

The Role of National Human Rights Institutions, the Unicef, and Non-governmental Organisations in the Implementation of the United Nations Convention on the Rights of the Child

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ABSTRACT

The United Nations Convention on the Rights of the Child (CRC) is the most widely ratified human rights treaty in the world.¹ The CRC declares the rights of children and defines a minimum level of protection applicable to all state parties for each child. Children's rights are human rights, and as such, their addressees are first and foremost the states. In other words, the states are those primarily responsible for and entitled to the implementation of children's rights as per the CRC. Nevertheless, there are other organs that played important roles in the process of drafting and adopting the CRC and its Optional Protocols,² and which remain adding special expertise and giving echo to the voices of stakeholders (e.g. parents, churches, and children) amid the continuous implementation of the CRC. The importance of their roles is also articulated in Art. 45 of the CRC. Accordingly, this chapter delves into the *United Nations Children's Fund* (UNICEF; as an intergovernmental organisation), *non-governmental organisations*, and *national human rights institutions*, along with the respective roles they played in the drafting and adoption of the CRC and continue to play in its implementation and monitoring.

KEYWORDS

United Nations Convention on the Rights of the Child, rights of the child, non-governmental organizations, UNICEF, national human rights institutions, adoption, implementation, monitoring

1 Convention on the Rights of the Child, adopted in New York on 20 November 1989 by General Assembly resolution 44/25, UN Treaty Series no. 27531. All State Parties to the UN have ratified the treaty, except for the United States of America.

2 Currently, there are three Optional Protocols attached to the CRC, which are the Optional Protocol on the sale of children, child prostitution and child pornography, Optional Protocol on the involvement of children in armed conflict, and the Optional Protocol on a communications procedure.

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1. Non-governmental organisations

1.1. Definition, legal basis of the involvement of non-governmental organisations, and their general role at the United Nations level

There is no exact, unanimously agreed upon definition of non-governmental organisations (NGOs). Typically, they are organisations representing a specialised expertise, established by a group of individuals, operating voluntarily, most frequently on a non-profit basis, and independent of the government. The United Nations (UN) Development Programme (also known as UNDP) defines it as ‘a third sector existing alongside and interacting with the state and private industry’.³ The founders of the UN envisaged NGOs as stakeholders who would play a crucial and active role within the UN structure,⁴ with the UN Charter⁵ stating that:

‘the Economic and Social Council (hereinafter referred to as ECOSOC) may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.’

To fulfil this mandate, the Economic and Social Council adopted a resolution⁶ that describes the statutory requirements which must be met to obtain one of the three levels of consultative status with the UN.⁷ Each level carries specific privileges and all NGOs with consultative status are allowed to lobby freely among government delegations and participate, to some extent, in various UN meetings.⁸ From the perspective of this study, it is a starting point to emphasise that the Convention on the Rights of the Child (CRC) and its Optional Protocols⁹ formally acknowledge the role of civil society in protecting and promoting the human rights of children. Nevertheless, other treaties reference the role of civil society:¹⁰

- The Statute of the International Criminal Court: Arts. 15 (2) and 44 (4)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: Art. 74 (4);

3 The United Nations Development Programme and Civil Society Organisations: A Policy Note on Engagement, para. 5 (Accessed: April 12, 2024).

4 Cohen, 1990, p. 137.

5 Chapter 10, Art. 71.

6 See in detail: ECOSOC Resolution 1296 (XLIV). Available at: <https://archive.globalpolicy.org/ngos/ngo-un/info/res-1296.htm>. (Accessed: April 12, 2024).

7 Cohen, 1990, p. 137.

8 *Ibid.*

9 See footnote 2.

10 Vučković Šahović, 2010, p. 3.

- United Nations Convention on the Rights of Persons with Disabilities, Arts. 32 (1) and 33 (3).

1.2. Role of NGOs in relation to the CRC

1.2.1. Role of NGOs in drafting and in the adoption of the CRC

The CRC adoption was preceded by the development of children's rights. Considering the concrete legislative steps taken at the international level, several NGO-initiated activities can be seen as important steps towards the CRC. For instance, the International Save the Children Fund,¹¹ a NGO established in Geneva by Eglantyn Jebb in 1920 and after the First World War, with the British Save the Children Fund and Swedish Rädde Barnen as leading members, played a key role in the declaration of children's rights at the international level. Jebb was the author of the Declaration of Geneva, which was adopted in 1924 by the League of Nations. This was the first international document to list children's rights using a holistic approach.

The drafting process of the CRC, which followed the Polish proposal based on the text drafted by Professor Tadeusz Smaczynski, began with the Human Rights Commission setting up the Working Group for its drafting in 1979. NGO activity at this point was not yet organised; nevertheless, the annual reports of the Working Group show that there was some sort of NGO activity from the very beginning, even if the reports did not detail the names of the NGOs that participated in this phase. The organised activity of NGOs started in 1983, when the NGO group for the CRC, known at the time as the *Informal Ad Hoc Group for the Convention on the Rights of the Child*, was created and played a crucial role in the drafting process. This NGO group was supported by the United Nations Children's Fund (UNICEF), and the International Save the Children Fund was a member of it. During the drafting process, the NGO group held meetings twice a year at the UNICEF headquarters in Geneva. The working method of the NGO group was to make recommendations on articles proposed by government delegations that either altered or completely revised them.

Still, since the NGO group comprised various individual NGOs, not all questions were unanimously agreed upon, and some NGOs represented different interests. Some topics upon which the NGOs in the group disagreed on included, for instance, *the rights of an unborn child*, which divided the NGO group, and some participants worked on different text proposals.¹² Consensus was not reached in the NGO group regarding Art. 1 in its entirety, as there was no unanimity on the end of childhood.¹³ A similarly difficult question concerned the *age threshold for children to get involved in armed conflicts*, with some NGOs wanting to exclude the possibility of involving children in armed conflicts altogether. This perception was eventually backed by most

11 Available at: <https://www.savethechildren.net/>. (Accessed: April 12, 2024).

12 Cohen, 1990, p. 141.

13 In the final text, Art. 1 leaves to the discretion of the state parties to define or leave open the exact beginning of childhood.

members of the NGO group, particularly Radda Barnen, who then made massive lobbying efforts to reach a common understanding with the state parties. Nevertheless, other interests prevailed, and in the final text of the CRC, Art. 38 defined the threshold for 15 years of age.¹⁴ The NGO group also played a crucial role in drafting articles on the protection of children against sexual exploitation, trafficking, torture, and armed conflict with special attention to including reintegration and promotion of physical and psychological recovery measures for children affected by these serious human rights violations.¹⁵ Furthermore, the provisions on juvenile justice were reducing the influence of NGOs.¹⁶

The work of the NGO group in drafting the CRC is irrevocable; it made a tangible imprint on almost all its articles,¹⁷ bringing in new aspects and points of view from their daily work.¹⁸ However, it must be underlined that the CRC is an international convention, and thus the role of NGOs is of providing professional consultation assistance; this means that while they have room to promote children's rights and lobby for interests, the real stakeholders and obliges are the state parties to the CRC, who also have the mandate to implement the convention in line with the text that they have agreed upon. Therefore, the constructive work provided by NGOs was important at the time of the drafting and adoption of the CRC and remains important during its current implementation and monitoring.

1.2.2. Role of NGOs in implementation and monitoring

Today, the network of NGOs most directly connected to the CRC, the Committee on the Rights of the Child (CRC Committee), and to the monitoring process of CRC implementation is the Child Rights Connect,¹⁹ which comprises 108 members, among which 103 are full members and five are observers. In the framework of the Child Rights Connect, the NGOs carry out their duties in working groups dedicated to specific topics, such as working groups on children and the right to education, child

14 Art. 38 of the CRC: '1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. • 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. • 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest. • 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.'

15 Cohen, 1990, p. 143.

16 *Ibid.*

17 *Ibid.*

18 There are aspects that were added to articles, such as standards of school discipline, encouragement of breast-feeding, and discouragement of "traditional practises" (female circumcision), which would have been omitted if not the efforts of the NGO Groups.

19 Available at: <https://childrightsconnect.org/member-network/#members>. (Accessed: April 12, 2024).

participation, children's rights and environment, children and armed conflicts, children and violence, and children of incarcerated parents. According to Art. 45 of the CRC, to foster the effective implementation of the CRC and to encourage international cooperation:

- The specialized agencies, the UNICEF, and other UN organs shall be entitled to be represented in consideration of the implementation of such provisions of the CRC that fall within the scope of their mandate. The CRC Committee may invite specialised agencies, the UNICEF, and *other competent bodies* as it may consider appropriate to provide expert advice on CRC implementation in areas falling within the scope of their respective mandates. The Committee may also invite specialised agencies, the UNICEF, and other UN organs to submit reports on the implementation of the CRC in areas falling within the scope of their activities.
- The Committee shall transmit, as it may consider appropriate, to specialised agencies, the UNICEF, and *other competent bodies*, any reports from state parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications.

In the context of Art. 45, NGOs fall within the scope of other competent bodies, and since the adoption of the CRC, they have worked to monitor the Convention by participating in the reporting process.²⁰ In its concluding observations, the CRC Committee also tends to call for cooperation between civil society and state parties, and for the involvement of NGOs in the dissemination of the CRC.²¹ In addition, many General Comments issued by the CRC Committee refer to civil society.²²

The Child Rights Connect is also a strategic partner of the Committee and Office of the High Commissioner of Human Rights for the engagement of children's rights defenders in the reporting cycle.²³ Their role is to strengthen the capacity of children's rights defenders and of children per se to use the CRC's reporting cycle, in connection

20 With the inclusion of Art. 45, the CRC was the very first international treaty that included the role of civil society.

21 Vučković Šahović, 2010, p.14.

22 See, for example, General Comment No. 10 (2007) 'Children's Rights in Juvenile Justice', General Comment No. 2 (2002) 'The role of independent national human rights institutions in the promotion and protection of the rights of the child', General Comment No. 3 (2003) 'HIV/Aids and the Rights of the Child', General Comment No. 4 'Adolescent health', General Comment No. 5 (2003) 'the General measures of implementation for the Convention on the Rights of the Child', General Comment No. 6 (2005) 'Treatment of unaccompanied and separated children outside their country of origin', General Comment No. 8 (2006) 'Corporal punishment', General Comment No. 9 'Disabilities', General Comment No. 11 (2009) 'Indigenous children and their rights under the Convention', and General Comment No. 12 (2009) 'The right of the child to be heard'.

23 It does not mean that only members of Child Rights Connect can participate in the reporting process, this role is rather to facilitate and promote the possibility of participation of other actors. As referred to also above, it is open to local and regional non-governmental organisations to write alternative reports.

with other relevant UN human rights entry points, as an advocacy tool. The CRC Committee also accepts international, regional, national, and local organisations to submit written reports on how the CRC is being implemented in a given country. It is an alternative report to the one that must be submitted by state parties every five years – and which are followed by the concluding observations of the CRC Committee – and serves for these actors to engage in the reporting cycle.²⁴ Information may be submitted by individual NGOs or coalitions of NGOs national human rights institutions (NHRIs), ombudspersons, children, and organisations representing children. Furthermore, the CRC Committee encourages the submission of joint reports, which in turn require national cooperation of a coalition of NGOs. Thus, in many state parties, child rights coalitions²⁵ have been established, usually with strong coordination efforts from UNICEF, where members are national and local NGOs and individual well-recognised experts on children's rights. This allows national-level cooperation for enhancing the impact of the monitoring and reporting processes of the CRC. In addition, it is more difficult to neglect or discredit submissions by NGO coalitions.²⁶ Nevertheless, it is important to emphasise that the submission of a single alternative report, even if it is very comprehensive and drafted by members of such NGO coalitions, may still result in one-sided opinions. Therefore, even if from a practical point of view or from the perspective of comprehensiveness, it is important to encourage various reports from single actors or different groups of NGOs to allow the representation of various opinions, even those that do not fall within the scope of mainstream information.

Art. 44 (6) of the CRC provides for making the reports of state parties widely available to the public in their own countries. Therefore, NGOs interested in preparing written information for the Committee should request a copy of the state party report from their government. If, for whatever reason, the government does not provide an NGO with a copy of the report, it may be requested from the NGO Group Liaison Unit or may be found in unedited format at <http://www.ohchr.org/english/bodies/crc/>

24 Art. 44 paras. 1–4 of the CRC: '1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights: a) Within two years of the entry into force of the Convention for the State Party concerned; b) Thereafter every five years. • 2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned. • 3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 b) of the present article, repeat basic information previously provided. • 4. The Committee may request from States Parties further information relevant to the implementation of the Convention'.

25 In Hungary, it is called 'Gyermekjogi Civil Koalíció' (see more on <https://gyermekjogicivilkoalicio.hu/>), and it was established on February 13, 2015, a date that also marks the initiation of the operation of the UNICEF Office in Hungary. Similarly to Child Rights Connect, members of the coalition gather in working groups.

26 A Guide for Non-Governmental Organisations: Reporting to the CRC Committee, p. 9.

sessions.htm.²⁷ Nevertheless, the monitoring and analysis performed by NGOs are ongoing processes that need to start as early as possible. Therefore, the structure and methodology of the work done by the NGOs should precede the state report itself. The NGO report should also not be finalised until the state party has submitted its report to the Committee, so that it can comment on its contents and the need for an update can be avoided.²⁸ As to the content of the NGO reports, should contain a section-by-section analysis of the state party report, and shall follow a thematic structure based on the following eight clusters of topics:²⁹

- General measures of implementation (Arts. 4, 42, and 44.6).
- Definition of the child (Art. 1).
- General principles (Arts. 2, 3, 6, and 12).
- Civil rights and freedom (Arts. 7, 8, 13, 14, 15, 16, 17, 19, and 37(a)).
- Family environment and alternative care (Arts. 5, 9, 10, 11, 18, 20, 21, 25, and 27.4).
- Basic Health and Welfare (Arts. 18, 23, 24, 26, and 27).
- Education, leisure and cultural activities (Arts. 28, 29, and 31).
- Special protection measures (Arts. 22, 30, 32, 33, 34, 35, 37, 38, 39, and 40).

The Committee prefers this format to be able to more easily compare the NGO report with the state party report. Governments tend to prepare legalistic reports, while those of NGOs play an important role in providing information on the practical implementation (or its lack thereof) of the CRC.³⁰ NGOs also help significantly in bringing in the voices of particular groups of stakeholders on the matter, such as different groups of children, parents, and churches, to the Committee and governments.

In addition to the involvement of national and regional NGOs in the reporting, and the direct support provided by NGOs of the Child Rights Connect Network to the CRC Committee, NGOs may also get involved in the process through constant dialogue with the Committee, as well as by engaging in the follow-up of the concluding observations of the Committee. This is because, as aforementioned, the Committee commonly recommends civil society organisations to use the concluding observations to generate awareness of the CRC and its implementation and monitoring.³¹

27 *Ibid*, p. 10.

28 *Ibid*.

29 *Ibid*, p. 9.

30 *Ibid*, p. 11.

31 Vučković Šahović, 2010, p. 20.

2. UNICEF

The UNICEF, originally known as the United Nations Children's Emergency Fund, was established in 1946,³² immediately after Second World War as the first intergovernmental organisation specialised only on children. Importantly, the Polish contribution can be seen not only in the beginnings of the CRC but also in the establishment of UNICEF. In fact, Ludwik Witold Rajchman, a Polish bacteriologist and social activist, was the founder and first head of UNICEF. It is a specialised agency of the UN currently present in 192 countries worldwide. It aims to provide humanitarian help to children in need, support their development, and advocate for the implementation of their rights. Their areas of activity³³ include child protection,³⁴ child survival,³⁵ education,³⁶ social policy,³⁷ emergency intervention,³⁸ gender equality,³⁹ innovation,⁴⁰ supply and logistics,⁴¹ and evidence-based research and analysis. UNICEF operates and relies on country offices and national committees in 33⁴² countries,⁴³ which are established as local NGOs but operate as an integral part of the global UNICEF. National Committees typically rely on fundraising, accept voluntary contributions, are responsible for raising one-third of UNICEF's annual income, and form national coalitions to submit reports alternative to government reports.

32 It was created by a resolution 57(I) of the UN General Assembly on 11 December 1946.

33 See: <https://www.unicef.org/what-we-do>. (Accessed: April 12, 2024).

34 The UNICEF deals, for instance, with child protection in a specific understanding, adolescent development, social and behaviour change, gender equality, the protection of children with disabilities in child protection systems, and the impact of environment and climate change.

35 In the context of child survival, the UNICEF deals with early childhood development, child nutrition, healthcare, HIV and AIDS prevention, and water, sanitation, and hygiene issues.

36 In the context of education, the UNICEF deals with education for children with disabilities, early childhood development, education in emergencies, education in general, access to education without any discrimination, and innovation in education.

37 The UNICEF deals with social policy in general and with child-friendly city initiatives.

38 Emergency intervention mainly involves humanitarian actions for the sake of children.

39 This activity of UNICEF is mainly about the empowerment of women and girls.

40 UNICEF works with partners in different sectors to create innovative solutions that accelerate progress for children and young people.

41 This activity of UNICEF is mainly about ensuring access to lifesaving supplies to those children at risk.

42 Available at: <https://www.unicef.org/unicef-national-committees> (Accessed: March 28, 2024).

43 Andorra, Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Hong Kong Special Administrative Region, People's Republic of China, Hungary, Iceland, Ireland, Israel, Italy, Japan, Republic of Korea, Lithuania, Luxemburg, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland & Liechtenstein, Turkey, the United Kingdom, and the United States of America.

According to its mission statement,⁴⁴ the UNICEF:

- (...) is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential.
- is guided by the UNCRC and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.
- insists that the survival, protection and development of children are universal development imperatives that are integral to human progress.
- mobilizes political will and material resources to help countries, particularly developing countries, ensure a "first call for children" and to build their capacity to form appropriate policies and deliver services for children and their families.
- committed to ensuring special protection for the most disadvantaged children – victims of war, disasters, extreme poverty, all forms of violence and exploitation, and those with disabilities.
- responds in emergencies to protect the rights of children. In coordination with United Nations partners and humanitarian agencies, UNICEF makes its unique facilities for rapid response available to its partners to relieve the suffering of children and those who provide their care.
- is non-partisan and its cooperation is free of discrimination. In everything it does, the most disadvantaged children and the countries in greatest need have priority.
- aims, through its country programmes, to promote the equal rights of women and girls and to support their full participation in the political, social and economic development of their communities.
- works with all its partners towards the attainment of the sustainable human development goals adopted by the world community and the realization of the vision of peace and social progress enshrined in the Charter of the United Nations.

Art. 45 of the CRC describes the UNICEF as an organ that shall be entitled to be represented at the consideration of the implementation of such provisions of the CRC that fall within the scope of their mandate. Furthermore, the CRC Committee cooperates with UNICEF on a wide range of topics, while the UNICEF issued an implementation Handbook for the CRC and intends to work on its global implementation.

44 Available at: <https://www.unicef.org/about-us/mission-statement> (Accessed: March 28, 2024).

3. NHRIs⁴⁵

In addition to NGOs and the UNICEF, NHRIs are important stakeholders in the monitoring and implementation of the CRC. Being state-mandated, state-financed, and safeguarded by national legislation, NHRIs can reflect on national specificities and, therefore, can be legitimate professional supporters of genuine duty bearers (i.e. states) in the implementation of the CRC. NHRIs for children differ from NGOs in that they are public entities and must account for its activities at a different level. In 1981, Norway became the first country to establish an independent ombudsman for children through legislation,⁴⁶ but since then, the number of NHRIs specific for children's rights has increased consistently.

3.1. Definition legal basis and general attributes

NHRIs are state-mandated bodies independent of the government, with a broad constitutional or legal mandate to protect and promote all human rights at the national level. Generally, NHRIs address a full range of human rights (e.g. civil, political, economic, social, and cultural rights), can take various forms (e.g. ombudsman offices, commissions, or councils), and while they operate independently of the government, they are still accountable to the public.

The possible necessity of NHRIs (i.e. not specifically focusing on the rights of the child) at the international level was first raised two years before the Universal Declaration of Human Rights.⁴⁷ Three decades later, in 1978, under the supervision of the Commission on Human Rights, draft guidelines were adopted on the possible role and functioning of NHRIs. In 1991, an international workshop was organised, resulting in the Paris Principles,⁴⁸ which are widely accepted as a guiding threshold for the credibility and legitimacy of these institutions.⁴⁹ In 2005, the Commission on Human Rights strengthened⁵⁰ the importance of establishing NHRIs designed in line with the requirements of the Paris Principles. The Paris Principles call for the establishment of NHRIs which meet the requirements of a broad mandate, function, pluralism, independence from the government, adequate power, resources, cooperative work, and international engagement. It is evident that children's rights are human rights

45 About this subchapter, the research made in the frame of the Polish-Hungarian Research Platform 3 (2023), in particular part II and part III/1 of the following article: Benyusz A child-rights based approach towards children with disabilities: The role of national human rights institutions (To be published in 2024).

46 Vučković Šahović, 2010, p. 38.

47 In 1945, the Economic and Social Council considered the issue of national institutions.

48 Principles Relating to the Status of National Institutions, which were endorsed by the Vienna World Conference on Human Rights and the UN General Assembly in 1993, by General Assembly resolution 48/134. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris> (Accessed: October 14, 2023).

49 National Human Rights Institutions; History; Principles; Roles and Responsibilities, p. 7.

50 Resolution 2005/74.

and, therefore, are somehow protected by an NHRI with a broad mandate. However, the fact that the CRC is the most accepted human rights treaty in the world and that it focuses on the vulnerability and outstanding importance of childhood in one's life justifies a specified approach and the necessity to establish separate human rights institutions.

Importantly, there are no direct references for the establishment of NHRIs in the CRC. Art. 45⁵¹ of the CRC gives much strength to the role of UNICEF, specialised agencies, and NGOs under the term "*other competent bodies*". Meanwhile, in Art. 33⁵² of the UN Convention on the Rights of Persons with Disabilities (also known as UNCRPD), where there are specific provisions regarding the rights of children with disabilities, mentions the important role that NHRIs play in national implementation, and obliges state parties to 'maintain, strengthen, designate or establish, a framework, including one or more independent mechanism, as appropriate, to promote, protect and monitor implementation of the present Convention'. Nevertheless, the lack of direct mention to NHRIs in the CRC text and that of the Convention on the Rights of Persons with Disabilities may have been purely a historical conundrum. Specifically, the CRC was adopted in 1989, whereas the importance of NHRIs was strengthened in the Vienna Declaration and the Paris Principles, both adopted in 1993 by the General Assembly.

51 Art. 45 of the CRC: 'a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities. • b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests of indications. • c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child; • d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted'.

52 Art. 33 of the Convention on the Rights of Persons with Disabilities: '1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels. • 2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights. • 3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process'.

Moreover, the Convention on the Rights of Persons with Disabilities was adopted after 1993. It is also the situation that the necessity of specified monitoring for the rights of the child and the establishment of specific NHRIs in this regard appears expressly in other documents of international law, as follows:⁵³

- In the *UN Guidelines on Alternative Care*, which call states to: ‘ensure that an independent monitoring mechanism is in place, with due consideration for the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). This monitoring mechanism should be easily accessible to children, parents, and those responsible for the children without parental care.’⁵⁴
- In the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, which aims to ‘establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhumane or degrading treatment or punishment’.⁵⁵ It requires State Parties to establish one or several independent national mechanisms to prevent torture in the country and, in doing so, to give due consideration to the principles related to the status of national institutions mandated to promote and protect human rights.⁵⁶
- In the *UN Rules for the Protection of Juveniles Deprived of their Liberty* (also known as Havana Rules) calls for the appointment of independent inspectors with the power to conduct unannounced and regular inspections of facilities with unrestricted access to employees, juveniles, and records, and with full guarantees of independence in the exercise of this function. They also specify that independent offices should receive and investigate complaints from juveniles deprived of their liberty.⁵⁷
- Art. 10 of the *Lanzarote Convention* specifies that:

‘(1) Each Party shall take the necessary measures to ensure the co-ordination on a national or local level between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children, notably the education sector, the health sector, the social services and the law-enforcement and judicial authorities.

(2) Each Party shall take the necessary legislative or other measures to set up or designate: a independent competent national or local institutions for the promotion and protection of the rights of the child, ensuring that they

⁵³ UNICEF, p. 8.

⁵⁴ UN Guidelines on Alternative Care, para. 130.

⁵⁵ Art. 1 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵⁶ Art. 17 and Art. 18 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵⁷ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Adopted by General Assembly resolution 45/113 of 14 December 1990, paras. 72 and 77.

are provided with specific resources and responsibilities; b mechanisms for data collection or focal points, at the, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection.

(3) Each Party shall encourage co-operation between the competent state authorities, civil society and the private sector, in order to better prevent and combat sexual exploitation and sexual abuse of children.’

Although the text of the CRC does not directly reference NHRIs, the CRC Committee deducts the alleged obligation of states parties to establish specialised NHRIs from Art. 4 of the CRC, which says that ‘the state parties undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention’. According to the CRC Committee, state parties are obliged to comprehensively review all domestic legislation and related administrative guidelines to ensure full compliance with the CRC. The review must consider the Convention not only article by article but also holistically, recognising the interdependence and indivisibility of human rights. The review must also be continuous, rather than one-off, and enshrined in existing legislation. Furthermore, while it is important that this review process is built into the machinery of all relevant government departments, it is also advantageous to have independent reviews be conducted by, for example, parliamentary committees and hearings, NHRIs, NGOs, academics, affected children, young people, and other stakeholders.⁵⁸ This review should also be supplemented with monitoring. The CRC Committee describes that self-monitoring and evaluation are obligatory for governments, as well as essential for the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups, and independent human rights institutions.⁵⁹

3.2. General Comment on the Role of NHRIs

The CRC Committee issued General Comment No. 2⁶⁰ to provide directions to states on establishing NHRIs. Importantly, General Comments are not legally binding instruments, making it such that their contents shall be considered guidelines and not binding provisions, and that it is up to each state to consider the necessity and method of establishing NHRIs to monitor and support the implementation of the CRC at the international level. Now, back to General Comment No.2, it states that while adults and children alike need NHRIs to protect their human rights, additional justification exists to ensure that children’s human rights are given special attention and need a

58 CRC/GC/2003/5 para. 18.

59 CRC/GC/2003/5 para. 46 (see also para. 65).

60 Committee on the Rights of the Child, General Comment No. 2, ‘The role of independent national human rights institutions in the promotion and protection of the rights of the child’, CRC/GC/2002/2 (2002).

specific focus.⁶¹ The justifying reasons include the ‘vulnerability stemming from the developmental state, the fact that their opinion is rarely considered and even less rarely considered seriously’, and the ‘difficulty and arising vulnerability that they face when meeting’ the judicial system. In general, children’s access to their rights tends to be limited.

Therefore, there should be NHRIs designed to protect constitutionally entrenched children’s rights, and these institutions must be at least legislatively mandated.⁶² NHRIs should be accorded such powers as necessary to enable them to discharge their mandates effectively, including the power to hear any person and obtain any information and documents necessary for assessing situations that fall within their competence. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the state party in relation to not only the state but also all relevant public and private entities.

The NHRI establishment process should be consultative, inclusive, and transparent, initiated and supported at the highest levels of government, and encompass all relevant elements of the state, legislature, and civil society. To ensure their independence and effective functioning, NHRIs must have adequate infrastructure, funding (specifically for children’s rights within broad-based institutions), staff, premises, and freedom from forms of financial control that might affect their independence.⁶³ While the CRC Committee acknowledges that this is a very sensitive issue and that state parties function with varying levels of economic resources, the Committee believes that it is the duty of states to make reasonable financial provisions for the operation of NHRIs in light of Art. 4 of the CRC.⁶⁴

NHRIs must also have the power to consider individual complaints and petitions, as well as conduct investigations, including those submitted on behalf of or directly by children.⁶⁵ To effectively carry out such investigations, they must have the power to compel and question witnesses, access relevant documentary evidence, and places of detention. These institutions also have a duty to ensure that children receive effective remedies – independent advice, advocacy, and complaints procedures – for any breaches of their rights. Where appropriate, NHRIs should also undertake mediation and conciliation of complaints,⁶⁶ and should have the power to support children taking cases to court, including the power (I) to take cases concerning children’s issues in the name of the NHRI, and (II) to intervene in court cases to inform the court about the human rights issues involved in the case.⁶⁷

61 CRC/GC/2002/2 para. 5.

62 CRC/GC/2022/2 para. 7.

63 CRC/GC/2022/2 para. 10.

64 CRC/GC/2022/2 para. 11. In addition, the mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers.

65 CRC/GC/2022/2 para. 13.

66 CRC/GC/2022/2 para. 13.

67 CRC/GC/2022/2 para. 14.

Furthermore, NHRIs should be geographically and physically accessible for all children. In the spirit of Art. 2 of the Convention, they should proactively reach all groups of children, particularly the most vulnerable and disadvantaged, such as children in care or detention, from minority and indigenous groups, *with disabilities*, living in poverty, refugees and migrants, living in the streets, and with special needs in areas such as culture, language, health, and education.⁶⁸ The NHRI legislation should include the right of the institution to have access to conditions of privacy for children in all forms of alternative care and to all institutions that include children.

Specialised NHRIs, as stand-alone institutions focused on children's rights, can make children's rights and best interests more visible, the recognition of children as rights holders more tangible, and improve children's accessibility and genuine participation on matters revolving around their rights. If human, material, and financial resources are guaranteed, adequately specialised NHRIs have great chances to reach children and involve them in their work such that children's needs can be addressed directly. This also opens up the possibility of designing these institutions to be accessible to all children, including those with extensive difficulty realising their rights. Notwithstanding, research shows that children are often unaware of the existence of such institutions⁶⁹ and the possibility of filing complaints or raising their voices, highlighting that accessibility enhancement should also be dealt with at the national level, as the specificities of the local circumstances⁷⁰ and groups of children concerned need to be considered. However, there are some characteristics that should be considered when working on improving the accessibility of NHRIs, such as proactivity, age-appropriate outreach, the range of children covered by the institution (e.g. should also deal with the cases of children with disability), and accessible mechanisms that enable children to reach the institution using their own initiative. *Awareness raising* is also an important element of accessibility interconnected with Art. 42 of the CRC, which underlines the role of the state in making the principles and provisions of the CRC widely known by appropriate and active means, to both adults and children. *Geographical accessibility* is also essential and can be enhanced by establishing branches and developing solutions that raise accessibility for children with disabilities.

4. Concluding remarks

This chapter overviews the role of stakeholders supporting the implementation of the CRC, that is, NGOs, UNICEF, and NHRIs, from the drafting of the CRC through its adoption, implementation, and monitoring phases. It is unquestionable that these stakeholders play an important role in the dissemination of the CRC and hold an

68 CRC/GC/2022/2 para. 15.

69 UNICEF, October 2012, Office of Research: Championing Children's Rights: A global study of independent human rights institutions for children – summary report, p. 15.

70 It is more than the issue of location, although this is part of it.

expertise worthy of use in CRC implementation. It is also unquestionable that they have done much to make children's rights more accessible.

Nevertheless, the primary duty bearers in connection to the obligations stemming from the CRC are the states, which are also the ones that took on the duty to implement children's rights to the maximum extent possible. This implies that the responsibility regarding the implementation of the CRC and the right to guide such implementation shall lay on their shoulders, and as referred to already in the chapter, according to Art. 4 of the CRC, they shall 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention'.

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