

## ***Ombudspersons for children in selected decentralised European States: implementing the CRC in Belgium, Spain and the United Kingdom.\****

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***Summary.** Over the last 15 years, the expectation that national human rights institutions will act as links between the national/local level and the international human rights regime to monitor State compliance with international norms has increased. Notwithstanding the important role of children's Ombudspersons as institutions responsible for promoting and protecting children's rights, little research has been undertaken on these types of institutions, in particular from a comparative perspective. Thus, through the analysis of the different Ombudsperson offices already established within three decentralised countries with regional autonomies - Belgium, Spain and the United Kingdom - this paper aims to study the particular characteristics of these institutions, and to verify how, within these States, regional and national governments implement the related international prescriptions.*

***Keywords:** ombudsperson, children, rights, regional governments*

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## **Introduction**

Decentralisation has an impact on children's rights at local level, where decisions concerning everyday life have been gradually moved from the central to regional or municipal level. Yet, data on children's rights are usually issued by central authorities and there is little information on whether and how local monitoring of children's rights is conducted. This is one of the reasons why the UN Committee on the Rights of the Child (Committee) has increased its efforts to systematically encourage States Parties to create national and local institutions to monitor the conditions of childhood and adolescence. These institutions can intervene as advocates for the children and bring their needs to the forefront of the national political process and legal system.

In compliance with international standards, these entities should be national or regional independent monitoring institutions accessible to children and empowered to receive and investigate complaints in a child-sensitive manner. Further, they should be able to address the complaints effectively and have at their disposition the necessary human and financial resources. The number of the States Parties of the Convention on the Rights of the Child (CRC) with an independent institution dealing specifically with children's fundamental rights is constantly increasing. In several decentralised States, such as Austria, Canada, Belgium, and Spain, these sorts of independent national institutions on children's rights or Ombudspersons for Children have been established at the level of region, provinces, cantons and communities. The General Comment no.2 of the Committee dedicated to this issue (CRC Committee, 2002a) underlines "that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights," but it does not provide any kind of suggestions or indications in relation to the role of these institutions within federal and regional States - like the Paris Principles - (UN General Assembly, 1993), to which the General Comment refers. In fact, the main concern of the Committee is "that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights".

However, within federal and regional States, the question of organisational dimension and the specific competence of this kind of institution needs particular attention as a consequence of the fact that the competencies on matters related to the rights of the child are divided between the federal or the State/central level and the different autonomous authorities at the regional, provincial and community level. There is a great diversity in origin and form of regional governments, but it is common that fields such as health, education, social care, culture and recreation are the

responsibility of the regional governmental entities. These are all areas of evident importance in the fulfillment of the State Party's obligations under the CRC (Williams, 2011). Therefore it was important for the CRC Committee to urge action on implementation across a range of administrative and political mechanisms and through various forms of what might be named 'collaborative activism' (CRC Committee, 2003a). Increasingly, in the implementation and monitoring process of the human rights treaties, the national human rights institutions seem to play a central role. Building on an idea already stated in the Universal Declaration on Human Rights (Pohjolainen, 2006), over the last 15 years, the expectation that national human rights institutions will act as links between the national/local level and the international human rights regime to monitor State compliance with the international norms has increased (Carver, 2010). But this amplified expectation is tightly related to the diffusion of the decentralization process which characterises the European context since the first half of the 20th century. For example, in analysing the administrative evolution of the State Parties of the European Union, Hopkins notes that in 1939, no EU member had democratic regional governments, but in 2002, 12 of the 15 EU member States had developed some form of regional governmental authorities or were in the process of the establishment of a regional democratic government (Hopkins 2002; Williams, 2011). Therefore, to the decentralised States that have already established an Ombudsperson for Children, the Committee on the Rights of the Child asks the promotion of similar institutions at every level of the State organization, and stresses the necessity to establish, between these different mechanisms and entities, a formal net of standardized cooperation (CRC Committee, 2002b; CRC Committee, 2003b).

Notwithstanding the important role of children's Ombudspersons as institutions responsible for promoting and protecting children's rights (Verhellen, 1989), little research has been undertaken on these types of institutions, in particular adopting a comparative approach (Verhellen, 1989; Gran & D. Aliberti, 2003). Thus, through the analysis of the different Ombudsperson offices already established within three decentralised countries- Belgium, Spain and the United Kingdom- this review aims to study the particular characteristics of these institutions within these States, and to verify how, within these States, regional and national governments reacted to the requirement of the CRC Committee General Comment n. 2 on this issue.

The work is organised into four parts. In the first part, the study examines to what extent the institution of the Ombudsperson for Children has developed during the last year, providing at the same time, an overview

of how independent institutions undertake local monitoring of children's rights. The second part is dedicated to the international standards and, in particular, to the Paris Principles and the General Comment no. 2 of the UN Committee on the Rights of the Child with a particular focus on the work carried out by the Committee on the Rights of the Child. Part III provides a comparative analysis of the Ombudsperson experiences based on data gathered in 2009. It outlines the eventual recurrent aspects that can be identified in the nine experiences: three in Spain, two in Belgium and four in the United Kingdom. The fourth concluding part builds upon interrelated elements emerging from the analysis of the international standards and the national cases analysed. It is based on the fact that, when implementing international standards on children's rights, regional governments in federalised States set up offices of Ombudsperson for Children to best suit their domestic reality and in proportion to the resources available.

## **Part I - Children's rights and INHRIs from an international perspective**

### **1.1. The evolution of children's rights and the role of the Ombudsperson**

Adopted by the General Assembly of the United Nations on 20 November 1989, the Convention on the Rights of the Child (CRC) celebrated its twentieth anniversary in 2009. Due to the dense network of social and normative implications surrounding the condition of childhood and adolescence globally, the CRC still represents, worldwide, the most widespread and commonly used international instrument for defining the human rights associated with the youngest generations. The CRC's new approach to childhood is primarily aimed at discarding the protectionist adult dimension toward a child considered as a future adult. This approach and the contemporary development of the present forms of interpretation and implementation of the CRC lead to two different foci for those that believe in the child as a fully-fledged holder of rights: (1) children's rights are not perceived as such in their essence and judicial connotation; (2) the rights of the child are deprived of some of their essential implications, such as the access, in case of violations, to legal remedy procedures and protection tools, and to the full exercise of them through participation.

In relation to the first element, through the work of the Committee, some scholars note that the innovative concept introduced by the CRC of the human rights of children still remains a major challenge to all of those concerned with the implementation of the CRC, such as States, parents,

teachers, educators, non-governmental organizations and professional groups (David, 2002; UNICEF, 2004; Hodgkin & Newell, 2002). This is essentially due to the fact that the CRC recognises the child as a human being entitled to a full range of rights, demanding as a consequence that children be considered as full-fledged persons to whom the public authorities are accountable, rather than as a possession of their parents and/or of the State as they are perceived in the paternalistic approach (Santos Pais, 1999). Thus, the implementation of the CRC aims at the adoption of sound measures taken by public authorities not to satisfy children's needs, but rather dedicated to the fulfilment of their rights (Hammarberg & Santos Pais, 2000). From a human rights perspective, the added value of the rights based approach over the welfare approach is that in addition to accountability, public security and transparency, in cases involving the violation of human rights, children can have direct access to judicial and non-judicial remedies and are more likely to obtain, eventually, compensation or rehabilitation.

Referring to the second element, it needs to be stressed that rights are important because those who have them can exercise agency, intervene as decision-makers, and negotiate with others. Now there is clear evidence that even children and adolescents are able to do so (Alderson, Hawthorne & Killen, 2005; Anderson, Sutcliffe & Curtis, 2006). As agents, rights-bearers can participate, organising their lives on their own. Rights are also important advocacy tools and as such they can be employed to guarantee recognition and respect. Therefore, giving people rights, without enabling them consequently to have access to those who can represent these rights, without access to legal remedy procedures, is like depriving these rights of their essential value (Freeman, 2005; Bandman, 1973).

## **1.2 The evolution of the Ombudsperson figure worldwide**

### **1.2.1 Meaning of the term “Ombudsperson”**

During the last 20 years, there has been a rapid proliferation of independent national human rights institutions for children, such as children's Ombudsperson offices and commissioners for children. The momentum of setting up Ombudspersons for Children is still very strong worldwide. It is essentially based on the commitment of State Parties to achieve effective implementation of the relevant international instruments and the intention of fulfilling the wording of the UN Convention on the Rights of the Child (CRC). But before embarking on the description of the evolution of the Ombudsperson figure worldwide, the meaning of the term “Ombudsperson” must be defined. It is a Scandinavian word which is used

to indicate that a person is acting on behalf of another person as an intercessor between that person and some sort of authority. This is a literal translation of the word “Ombudsperson”. In its initial conception, the term referred to the intercession between a person and some sort of public, usually governmental, authority and in its original usage, the Ombudsperson was exclusively a man, whereas today, the term is applied to both men and women. The first Ombudsperson Office was established by the Swedish parliament in 1809 for the purpose of ensuring that public authorities carried out their official obligations as set down by the National Constitution. The experience of the Ombudsperson process in Sweden proved to be so successful that the government decided to repeat the experience setting up specialized Ombudsperson offices (Price Cohen, 1993). The practice of the Ombudsperson spread to other national institutions within Sweden and then eventually to countries around the world. Over time, the term “Ombudsperson” acquired a more general meaning, the word often being applied to any governmental or non-governmental body, which acts as a “public watchdog” or “citizen defender” of human rights.

### **1.2.2 The spread of Ombudsperson for Children**

The idea of an intercessor between government agencies and citizens, monitoring the transparency, quality and efficacy of the public administration can be extremely beneficial when focused on gaining rights for children. There are many reasons justifying the need for particular institutions to protect children’s human rights: first, they have no vote and play no significant part in the political process; second, children have serious problems accessing legal systems to assert their rights or to seek remedies for breaches of their rights (Gran, 2011)<sup>1</sup>. Children have a wide range of needs and, because of their age, there is always great urgency in meeting them. Thus, the establishment of a centralized office to which complaints can be brought, which can represent children’s rights and act to provide remedies to problems is an ideal solution for children’s issues, both from the standpoint of government efficiency and client assistance.

<sup>1</sup> On this point see also: Information Sheet 3, Other recommendations for independent offices for children of the European Network of Ombudsmen for Children (ENOC) Information and Training Pack, available on <http://www.ombudsnet.org/docs/informationandtrainingpack.pdf>

The creation of a special “Ombudsperson for Children” has a relatively recent history. In fact the first children’s Ombudsperson was set up in Norway in 1981 (Commissioner for Children) and, as a consequence, it is also the most well-known national example in this field (Waage, 2006; Flekkøy, 2002; Flekkøy, 1991, Flekkøy, 1993; Flekkøy, 1989). Subsequently, other national children’s Ombudsperson offices were established, such as those set up in Austria, Costa Rica, Guatemala, New Zealand and Sweden. There has been a substantial increase in popularity since the mid-1980s. In fact, with the exception of the Norwegian Children’s Commissioner, all national children’s Ombudsperson offices have been established since 1987. Probably, the near universal ratification of the CRC led to a growing acceptance that special attention must be paid at national level to the promotion and safeguarding of children’s rights, including the design of special independent institutions or special sections or departments within national human rights institutions (Waage, 2006 & 2004; UN General Assembly, 2002)<sup>2</sup>. To strengthen this position the Committee observed in 2002 in its General Comment No. 2, that “Every State needs an independent human rights institution with responsibility for promoting and protecting children’s rights” (CRC Committee, 2002a).

There are no specific definitions of characteristics of the organizational aspects, and the debate within international organizations such as the United Nations and in a number of States still focus on two elements: (1) whether to promote and establish a stand-alone children’s rights institution – such as a children’s ombudsperson or a commissioner – or rather to set up a children’s rights department or office within the already existing or soon to be established human rights commissions or general ombudsperson offices; (2) in the case of a detached children’s rights institution, whether to develop one single national institution or to set up decentralised ombudsoffices following the organizational structure of the State. The latter option would make it possible to operate as closely as possible to the children’s realities and needs. Even though the debate on these elements is

<sup>2</sup> As already precised above the Convention on the Rights of the Child was drafted during the ten year period between 1979 and 1989. It has had overwhelming support from the world community. As of October 1993 it was already ratified by 150 countries and by the 1997 it reached the almost unanimous ratification of the international community, 193 countries come States Parties to the Convention. For the status of the signatures and ratification of the Convention on the Rights of the Child, see the website of the Committee on the rights of the child: <http://www2.ohchr.org/english/bodies/crc/index.htm>

still ongoing, there are more independent children's rights institutions than institutions subsumed under a more general human rights office (Smith, 2006). Regarding these subjects, the Committee has stressed on different occasions that its "principal concern is that the institution, whatever its form is, should be able, independently and effectively, to monitor, promote and protect children's rights." Furthermore, the Committee highlights the importance of ensuring that promotion of children's rights is 'mainstreamed' and that all human rights institutions existing in a country work closely together to this end<sup>3</sup>. However, we have to bear in mind that, as stated above, the principles set down in the General Comment no. 2 are not legally binding for the States, but they represent an "authoritative guideline" (Vandekerckhove, 2003). However, the effectiveness of these institutions would, in our opinion, indeed much depend on the mandate of the Child Ombudsperson and the administrative organisation within the Human Rights Commission, and the comparative analysis provided here will essentially be dedicated to this aspect.

## **Part II - The international standards**

### ***2.1 The role played by the CRC Committee in the promotion of the Paris Principles***

The CRC Committee adopted, in 2002, a specific General Comment dedicated to the national institution for the promotion and protection of children's rights. It is a detailed and articulated document in which the Paris Principles represent the constant reference point for all recommendations formulated in it, an example being the request to States Parties to establish such institutions as a means of fulfilling the CRC legal obligations and complying with the Paris Principles (CRC Committee, 2002a). For this reason, the General Comment no. 2 is considered as the

<sup>3</sup> In particular the Committee's General Comment suggests that where resources are scarce, "consideration must be given to ensuring that the available resources are used most effectively for the promotion and protection of everyone's human rights, including children's and in this context, development of a broad-based [institution] that includes a specific focus on children, is likely to constitute the best approach". Emphasis is further placed on ensuring that within a broad-based institution there is "either an identifiable commissioner specifically responsible for children's rights, or a specific section or division responsible for children's rights" General Comment no. 2:

[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2002.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2002.2.En?OpenDocument).



most articulated intervention for the implementation of the Paris Principles at the national level (Pohjolainen, 2006). The General Comment provides clear indications regarding mandates and power, establishment process, resources, pluralistic representation, provision of remedies for breaches of children's rights, accessibility and participation, cooperation with the Committee and other UN mechanisms, and regional and international cooperation. In other words, through the adoption of this General Comment, the Committee defines independent national human rights institutions as "an important mechanism to promote and ensure the implementation of the Convention" and goes on to say that it "considers the establishment of such bodies to fall within the commitment made by States Parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights" (CRC Committee, 2002a). Until now, none of the other five UN mechanisms monitoring the State Parties' compliance with the international treaties on human rights has been expressed in such terms (Alston & Tobin, 2005). The General Comment no. 2 endorses more strongly the concept that the establishment of a national Ombudsperson for Children has become something of a "norm" for the implementation of the CRC and presents the Paris Principles as a benchmark for setting up these kinds of children's human rights bodies in an effective manner (Cerver, 2010; Finnemore & Sikkink, 1998; Pinheiro & Baluarte, 2000)<sup>4</sup>.

The essential work developed by the Committee with the intention of enhancing the figure of the Ombudsperson for Children is not supported by a clear statement by the CRC in this direction. In fact, the CRC does not contain an explicit reference to the setting up of independent monitoring institutions. Thus, the CRC Committee dedicated the 2002 General Comment no. 2 specifically to this issue, demonstrating its special importance in the concrete implementation of the CRC. The General Comment states that:

Article 4 of the Convention on the Rights of the Child obliges States Parties to 'undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.' Independent national human rights institutions are an important mechanism for promoting and ensuring the implementation of

<sup>4</sup> This is approach of the CRC Committee is the result of the broad acceptance, manifested by the late 1990s, within the UN of the concept that national institutions are almost taken for granted as national implementation tools.

the Convention, and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States Parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights ... (Hodgkin & Newell, 2002).

Within the European context, strong support for the independent institution was provided also by the establishment and work of the European Network of Ombudspersons in Europe (ENOC). Established in Norway in June 1997, ENOC is a not-for-profit association which links together independent offices of children's ombudspersons which have been established in European countries (ENOC, 2001). The aims of the network are to enhance the quality of children's lives; encourage the sound implementation of the CRC; and share and support the exchange of information, approaches and experiences for the benefit of children (ENOC, 2006). ENOC strongly promotes the Paris Principles, adapting them to children's particular situations for a more effective development of a National Institution for Children.

### ***2.2 The standards identified by the Committee on the Right of the Child through its Concluding Observations to some selected decentralised States***

It is noteworthy that in addition to the General Comment no. 2, a further significant intervention has been made by the CRC Committee through the formulation of its Concluding Observations when dealing with the reports of individual governments. Increasingly, the CRC Committee has started to refer, in a systematic way, to the Paris Principles in its Concluding Observations, encouraging States Parties to create national institutions that comply with these standards. From a review carried out by the European Network of National Observatories on Childhood (ChildONEurope) in 2006 on the twenty-nine countries, it emerged that the CRC Committee made references to the issue of independent national human rights institutions in the Concluding Observations formulated for the majority of those States (Bernacchi, Moyersoer & Ruggiero, 2006)<sup>5</sup>.

The Committee welcomed the establishment at national level of Children's rights Commissioners, Ombudspersons for Children or National

<sup>5</sup> Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Slovenia, Sweden, The Netherlands, United Kingdom, Bulgaria, Croatia, Romania, Turkey

Councils for Children in eight of the examined countries<sup>6</sup>, and the establishment of the Children's Rights Commissioners or an Ombudsperson for Children at the regional level in three countries<sup>7</sup>. However, in the latter cases it expressed its concern about the absence of such an institution at the national level. Regarding the mandates and power, the General Comment n. 2 states that "NHRIs should, if possible, be constitutionally entrenched and must at least be legislatively mandated. It is the view of the Committee that their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the Convention on the Rights of the Child, its Optional Protocols and other relevant international human rights instruments" (CRC Committee, 2002a).

As underlined above, the General Comment no. 2 does not refer to identification of the organizational characteristics of the Ombudsperson office. In other words, there is no attempt to outline the structural features in relation to the State organizational dimension, such as monocratic body or collegial one, centralised or decentralised, national/federal or regional office. Thus, the Committee tried to compensate for this absence of provisions through the development of its Concluding Observations. In particular, as far as the decentralised States that have already established an Ombudsperson for Children are concerned, the Committee on the Rights of the Child asks for the implementation of this kind of institution to be promoted at every level of the State organization. For example, in the Concluding Observation formulated to the Second Belgian Report, while positively welcoming the establishment of national independent institutions in the two principal communities –the Children's Rights Commissioner in the Flemish Community and the Délégué Général aux Droits des Enfants in the French Community – the Committee manifests its concern about the absence of an independent monitoring mechanism for the implementation of the CRC which is mandated to receive and pass children's complaints to the federal or central level. The Committee recommends the creation of this kind of institution at a federal level and stresses the necessity to establish a formal net of standardized cooperation linking these different mechanisms and entities. The Committee suggests the establishment of independent human rights institutions also in the German-speaking Community and at the federal level, in accordance with the Paris Principles (CRC Committee, 2002b).

<sup>6</sup> Denmark, Finland, Greece, Lithuania, Luxembourg, Poland, Sweden, Croatia.

<sup>7</sup> Belgium, Italy, United Kingdom.

Referring to the United Kingdom, despite the establishment of an independent Children's Commissioner in Wales and the plans for the establishment of an independent human rights institution for children both in Northern Ireland and in Scotland, in the Concluding Observations to the Second Report of the United Kingdom, the Committee showed its deep concern about the fact that State Party had not yet established an independent human rights institution for children in England (CRC Committee, 2002c). In the Concluding Observations formulated to the Third Report of the United Kingdom issued in 2008, while the Committee welcomed the establishment of independent Children's Commissioners in all four component Regions of the United Kingdom, it was concerned that their independence and powers are limited and that they have not been established in full compliance with the Paris Principles. The Committee was no longer referring to the importance of decentralised offices or coordination mechanisms between the four entities, but focused more on the characteristics of the mandate of all four established Commissioners in compliance with the Paris Principles (CRC Committee, 2008). This attitude on the part of the Committee suggests implicitly the fulfilment of one of its principal aims: the development of the presence of the ombudsperson offices for children in all the different organizational territorial divisions of the State.

Belgium and United Kingdom are considered new decentralization experiences. However, the approach of the Committee does not change when referring to the so called historical federal States such as Canada, Germany, Austria and Switzerland. For example, referring to Canada, the Committee noted with satisfaction that in the eight Canadian provinces the institution of the Mediator for Children has been established. However, it underlined and criticised the absence of a national institution on human rights at the federal level. The Committee recommended that in every province where the office of the Mediator for Children's rights at federal level has not yet been established, and in the three territories where a high proportion of vulnerable children live, this should be done without delay (CRC Committee, 2003b). A similar situation is present in the Concluding Observations to the Second Periodic Report of Germany (CRC Committee, 2004), in the Concluding Observations to the First Switzerland Report (CRC Committee, 2002c) and in those related to the First Austria Periodic Report, (CRC Committee 1999).

From the information provided up to now and taken from the Concluding Observations, the Committee seems to be making an attempt to complete the recommendations stated by the General Comment n. 2, aiming to provide suggestions related to the characteristics of the

Ombudsperson offices in relation to the State territorial organizational authorities. It appears that even though it remains unspoken, one of the objectives of the Committee is to have a capillary distribution of the offices of the Ombudsperson for Children, in order to align them as closely as possible to the children's realities and needs. These entities will facilitate the monitoring process of the implementation of the CRC at the local level, and enhance the implementation process at the national level through the work of local governments.

### **Part III - Evaluation and analysis: Ombudsoffice experiences in selected decentralised States**

The aim of this section is to present, from a comparative approach, the characteristics of the Ombudsperson for Children that have been developed in three European countries: Belgium, Spain, and the United Kingdom. These represent sound experience of the so-called new federal experiences. The intention is to analyse four essential elements: the connotation of the establishing legislation, giving particular attention to the independence factor; the organizational structure; the mandate and the areas of competence of the ombudsoffices; and (where available) the coordination mechanisms between the different national/regional ombudspersons offices for children, which have been developed into the national realities.

This third part is founded on two interrelated elements which have already emerged from the evaluation provided in the previous parts of the article: (1) the international instruments fostering the creation of the figure of the Ombudsperson office for children are in the majority of the cases soft-law instruments; they are not compulsory legal provisions; (2) even though the soft-law international instruments require the creation of such institutions in compliance with a specific determined benchmark of elements, the States and their respective federal or regional entities are not obliged to implement a pre-determined model as described in the international document. As a consequence the State and the regional or federal entities can create such institutions on the basis of their needs, in relation to the national and local peculiarities, fulfilling the request of the international community and setting up institutions in the manner that best suits their domestic reality. The aim of this part is, in consequence, to outline the eventual recurrent aspects that can be identified in the nine experiences analysed: three in Spain, two in Belgium and four in the United Kingdom.

### **3.1.1 The setting-up legislation and the organizational structure.**

In none of the three countries is there a central or national Ombudsperson dedicated to the promotion and protection of children's rights. The nine children's Ombudsperson offices are, respectively: three in Spain: (1) El Coordinador del Area del Menor (Coordinator for Children) for the Autonomous Community of Basque Country, established in 1985; (2) El Defensor del Minor (Ombudsperson for Children) for the Autonomous Community of Madrid, created in 1996; (3) the Deputy for Children for the Autonomous Community of Catalonia, established in 1989; two in Belgium: (1) the Delegate-General for Children's Rights of the French Community and (2) Children's Rights Commissioner of the Flemish Community; and four in the United Kingdom, namely: (1) Children's Commissioner for England, (2) Commissioner for Children and Young People for Northern Ireland, (3) Commissioner for Children and Young People for Scotland and (4) Children's Commissioner for Wales.

Seven of the nine experiences are organised as stand-alone institutions specifically and exclusively dedicated to the promotion and protection of children's rights and needs. The Ombudspersons of the Autonomous Communities of Catalonia and Basque Country represent an exception to this general trend. In fact, in these two cases, the Coordinator for Children for the Autonomous Community of Basque Country and the Deputy for Children for the Autonomous Community of Catalonia are entities subsumed within the relevant communitarian General Ombudsperson. Only in the United Kingdom has the figure of the Commissioner for Children been created in all four national entities composing the State's specific organizational structure – Wales, Scotland, England and Northern Ireland, whereas in the other two countries the figure of the Ombudsperson for Children is present only in some of the Communities making up the State structure. In Belgium, such an institution is present only in the French Community and in the Flemish Community, whereas in Spain it has been developed in only three of the seventeen Spanish Autonomous Communities: Catalonia, Madrid and Basque Country.

In making an evaluation of the characteristics of the establishing legislation of all nine experiences we took into consideration that almost all were created through separate legal provisions specifically dedicated to the establishment of the specific institution. The only exceptions were the Deputy for Children of the Autonomous Community of Catalonia, the Coordinator for Children of the Autonomous Community of Basque

Country, and the Children's Commissioner for England. In these last three cases, the figure of the Ombudsperson for Children was created by legal provision subsumed within a law not exclusively dedicated to the creation of the Ombudsoffice. To be precise, for the Catalan Deputy and the Basque Coordinator, the setting-up provisions are contained in the legislation establishing and regulating the office of the General Ombudsperson in both the relevant Autonomous Communities. The Catalan Deputy and the Basque Coordinator are both entities subsumed within the general communitarian ombudsperson. A unique case is that of the Commissioner for England, a stand-alone institution established through legal dispositions contained in the Children Act, a general legal provision determining the powers and the responsibilities over childhood and adolescence attributed to England.

An additional distinction is that the Catalan Deputy for Children is a specific child division with its own staff entirely dedicated to the protection and promotion of the rights and interests of the child explicitly stated by the legislation establishing the office of the Catalan General Ombudsperson. The Basque Coordinator for Children, subsumed within the office of the Basque General Ombudsperson, is similar to a specific child division entirely dedicated to the protection and promotion of the rights and interests of the child, and the head of this division is the Coordinator del Area del Menor. But conversely to what happens in the Catalan case, the presence of the Basque coordinator is not mentioned in the law establishing the position of General Ombudsperson. Thus, the existence of this specific division is not guaranteed by the law and is essentially entrusted to the discretion of the person holding the Ararteko - General Ombudsperson - position.

Through the wording of the establishing laws, it seems that the setting up legislation for the Ombudsperson for Children represents in the majority of the cases a further measure extending and giving specific form to the recognition of the CRC within the regional reality and the implementation of the CRC principles. In relation to this point, it needs to be underlined that in seven out of the nine cases<sup>8</sup>, the establishing laws contain an explicit reference to the UN Convention on the Rights of the Child. In fact, in certain cases the law underlines from the preamble the particular intention to promote and implement the rights of the child as set down by the CRC,

<sup>8</sup> French Community of Belgium, Flemish Community of Belgium, Autonomous Community of Madrid, England, Wales, Northern Ireland, Scotland.

which is considered as a specific doctrinal and professional core<sup>9</sup>. In other words, it is represented as the core principles to which the work of the Ombudsperson must be committed<sup>10</sup>. An exception to this trend is the legislation setting up the Catalan Deputy and the Basque Coordinator, which do not refer to the Convention on the Rights of the Child.

As far as the independence factor is concerned, it is explicitly mentioned in only five out of the nine cases under discussion<sup>11</sup>. However, it is worth underlining that the establishing legislations in these five cases dedicated a variegated range of attention to this element. In certain cases, it is only mentioned as a way of intervention to which the Ombudsperson must adapt his/her work methods; in other cases it is the subject of a specific section of the establishment provision. The latter is the case for Scotland whose legislation dedicates a specific paragraph to the independence factor, stating that the Commissioner is not subject to the direction or control of any member of Parliament, any member of the Scottish Executive or of the Parliamentary corporation, providing more emphasis on this element.

The presence of such explicit reference to the independence factor cannot be considered in itself a guarantee of the effective independence of the Ombudsperson's work. In fact, other elements foster the effective independence and impartiality of the Ombudsperson for Children. Among the relevant elements are: the establishment of legislation; the definition by law of the appointment procedure; the identification of the eligibility criteria; the causes leading to removal from office and the removal procedures themselves; the listing of mandate incompatibilities; the recognition of specific immunity; and the power of the Ombudsperson for Children to organise his/her own work and to freely establish the priorities of the work of the office.

There are only two experiences, among those analysed, that, in addition to the explicit reference to the independence of this kind of institution, include in the legislation the creation and regulation of the figure of the Ombudsperson for Children and the element which goes to enhance and strengthen the independence and impartiality of the figure: the legislation establishing the Children's Rights Commissioner of the Flemish

<sup>9</sup> Law 5/1996 of 8 July on the Ombudsman for Children of the Autonomous Community of Madrid BOCM 17 July BOE 25 November, Preamble, par. 1.

<sup>10</sup> Children Act 2004 for England.

<sup>11</sup> French Community of Belgium, Flemish Community of Belgium, Autonomous Community of Catalonia, Autonomous Community of Madrid and Scotland.



Community and the El Defensor del Minor (Ombudsperson for Children) for the Autonomous Community of Madrid.

Another element that is considered to be an indicator of independence is the recognition of the Ombudsperson's power to make his/her own work plan without interference or judgment on the part of other authorities. In a transversal manner, but with a different level of autonomy, this element is present in all the legislation under consideration. The different levels of autonomy are related to the fact that in certain cases this autonomy is limited by the intervention of a State authority. This is the case of the Delegate-General for Children's Rights of the French Community. In this case, for each mandate of the Delegate, the Council of the French Community (Parliament) lays down a non-exhaustive list of priorities within which the Delegate should operate. This would seem to be a limitation on the autonomy and independence of the Delegate-General in drawing up and identifying his/her work priorities, as consequently the priorities of the agenda are not identified entirely by the Delegate-General in the exercise of the office functions, but partially by the Council of the Community. In other cases, the power to have freedom in drawing up the office work plan is subject to the approval of the authority to which the Ombudsperson is responsible. An example of this second case is provided by the El Coordinador del Area del Menor (Coordinator for Children) for the Autonomous Community of Basque Country, which has the autonomy to set its own priorities and a specific work plan which has to be approved by the Head of the Office, the Basque General Ombudsperson.

As always, reference to the independence factor is another important aspect and it is related to the allocation of adequate economic and qualified human resources. Comparing the contents of the establishing legislation, in eight out of the nine cases under discussion, the Ombudspersons are empowered with a specific multidisciplinary staff. In general, the Ombudsperson for Children can rely on a team of collaborators with a multidisciplinary background and skills including criminologists, jurists, experts in communication, paediatricians, nurses and social workers. The only exception is represented by the Coordinator for Children of the Autonomous Community of Basque Country which, as mentioned above, is not explicitly established and regulated by the general legal provision setting up the office of the Basque General Ombudsperson. The law does not provide it with any specific staff and, in practice, it seems that the Coordinator cannot rely on a specific staff, his/her office being composed of only one permanent figure - the Coordinator. When seeking support he/she can, in case of necessity, make use of the human resources and competences already present in the office of the Ararteko with the

authorization of the latter. A position between the two described is the one held by the Deputy for Children of the Autonomous Community of Catalonia which can rely, in addition to the unit dedicated to children, on the multidisciplinary team of the *Sindic de Greuges*.

Of course, the presence in the law of such provisions does not ensure the effective independence of the Ombudsperson's work. Evaluation of this aspect would probably require further research, but what it is possible to say now, is that, without doubt, the presence of such provisions in the setting-up legislation contributes to the strengthening of the accountability of the Ombudsperson figure within the regional reality of intervention.

### **3.1.2 Mandate and competences**

Analysing the characteristics of the nine Ombudspersons for Children under discussion on the basis of the provisions contained in the establishing legislation, it is possible to notice that, first of all, the duration of the mandate is, in the majority of cases, five years. Exceptions to this trend are the Delegate General of the French Community of Belgium, with a mandate of six years, and the Commissioner for Children of Wales, whose mandate lasts for seven years. Furthermore, almost all cases taken into consideration have a mandate that is renewable at least once. Only the Commissioner of Wales, which has the longest mandate registered, cannot be renewed, whereas the Coordinator for Children of the Basque Autonomous Community can be renewed continuously according to the will of the relevant General Ombudsperson.

Referring to the content of the mandate, all the legislation under discussion states that the essential aim of the Ombudsperson office is to operate for the promotion and safeguarding of children's rights within the territory of competence. To enable reaching this objective the Ombudsperson's general functions are generally recognised to be as follows: (1) the promotion of awareness and understanding of the rights of children and of the United Nations Convention on the Rights of the Child; (2) the monitoring of the laws, policies and practices relating to the rights of children, paying special attention to the adequacy and effectiveness of these instruments in facing the childhood conditions and needs within the country; (3) fostering the best practices and their replication by service providers; (4) promoting, entrusting, undertaking and publishing research on childhood and related fields; and (5) encouraging the participation of children and the dissemination of information relating to their views and opinions. Moreover, all the Ombudspersons analysed monitor the follow-

up of the Concluding Observations formulated by the Committee on the Rights of the Child.

Moreover, on the basis of the provisions of the establishing legislation, the majority of the experiences share the common task of monitoring the legal provisions adopted and in force within their territorial jurisdiction. This task is fulfilled not only in relation to the legislation adopted before the ratification and entering into force of the CRC, but also in relation to newly adopted laws and their necessity to comply with the CRC principles (harmonization process). Thus, the Ombudspersons promote the harmonization of the legislation in order to have legal instruments in line with the CRC approach. This activity is essentially carried out through the submission of legislative proposals or the suggestion of legal reforms.

Regarding the reactive role of the Ombudspersons for Children, it is interesting that almost all of them are authorised to receive individual complaints, the only exceptions being England and Scotland. In fact, in these two cases, the establishing law imposes a limitation to the Ombudsperson's powers. They are able to receive and investigate or inquire into individual complaints and alleged violation of children's rights as those are enshrined by the CRC only in specific circumstances. The Commissioner for Children of England is not, in fact, authorised to receive and handle individual complaints. The only exception to this rule is provided explicitly by the Children Act 2004, in which it is stated that the Commissioner can initiate an investigation related to an individual complaint only where he/she considers that the case of an individual child raises issues of public policy of relevance for other children<sup>12</sup> or raises issues of interest for a group of children<sup>13</sup>. This extension of competences arises from the necessity to draw up recommendations concerning those issues, with the aim of finding a solution to similar cases and preventing future violations of the CRC principles and rights. A similar provision is contained in the law setting up the Scottish Commissioner for Children and Young People, who can initiate an activity of investigation if, on the basis of the evidence and information received about the matter, it emerges that the case to be investigated raises an issue of particular significance to children, or to particular groups of children, and that the investigation

<sup>12</sup> Article 3.1, Children Act 2004.

<sup>13</sup> Article 4.1, 3 and 4, Children Act 2004. In this cases the Secretary of State is charged with the responsibility to publish as soon as possible all the report received after such enquires by the Children's Commissioner.

would not duplicate the work of other bodies<sup>14</sup>. In addition, the law states that in three cases the Commissioner may not carry out an investigation, namely, when the issue: (1) relates to a reserved matter; (2) relates only to an individual child; or (3) relates to the making of decisions or taking of action in particular legal proceedings before a court or a matter which is the subject of legal proceedings already being handled by a court or tribunal<sup>15</sup>.

The Ombudspersons examined here all share the authority to carry out investigations and inquiries related to the collective cases submitted to their attention. As a consequence, they all have the general authority to require any person to provide evidence on any matter included within the terms of reference of an investigative procedure or to produce documents under the custody or the control of that person. They have the power to access data and, in certain cases, to access any administrative record or document relating to the activity or service under investigation<sup>16</sup>. In other cases, the requirement to give evidence or produce documents must be communicated in writing in advance to the person concerned, specifying the time and place at which the person is to appear before the Ombudsperson, and the particular subjects concerned, or the documents, or types of documents, which that person is to be required to produce, the date by which that person is to produce them, and the particular subjects concerning the investigation<sup>17</sup>. Another particular case is that represented by the Delegate General of the French Community of Belgium. On the basis of its establishing legislation the Delegate has the authority to enter any public building during working hours and demand that the staff provide her/him with any papers and information s/he requires, with the exception of confidential medical or professional papers. In doing so, the Delegate can ask for a reply to be produced within a certain deadline which is fixed by the Delegate General, and which must be respected by the staff of that office or department. In the

<sup>14</sup> Par. 6 *General powers* of the Commissioner for Children and Young People (Scotland) Act 2003 adopted by the Scottish Parliament this Act was passed by the Parliament on 26<sup>th</sup> March 2003 and received Royal Assent on 1<sup>st</sup> May 2003.

<sup>15</sup> Par. 7.3 *Carrying out investigations*, Schedule 1 of the Commissioner for Children and Young People (Scotland) Act 2003 adopted by the Scottish Parliament this Act was passed by the Parliament on 26<sup>th</sup> March 2003 and received Royal Assent on 1<sup>st</sup> May 2003.

<sup>16</sup> Among the other an example of such authority is provided by the case of the *Defensor del Menor* of the Autonomous Community of Madrid.

<sup>17</sup> Among the other an example is the one of the Scottish Commissioner for Children and Young People.

case of the Delegate General, with the aim of strengthening the investigative requests formulated by the Ombudsperson, the office has the right to present a formal appeal before the government or the judicial power in all those cases in which the Ombudsperson has not received an answer to his/her request for information from the addressed institutions within the fixed deadline<sup>18</sup>.

In addition to having access to data, the power to enter buildings in which services dedicated to childhood and adolescence are provided is also connected to the investigative activity. Normally this authority is exercised without the consent of an external authority and without any previous notice announcing the visit of the Ombudsperson. In certain cases, it can be carried out only in public buildings dedicated to children such as schools, care centres, hospitals, and detention centres. In other cases, the Ombudsperson has the authority to enter any public building during working hours, and the same power can be exercised in relation to private buildings in which a service receiving financial support from the public central or local authority is carried out<sup>19</sup>. For example, the Basque Deputy monitors the work of both private and public institutions dedicated to child-care activities, schools, detention centres, and health care institutions.

From the cases analysed, it emerges that only two out of the nine discussed provide forms of legal support to children and intervene in legal proceedings, these being the Northern Ireland Commissioner and the Welsh Commissioner for Children. In particular, as far as the Northern Ireland case is concerned, the Commissioner has the power to bring proceedings (with the exception of criminal proceedings), intervene in any proceedings, and act as *amicus curiae* in any proceedings involving law or practice concerning the rights or welfare of children. The Commissioner can exercise his or her power of intervention only if s/he believes that the case raises a question of principle that could affect other children or there are special circumstances which make it appropriate for the Commissioner to intervene. Moreover, assistance in legal proceedings must be granted by the

<sup>18</sup> Among the other this is the case for the Delegate General of the French Community of Belgium, for the Scottish Commissioner for Children and Young People, the *Defensor del Menor* of the Autonomous Community of Madrid, the Commissioner for Children of England and the Commissioner for Children of Wales.

<sup>19</sup> This is the case of the Delegate general of the French Community, the Commissioner for children of the Flemish Community of Belgium, the Deputy for Children of the Autonomous Community of the Basque Country.

Commissioner when the child, or children, involved lack the possibility of being adequately assisted by another person or entity. This kind of legal assistance includes legal advice or representation, and any other assistance as well as the recovery of the child/children involved if the Commissioner thinks it is necessary in relation to the circumstances<sup>20</sup>.

The Welsh Commissioner can also assist children in making a complaint or represent them against a provider of regulated children's services in Wales, or in any prescribed proceedings. In the cases considered by the establishing legislation, this assistance includes financial assistance, arranging for representation, as well as providing advice or assistance by any person. Moreover, in all those cases in which the Commissioner has not the power to take into consideration or effect legal representation, s/he can nevertheless bring the issue concerned before the Assembly, provided the matter affects the general rights or welfare of children in Wales<sup>21</sup>.

In conclusion, another interesting element emerges from the comparison of the cases taken into consideration: this is the fact that even though the Ombudspersons described above are all dedicated to the promotion and protection of children's rights and to the implementation of the CRC, only in four cases does the establishing law contain an explicit reference to the obligation for the Ombudsperson to work in regular and strict collaboration with children. These are the Deputy of the Flemish Community of Belgium and the Commissioners of England, Northern Ireland and Scotland. For example, in the case of Scotland, the establishing Act lists the involvement of the children as one of the functions of the Commissioner's mandate. Moreover, the Commissioner of Scotland must, in addition, provide adequate interventions to communicate with the most vulnerable groups of children and be constantly informed about their needs and opinions, taking into due consideration their difficulty in accessing adequate means by which they can make their views known<sup>22</sup>. A similar provision is contained

<sup>20</sup> Para. 15 Assistance in relation to legal proceedings of the Order No. 439, The Commissioner for Children and Young People (Northern Ireland), adopted on 27 February 2003.

<sup>21</sup> Para. 5, *Additional power of consideration and representation* of the Commissioner of the Children's Commissioner for Wales Act 2001.

<sup>22</sup> Para. 6 Involving children and young people of the Commissioner for Children and Young People (Scotland) Act 2003 adopted by the Scottish Parliament this Act was passed by the Parliament on 26th March 2003 and received Royal Assent on 1st May 2003.

in the Flemish establishing law, in which the Commissioner is required to pay special attention to:

dialogue with children and with organizations providing individual and collective services to children, and operating in the field of the defence of their interests;

children's social participation and accessibility for all children to services and organizations that concern them;

monitoring conformity with the Convention of the acts, decrees, executive decrees and orders, including the procedural regulations on matters falling within the competence of the Flemish Community or the Flemish region;

dissemination of information on the content of the Convention, particularly in the interests of the child<sup>23</sup>.

However, it needs to be underlined that in the other cases, even though the law provides no reference to the involvement of children in the work of the Ombudsperson, in discharging the office tasks, the Ombudsperson do work in partnership with children. This is accomplished through direct contact with children, paying visits to the settings in which they are present, such as schools, child-care institutions, detention centres, and health centres, and by organising meetings at the office of the Ombudspersons to which children are invited to participate. With reference to this last point, it is worth mentioning that in the case of Wales, the involvement of children, even if it is not stated by the establishing law, is carried out in a constant and effective manner in daily practice. In fact, in order to be in regular contact with the children under the Commissioner's jurisdiction and to involve them in the work of the office, two young people's advisory groups have been created. Their main function is to advise the Commissioner's office on its work with children and young people. The two groups support the Commissioner in planning the work and they also take part in some of the work with children developed by the Commissioner.

### **3.1.3 Mechanisms of coordination between the different ombudspersons for children.**

Of the three countries analysed, only the United Kingdom presents a structured system of coordination among the four regional Ombudsperson

<sup>23</sup> Article 5 of the 15<sup>th</sup> July 1997 – Decree creating a Commissioner for Children's Rights and establishing the post of Commissioner for Children's Rights.

figures present – Wales, Scotland, England, and Northern Ireland. In fact, in the other two countries, namely Belgium and Spain, such a system had not been created.

As far as the collaboration activities between the Ombudspersons present in the two latter countries – Spain and Belgium - is concerned, it needs to be clarified that there is no reference in the establishing legislation of either of these offices to the necessity of sharing information and experiences and/or setting up a system of more structured collaboration with the other existing independent institutions dedicated to the promotion and protection of children's rights at federal or community level. Thus, both the Spanish and the Belgium experiences led essentially to the development of an informal and unstructured activity of cooperation, which relies only on the good will and personal attitude of those holding the position of Ombudsperson respectively in the two countries. In fact, there are forms of collaboration and cooperation between these institutions only in those cases that could be of common interest, or that could be settled only through an intervention undertaken in partnership.

However, the Spanish and the Belgium experiences present two essential differences related to the structural organization of the Ombudsperson offices existing in the countries. As far as the Spanish case is concerned, there are three different entities which have developed respectively in three of the Autonomous Communities of Spain, namely: El Coordinador del Area del Menor (Coordinator for Children) for the Autonomous Community of Basque Country, El Defensor del Minor (Ombudsperson for Children) for the Autonomous Community of Madrid, and the Deputy for Children for the Autonomous Community of Catalonia. The figure of the Ombudsperson for Children that has developed in Spain follows two different organizational structures. Two of them are figures subsumed within the office of the General Ombudsperson – this is the case of the Coordinator for Children for the Autonomous Community of Basque Country and the Deputy for Children of the Autonomous Community of Catalonia – whereas the Ombudsperson for Children of the Autonomous Community of Madrid represents the only exception as a stand-alone institution dealing exclusively with children's rights and interests. Due to the different organizational structures, it can be argued that (1) a structured and regulated system of coordination is present between the two Ombudspersons organised as figures subsumed within the office of the General Ombudsperson of the relevant Autonomous Community – Basque Countries and Catalonia - whereas (2) informal channels of collaboration and coordination have developed among the three Spanish Ombudspersons on the basis of the personal commitments of those holding the



Ombudsperson positions. In particular, the first – the structured and regulated system of coordination - was created by the wording of legislation establishing the positions of the General Ombudsperson for Children respectively in the Basque and Catalan Communities. The law states that these General Ombudspersons must cooperate or refer to the federal General Ombudsperson - Defensor del Pueblo - for the solution of all those cases that fall under the competence of the central State authority or in those cases related to cross communitarian issues or to the alleged violation of children's rights by an authority of the central State<sup>24</sup>. In other words, like the pertinent General Community Ombudsperson, the Coordinator for Children of the Basque Countries and the Deputy for Children of the Autonomous Community of Catalonia, hold a regional/local jurisdiction. If the case or the issue addressed falls under the authority of the central State's bodies, the Coordinator or the Deputy are, due to a question of competencies, and in order to handle the case successfully, obliged to refer the case, through the intervention of their General Ombudsperson of reference, to the Defensor del Pueblo, the Spanish Ombudsperson of the Central State.

In a certain manner, the Spanish system of collaboration is designed primarily to provide an effective solution to those situations in which the General Communitarian Ombudsperson handles a case that has some implication beyond its own jurisdiction. In these two cases, the Coordinator for Children of the Basque Countries and the Deputy for Children of the Autonomous Community of Catalonia are entities subsumed to the relevant General Communitarian Ombudspersons of their respective Community and, as a consequence, are obliged to adhere to the prescriptions provided by the establishing legislation and to the process described above. Of course, this kind of interaction covers only the aspects of the work of the Coordinator and of the Deputy dealing with an absence of competence in specific fields, but it does not include or regulate eventual forms of collaboration related to the sharing of experiences and knowledge. This latter aspect of the collaboration and cooperation activities falls within the so-called informal way of sharing knowledge, experience, and practices.

<sup>24</sup> On this point see for the Autonomous Community of Catalonia, Act 14/1984 of March 20, on the "Sindic De Greuges" (Ombudsman or Parliamentary Commissioner) amended by Act 12/1989 of November 29 and for the Autonomous Community of the Ley 3/85, de 27 de febrero, por la que se crea y regula la Institucion del "Ararteko" published in BOPV nº 63, de 22 de marzo de 1985. For the full text of these laws.

This informal manner of collaboration, which exclusively characterises the relationship and the interactions between the two Belgian Ombudspersons for Children, is based on their personal interest and dedication to addressing children's cases and issues under their attention in the best possible manner. The fragility of this kind of system of partnership lies in the fact that a collaboration of this type is essentially based on the personal attitudes and wisdom of those holding the positions of children's Ombudsperson within the communities. As a consequence, because of the absence of legal provisions or the development of consolidated practices in this direction, this partnership exists only as long as there is a true commitment and good judgment on the part of the people appointed.

In this context, the United Kingdom represents an exception when compared to the other two realities. Conversely to what happens in Belgium and in Spain, the United Kingdom is characterised by two elements: (1) the presence of four Commissioners for children, one in each of the four national entities of The United Kingdom, namely the Children's Commissioner for England<sup>25</sup>, Commissioner for Children and Young People for Northern Ireland<sup>26</sup>, Commissioner for Children and Young People for Scotland, and Children's Commissioner for Wales<sup>27</sup>; and (2) the creation of the British and Irish Network of Ombudsmen and Children's Commissioners (BINOCC) .

The necessity to develop such a system of exchange is founded on the fact that even though the four UK Commissioners for Children hold a mandate appropriate to their own local circumstances and the needs of the children within their nation, they do work together for the benefit of all children living in the United Kingdom. Composed of the four UK Commissioners and the Ombudsperson for Children from the Republic of Ireland, the BINOCC has the aim of facilitating their overlapping roles and developing a common approach in order to share information and carry out joint activities and interventions, in particular on issues concerning the British Isles as a whole<sup>28</sup> .i

<sup>25</sup> Children Act 2004.

<sup>26</sup> The Commissioner for Children and Young People for Northern Ireland Order.439/2003.

<sup>27</sup> Commissioner of the Children's Commissioner for Wales Act 2001.

<sup>28</sup> Third and fourth periodic reports of United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/4, 25 February 2008, par. 50. For more information about the British and Irish Network of Ombudsmen and Children's Commissioners (BINOCC) please see the website [www.binocc.org](http://www.binocc.org).

The presence of the BINOCC provides the UK Commissioners with the opportunity to have an arena for the exchange of information and practices, discussion about the issues of major interest, planning of common work, and decisions relating to strategic communications activity. Moreover, a consolidated practice of the BINOCC is to give to the Ombudspersons of the five jurisdictions the possibility to organise informal visits between offices, in order to improve staff knowledge and skills through the sharing of information and experiences between the existing Ombudspersons.

Of the countries analysed, the United Kingdom is the only country having a structured experience of coordination and collaboration of work amongst its Commissioners for Children. This strengthens the position of each of Commissioners and their accountability in relation to public opinion and the entire UK community.

This form of collaboration is strengthened by the presence of a system of subsidiarity of intervention set down by the Children Act 2004. The system rests on the foundation that the Children's Commissioner for England is responsible for England and for not-delegated issues affecting children and young people in Scotland, Wales, and Northern Ireland. This has a strong impact, increasing the necessity to effectively coordinate the intervention of the Commissioners of Scotland, Wales and Northern Ireland with the intervention of the English Commissioner in order to avoid overlapping of action or dangerous omissions of intervention. In this regard, the Children Act 2004, which established the Children's Commissioner in England, provides the identification of the Commissioner's competences over its geographical territory. To provide an example, the English Commissioner has the function of promoting awareness of the views and interests of children in Wales, Scotland and Northern Ireland except in so far as relating to any matter falling within the remit of the Children's Commissioner of that nation. In doing so, it must take into account the views of, and any work undertaken by, the Commissioner for Children of the intervening jurisdiction. This structural organization and distribution of competences bestowed on the English Commissioner is a residual competence in the other national realities. It also attributes the office with monitoring power over the work of the other UK commissioners, providing it with the opportunity to initiate investigation when the matter could be of public interest or could involve other children beyond the territory of the nation involved.

## **Conclusion**

The sovereign State, because of its political dominance, is still considered the central institution and the central mechanism by which

contemporary international society attempts to implement international human rights, and they are recognised by the adopted international instruments. After the adoption of the Universal Declaration of Human Rights in 1948, States have progressively accepted as an obligation the task of implementing internationally recognized human rights (Donnelly, 1999). This represents the principal basis for the establishment of Human Rights Institutions and, as a consequence, of the Ombudsperson for Children.

By the end of the 20th century, the legal provisions recognising and regulating human rights became fully internationalized. However, even though the decentralization process of State structures in Europe has been underway, in a most vivid manner, since the 1970s, and local government reforms have increased in speed in the last decade, the implementation and enforcement of the human rights international norms remain to be realized fully at the national level. Notwithstanding, in daily practice, national or central governments of federalised or regionalised States rarely exercise direct power over the issues that are of most immediate concern to the vast majority of the world's people. Regional or federal governments often are more relevant because, they tend to monitor the operation of schools, hospitals and health centres; grant or withdraw entitlements to land, water and other resources; recognise property rights and licenses; settle local disputes; and enforce personal civil laws (marriage, divorce etc.) (Bird et al., 1999).

To these elements needs to be added that the main international instruments promoting the creation of the figure of the Ombudspersons for Children are characterised by a soft-law nature. The so-called Paris Principles, dedicated to the delineation of the status and functioning of National Institutions for the protection and promotion of human rights, have become an important benchmark for the effective setting up of these kinds of human rights bodies, through the legitimization received by the different UN treaty entities. In the case of children's rights, this legitimization came through the General Comment no. 2 issued by the Committee on the Rights of the Child. The implementation of Ombudspersons for Children strongly relies on the idea endorsed by the General Comment no. 2 that the establishment of a national Ombudsperson for Children has become something of a "norm" for the implementation of the CRC.

The motivation for regional governments to establish national children's rights institutions is partially due to the ratification of international instruments for the protection of human rights. CRC State Parties are supposed to demonstrate that they intend to, or that they already do, effectively implement human rights in their societies. Depending on the

political composition of each government, States may express a high or a small degree of political will to let human and children's rights influence their public policies. There is no doubt that the existence of Ombudspersons for Children and national independent human rights institutions create better conditions within countries thanks to the establishment of official mechanisms to monitor, denounce, and prevent violations of human and children's rights (Pinheiro & Baluarte, 2000).

From the analysis carried out here, the Ombudsperson for Children, as all other national human right institutions, emerges as a potential effective interface between the treaty bodies and the national human rights and children's rights protection system. Regional, cantonal, or community Ombudspersons for Children should play the same role, except that they should perform it between the regional governments and international treaty bodies. Unfortunately, this is not yet the case, mainly because, for the moment, the role of the regional governments in implementing the international State obligations is not recognised as such (Williams, 2011). Therefore, the regional Ombudsperson, who develops direct or indirect forms of interaction with the CRC Committee and international stakeholders like the ENOC, contributes to the creation of the so-called 'collaborative activism.' This runs counter to what is prescribed by the CRC Committee (CRC Committee 2003a) and paradoxically does not always include, in the synergic process of interaction, the complete range of administrative and political mechanisms operating at the local and national level. In short, the regional governments are currently not fully included in the 'collaborative action' mandated by the Committee, though the process will probably be completed with the involvement of all actors, once the role of the regional governments in the implementation of international obligations is recognised.

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<sup>i</sup> Third and fourth periodic reports of United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/4, 25 February 2008, par. 50. For more information about the British and Irish Network of Ombudsmen and Children's Commissioners (BINOCC) please see the website [www.binocc.org](http://www.binocc.org).