s rights;
- any permanent mechanisms/institutions established in regional/local government to promote and protect children’s rights;
- child protection systems and institutions;
- any mechanisms, central or local, for the investigation and resolution of concerns or complaints raised by children and their representatives;
- any organisations providing advocacy for children;
- any self-advocacy organisations of children promoting their rights;
- inter-governmental organisations working actively to promote and protect children’s rights;
- NGOs and NGO alliances focused on children’s rights;
- other bodies, for example professional or academic or research institutes, involved in monitoring children’s rights.

## Discussion Worksheet 4

### *What does “independent” mean?*

*It is important to emphasise that independence can only be relative not absolute; if the office is established and funded largely by government, it cannot be wholly independent. But there are elements in the establishment of an office which can enhance its independence, in particular being established by legislation.*

*The following is an initial list of issues which need to be addressed, preferably in legislation:*

### **Appointment of ombudsperson/commissioner:**

- method of appointment;
- criteria for appointment (nationality, profession, qualifications, etc.);
- duration of appointment, and whether re-appointment is allowed (normally a fixed term appointment, not too short, with the possibility of an additional term);
- who has power to dismiss and for what reasons (power to dismiss should only be vested in Parliament or at an equivalently high level, and only for very serious reasons);
- right to appoint own staff.

### **Other characteristics for independence:**

- link to Convention on Rights of the Child: this provides set of external principles and standards and, because of the State’s obligations under the Convention, gives authority to the office;
- financial autonomy: the office 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. For financial issues, the office should be accountable not to government but to parliament. The Office should also be free to raise additional funds from non-government sources;
- right to set own agenda (government or other authority must not be able to dictate whole programme);
- some legal powers:
  - of investigation - for example to enter institutions, to have access to reports;
  - to initiate legal action, or to support legal action;
  - to report to the public, to Parliament if possible, powers requiring consultation by the Government with the office (for example over new legislation which will effect children), and ensuring that appropriate attention is paid to recommendations from the Office.
  - as far as possible, guaranteed access to the President and Government at a high level and across all departments;

- access to information about the content and results of children's complaints;
- developed contacts with children, and groups of children, for example through schools, through children's associations.



## Discussion Worksheet 5

### *Criteria for choosing a children's ombudsman*

*What sort of person are we looking for to be a children's ombudsperson? To fulfill the aims requires some special human qualities and skills, including perhaps the following (list provided for discussion):*

- Proven commitment to the human rights of children, and to non-discrimination;
- respected person - ideally in the eyes of the public and the President and government;
- not identified closely with one political party;
- able to form good relationships with children;
- good at presenting to the public, the media;
- good knowledge of different structures and levels of government which affect children, but not too committed to one service/area (education, health, etc.)

## Discussion Worksheet 6

### *What is advocacy?*

*Independent institutions for children are involved in advocacy. It is a general term which in this context means monitoring, promotion and protection of the human rights of children. There are many different methods of advocacy. The following starter-list is intended to be used in discussion of appropriate activities for an independent office:*

### Methods of advocacy

- lobbying the government - both Ministers and officials;
- lobbying Parliament;
- establishing a formal investigation, commission of inquiry;
- carrying out and using research;
- taking or threatening legal cases;
- using the media;
- building alliances;
- producing and disseminating publications;
- public opinion polling;
- supporting self-advocacy by children and young people.

What other forms of advocacy can be identified? Which are appropriate activities for an independent office?

## Discussion Worksheet 7

### *Case scenarios for consideration of strategies for advocacy*

*What role could/should an independent human rights institution for children play in the following situations? The discussion can also be used to help to identify the sort of powers and duties which an independent office needs to be effective:*

**Institutional abuse of children:** A series of scandals involving physical and sexual abuse of children in state-run and private institutions have been exposed in a newspaper.

**Responding to violence by children:** The Government, responding to the brutal murder of a child by two other children, proposes new juvenile justice legislation including automatic custodial sentences for violent offences and lowering the age of criminal responsibility.

**Education drop-outs:** A research study reveals that 20 per cent more girls than boys drop out of education at the end of primary education/at the end of compulsory education.

**Budget cuts:** An increase in defence spending threatens to reduce school and child health budgets.

**Detention of street children:** A group of street children have been picked up by the police and are being detained without charge.

**Deportation ignoring children's interests:** The parents of two children who have been settled for some years in a local community and school are threatened with deportation as illegal immigrants.

**Lobby against sex education for children:** A strong political/religious lobby, aided by sections of the media, is advocating that there should be no school sex education and no confidential counselling for adolescents.

**Segregation of disabled children:** A child with Downs Syndrome who has been educated in a local primary school with her friends from the community is told she must transfer to a special school, not the regular secondary school which her friends are going to as it cannot meet her special needs.

## Discussion Worksheet 8

### *What sort of independent office for children should be established?*

*The aim of this sheet is to start discussion on the relative advantages and disadvantages of separate offices for children and offices integrated into national human rights institutions. It also provides notes on characteristics required to effectively promote children's rights within a national human rights institution.*

*A key aim of an independent office for children is to make children and their rights more visible and to promote a higher political and social priority for children. This can be achieved either by establishing a separate independent human rights institution for children, or by ensuring a distinct focus on children's rights within a national human rights institution (a human rights commission or general ombudsperson - see [INFORMATION SHEET 1](#)).*

*Human rights are universal, and it is important that the promotion and protection of the human rights of children should be an integrated part of the mainstream human rights movement. But integration must not mean invisibility.*

*There is no overwhelming case for separation or for integration. The debate should revolve around establishing an office that can pursue the promotion and protection of children's human rights effectively and ensuring that it has the necessary profile, powers and duties. The following sets out some of the advantages and disadvantages of the two approaches as a basis for discussion:*

### **An independent office set up through legislation specifically to promote the human rights of children?**

This is the model adopted in the following European countries: Austria, Belgium, France, Iceland, Norway, Sweden.

#### **Advantages:**

- Able to take a distinctive and exclusive children's perspective;
- Provides a high profile individual(s) that children can relate to;
- Designed specifically to relate to children - in touch with children's views and feelings;
- Emphasises the priority which should be accorded to children;
- Able to take on specific tasks relevant to the particular situation of children (for example, certain child protection functions);
- Guarantees a distinct budget devoted to children's rights.

#### **Disadvantages:**

- Lack of integration with "mainstream" human rights promotion;

- Possibility of marginalisation/lower status/less powers than national human rights institutions;
- Possible lack of adequate resources.

## A “specialist” ombudsman or commissioner for children within a national human rights institution?

In some countries in Europe - Hungary, Macedonia, Portugal, Spain - specialist offices for children have been established within national human rights bodies.

### Advantages:

- Promotion of children’s rights integrated into the mainstream promotion of all human rights;
- Should ensure that discussion of children’s rights is not marginalised or accorded lesser status;
- Resources may not be adequate to support a range of separate offices, whereas a children’s commissioner within a human rights commission would be able to use the power and resources of the whole institution;
- Ability to work closely with other commissioners, for example on race or disability issues.

### Disadvantages:

- Children’s concerns tend to get lost in adult agendas.
- An institution designed primarily to respond to adult issues may not be accessible to children.
- Children may not identify with and use an institution primarily designed for adults.
- Problems over implementation of children’s rights often arise through conflicts between children and adults. A separate office would have more freedom to advocate from the child’s perspective.
- Some national human rights institutions have been limited to reviewing only issues arising from an individual’s relationship with the state; respect for children’s rights also requires consideration of their relationship with those in authority over them, in the family, in schools and other institutions.

## What characteristics are needed to ensure effective work for children within a national human rights institution?

To ensure that the focus on children is not obscured it is important that:

- the design and development of the national human rights institution takes full account of the special status of children;

- the legislation establishing the national institution is linked specifically to implementation of the Convention on the Rights of the Child (thus covering children's economic, social and cultural rights as well as civil and political rights) and includes provisions setting out specific functions, powers and duties relating to children, linked to the Convention.

For example:

- the duty to pay particular regard to the views and feelings of children and to take active steps to maintain direct contact with children;
- power to have regard to the situation of children in the family, in schools and other institutions
- power to consider the promotion and protection of children's rights in relation not only to government but also private bodies;
- the right to have access to children in all forms of alternative care and all institutions which include children;
- the right to report separately on the state of children's human rights;
- there is an identifiable individual "ombudsman" or representative for children (ideally someone who will bring status and public and political respect to the office, have a high public profile and so enhance the status and visibility of children);
- this individual has appropriate staffing and a ring-fenced minimum budget and is able to attract and use funding from other sources than government.

### A national/federal institution or regional institution - or both?

There are many different models in European countries: some states have more than one federal or national children's ombudsman (for example, in Belgium there are commissioners operating on a completely different basis in the Flemish and French communities). Other states have independent regional and/or local children's ombudsmen, linked together for various purposes (for example in Austria there is a federal children's ombudsman and one in each of the nine *lander* (regions) who together form the Conference of Ombudsmen); in Spain there is the federal ombudsman with a specialist representative for children and independent children's ombudsmen are also established in the city of Madrid and the region of Catalonia.

If the independent office is to have the function of responding to complaints or concerns from individual children, then it will need to have some local structure, making it genuinely accessible to children. A phone line can provide one form of contact, but complaints procedures and advocacy services will need to be locally-based.

## Discussion Worksheet 9 Relationship of independent offices with children

Independent offices will need to establish direct contacts with children and ensure that all aspects of their work are informed by children's views. This is a requirement of article 12 of the Convention.

The legislation setting up children's ombudspersons and commissioners' offices in some countries requires them to establish dialogue with children, and existing offices have developed a variety of strategies (see [INFORMATION SHEET 6](#)).

Various strategies can be suggested to achieve the participation of children and consultation with children. It is clearly important to aim at participation and consultation representative as far as possible of the overall child population.

For example, the Commissioner could (*list to be developed in discussion*):

- organise local and national forums of children and young people, or relate to existing structures through schools or other networks;
- form advisory groups of children, including specialist advisory groups, for example of adopted children, children in state care, or disabled children. Any such groups could deal either with the office's overall activities, or with particular projects.
- formalise links with any existing organisations of children;
- use the media;
- use the Internet - Web-site and e mail networks.



## Discussion Worksheet 10

*Developing proposals for investigating and responding to complaints or concerns from children and their representatives concerning breaches of rights*

*Consideration of what sort of advice, advocacy and complaints procedures children need must start from children's real situation, and should ask children for their ideas and views.*

*The following questions are intended to guide discussion to determine what an independent office's role should be - see also [INFORMATION SHEET 7](#)*

- Where can a child who has a problem or complaint - for example about ill-treatment - go?
  - in the family (including representation of very young children)
  - in foster-care
  - in any other sort of care (pre-school)
  - in school
  - in detention (penal system and welfare system)
  - in other institutions
  - in the health system
  - living and/or working on the street
- Has there been any evaluation of children's use of existing advice, advocacy and complaints procedures?
- How can children be engaged in the process of developing advocacy and complaints procedures?
- How can existing government services and NGO programmes and projects be developed or adapted to provide complaints procedures and advocacy for all children?

## Discussion Worksheet 11

### *Evaluating the success of an independent office*

One way of considering why an independent office is needed is to consider how one would evaluate its effectiveness/success when established. These are some possible ways (*preliminary list to start discussion*):

- interview research (opinion polls, etc.) to determine:
  - knowledge/popularity of the office among -
    - children
    - the public
    - those working with children/parents
    - politicians.
  - knowledge of the Convention and human rights of children among -
    - children
    - the public
    - those working with children/parents
    - politicians.
  - knowledge of where to go with a problem/complaint concerning children among -
    - children
    - parents
    - those working with children and parents.
- indications that the Government - different departments - has been usefully influenced by the office;
- availability of information on the state of human rights of children in the state;
- review of action taken as a result of appeals to the office (and analysis of the number and content of appeals).