

ÁGNES LUX*

Children's right to remedy, as part of their protection

ABSTRACT: A complaint mechanism is a procedure and tool by which children who believe that their rights have been violated seek a remedy and end to the violation. The right to remedy is a core human right, and the basic dimension of children's access to justice and the recognition that children are full citizens are crucial to being protected. In most cases, independent children/human rights institutions (ICRIs) function as ombudsman offices, which are (mostly) complaint driven. If an institution has broad competence, it should determine within its structure either an identifiable commissioner or special unit/division responsible for children's rights. A complaint can also be seen as an essential and direct source of information about children's lives and problems, as well as a tool for ICRIs to propose amendments to policies and legislation. However, research has clearly shown that children and young people comprise a very small proportion of ICRI complaints. Why is that so? There is a lack of information and trust in public institutions. This may be due to the belief that complaints are not taken seriously, and perhaps due to fear of negative or retaliatory consequences. Therefore, complaint mechanisms are not sufficiently accessible to children and should be made more child-friendly. There is an important new international forum of complaints that can be analyzed here: the UN Committee on the Rights of the Child. Here, individuals or groups can make complaints regarding the violation of children's rights since the Third Optional Protocol of the UN Convention on the Rights of the Child entered into force.

KEYWORDS: children's rights, right to remedy, complaint mechanisms, UN CRC, UN Committee on the Rights of the Child.

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1. Introduction

The UN Convention on the Rights of the Child (UN CRC), adopted in 1989, recognizes children as autonomous human rights bearers. As such, they also have the right to remedy, which is a fundamental human right and a critical element of the recognition of children as sovereign actors.

The UN Committee on the Rights of the Child (CRC Committee),¹ which has the mandate to monitor the implementation of the CRC, sees a complaint mechanism as a mandatory feature of independent children/human rights institutions (ICRIs). Based on non-binding recommendations, every country should establish a body that can handle complaints submitted by anyone, including children. These complaint mechanisms should be accessible, free of charge, non-discriminative, and child friendly. However, it is not easy for a public body to be child friendly.

2. Right to remedy: An effective complaint mechanism is part of access to justice and protection

Independent, safe, effective, easily accessible and child-sensitive complaint and reporting mechanisms should be established by law in compliance with international human rights norms and standards, in particular the Convention on the Rights of the Child. Where such mechanisms already exist, States should secure their availability and accessibility for all children, including children deprived of their liberty, without discrimination of any kind. In addition, States should ensure that complaint and reporting mechanisms act in an effective and child-sensitive manner and pursue the best interests of the child at all times.²

The right to remedy is particularly important for vulnerable children and young people (e.g., children who are abused, those living in care/closed

¹ The UN Committee on the Rights of the Child (CRC Committee). Available at: <https://www.ohchr.org/en/treaty-bodies/crc> (Accessed: 1 February 2023).

² Access to justice for children. Report of the United Nations High Commissioner for Human Rights. 16 December 2013. Para 55. Human Rights Council. Twenty-fifth session Agenda items 2 and 3. A/HRC/25/35.

institutions, those who belong to a minority, and those in conflict with the law). To use their right to remedy effectively, they must know their rights, recognize any abuse of these rights, and complain. The promotion of the content of the UN CRC (also as part of national laws) is mainly a task for state parties, but in most cases they fail at it (see the various concluding observations of the CRC Committee).

It is also clear that being aware of these rights as a crucial precondition of the effective use of the right to remedy is also a form of abuse prevention and protection. The Global UN Study on Violence Against Children (2006) states that:

there is a well-publicized, confidential and accessible mechanisms for children, their representatives and others to report violence against children. [...] All children, including those in care and justice institutions, should be aware of the existence of mechanisms of complaint. Mechanisms such as telephone help lines, through which children can report abuse, speak to a trained counsellor in confidence and ask for support and advice should be established and the creation of other ways of reporting violence through new technologies should be considered.³

3. The roles of national children/human rights institutions in the realization of the right to remedy

National human rights institutions (NHRIs) and ICRIIs function, in most cases, as ombudsman offices, which are based (mostly) on complaints, but studies show that children and young people do not turn to these institutions for various reasons (e.g., a lack of information, a lack of trust in public institutions/adults, etc.).⁴ There need to be systems in place that make trusted adults explicitly available to children and help them feel confident in speaking out.

³ Pinheiro, P. S., 2006, p. 21.

⁴ Lux, 2020, p 3.

CRC Committee in General Comment No. 2.⁵ reaffirms that NHRIs shall have the power to consider individual complaints and petitions and carry out investigations (either can be ex officio), including those submitted on behalf of or directly by children. Children (and every citizen) must receive proper information and exercise their rights. NHRIs are tasked with promoting fundamental human rights and informing the public.

Despite the fact that children make up a significant proportion of the population worldwide (in some countries, even the majority of the population), they usually have limited access to public goods and services, and institutions tailored to adults are ill-suited to providing a children's rights perspective.⁶ For this reason, and due to their age and evolving capacities, children are a vulnerable group; thus, a special category of subjects requiring special protection should be brought under the umbrella of the institutional ombudsman protection of fundamental rights. Not to mention the additional vulnerability enhancing characteristics that affect a child's status and need to be protected (e.g., girl children, children in care, children in conflict with the law, children from disadvantaged or minority groups, children with migratory status, etc.). For vulnerable groups in general, including children, access to legal aid can be described as an "inverted pyramid" phenomenon, i.e., the most vulnerable groups have, for various reasons, the fewest opportunities and the least room to articulate their problems and to ask for help, let alone find a solution: An inverse proportionality often exists between the severity of social problems and the ability to articulate them and have them addressed.⁷

Children are highly exposed to relationships of dependence on adults when exercising their rights. Children are constantly evolving beings during their unique and unrepeatable life stages and are therefore particularly vulnerable to rights violations. In most societies, children's voices go unheard.⁸

For this reason, many countries have established a system of so-called specialized ombudsmen to protect the rights of vulnerable social groups with particular needs. Former Hungarian Commissioner for Data Protection

⁵ See UN CRC Committee. General Comment No. 2. (2002) *The role of independent national human rights institutions in the promotion and protection of the rights of the child*. CRC/GC/2002/2, 15 November 2002, para 13.

⁶ UNICEF. (2012). *Championing Children's Rights*. Introduction, p. 2.

⁷ For more on vulnerable groups, see Hajas, B., and Szabó, M. (eds.) (2013) *Their Shield Is the Law*. Budapest, pp. 9–33.

⁸ Gran, 2011, p. 223.

László Majtényi believes⁹ that there are two cases in which it is advisable to entrust the protection of a constitutional right to a specialized ombudsman: firstly, when the infringement of a constitutional right poses a particularly serious threat to the freedom of citizens and the self-defense reflexes of civil society are not strong enough. He found this to be the case for data protection. However, he also calls for the establishment of a parliamentary commissioner to stop the rapid destruction of the environment at a global level. In my view, although Majtényi does not explicitly mention the need for ombudsman-type protection of children's rights in the work cited above, the need to protect children as a subset of the "large minority" of society, a group of entities with limited capacity to defend themselves and to articulate their interests, fulfils the first criterion and provides a clear constitutional justification for the establishment of a specialized ombudsman. This is confirmed by the fact that, looking at a map of the European Union, there are only two countries where there is no independent institution for children's rights with national powers.

The UN CRC states that all persons under the age of 18 years are considered children for its purposes. It is precisely because of their age that children under 18 years need greater protection from society and help from adults to recognize, articulate, and assert their rights and interests. Therefore, in recent decades, many states have entrusted this specific task to the ombudsman general. However, many countries have opted to set up independent ombudsman institutions to effectively represent and protect children's rights.

Many other arguments can be listed (within or beyond the scope of human rights) in favor of the specific institutional protection of children's rights. For example, the lack of adequate protection for children at the outset can be very costly at the level of society as a whole later on (events in early childhood have a strong impact on later life, e.g., the possible emergence of deviant behavior, reoccurrence of abuse, etc.). Children are more affected by governments' actions or lack of actions, as there is no such thing as a "child-neutral" policy and almost all policy decisions have an impact on children. Children are often faced with the fragmentation of services, which can result in, at best, the duplication of care (which is unnecessary and costly) or, at worst, a lack of care. Children lack lobbying power to influence decisions that affect them at the policymaking level. In most states, children do not

⁹ Majtényi, 1992, p. 12.

have adequate access to complaint mechanisms because they are unaware of them or do not know when or how to access them.

In 2002, the CRC Committee issued General Comment No. 2 on the role of independent national human rights institutions in the protection and promotion of children's rights,¹⁰ which highlights the role of NHRIs in the protection of children's rights under Article 4 of the UN CRC. The CRC Committee encourages the establishment of ICRIIs or ombudspersons/commissioners for children's rights in state parties, possibly in a constitutional manner, to play a role in the implementation of the UN CRC. The purpose of this General Comment was to call on state parties to review their existing institutions in terms of their status in accordance with the UN Paris Principles, which set minimum standards for human rights institutions and their effectiveness in carrying out child protection functions.

General Comment No. 2 argues that even in the case of NHRIs with broad competencies, in the absence of a separate Children's Rights Commissioner/Ombudsman, there is a need to appoint a person responsible for children's rights or to establish a separate unit to monitor, promote, and contribute to the effective and independent protection of children's rights as a key benchmark in policymaking and decision-making.

As the CRC Committee stated in its General Comment No. 5 on the implementation of the Convention issued in 2003:¹¹

the promotion of the full realization of all rights of all children under the Convention is the goal. This is to be achieved through legislation, the establishment of governmental and independent coordinating and monitoring bodies, comprehensive data collection, awareness-raising, training and the development and implementation of appropriate policies, services and programmes. One of the reassuring results of the adoption of the Convention and its near universal ratification is the widespread establishment at national level of new child-focused and child-sensitive bodies, structures and activities: children's rights

¹⁰ UN CRC Committee. General Comment No. 2. (2002) *The role of independent national human rights institutions in the promotion and protection of the rights of the child*. CRC/GC/2002/2, 15 November 2002.

¹¹ UN CRC Committee. General Comment No. 5 (2003) *General Measures of Implementation of the Convention on the Rights of the Child*. CRC/GC/2003/5, 03 October 2003.

groups within governments, ministers for children, inter-ministerial committees on children, parliamentary committees, child impact analysis, children's budgets, children's rights reports, joint activities of NGOs, NGOs in the field of children's rights, children's rights ombudsmen, children's rights commissioners, and so on.

Eight years before the adoption of the UN CRC, in 1981, the Norwegian Ombudsman for Children, the first institution of its kind in the world, started an "avalanche," not only in the region but worldwide. Many ICRIs were set up, especially as a result of the UN CRC and the other international recommendations detailed above, initially in countries with democratic traditions where the individual was recognized as a holder of rights.¹²

The stable democracies of Western Europe have typically established a separate ombudsman for children, where the executive appoints an ombudsman who takes a children's rights approach (including taking the principle of child participation seriously). There were also many variations in this group in terms of the tasks they performed. In the UK and Austria, the commissioner has a particular focus on child protection issues (e.g., the English children's commissioner has a statutory duty since 2014 to provide advice, information, and assistance to children who are removed from their families or in need of protection), while Nordic countries focus more on *advocacy* and may not act on individual cases or handle individual complaints.

In Central and Eastern European countries, as the adoption of the UN CRC coincided with regime changes and subsequent political changes affecting fundamental institutions, constitutional institutions for the protection of fundamental rights, such as the ombudsman, were enshrined in the constitutions. The ombudsman is elected by parliament (for example, in Hungary, by a two-thirds majority¹³) and, as an independent institution, typically has wide powers to investigate public services and authorities and may often have recourse to the Constitutional Court.

In terms of competence, the picture is more varied despite the fact that, in principle, most institutions operate based on the UN Paris

¹² UNICEF. (2012). *Championing Children's Rights*. Introduction, p. 234.

¹³ Article 30 of Hungary's Fundamental Law refers to the Commissioner for Fundamental Rights.

Principles.¹⁴ Most of them have the right to give opinions on legislative initiatives, and most deal with individual complaints (with the exception of Scandinavian ombudsmen).

The handling of individual complaints and the conduct of inquiries in all institutions allows for direct contact and requests for information, which recipients endeavor to meet within a reasonable time. The number of complaints and referrals received can vary from a few hundred to a few thousand per year, depending on the size of the country, the proactivity of the office, and the availability of other redress forums. The available data may also vary depending on the reporting system used by the institution (for example, the Hungarian Ombudsman does not record whether the complainant is an adult or a child). Typically, there are no formal constraints on the submission of complaints and institutions try to be flexible (complaints can be submitted in person or by letter, email, or telephone). In general, the majority of complaints come from adults (parents, grandparents, and other caregivers), with a smaller, almost negligible number of complaints from children. The need to deal with individual complaints has also emerged in countries where it was not previously possible; for example, the Scottish Parliament passed a new Children Act in the summer of 2014,¹⁵ which also enshrines children's rights and gives the Scottish Children's Commissioner the power to investigate individual complaints, which came into force in 2016.

Easily accessible complaint procedures and the capacity to take necessary action are necessary to ensure effective redress. Access is particularly important for these procedures because of the special status of children; however, in many cases, they face obstacles.

According to the CRC Committee, the implementation of Article 12 of the UN CRC, which ensures participation, also involves ensuring effective child-friendly complaint procedures. Children must have access to complaint mechanisms in all areas of their lives: in the family; outside the family; in alternative care; in school; and in all other institutions, services, and opportunities important to them. The CRC Committee, in supporting the establishment of independent children's rights institutions, has also urged

¹⁴ Principles relating to the Status of National Institutions (The Paris Principles). General Assembly resolution 48/134. Adopted 20 December 1993.

¹⁵ Children and Young People (Scotland) Act 2014. Available at: <http://www.legislation.gov.uk/asp/2014/8/contents> (Accessed: 23 January 2023).

states to put appropriate complaint procedures in place and check that children have access to other complaint procedures.¹⁶

The Committee's General Comment No. 2 considers the provision of an accessible complaint procedure as a mandatory element for independent national children's rights institutions. The examination of complaints is also a direct source of information for institutions on the lives of children and the enforcement of their rights, which can provide an orientation for the ombudsman's work and highlight systemic operational problems.

As mentioned above, in the field of individual complaints and inquiries, all European ombudsman-type institutions can also be approached by children, at least for information that does not require parental or guardian authorization. However, it is not always possible for the office to pursue inquiries or complaints *ex officio*. However, an important indicator is that the lowest number of complaints and inquiries comes from children, which raises the question of how accessible or even known these institutions are to children, in addition to the legal possibility of access.

The norms regulating most institutions do not specifically mention children as possible complainants, but identify a broader category (for example, "anyone" can lodge a complaint with the Hungarian Ombudsman¹⁷). In the case of autonomous ICRI, the regulatory norm may also specifically single them out (such as in Mauritius).¹⁸

The majority of ICRI¹⁹ act on their own initiative in so-called *ex officio* investigations of children's rights violations, in which case no direct involvement is necessary. Investigations may also be launched based on media reports or other persons not named in the legislation.

An example of a special solution is the mandate of the Irish Children's Ombudsman, which cannot investigate a complaint from a child unless a parent or other legal guardian representing the child provides permission. The problem with this provision is that the ombudsman cannot act effectively (or at all) if the parent or guardian commits an offence. The Norwegian Ombudsman can be approached by anyone; however, as a general rule does not investigate complaints without the consent of the child

¹⁶ Herczog, 2009, p. 117.

¹⁷ According to paragraph (1) of Article 18 of Act CXI of 2011 on the Commissioner for Fundamental Rights, 'Anyone may apply to the Commissioner for Fundamental Rights...' (emphasis added).

¹⁸ Art. 6 (j) of the Ombudsperson for Children Act, No. 41 of 2003, Mauritius – 'investigate complaints made *by a child*.' (emphasis added).

¹⁹ UNICEF. (2012). *Championing Children's Rights*. Introduction, p.116.

concerned. This provision was developed because, in most cases, adults lodge complaints with the institution, which is a way of giving children a voice in decisions that affect them.

The accessibility of the complaint procedure is influenced by, among other factors, the way the institution can be reached, its physical location, and how it informs children and adults about the possibility of complaining.

The way in which complaints are lodged varies across Europe, but overall, it follows less strict and fixed rules than other legal procedures. The ombudsman's procedure is free of charge and does not require legal representation. Most institutions can be contacted by email, telephone, or in person.

The complaint procedure has a "quasi-judicial" character.²⁰ In most cases, the findings of the investigation of a complaint may be condemnatory, but the recommendation is not legally binding.

For all institutions, it is essential to ensure that referrals are responded to as soon as possible in an ethical and child-centered manner. For example, the French Children's Rights Ombudsman, which operated independently until 2011, worked with an interprofessional team of lawyers, social workers, and psychologists to determine the best solution for each complaint in the best interests of the child.

The nature of violations of children's rights, their different perceptions by adults, and the fact that the ombudsman acts in the interest of good administration to prevent future maladministration make it particularly appropriate to deal with complaints in a timely manner:

Time is perceived differently by children and young people than by adults. A month can seem like an eternity to them. Children and young people are constantly growing and changing, so the procedures for them need to be faster than those for adults.²¹

Of course, the reasonable timeliness of the action depends on the nature of the complaint and the complexity of the problems it raises. Prompt

²⁰ In a state, other bodies (quasi-judicial bodies), sometimes not even state bodies, can perform a judicial function (quasi-judicial or judicial function) at the same time as the judiciary. For more on this, see Constitutional principles of the judiciary. In: Dezső, M., Fűrész, K., Kukorelli, I., Papp, I., Sári, J., Somody, B., Szegvári, P. and Takács, I. (eds.) (2007) *Alkotmánytan I.*, Budapest: Osiris Kiadó).

²¹ UNICEF. (2012). *Championing Children's Rights*. Introduction, p. 120.

reactions are not common among institutions, but a good practice can be if a special department has been set up to respond and act within maximum of 72 hours to serious, irreversible violations that come to their attention and require immediate action.

Child-friendly (and essentially client-friendly) complaint handling requires that the child (as well as the adult) be regularly informed about the status of the case.

As a general practice, if the office does not have jurisdiction over the matter, it may refer it to a body with jurisdiction and competence without delay.

Nearly a quarter of the institutions in UNICEF's 2013 comprehensive survey, mostly in common law countries, provide case representation and can bring test cases to court. Commissioners in Croatia, France, and Hungary are allowed by law to initiate proceedings in cases of suspected criminal offences and may also apply to the Prosecutor General under certain legal conditions.

A seemingly insoluble paradox is that if the ombudsman does their job "well," more and more people will come to them with their problems and in turn increase the caseload of the offices, which are usually limited and rather small. Moreover, the legal nature of the office does not often result in a remedy for specific infringements, since it tends to improve future institutional functioning and law enforcement through its actions rather than identifying the shortcomings of regulators. Its actions are therefore not always satisfactory in relation to the violations detected, particularly in cases of child abuse, where the ombudsman's competence is almost lost among the competing authorities, while remedies and assistance for child victims often arrive too late.

Measuring the effectiveness and efficiency of measures taken following the investigation of complaints or *ex officio* investigations is particularly difficult, partly because of capacity constraints and competence limitations, which prevent the evaluation of the activity, and partly because the lack of legally binding force of the recommendation leaves room for flexible interpretations of the measures.

4. New international forum on the right to remedy: UN CRC Committee and the Third Optional Protocol

The Third Optional Protocol to the Convention on the Rights of the Child²² (hereinafter the Third Protocol) creates the possibility for citizens of state parties (including children) to complain to the Geneva body of violations of children's rights when the remedies available at the national level have been exhausted or are not available. In addition to investigating individual and/or group complaints, the CRC Committee can also conduct country visits in relation to systemic violations that emerge from the case. The Protocol was adopted by the UN General Assembly in December 2011, ratification was opened, and, following the ratification of the tenth state, the protocol entered into force on April 14, 2014. Currently, there are 50 State Parties (mostly in South America and Europe) and 15 signatory states; in 133 countries, no action has been taken so far.²³

The Third Protocol identifies in its Preamble independent national children's rights institutions at the regional and national levels as complaint forums for violations of children's rights, whose activities are complementary to those of the Protocol. The Preamble further encourages states to establish effective and child-sensitive redress forums and institutions.

The "Optional Protocol" is by its nature optional, facultative, and only binding to those states that have ratified it. Accordingly, only a state that has accepted the Third Protocol as binding upon it may complain to the CRC Committee about a violation of the UN CRC and Optional Protocols after exhausting the available remedies at the national level (unless they are unavailable, ineffective, or would take too long to exhaust).

The Third Protocol moved into a noticeably more sensitive area, but also filled a significant gap in the UN's redress system. Before this, of all treaty bodies, only the CRC Committee was unable to receive individual complaints about violations of the provisions of the UN CRC. Despite the

²² Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/138.

Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICCRRC.aspx> (Accessed: 23 January 2023).

²³ Ratifications can be tracked on the UN High Commissioner for Human Rights website. Available at: <http://indicators.ohchr.org/> (Accessed: 23 January 2023).

importance of monitoring, the lack of enforcement often makes the CRC Committee's work (and the UN framework) a target for criticism.²⁴

The CRC Committee is mandated by the Third Protocol to develop its own sufficiently child-centered procedures for dealing with complaints, which include procedural safeguards to exclude the possibility of the child complainant being manipulated by a third party, and the possibility of rejecting a complaint that is not in the best interests of the child. The Protocol also provides that the state party must guarantee that no one will be disadvantaged because he or she has brought his or her case to the Committee.

An individual complaint²⁵ must identify the specific violation of the child's rights, the responsibility of the state, and where and how it was violated. If a third party, rather than the child, acts on behalf of the child, it must be shown that the child has given consent to the complaint (the legislation allows for some bona fide exceptions to this; for example, if the child is too young to do so). The CRC Committee may, in cases where the complaint alleges that the rights of the child were seriously violated or may be at risk, take interim measures requiring the state to take immediate steps to protect the child before the end of its proceedings. As a matter of routine, the CRC Committee requests that the state party provide written information within six months on the violation situation and the measures taken or intended to be taken. The parties should endeavor to reach a mutually favorable solution, respecting the UN CRC and the Protocols, before the conclusion of the CRC Committee's procedure, as explicitly authorized in paragraph 9 ("friendly settlement"). If this is done, the CRC Committee will consider the case closed and terminate its proceedings. The duration of the procedure is not specified; paragraph 10 states that the procedure should be completed as quickly as possible. It should be noted that the Committee has not been given any resources to investigate and deal with complaints; this is left to the members and secretariat in the current resource-constrained environment. It is also important to note that the majority of complaints

²⁴ Kilkelly, 2010, pp. 246–247; Bolton, 1990, p. 120; Ramesh, 2001, pp. 1948–1950.

²⁵ Working methods to deal with individual communications received under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure [Online]. Available at: <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/WorkingMethodsOPI C.pdf> (Accessed: 5 February 2023).

received do not meet the criteria for the complaint mechanism and are therefore not investigated but are communicated to the complainants.

The Third Protocol also provides the possibility for a state party to report an infringement by another state party to the Committee, which must receive an explanation from the state party concerned within six months of its request (paragraphs 11–13). It should be noted that at the time of writing, no such procedure had been followed before any of the treaty bodies.

With the Third Protocol coming into force, there are now six UN treaty bodies²⁶ that can open an *ex officio* investigation if they have reliable information that there is a serious or systematic violation of the provisions of the UN CRC and its Protocols, and they will call on the state concerned to cooperate with the investigation and provide the necessary information. This procedure can only be initiated against a state that recognizes the CRC Committee's jurisdiction in this respect and did not request an opt-out when adopting the Third Protocol. The CRC Committee appoints one or more of its members to conduct the investigation, which may include a country visit if necessary—something that is possible if the costs are covered and the inviting party is not opposed—and then prepares a report. The CRC Committee reviews the report and sends it along with its recommendations to the state party, which will have six months to respond, after which the CRC Committee may ask about the measures taken. The procedure itself is confidential and not public, and the recommendations of the CRC Committee are, of course, not binding to the state party.

The possibility of lodging a complaint (or, to use the terminology of the protocol, communication) has filled a gap in the procedures of other treaty bodies. Not only has it put the CRC Committee on an equal footing in every respect with similar UN bodies, but it also has symbolic force in the sense that children's participatory rights under the Convention should be considered in the same way as rights under any other treaty addressed to adult subjects.

²⁶ The Committee against Torture (article 20 of CAT); the Committee on the Elimination of Discrimination against Women (article 8 of the Optional Protocol to CEDAW); the Committee on the Rights of Persons with Disabilities (article 6 of the Optional Protocol to CRPD); the Committee on Enforced Disappearances (article 33 of CED); the Committee on Economic, Social and Cultural Rights (article 11 of the Optional Protocol to ICESCR); and the Committee on the Rights of the Child (article 13 of the Optional Protocol [on a communications procedure]) to the CRC. Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#interstate> (Accessed: 22 May 2023).

All communications received under the Optional Protocol and submitted by children will be forwarded without delay by the CRC Committee Secretariat (Petitions Section) to the Committee's Working Group on Communications, including those that seem inadmissible. The Petitions Section transfers these communications to the Working Group in the original language, confirming the receipt of these communications from the complainant as soon as possible (within a maximum of two weeks). Responses to letters received from children are drafted using child-friendly language.²⁷

If we analyze the cases that have come before the CRC Committee since 2019,²⁸ it can be found that the usual subjects are as follows: the greatest share comes from various issues (e.g., deportation or lack of access to services, problematic age-assessment procedures) related to unaccompanied minors (see cases, e.g., 80/2019, 128/2020 [Switzerland]; 131/2020 [Finland]; and 132/2020, 149/2021 [France]), deportation of failed asylum seeker children/families (see cases 102/2019, 120/2020, 125/2020, 126/2020, [Switzerland]; 103/2019 [Denmark]), institutionalization or placement in care (see cases, e.g., 135/2021, 137/2021 [France]; 139/2021 [Czech Republic]; 146/2021 [Italy]), and some cases relate to issues of juvenile justice (see case 89/2019 [Argentina]).

In October 2021, the CRC Committee published its long-awaited decisions on admissibility in the so-called "climate change case" (*Sacchi et al. v. Argentina et al.*). Along with this decision, the CRC Committee published an open letter to children and young complainants and a child-friendly version of the decision for the first time. Before this historic verdict, in September 2019, sixteen child human rights defenders and climate activists (including the iconic Greta Thunberg) from all over the world submitted a petition against five UN CRC state parties: Argentina, Brazil, France, Germany, and Turkey. These countries are the world's five largest issuers and, by ratifying the Third Protocol, have recognized the CRC Committee's competence to receive communications. In this case, the CRC Committee said that states have extraterritorial jurisdiction over harm caused by carbon emissions, though it ultimately found the petitioners'

²⁷ Available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/WorkingMethodsOPI_C.pdf (Accessed: 3 May 2023).

²⁸ Available at: <https://www.ohchr.org/en/treaty-bodies/crc/individual-communications> (Accessed: 3 May 2023).

communication inadmissible due to their failure to exhaust their national-level remedies.

It was a milestone for the following reasons: first, it was a clear and real form of child participation, as the complainants were children and young people; second, it was the first ruling of the Committee on Climate Issues. 'Though the decision has been lauded for expanding the jurisdiction of human rights law, such a doctrinal shift may give rise to unintended consequences in other areas of international law.'²⁹

5. Summary

To develop and maintain a child-friendly complaint mechanism, preliminary requirements must be considered. The mechanism, either at the national level (in the case of ICRI) or international level (the CRC Committee), shall be directly and easily accessible, known by children and by those working with children, and as informal as possible. The UNICEF NHRI Toolkit (2018: 14) states that each complaint submitted concerning a child rights violation should receive an answer declaring that the complaint has been taken seriously and acted upon and, if not, the reasons should be provided and other options offered for redress or support relevant to the situation. Timely handling of complaints is an essential component of child friendliness, especially in cases submitted by children or those that have direct effects on children. A child-centered approach requires the accessible fora served, the child to be informed of the procedure, status of the complaint, and outcomes.

An ICRI receives and handles complaints based on its mandates and competencies. These details vary according to the institution and country of origin, and still some institutions do not have a mandate to handle individual complaints, however it is an essential element of practicing the fundamental right to remedy and also a useful source of information for ICRI too.

The growing number of state parties of the Third Protocol and, in parallel, the emerging caseload of the CRC Committee related to individual complaints, clearly show that effective complaint mechanisms are a vital part of protection systems and provide a new space for further research.

²⁹ 'Sacchi v. Argentina. Committee on the Rights of the Child Extends Jurisdiction over Transboundary Harms; Enshrines New Test', *Harvard Law Review*. Available at: <https://harvardlawreview.org/2022/05/isacchi-v-argentina/> (Accessed: 24 January 2023).

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Bibliography

- [1] Bolton, D. A. (1990) 'The Convention on the Rights of the Child: Prospects for International Enforcement', *Human Rights Quarterly*, 12(1), pp. 120–129; <https://doi.org/10.2307/762170>.
- [2] Gran, B. (2011) 'The Roles of Independent Children's Rights Institutions in Implementing the CRC' in Invernizzi, A. and Williams, J. (eds.) *The Human Rights of Children. From Vision to Implementation*. Ashgate, pp. 219–239.
- [3] Herczog, M. (2009) *Kézikönyv a Gyermekjogi egyezmény alkalmazásához*. Budapest: UNICEF – CSAGYI.
- [4] Hodgkin, R., Newell, P. (2010) *The Role and Mandate of Children's Ombudspersons in Europe: Safeguarding and Promoting Children's Rights and Ensuring Children's Views Are Taken Seriously*. ENOC Survey. [Online]. Available at: <https://enoc.eu/wp-content/uploads/2015/02/201012-ENOC-Malta-survey-Role-of-Ombudspersons-for-Children.pdf> (Accessed: 3 September 2023).
- [5] Hoffman, S., Stern, R. T. (2020) 'Incorporation of the UN Convention on the Rights of the Child in National Law', *The International Journal of Children's Rights*, 28(1), pp. 133–156; <https://doi.org/10.1163/15718182-02801001>.
- [6] Imanian, S., Thomas, N. P. (2019) 'Understanding the Impact of Independent Human Rights Institutions for Children: A European Study', *The International Journal of Children's Rights*, 27(2), pp. 339–372; <https://doi.org/10.1163/15718182-02702001>.
- [7] Kilkelly, U. (2010) 'Protecting children's rights under the ECHR: The role of positive obligations', *Northern Ireland Legal Quarterly*, 61(3). <https://doi.org/10.53386/nlq.v61i3.453>.
- [8] Lux, A. (2020) '“Do My Complaints Matter?” Child Participation and Child-friendliness of Complaint Mechanisms in European Independent Children's Rights Institutions', *Societies Without*

Borders, 14(1);
<https://scholarlycommons.law.case.edu/swb/vol14/iss1/7>.

- [9] Lux, A., Gran, B. (eds.) (2022) *The Roles of Independent Children's Rights Institutions in Advancing Human Rights of Children*. Sociological Studies of Children and Youth, Vol. 28., Emerald Publishing Limited.
- [10] Majtényi, L. (1992) *Ombudsmann. Állampolgári jogok biztosa*. Budapest: KJK.
- [11] Pinheiro, P. S. (2006) *World Report on Violence against Children*. United Nations, Secretary-General's Study on Violence against Children [Online]. Available at:
https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document_files/world_report_on_violence_against_children.pdf (Accessed: 3 September 2023).
- [12] Ramesh, A. (2001) 'UN Convention on Rights of the Child: Inherent Weaknesses', *Economic and Political Weekly*, 36(22), pp. 1948–1950; <http://www.jstor.org/stable/4410687>.
- [13] Reif, L. (2015) 'The Future of Thematic Children's Rights Institutions in a National Human Rights Institution World: The Paris Principles and the UN Committee on the Rights of the Child', *Houston Journal of International Law*, 37(2), pp. 434–488.
- [14] ENOC Standards for Independent Children's Rights Institutions. October 2001. [Online]. Available at: <http://enoc.eu/wp-content/uploads/2015/01/ENOC-Standards-as-approved-Paris-01.pdf> (Accessed: 14 October 2023).
- [15] National Human Rights Institutions (NHRIs) Series: (2018) *Tools to Support Child-friendly Practices. Child-friendly Complaint Mechanisms*. UNICEF ECARO [Online]. Available at: https://www.unicef.org/eca/sites/unicef.org.eca/files/2019-02/NHRI_ComplaintMechanisms.pdf (Accessed: 10 October 2023).

- [16] UN CRC Committee. General Comment No. 2. (2002) *The role of independent national human rights institutions in the promotion and protection of the rights of the child*. CRC/GC/2002/2, 15 November 2002.
- [17] UN CRC Committee. General Comment No. 5 (2003) *General Measures of Implementation of the Convention on the Rights of the Child*. CRC/GC/2003/5, 03 October 2003.
- [18] UN CRC Committee (2020) *Recent Developments In the Individual Communications Received Under The Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure*. ('OPIC-CRC') [Online]. Available at: <https://opic.childrightsconnect.org/wp-content/uploads/2020/04/OPIC-CRC-trends.pdf> (Accessed: 10 October 2023).
- [19] Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. Resolution Adopted by the General Assembly on 19 December 2011, A/RES/66/138.
- [20] UNICEF (2012) *Championing Children's Rights. A Global Study of Independent Human Rights Institutions for Children – Summary Report*. UNICEF Office of Research [Online]. Available at: <https://www.unicef-irc.org/publications/669-championing-childrens-rights-a-global-study-of-independent-human-rights-institutions.html> (Accessed: 10 October 2023).
- [21] UNICEF (2018) *National human rights institutions (NHRIs) Series: Tools to support child-friendly practices. Child-friendly Complaint Mechanisms* [Online]. Available at: https://www.unicef.org/eca/sites/unicef.org.eca/files/2019-02/NHRI_ComplaintMechanisms.pdf (Accessed: 10 October 2023).
- [22] UN High Commissioner for Human Rights (2016) *Access to Justice for Children. Report of the United Nations High Commissioner for Human Rights* [Online]. Available at: <https://digitallibrary.un.org/record/766759> (Accessed: 10 October 2023).