



Article 12 of the Convention on the Rights of the Child:



Taking their views into account

**Global
Monitoring**
status of action against commercial
sexual exploitation of children

Article 12 of the Convention on the Rights of the Child:



Taking their views into account

ECPAT International is a global network of organisations and individuals working together to end child prostitution, child pornography and the trafficking of children for sexual purposes. It seeks to encourage the world community to ensure that children everywhere enjoy their fundamental rights free and secure from all forms of exploitation.

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Designed by Manida Naebklang

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PREFACE

As ECPAT International launches updated 2nd Edition Country Monitoring Reports on the status of action against commercial sexual exploitation of children, the ECPAT International Secretariat is preparing a series of technical journals that allows a more systematic country by country comparative analysis of progress on implementation on the Stockholm Agenda for Action (A4A). An in-depth global analysis, identifying and contrasting lessons learnt and experience among countries can stimulate a richer dialogue of the more effective action, gaps and recommendations in advancing positive change for children and to protect their right to live free from sexual exploitation.

This first ECPAT 'A4A' Journal is focused on the growing importance and recognition given to child and youth participation in the fight against commercial sexual exploitation. It is now a separate and defined section of the 2nd Edition Country Monitoring Reports and this journal draws on learning and experience of children and young people's involvement in programmes and projects; in research and evaluations; community awareness raising and policy advocacy; and in mobilizing children and youth through peer support programmes, networks and clubs. Much of the work is being led by ECPAT groups themselves.

Article 12 of the Convention on the Rights of the Child is examined in two papers in this journal. The first focuses on the concept of children's citizenship and the

differing views, debates and definitions of children's citizenship that have resulted in the neglect and poor realisation of children's citizenship rights worldwide. In relation to ECPAT's core mandate, the paper illustrates how vulnerable and exploited children's place and influence in society (plus societal blocks) has prevented their participation in social, civic or political initiatives. The paper concludes by showing how the participation of vulnerable children can lead to enhanced resiliency, empowerment and improved competencies which can be a significant asset to civil and political engagement – both in the present and in later life.

The second paper examines the important role of National Human Rights Institutions in promoting and protecting the rights of children. In particular, it explores the on-going debate of whether establishing single and specialised bodies or integrated NHRIs are most effective at safeguarding children's rights. The unique role of NHRIs in promoting children's participation is illustrated as a strategy to improve effectiveness, accessibility and accountability of the institutions.

This ECPAT Journal reinforces the ECPAT network's belief in the importance of children's participation and the significant impact it can bring in facilitating their active role in protecting other children from abuse and exploitation as well as to accelerate their own sense of empowerment as social actors.

PART 1

The meaning of citizenship for vulnerable and exploited children

Introduction: The importance of recognising children's citizenship

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The United Nations Convention on the Rights of the Child is an extremely comprehensive treaty on children's rights, embracing what Cantwell (1989) refers to as the 'three Ps' – rights to protection, provision (of services and materials necessary for well-being), and rights to participation in society and in decisions affecting the child himself/herself. The 'participation' rights are substantive and are reflected throughout the entire treaty, presenting children as able participants in society, building their capacity for active citizenship. Article 12 of the Convention, a unique provision in a human rights treaty, offers to 'the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the

view of the child being given due weight in accordance with the age and maturity of the child'. This formulation affirms that it is in both children's and the state's best interest to facilitate the participation of child citizens as they grow and mature (Van Bueren, 2011). Indeed, the Committee on the Rights of the Child at its first session (1991) has identified article 12 as one of the four general principles of the Convention¹, establishing it as not only a right in itself, but to be considered in the interpretation and implementation of all of the other rights.

Article 12 of the Convention on the Rights of the Child provides:

"1. State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

¹ Note: the other three general principles being the right to non-discrimination, the right to life and development, and the primary consideration of the child's best interests.

For ECPAT International, the responsibility to promote children’s participation has been heightened by the prominence that child and youth participation has been given in the Stockholm Declaration and Agenda for Action against Commercial Sexual Exploitation of Children (1996), often referred to as ‘soft law’, which also strengthens states’ obligations under the Convention on the Rights of the Child (CRC, Article 12 and also 13, 32, 34, 35 and 36). The Second World Congress in Yokohama and the more recent World Congress III in Rio de Janeiro, Brazil, reaffirmed this commitment.

Article 12 of the CRC has been hugely important in various programmes and advocacy work to give children and young people a voice to be listened to and taken seriously in a wide range of matters of concern to them. However, understanding and interpreting

what it means for children to: exercise participation rights as citizens; be defined as being ‘capable of forming his or her own views’; and what ‘due weight in accordance with the age and maturity of the child’ actually means can lead to widely differing approaches and acceptance of children’s involvement in decision making processes. The evolution of children’s citizenship is often deeply rooted in historical norms and practices in societies across the world about what is acceptable and appropriate. The Committee on the Rights of the Child (2006) held a Day of General Discussion on Article 12 in order to better understand the linkages to the other CRC articles and the challenges and lessons learnt in realising this right. This then led to a General Comment (Committee of the Rights of the Child, 2009) on Article 12, which provided a legal analysis of the two paragraphs of the article and the basic requirements for the full implementation of this rights.

The International Human Rights Regime and its promotion of child participation over the last decade

(adapted from: Karkara, 2011; email circular)

- 2011: UN Special Representative on Violence against Children welcomes the adoption of a new protocol to the Convention on the Rights of the Child introducing a system of individual complaints for children (http://srsg.violenceagainstchildren.org/story/2011-06-21_351)
- 2011: Committee on the Rights of the Child General Comment 13: *The right of the child to freedom from all forms of violence (CRC/C/GC/13)* “Children’s rights to be heard and to have their views given due weight must be respected systematically in all decision-making processes, and their empowerment and participation should be central to child caregiving and protection strategies and programmes” (http://srsg.violenceagainstchildren.org/document/crc-c-gc-13_368)

- **2011: Resolution adopted by the Human Rights Council (A/HRC/RES/16/12) 16/12 Rights of the child:** *a holistic approach to the protection and promotion of the rights of children working and/or living on the street. " Reaffirming that it is essential for States to take all appropriate measures to ensure the meaningful participation of children, including children working and/or living on the street, in all matters and decisions affecting their lives through the expression of their views, and that those views be given due weight in accordance with their age and maturity,"* (http://srsg.violenceagainstchildren.org/sites/default/files/documents/A.HRC.RES.16.12_en.pdf).
- **2010: Resolution adopted by the General Assembly 64/146. Rights of the child (A/RES/64/146) 64th session** *"The right of the child to express his or her views freely in all matters affecting him or her –Recognizes that the child who is capable of forming his or her own views should be assured the right to express those views freely in all matters affecting him or her, the views of the child being given due weight in accordance with his or her age and maturity, referred to in the present resolution as "the right to be heard"....."* (http://srsg.violenceagainstchildren.org/sites/default/files/documents/a_64_146_welcomes_appointment_srs.pdf)
- **2009: UN General Assembly Resolution on the Rights of the Child (the "Omnibus" resolution)** *..Right of the child to be heard – the resolution details various facets of this right, encouraging children's participation in all settings on matters affecting them. Among other things, Governments are called on to designate, establish or strengthen relevant structures for children, to involve them in enacting the national action plans set out in "A world fit for children", and to ensure the equal participation of girls, including adolescents.*
- **2009: UNCRC General Comment 12** *adopted a General Comment on the Right of the Child to be Heard. This General Comment elaborates in detail the scope of Article 12, and how the Committee expects governments to interpret their obligations to children under its provision* (<http://www.unhcr.org/refworld/type,GENERAL,,,4ae562c52,0.html>).
- **2007: Article 7 of the UN Convention on the Rights of Persons with Disabilities (CRPD)** *Governments agree to take every possible action so that children with disabilities can enjoy all human rights and freedoms equally with other children. They also agree to make sure that children with disabilities can express their views freely on all things that affect them. What is best for each child should always be considered first* (<http://www2.ohchr.org/english/law/disabilities-convention.htm>).
- **2006: Day of General Discussion on Article 12** *in order to better understand the linkages to the other CRC articles and the challenges and lessons learnt in realising this right. Discussions, including with children, involved an exchange of information regarding the expertise and experience of governments, non-governmental organisations (NGOs), community organisations, development agencies and children themselves on implementing the right embodied in article 12.* (http://www2.ohchr.org/english/bodies/crc/docs/discussion/Final_Recommendations_after_DGD.doc).
- **2006: The United Nations Secretary General's Study on Violence against Children.** *"I recommend that States actively engage with children and respect their views in all aspects of prevention, response and monitoring of violence against them, taking into account article 12 of the Convention on the Rights of the Child. Children's organizations and child-led initiatives to address violence guided by the best interests of the child should be supported and encouraged"* (http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf).
- **2002: The World Fit for Children paragraph 32 (i)** *adopted at the UN General Assembly special Session on Children made a strong commitment towards increasing participation of children.*
- **2000: The Millennium Declaration in Article 25** *reaffirms the commitment to work collectively for more inclusive political processes, allowing genuine participation of all citizens (and in this case, children and young people included) in all countries.*

Article 12 is both a substantive and procedural right, meaning that whilst children are entitled to participate in the decisions that affect them, the state has a legal duty to create mechanisms that allow children the right to be heard in any judicial or administrative proceeding affecting them (Lansdown, 2001). All children are born with civil, political, social and economic rights, which are the fundamental building blocks of citizenship. Whilst access to and enjoyment of these rights can vary greatly between groups in society (certain political and economic rights are generally restricted for children), children are members of society and have a vested interest in how their world develops.

However, the notion of a child as a 'citizen' and 'children's citizenship' has remained somewhat ambiguous partly because of children's limitations practicing their economic and political participation rights (Van Bueren, 2011). However, whilst children cannot sign contracts or obtain bank loans, they can receive wages and inherit property and, whilst few children can practice formal political rights (such as voting), they do take part in political movements, campaigns and struggles (Inter-Agency Working Group on Children's Participation 2008). The definition of children's citizenship should therefore not be solely understood in terms of their difference from or similarity to adults, but more based on children's changing needs and growing capacities; otherwise, traditional social constructions will significantly delineate their citizenship status (James, 2011). Cockburn (2005) argues that if children's citizenship is to become meaningful then it must first be contextualised in the dynamic and

changing public arenas that influence and change children's lives on an almost daily basis.

Van Bueren (2011) re-defines children's citizenship as recognising that children are both citizens of a nation-state and of the global community, introducing new terminology such as 'multigenerational citizenship' and 'children as international citizens'. These distinctions are important as they introduce a further facet of citizenship supporting the capacity of the child to act beyond national courts if necessary to reach international human rights bodies such as complaints mechanisms. Feedback and complaints mechanisms, whether they be at local, national or international levels enable children to express their views and to seek support.

Despite the debate about what it means for children to exercise participation rights as citizens, not allowing them to engage in political socialisation and civic engagement will only result in them being construed as second-class citizens with little chance to take part in the societies to which they belong (James, 2011).

Why has children's citizenship been so neglected?

Despite the near universal ratification of the Convention on the Rights of the Child, children's citizenship rights have yet to be systematically interpreted into practical approaches that can lead to meaningful and sustained changes in children's position in society. A number of reasons have been identified for this.

Firstly, the CRC itself has been criticised in light of the limited extent to which it conceptualises children as citizens. Rehfield (2011) argues that thirty-five of the forty-one substantive articles of the CRC focus on the protection and welfare rights of children and that the six articles specifying legal and political rights of children are limited, projecting children as in need of protection and social welfare rather than proactive stakeholders in their own rights.

Where article 12 stipulates “State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in matters affecting the child”, Rehfield (2011) believes that this limits the expression of children’s views to only matters of direct interest to them. Furthermore, children are not given the right to be heard in legislatures as is the case for adults (although some countries have taken the initiative to provide this right), and children’s participation rights are thus executable by an ‘appropriate body’, which Rehfield points out may not include the appropriate oversight of the child in the execution of his or her own rights. These omissions can have far-reaching impacts as they limit children’s ability to challenge states’ decisions concerning their citizenship. Many academics and child rights advocates (Van Buren, 2011; Feinstein and O’Kane, 2009; and the Inter-Agency Working Group on Children’s Participation, 2008) have shown how this has resulted in children having virtually no access to complaints mechanisms and often being excluded from public decision making.

One interpretation of why this happened is that during the drafting of the CRC, it was generally believed that children’s input to law or policy could be best represented by adults exercising citizenship on behalf of children (Van Buren, 2011). Certainly children engaging in public roles can be perceived as a threat to parental and adult obedience, which can also result in significant barriers to and socialisation against children’s involvement (Van Buren, 1995). In many contexts around the world, adults’ perceptions about ‘childhood,’ including children’s capacities and their relationships with adults, can significantly influence the child’s ability to play an active role in their society. For example, in Thailand (ECPAT International, 2011a), as in many Southeast Asian countries, the concept of child participation is not fully appreciated by many adults with cultural perceptions that children should show respect and not question adults and those in authority. In countries where adults largely prescribe the places where children can participate and speak, their citizenship status can remain limited (James, 2011).

In many places around the world, children’s early dependence on adults can result in them being viewed as incapable ‘incomplete adults’ (Sinclair, 2004) or ‘semi-citizens’ (Cohen, 2009). Dahrendorf (1974) believes that the CRC envisaged children as ‘passive citizens’. Qvortrup (1990) describes how children can be reduced to ‘human becomings,’ where they are shielded from public issues and major social discourses. In the Philippines, children are often considered ‘parental property,’ and they are therefore taught to be

submissive and deferent to adults at all times (ECPAT International, 2011b). This attitude can compromise children's ability to defend themselves when being approached by sex abusers, as highlighted by UNICEF (2005), resulting in families being reluctant to bring charges of sexual abuse to the authorities for fear that it can bring shame on the family.

The emphasis in Article 12 to the 'views of the child being given due weight in accordance with the age and maturity of the child' can result in children being interpreted as having a lack of physical, emotional and cognitive capacity that can be used to justify exclusion from active citizenship (Rehfeld, 2011). According to traditional views in Indonesia (ECPAT International, 2011c), children are thought to be devoid of their own ideas, knowledge and experiences (a perception which is reinforced through the emphasis in the education system on discipline and subordination of children over free expression and creativity). Keysaar (2000) however, notes the historical similarities to the struggle of the suffragettes where women were also perceived as lacking capabilities for political maturity. Indeed, in the early 1900s, women were in fact already seen as having sufficient representation via the participation of men.

Should children's welfare be given primacy over children's citizenship?

Much western academic literature appears to reflect the CRC's emphasis on child welfare and protection rather

than children's active participation and membership in society (Moosa-Mitha, 2005). Rehfeld (2011) strongly argues that children's education and welfare must be a priority before space is created for the development of their citizenship capabilities; he describes childhood as 'a naturally precarious time' with millions of children living in unstable environments vulnerable to many threats. James (2011) identifies a primarily northern, and even Christian, slant to automatically viewing children as dependent and in need of protection that fails to acknowledge the everyday realities of children in different parts of the world.

Lister (2007) believes that societies that describe childhood through a more 'deficit model' of children's developmental and protection needs are presenting a 'skewed' picture of their membership in society. James, Curtis and Birch (2008) caution against 'caring too much' as the controls put in place to protect children can also limit their imagination, growth and development. Rehfeld (2011) acknowledges that adults have a desire to promote a healthy childhood that is 'protected from the concerns of adults;' hence he cautions about the potential harm of children engaging in adult discourse. Active citizenship builds trust, responsibility and empowerment, but fears around children's security and welfare often mean that their participation in many parts of the world is sidelined. Indeed, where children are not credited with human agency they are particularly vulnerable to breaches of their rights leading to neglect, exploitation and violence (Pinheiro, 2006). Without being able to practice their citizenship rights, children become more vulnerable, not less.

Child-headed households, for example, need to be able to access social security payments and have the necessary legal recognition to meet their basic needs (Van Bueren, 2011). Children in institutions, child labourers and children in emergency situations are less likely to be abused and exploited if they have a chance to express their views and call for accountability and justice (Inter-Agency Working Group on Children's Participation, 2008).

Furthermore, derogation of Article 12, in light of the primacy of welfare, overlooks the very specific benefits of children's right to participation that see these children taking on leadership roles within their communities, building their sense of resilience and empowerment, whilst at the same time enabling social mobilisation in the struggle against violations of their rights. For the many children who have survived sexual exploitation, NGO supported initiatives have enabled them to progressively play an active role in the design, implementation, decision making and monitoring of counter action initiatives, enabling them to become positive actors in decisions that affect their care and future (ECPAT International, 2006). Activities have included peer to peer support, community awareness raising and engagement and policy influencing and advocacy. Goulet (2001) examined good practices working with sexually exploited youth in the Americas; Black (2003) researched working children's participation in countries in Latin America and South Asia; O'Kane (2004) examined the role of working children in India who are challenging the status quo regarding children's place

and power in society; and Newman (2005) explored the importance of addressing the limitations of young people's participation and non-citizenship as a way to protect themselves in situations of conflict.

Clearly, the dangers that children may face, particularly in societies where it is hazardous for children to speak their minds in certain contexts, need to be adequately addressed (UNICEF, 2002). Child protection mechanisms need to be in place, not just to protect children from potentially abusive adults but to recognise the 'political dangers children and young people face when they effectively work together to achieve social change against a background of discrimination, resistance and vested interests' (Etherton, 2002).

Thus, whilst child welfare protectionists may take a somewhat paternalistic view of the demarcation of child rights, seeing children's difference from adults, many child rights 'liberationists' (Moosa-Mitha, 2005) believe that children should have the same rights as those enjoyed by adults. Whilst children are not responsible for the state of the world or its injustices, they can certainly react, counter, form views and engage with their social context, be it good or bad that they find themselves in. As the ECPAT International examples highlighted in this publication show, ECPAT considers child and youth survivors as priority stakeholders with strong social citizenship capacities; where their participation is appropriately and meaningfully enabled, their safety and well being can in fact be better protected and advanced.

Responsibly supporting active citizenship for all children

Realising children's civil rights

There is clearly a need to take a much more encompassing approach to children's citizenship rights to ensure that they are directly related to each of the aspects of children's right to survival, development and protection. This requires defining the dimensions of children's civil, political, social and economic rights in the realities of children's daily lives.

Children's civil rights are amongst the least understood and least realised in all regions of the world (Hodgkin and Newell, 2002). Unfortunately, the problems can start right from birth with many children not being registered, resulting in a lack of official recognition of a child's importance and existence before the law (UNICEF, 2005, estimated that one in every five children born in East Asia and the Pacific do not have birth registration). The right to be registered at birth is enshrined in article 7 of the CRC and, without birth registration, children are unable to prove their age, nationality, parentage, have less access to basic services and will often be less visible and less valued as citizens (Hodgkin and Newell, 2002). Major international campaigns led by NGOs and UNICEF have seen significant improvements in the adoption of birth certification and the strengthening of civil registration systems; a very recent example has been in Thailand where the Thai government has announced the withdrawal of its reservation to article 7 of the CRC and is now committed to the registration

of all children born in its territory (ECPAT International, 2011a).

The right to freedom of expression (article 12 of the CRC) is clearly a fundamental civil right that applies to all other children's rights. All children have competencies, knowledge and experience that can contribute to shaping and developing their society, strengthening government services and making a fairer and just nation. However, the review of children and young people's public and civic participation has generally not been positive. Hart (1997); Lansdown (2001); Kirby (2003); Theis (2005) amongst others find that most participation is ad hoc, event driven or focused more on service delivery with less attention given to children's participation at the more strategic local level or in national policy development. The major weakness identified is that most children's civic engagement can be more accurately described as consultation, where opinions may be offered but there is limited involvement in the decision-making processes and outcomes (often referred to as 'passive citizenship', see Van Bueren, 2011). Not only does this fail to assign real power to children and young people, it further encourages the likelihood that the disadvantaged will remain excluded, as such consultative processes tend to be dominated by the more articulate or elite children, often reinforcing existing patterns of discrimination (Poudyal, 2003). Supporting children to express themselves needs to start with the very institutions closest to them, such as the family, school, shelter, health centres, community settings and work places. Children's clubs, associations

and student councils offer structured opportunities for children's participation, which helps them to form opinions and to become better at influencing decision making processes about issues that affect them (ECPAT International, 2007). Such mechanisms also

can facilitate better and more child friendly access to information, which is another basic civil right with significant implications on the development, survival, protection and participation of children (Inter-Agency Working Group on Children's Participation, 2008).

Case Study: Peer support and Youth Clubs help empower vulnerable and exploited children in South Asia

The ECPAT Youth Partnership Project for Child Survivors of Commercial Sexual Exploitation (YPP) is an innovative initiative that has been running for six years. The project is implemented in partnership with ECPAT affiliate groups SANLAAP India, Maiti Nepal and Aparejeyo Bangladesh. External evaluations of the project in 2007 and 2011 have showed that the project was making a visible positive difference to youth directly involved in its work, many of whom have lived through and survived the experience of commercial sexual exploitation. In 2008 the project expanded into a second phase in India, Nepal and Bangladesh, and new project areas were established in other parts of the world in Thailand, Cambodia, Vietnam, Ukraine, Moldova, Togo, The Gambia, Cameroon, Mexico, Guatemala and Chile. The youth-led participatory monitoring process allows the project to learn from its experience to support meaningful, socially engaging and empowering participatory initiatives for CSEC survivors and at-risk youth that are replicable.

A key strategy used by the project is a peer-to-peer component whereby a core group of children and young people are trained in peer support techniques and CSEC and child rights. The YPP Peer Supporters form Children's Clubs and Associations within their schools, shelters and community centres, which can facilitate support to other vulnerable children and those experiencing exploitation. For example, the 2011 evaluation found that in all three South Asian countries, a number of the YPP team members felt that peer support work was the single most effective part of the YPP. In Nepal, a boy who had been a peer supporter said that learning about the issues of CSEC and trafficking and being involved in peer support work had made him more aware of broader social concerns and made him want to fight for social justice. In Bangladesh, girls in a shelter said they enjoyed their weekly meetings where they discussed a range of different topics. They learned how to protect themselves on the street, gained courage and were also prepared to help other girls. Activities organised within the clubs have included awareness raising campaigns as well as fun activities, such as cultural and sports events.

ECPAT has found that the involvement of these young people in social action for the protection of others against CSEC has acted as a powerful mechanism for recovery and empowerment. The empowerment of these children has enabled them to take on leadership roles within the communities and organisations in which they live, challenging the view of child survivors as only welfare recipients, but as positive actors within society. ECPAT's Global Youth Partnership Project is now operational in 12 countries around the world and is funded by the European Commission.

Realising children's political rights

Public and policy decisions that are informed by the views of children can lead to better policies, better services and more appropriate allocation of government budget to children's services. However, where children are not considered as political actors there is little space for children in the public political arena. Whilst children's political rights are not enshrined in the CRC, children's lack of formal political rights need not exclude them from participating in political actions and shaping policy. Many countries have involved youth in the development of legislation, policies and national action plans. In Nepal for example, even with the immense political change that is occurring within the country at the moment, the government is making efforts to ensure the inclusion of marginalised groups and child and youth participation at all levels of policy development and planning, including to ensure children's input on the new constitution (ECPAT International, 2011d). The Thai government is also engaging children and youth in the development of its National Strategic Plan to Prevent and Eliminate Violence against Children and over the last year have been organising consultations (in partnership with civil society) throughout the country (ECPAT International, 2011a). Similarly, in Taiwan, children and young people were involved in the "2008 Symposium on the Results of the Youth Policy White Paper Guidelines" (ECPAT International, 2011e).

Van Bueren (2011) describes a 'slow evolution' towards better child citizenship where states have enabled

children to engage in political systems and processes through the establishment of child parliaments. Children's parliaments have been established in a number of countries and have been highly influential on national policy debates related to children's issues. In Africa for example, effective advocacy of children's parliaments have resulted in the strengthening of legal frameworks for children and easier and better quality access to education and health services (Inter-Agency Working Group on Children's Participation, 2008). In Japan, Municipal ordinances have established child and youth committees which have opened up opportunities for young people to legitimately express their political views (ECPAT International, 2011f).

The Committee on the Rights of the Child (2006) in their Day of General Discussion on the Right of the Child to be Heard, identified a number of priority areas to strengthen children's political contribution. Recommendations included capacity building of public officials who develop government policy and the provision of mechanisms to enable children to express their views through independent human right institutions and children's ombudspersons. Human rights institutions for children have a specific responsibility to ensure that their work is directly informed by the views of children and that these inputs are presented to government through structured mechanisms that facilitate children's participation (UNICEF, 2002). The Committee on the Rights of the Child itself welcomes alternative reports to the CRC and Optional Protocol prepared by children to complement the official

government report (ECPAT International, 2011). In Thailand and Nepal for example, children from different provinces throughout the two countries have recently inputted into the development of an Alternative Report

on the Optional Protocol on the Sale of children, child prostitution and child pornography which will be shared with the UNCRC Committee in October 2011 (ECPAT International, 2011a; ECPAT International, 2011d).

Different models and functions of NHRIs in relation to the rights of the child and Article 12

Independent National Human Rights Institutions (NHRIs) may be broadly described under differing names and functions. Ombudspersons, which are often constitutionally established, mainly address individual human rights violations that may exist in domestic law systems or that are in conflict with international treaties that the State is party to. The Ombudsperson also has a key role to promote and educate public on human rights.

The first Ombudsman for children was established in Norway in 1981, followed by a number of countries, mostly in northern and central Europe, Latin America, and South Australia (Innocenti Centre, 1997). In line with the Paris Principles, (United Nations, 1993) national human rights mechanisms for children should also be independent of the government and free from the control of individual ministers; financial support should not affect its independence and its mandate should be established by law or state policy to ensure its long-term existence and sustainability (Burdekin 2007; Innocenti Centre, 1997 and 2001). NHRIs related to children's rights should possess statutory authority and functions to investigate individual complaints or conduct public enquires; represent children in legal processes; gather and disseminate information to relevant agencies and public; provide consultative and advisory functions to policy work of relevant government agencies and legislative functions, including reporting obligation under the CRC and other relevant international treaties, etc. (Innocenti Centre, 1997 and 2001). One of the central functions of a NHRI for children is promote the implementation of Article 12 and to ensure that the views of children and young people are incorporated into government legislation, policies and initiatives.

In order to be legitimate in representing and protecting the rights of children, the NHRIs related to children need to ensure their accessibility to children. Furthermore, their operations and approaches must enable children whom they work for feel comfortable to come directly and use their services (Innocenti Centre, 1997 and 2001) and, in effect, earn the trust of children that the NHRIs represent. For example, the Danish National Council for Children's Right acts as 'a bridge communicating the view and experiences of children to legislators and policy makers. It has established an innovative system of formal consultation with children in schools where students can respond either as a group or as an individual'². The result of the consultation is then shared to the public through media as well as to relevant government departments.

² The Innocenti Centre, UNICEF 1997, Ombudwork for Children, Innocenti digest, no.1. page 2, Florence, Italy.

Other very practical options for involving children in public and policy decision making processes can include research with children and involving children in public consultations and conferences. The challenge remains, though, that where children have participated in numerous government and intergovernmental forums over the last 30 years, the events have often been open to criticism that the children's presence was actually more decorative and tokenistic than substantive (Ennew and Hastadewi, 2004). A recent exception to this was the 2008 World Congress III against Sexual Exploitation of Children and Adolescents that was held in Rio de

Janeiro, Brazil and its supporting Regional Preparatory Processes, where special efforts were made to ensure the meaningful presence and participation of children – including the proactive mobilisation of experiential youth and participation in the Core Organising Committee and final outcome Drafting Committee (ECPAT International, 2009). Similarly, the 2010 “Review on Progress of the World Congress III against Sexual Exploitation of Children and Adolescents” held in Bangkok also included the participation of children and youth (ECPAT International, 2011).

Case Study: Youth-led research to inform youth-led advocacy

ECPAT International, in 2010, supported its NGO partners (Maiti Nepal, Aparejeyo Bangladesh and SANLAAP India) to carry out youth-led research specifically focussed on children living in vulnerable areas, such as red light districts, slum areas or working in the ‘adult entertainment sector’. The purpose of the research was to provide ‘evidence-based’ data that can be used in effective advocacy to influence changes in national and local laws, policies and practices.

The research undertaken by youth in India (SANLAAP, 2010) identified how marginalised and stigmatised children living in red light areas can face conditions such that the risk of sexual exploitation is a serious daily concern in these localities (indeed, children themselves can become so entrenched in the cycle of abuse that they can even become perpetrators themselves in later life). In Bangladesh, slum areas are particularly difficult places for children to grow up; children in these situations are often reluctant to disclose abuse for fear that they will be blamed or moved away from the area and not able to continue with their schooling (Aparejeyo, 2010). In Nepal, the youth researchers were able to identify a large number of young people working in establishments known as cabin restaurants, dance bars, massage parlours and dohori restaurants; girls working in these locations were subjected to both labour and sexual exploitation (Maiti Nepal, 2010).

Such insights into these marginalised settings were only possible due to the ability of youth peers to infiltrate these locations without raising suspicion or fear of the child respondents. In each of the three countries, the ECPAT affiliate groups helped organise youth-led national stakeholder consultations where recommendations identified by the young people themselves were shared with policy and decision makers and discussed. Youth advocacy recommendations placed a high priority in the role of surrounding social structures (such as schools and youth groups) where young people can learn and relate to the experience and support of their peers.

Realising children's socio-economic and legal rights

The economic and social facets of citizenship are often conceptualised as exclusively adult in nature. However, Van Bueren (2011) shows how children and adults share multigenerational socio-economic rights. 'Multigenerational citizenship' proposes for children a more socially just society by recognising their legal and economic rights under the best interests of the child (CRC article 3). In a growing number of cases around the world, children have won legal socioeconomic court cases on their rights to nutrition, housing and appropriate care (Van Bueren, 2011). Laws and policies regarding land ownership and private property can be reviewed to protect orphans from losing their inheritance; social protection measures including cash transfers, elimination of school fees, micro-credit schemes for children, family support services or alternative care options can all help in mitigating against the vulnerabilities that child-headed households and other children living in extreme conditions face (Inter-Agency Working Group on Children's Participation, 2008).

Children themselves are continuously looking for livelihood options, to learn about the world of work, to be mentored and to work in protected work environments, engaging in economic activity that

contributes to society. Without recognition and provision of such opportunities, the vulnerability for children's economic marginalisation grows, building the pressure to access resources through informal or unsafe means (ECPAT International, 2007).

One of the most important functions of a human rights institution for children is that it must ensure that children have effective means of redress when their rights are violated, commonly referred to as a complaints mechanism. Such a petitioning mechanism allows children to report violations of civil, economic, social and cultural rights. Whilst such mechanisms exist in many states around the world³, a new Optional Protocol to the Convention on Rights of the Child on a communications procedure for children's rights violations has just been approved by the UN Human Rights Council (2011). The final draft Optional Protocol will be transmitted to the UN General Assembly for its final adoption in December 2011, confirming the concept of international child citizenship. The challenge remains ensuring that all such complaint mechanisms and their generally formal structures can be accessible to the most vulnerable and victimised child citizens (Van Bueren, 2011). More informal and localised mechanisms can range from complaints boxes in schools (and other institutions providing services to children), telephone hotlines, legal aid and counsel to children's involvement in truth commissions (Inter-

³ Note: Although approximately 46 countries worldwide have established either Ombudspersons, Human Rights Commissions or Equalities Institutions for children, not all have statutory powers to intervene on individual cases of complaints from children.

Agency Working Group on Children's Participation, 2008).

Conclusion: The realisation of children's citizenship

Children are among the most vulnerable to human rights violations in countries around the world due to their stage of development and relative dependency on adults. This often results in their lack of redress for violations of their rights as well as a lack of their ability to exercise their citizenship in order to advance their social development and protection. Children should not be viewed as future or passive citizens; people do not suddenly become 'responsible and accountable citizens' on reaching a particular age neither is responsibility and political and civic maturity limited only to adults.

Evidence shows that the level of participation that children and young people have in their societies through children's groups, voluntary associations or other means is a significant predictor of civic engagement as well as of political participation in later life (Golombek, 2002). Without these opportunities, competencies and channels to participate, large numbers of children become disenfranchised and vulnerable. Children that face exclusion, discrimination or stigmatisation face the greatest risks of increased exclusion, injustice and harm. The emphasis and primacy of welfare and protection rights over civil and

citizenship rights for children is spurious in that it ignores the millions of children living in vulnerable situations around the world who will thus be excluded from opportunities to protect and advance their own interests and rights as well as the lives of the peers around them. Claiming the citizenship rights of the most marginalised and disenfranchised children is a necessary precursor to addressing social and cultural norms that perpetuate discrimination, violence, abuse and exploitation of children. Choosing between children's rights by addressing welfare prior to development of their citizenship capabilities denies children their potential and inherent right to influence the decisions that most directly influence them, to expose abuses of power and to seek justice. ECPAT International (2007) considers at-risk and victimised children and youth as priority stakeholders, with strong social citizenship capacities and that, where their participation is appropriately and meaningfully enabled, their safety and well being can in fact be better protected and advanced.

Whilst James (2011), Torney-Purta and Amadeo (2011), Percy-Smith (2010) and other experts have stressed that participation should be grounded in everyday life and the developmental niches of young people (rather than being institutionalised in formal settings), others such as Thomas (2010) and Shier (2001) argue that the longer term, institutional dimension is also important if children and young people are going to be able to formulate and express their opinions and views on matters that impact their lives and have a real share in public decision-making locally and nationally. In either case, adults

need to learn to share decision making power beyond just listening to children to also include taking the views of children into account; sharing responsibilities; and changing social and moral behaviours.

Creating space for children's citizenship faces many challenges. Children should not be pushed into participatory initiatives that they are not ready for or do not wish to be part of; participation is a right not an obligation. Children's participation can put children at risk so minimum standards and frameworks for protection should be in place to protect children from coming to further harm as they seek to promote their own issues, concerns and ideas. Children's citizenship is about mutual respect between adults and children; providing opportunities for children to participate in society teaches them the importance of exercising responsibility and respecting everyone's rights. Children have different levels of competence depending upon their age and the environment within which they live, but evidence from around the world shows that children have capacities to take responsibilities at various levels within their lives provided they are allowed to express themselves in ways that are meaningful to them (Inter-Agency Working Group on Children's Participation, 2008).

This literature review surmises that it is necessary to identify more innovative and accessible models and mechanisms for involvement of children in the development and implementation of policies and practices that concern them whilst simultaneously setting up complementary systems that help build their skills to enable them to examine, analyze and develop inputs through structured and enabling environments and interactions. Competencies for meaningful child participation include communication and life skills, community activism and volunteering and political literacy and respect (Inter-Agency Working Group on Children's Participation, 2008). Active civic engagement empowers children, builds confidence, self respect and leadership skills (ECPAT International, 2007).

The CRC should not be misinterpreted by treating children as an 'at-risk class' (Rehfeld, 2011) that marginalises them from active citizenship. The exclusion of vulnerable children as civic agents ignores the potential to build on children's capacities to address the harm and abuse that they face and to access the means to improve their lives and the lives of those around them. Prioritising welfare over participation limits children to being welfare recipients rather than recognising them as active social agents of change that builds upon children's resilience, allowing them to be advocates for realising their citizenship rights.

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PART 2

National Human Rights Institutions: Promoting respect and structures for the participation of children

Introduction

The proliferation of international human rights mechanisms has seen most countries sign, ratify or accede to the major human rights treaties, although states' efforts to honor these commitments have led to many failures both in respect to rights violations and/or state obligations to the international monitoring mechanisms for these treaties (Burdekin, 2007). The United Nations has long had an interest in the establishment of National Human Rights Institutions (NHRIs) as it is generally accepted that building "strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner" (Annan, 2002). The 1993 World Conference on Human Rights reinforced the importance of national institutions to protect rights (endorsed in the same year by the UN General Assembly), which set out the essential responsibilities of such institutions through the 'Paris

Principles' (resolution 48/134). The establishment of national human rights institutions for children began primarily in the 1980s, although it is largely the last decade that has seen the most significant growth in the number of human rights institutions that specifically include children within their mandate.

The effectiveness of NHRIs has remained an issue of contentious debate. Many factors can influence their independence, accessibility and accountability, and their achievements directly relate to their level of power, ability to cooperate with other institutions (both state and non-state), structure of bureaucracy and the way key parties (primarily the state) and the political climate can influence, facilitate or block their potential impact (European Union Agency for Fundamental Rights, 2010).

The critical measure of the effectiveness of any national human rights institution is nevertheless its capacity to respond to the needs of those in society who are most at risk of suffering rights violations. Children are one such group who have special protection needs and can experience widespread discrimination. As the number of institutions to protect human rights has grown worldwide, there has been considerable debate over the potential benefits of specific institutions focusing on children's issues, and there are governments and other stakeholders who are opposed to the establishments of such institutions (UNICEF 1997; Newell, 2000; Power, 2002; Carver, 2011).

This paper will therefore examine the common objections raised concerning the need for separate

NHRIs for children and dismiss the perception that the extension of rights for one group (i.e. children) must be at the expense of another group (e.g. parents/adults or other vulnerable groups). It will provide compelling arguments to explain how NHRIs for children have a unique opportunity to support the realisation of children's citizenship rights – particularly in relation to children's participation in political decision making processes and in seeking remedies for rights violations. The paper will conclude by returning to the question concerning which kind of NHRIs best contribute to supporting the realisation of child rights and child participation? The paper will surmise that the debate needs to move on from 'separation or integration' to the establishment of an NHRI management structure which basically creates an appropriate culture that respects the views of the child and the right to have those views taken seriously in all matters that affect them.

The case for Children's Commissioners/Ombudsmen

The Paris Principles¹ have become the benchmark against which national human rights institutions are measured. The principles affirm that national institutions should be sufficiently competent to promote and protect

human rights and be given a broad constitutional and legislative mandate. "National human rights institution" is a somewhat amalgamated term and includes many different varieties of functions and responsibilities related to any human rights matter, including the promotion and protection of human rights of children (Burdekin, 2007).

There are generally two recognised categories of human rights institutions: commissions and ombudsmen. Commissions tend to have a more general remit, which often does not include protecting the rights of individuals who feel they have been unjustly treated, whereas ombudsmen are usually mandated to receive and deal with individual complaints. However, in relation to children, the term ombudsman can also include the wider remit of monitoring, promoting and protecting children's rights, (UNICEF, 1997) and attempts to categorise national institutions (e.g. commissioner versus ombudsman) by mandate (integrated or specialized) or by political context can be challenging².

Whilst it is internationally recognized that robust and independent institutions are needed to promote and protect human rights, there are additional justifications and needs for children: children's stage of development makes them especially vulnerable to human rights

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- ¹ United Nations Commission on Human Rights Resolution 1992/54 (March 3, 1992), Official Records of the Economic and Social Council, 1992, Supp. No. 2, E/1992/22, ch. II, s. A, Annex I; G.A. Res. 48/134 (December 20, 1993), Annex. Reprinted in United Nations Centre for Human Rights, National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4, New York and Geneva, 1995. See also Appendix.
 - ² Hodgkin and Newell (2008) describe the varied names and descriptions that exist for European children's ombudsman offices, such as: Commissioner for the Protection of Children's Rights (Cyprus); Institution of the Defender of Children (France); Chairperson of the Danish Council for Children's Rights; Delegate General for Children's Rights (French Community, Belgium); Childrights Ombudsman (Lithuania) etc.

violations by both adults and the state; children have only recently been recognised as rights-holders and misunderstandings and hostility to this recognition still exist in many parts of the world; and children's citizenship rights, despite Article 12 of the CRC, limits their participation in political processes and opportunities to seek remedies for breaches of their rights (Newell, 2000).

As such, the idea of a children's ombudsman was first developed by Save the Children Sweden, who established an Ombudsman for Children in the 1970s; Norway was the first state to set up an independent Ombudsman for Children through legislation in 1981 (UNICEF, 1997). Unfortunately, the adoption of the Convention on the Rights of the Child (CRC) in 1989 was not as explicit as it could have been in requiring governments to create human rights institutions for children. Nevertheless, Article 4 of the CRC does require states to "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention," which suggests the establishment of such a body as a NHRI. Furthermore, the specific mandate of most NHRIs to establish structures through which their target groups can directly and effectively be represented is clearly in line with Article 12 of the CRC (the child's rights to express their views and to have those views taken seriously in all matters affecting them).

The Committee on the Rights of the Child has also stressed the need for state sponsored structures and mechanisms that facilitate consistent consideration

of children's rights. In their 2002 General Comment, the Committee stated that "Independent national human rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention". The Comment also provides details about mandate and powers, establishment processes, resources, representation, etc., saying that these issues "fall within the commitment made by States parties upon ratification to ensure the implementation [of the treaty]". UN Special Procedures mandate holders (such as the Special Rapporteurs and the UN Special Representative on Violence against Children) have similarly recommended that states establish or reinforce existing NHRIs to better include child rights (Burdekin, 2007).

A key role of a human rights institution for children should be to make children and their rights more visible and to promote compliance with international treaties, in particular, the CRC. Children often lack the means to exercise their rights and so a specific child rights mandate within a NHRI will help ensure that their rights and interests are not forgotten or laid aside in preference to the interest of others. An independent commissioner or ombudsman should have the specific mandate to promote the respect for the views of the child and help develop mechanisms through which those views can be heard (including making sure that children have effective means of redress when their rights are violated). As the CRC states, this right is not meant to interfere with the rights of parents, but it also recognises that children have rights within the family as well. Furthermore, the CRC also places clear

obligations on governments to protect children from those parents or adults who are violating their rights.

As one of the four key principles of the CRC, a central function of a NHRI for children is promoting implementation of Article 12 and ensuring that legislation, government policies and initiatives incorporate the views of children and young people. The Commissioner should also monitor compliance with Article 12, promoting and disseminating models of good practice and supporting the government in developing more effective mechanisms for promoting children's active participation in decision making processes at all levels (Lansdown, 2001). Hodgkin and Newell (2008) also identify other key mechanisms for child and youth participation within NHRI structures and systems, such as their involvement in the administration of children's ombudsperson institutions or the direct involvement of children in specific research or campaigning activities undertaken by the children's ombudspersons institutions.

Separate or integrated NHRIs for children?

Opinion appears divided as to whether a separate children's commission or a more integrated and holistic commission is best for the promotion and protection of children's rights (UNICEF, 1997; Newell, 2000; Carver, 2011; European Network of Ombudspersons,

n.d.). Although the issue has been largely neglected in the academic literature to date, an analysis around the pros and cons for separation or for integration can help distill much of the confusion and objections used to oppose the establishment of such institutions and illustrate the key components needed to ensure that a NHRI takes full account of the special status of children (Carver, 2011).

An independent and separate office set up through legislation specifically to promote the human rights of children is the model adopted in a number of countries in order to ensure that children's rights are not bypassed by adult agendas³. The concern of integrated bodies is that children's issues will receive a lower priority and visibility (Newell, 2000). Proponents of integrated and single bodies (Carver, 2011) nevertheless raise the point that, if it is important that children's rights are to be seen as equal to adult rights, then separate institutions can unwittingly result in their marginalisation and/or unnecessary layers of bureaucracy. Unsurprisingly, one of the most frequently raised arguments in favour of single NHRIs is the cost effectiveness. For example, Carver (2011) cites Moldova and Georgia who reportedly resisted the pressure to create a separate children's ombudsman, instead merging the function into their existing NHRIs. The counter arguments to these concerns are that an independent and separate institution with clearly defined powers and duties should actually be more effective in dealing with layers

³. Specialist NHRIs for children examples: Austria, Bolivia, Poland, Ireland, Macedonia, Norway, Sweden, Russia, Finland, Lithuania, Czech Republic, Latvia, Belgium and Iceland.

of bureaucracy that frequently delay decision making processes. Furthermore, a more focused institution can help in more targeted coordination to ensure that all relevant entities can work together more effectively for children, as has been seen in Sweden (Comparative Studies, 2011a). Inevitably, though, single institutions are too frequently merged in order to cut costs and save government budget (Carver, 2011).

Other countries have adopted the model of a single national human rights body with the aim of mainstreaming promotion of all human rights, supposedly with inbuilt guarantees that the interests of specific vulnerable groups will receive appropriate attention⁴. A key argument to support this approach is that the limited resources available from the state budget may not be sufficient to support a range of separate offices, whereas a children's commissioner within a human rights commission should be able to

use the power and resources of the whole institution. A further argument in favour of a single NHRI is that with a single founding statute the application of the same standard of rights to all groups and individuals should be ensured, and the fact that a single institution can be presented and profiled in the public eye means less confusion over which institution people need to contact, making it clearer and more accessible. Indeed, a single institution means that no vulnerable group should feel neglected or excluded if they don't have their own human rights institution (Carver, 2011). Government authorities and other relevant stakeholders should also be able to better relate and coordinate with a single institution (Newell, 2000), although it is generally accepted that specialised agencies (particularly those focused on vulnerable groups) usually have closer and more productive ties with civil society (Comparative Studies, 2011b).

⁴ Single NHRI entity examples: Hungary, Portugal, Spain, Ukraine, Belgium, New Zealand, Nicaragua, Philippines, South Africa, Russia, Cyprus, Luxembourg, Poland, Malta, Costa Rica, Bhutan, Maldives, Nepal, Belarus, and India.

New Children's Ombudsmen emerging

A number of countries recently under review for the production of 2nd Edition ECPAT Country Monitoring Reports have noted that separate NHRIs for children are being planned. Ukraine is making progress towards the establishment of an Ombudsman on Children's Rights, which will have the mandate to receive individual complaints (ECPAT International, 2011a). Bangladesh, which in 2008 set up the National Human Rights Commission, prepared a draft law (in 2006) for the establishment of a specific Ombudsman for Children. Reportedly the Cabinet returned the draft for further revision and the process is still ongoing (ECPAT International, 2011b).

In June 2010, the Dutch Senate approved the establishment of a Children's Ombudsman with the mandate to advise the government and parliament on laws and regulations affecting children's rights. The Ombudsman will also raise awareness and empower young people so that they become more aware of their rights, as well as receive and respond to individual complaints. The Dutch Children's Ombudsman has been in operation since April 2011 (ECPAT International, 2011c).

In Italy, the Parliament approved a bill for the establishment of a National Ombudsman for Children and Adolescents in June 2011. The Ombudsman will be required to carry out a number of tasks including the promotion of the implementation of the CRC and other international and regional instruments concerning the promotion and protection of the rights of the child (including a specific mandate to consult with children). Unfortunately, it is uncertain as to whether the Ombudsman will be able to receive complaints directly from children. At the time of writing, the bill has not yet passed (ECPAT International, 2011d).

By far the most compelling argument for a separate institution for the protection of children's rights is the cross-cutting principle of Article 12 of the CRC that will enable a specially designed institution to better relate to the children it is serving and to be able to more successfully elicit their views and inputs (the core and main mandate of the Children's Commissioner in England as seen in *Comparative Studies*, 2011c). Indeed, Scottish legislation includes a provision to ensure child and youth participation within the institution, and countries such as Ireland have a mandated Youth Advisory Panel (Hodgkin and Newell, 2008). Furthermore, as can be seen with the case of the Irish Ombudsman for Children, the impact of the participation of children has also resulted in enhanced self-confidence and efficacy of children and more proactive children's citizenship (Ombudsman for Children's Office Ireland, n.d.). As the next section of this paper shows, the strategies and approaches that a separate institution for children utilise can ensure that the institution's mandate is visible to children and also more accessible – an essential prerequisite for effectiveness both in informing policy and legislative proposals (The Scottish Parliament Information Centre, 2001; *Comparative Studies*, 2011c).

Listening and acting on the views of children: case study examples

Children's involvement in the running of the institution

In Hodgkin and Newell's (2008) review of children's participation within NRHs of the European Union, examples were found of how children had been involved in areas of internal administration of children's ombudsman institutions in cases of staff recruitment, work planning and budgeting. The most common structure for this to take place was through the establishment of advisory groups to the Ombudsman. In Ireland, this was institutionalised through the establishment of a Youth Advisory Panel that is involved with a wide range of issues, such as personnel recruitment, informing the ombudsman of emerging concerns for children and young people and co-facilitating workshops and events (Ombudsman for Children's Office Ireland, n.d.). Scotland has set up a 'Reference Group' of young people aged between 14 and 21 with a similar goal (Power, 2008), and in Sweden the Children's Commissioner, wishing to ensure that the views of particular vulnerable groups of children can feed into the commission's work planning, has set up an expert advisory panel of children who live in care homes (*Comparative Studies*, 2011a).

Whilst a number of other institutions within Europe reportedly involve children in administration and office matters in similar ways, Hodgkin and Newell (2008) note that a number of ombudsman offices remain hesitant to open up such structures over concerns of how meaningful and genuine such participation can actually be. Furthermore, a number of experts point out that this level and type of children's participation is expensive to sustain from what are generally very tight NHRI budgets. Furthermore, both Ireland and Scotland similarly reported that this level of engagement could sometimes lead to expectations from the young people themselves that were difficult to address in relation to the extent of their involvement in follow up activities (Power, 2008). Most European institutions with well established child advisory mechanisms nevertheless reported visible positive impacts in the quality of their publications, promotion, corporate visibility and more focused work priorities (Hodgkin and Newell, 2008).

Consulting with children about their views and ideas

Most institutions working for children examined for this paper appear to have consulted with children at some stage in their operations, more often than not in relation to their country's periodic report to the Committee on the Rights of the Child or some other national level event, conference or surveys. Children's input is also regularly sought for input into the design of awareness raising materials, brochures, websites or case study inserts and quotes or stories in various publications.

Unfortunately, whilst this approach to children's participation appears to be fairly wide spread, it is neither systematic nor in-depth, which raises concerns that this type of participation can be more tokenistic and decorative than meaningful. The major weaknesses identified is that this type of children's participation can be more accurately described as 'consultation rather than participation,' where opinions may be offered but there is less involvement in the actual decision-making processes, outcomes and follow-up (ECPAT International, 2007).

Children's involvement in advocacy

Policy proposals, recommendations and statements should be supported by evidence based data, and children's views and experiences on issues relevant to them should be an essential part of the children's ombudsman office. A number of ombudsmen offices have involved children and young people in research, which also resulted in recommendations and priorities for action identified by the children themselves. Scotland and Ireland ombudsman offices have regularly used schools and the internet to elicit large numbers of responses from children on key policy issues, which has resulted in unequivocal qualitative and quantitative data (Hodgkin and Newell, 2008). Interestingly, Denmark has made specific efforts to ensure that the children who participate in their activities are truly representative of youth being targeted through the help of the Statistical Records Office to help identify children

to be identified to participate in the institutions work (Hodgkin and Newell, 2008).

The presentation of research findings, policy review and debates are often around national conferences and public consultations. Children's presence and participation at these fora is now more common place, and child and youth advisory groups (working with NHRIs) are seen as important stakeholders to influence government policy and to be actively present at round table discussions and stakeholder debates (Newell, 2000). However, children's involvement in advocacy has tended to focus on adolescents, and there is a need for children's ombudsmen to attempt to reach out to younger children. One notable good practice example is Sweden, which engages primary school children in debates and topics through a website and the help of an e-mascot caricature of a cat (Hodgkins and Newell, 2008).

However, whilst a large number of publications exist detailing a wide range of children's participation in advocacy events, this literature review notes that the assessment of children and young people's public and collective participation across the board has generally not been positive, with child rights advocates such as Lansdown (2001) and Theis (2005) finding that most advocacy oriented participation is event driven or one-off experiences. In relation to youth-led research or research undertaken with significant children's

engagement, Ennew (2008) raises concern that much of it has been undertaken outside peer-reviewed academic circles and is therefore not subjected to sufficient quality checks and research protocols. Whilst these concerns are valid for most national level and policy development processes, and thus not unique to NHRIs, they do illustrate the significant and targeted investment in technical and personnel support and financial resources needed to ensure that children's participation is meaningful and sustained.

Children's participation and complaints mechanisms

Advocates for the specialist institutional model argue that the main benefit of this structure is that they can protect the particular interests and special needs of vulnerable groups through better empathy and accessibility (such as 'child-friendly' spaces and services), particularly to individual complaints mechanisms. However, this review has not been able to identify any significant level of analysis or data that actually supports this claim. In fact, Carver (2011) actually suggests that complaints-handling would be more effective in single institutions due to a reduction in the number of misdirected complaints. Furthermore, many specialised NHRIs for children appear to lack the mandate to receive individual complaints (exceptions identified include Norway, the Netherlands and Ireland), either due to fears that they could be easily overwhelmed by reports, thus not allowing them to cover other aspects of their work, or

for concern that it would create duplication with the country's main human rights commission, such as in Sweden (Power, 2002). Furthermore, in 2009, France actually abolished its Ombudsman for Children, which had the mandate to receive individual complaints, only a couple of months after the Committee on the Rights of the Children urged the state to allocate it sufficient financial and human resources (ECPAT International, 2011e). However, isolated examples of good practice

of child and youth participation supporting complaints mechanisms do exist, such as the NHRI in Slovakia where children themselves are recruited as 'children ombudsmen' and help facilitate communications between children bringing individual complaints and the Office of the Public Defender of Rights. Additionally, Austria uses a network of children and youth to provide 'peer to peer' support across the country (Hodgkin and Newell, 2008).

The abolition of the Children's Ombudsman in France

The French Children's Ombudsman had been created through legislation as an independent authority in 2000, with the role to defend and promote the rights of the child as they have been defined through national and international law. Since its inception, the Children's Ombudsman had handled nearly 20,000 cases of children whose rights had been reportedly compromised. The removal of the Children's Ombudsman office only months after the Committee on the Rights of the Child had urged the French government to continue "to strengthen the role of the Ombudsman for Children...to allocate financial resources and human resources..." was met with incomprehension by French child rights advocates and European partners (ECPAT International, 2011e).

Conclusion

International and regional standards offer no decisive guidance on whether a state should have a single or multiple NHRIs (Carver, 2011). It is also clear that the question of whether a single national human rights institution or multiple, more specialized institutions are more effective has been largely unaddressed in academic literature and technical reviews. Studies tend

to focus more on compliance with the Paris Principles and the standards of independence and competence, which in fact few NHRIs around the world appear to attain comfortably without some degree of qualification. The generally stated advantages of a separate human rights office for children are that it can have a more targeted and specialised agenda and way of working that maximises the visibility of children and their rights. Whilst proponents of single institutions can

argue that separate institutions can undermine the principle of the indivisibility of rights and even create a hierarchy of rights, it is difficult to genuinely justify this proposition in light of the chronic and systemic violation of human rights that many vulnerable groups continue to suffer around the world. Furthermore, there are obvious significant justifications for children. Whilst human rights are universal, the world community has given special importance to ensuring the protection of children's rights through the almost universal ratification of the Convention on the Rights of the Child. Children are internationally recognised as being especially vulnerable to exploitation and abuse because of their physical, emotional and psychological stage of development, the limited realisation of their citizenship rights and their particular lack of political power. As such, the Committee on the Rights of the Child is the only human rights treaty body to have specifically addressed the issue of single versus multiple human rights institutions, recommending in its General Comment No. 2 (UN Committee on the Rights of the Child, 2002) that children's human rights are given special attention and that 'the Committee clearly favours a specialist independent human rights institution for children where possible'.

Very little work (outside of Europe at least) appears to have been done to measure the effectiveness of human rights institutions. Developing a common measure of the impact of NHRIs for children faces additional challenges, in particular, in clarifying the diverse social and political context within which they are operating and in agreeing on the necessary child rights

progress indicators. Despite children's participation being heralded as a key feature (and in many cases in Europe, mandated legislatively), this review has identified only limited evaluations of the meaningful and sustained child participation mechanisms within NHRIs (again, primarily only in Europe). Good practice examples and lessons learnt do though exist, and this paper has shown the potential for children's input to improve greatly the legitimacy, targeting and effectiveness of an NHRI mandate through tailored interventions. Nevertheless, this paper notes that few national institutions for children deal with individual complaints, which most child rights advocates would regard as an essential characteristic and an important indication that a children's ombudsman is promoting and protecting children's rights. This includes respect for their participation in all matters that concern them and that children themselves have effective redress when their rights are breached.

Further research is clearly needed to respond to the question of whether separate or integrated national children's rights institutions can be best at promoting and protecting children's rights. Until then, it would appear that the discourse should move on to address the necessary powers, duties and design of any NHRI to ensure that they are accessible and accountable to the children they are meant to serve and that the mainstreaming of children's participation strengthens the design and implementation of complaints procedures and the institution's planning, advice and advocacy processes.

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