THE FUTURE OF THEMATIC CHILDREN'S RIGHTS INSTITUTIONS IN A NATIONAL HUMAN RIGHTS INSTITUTION WORLD: THE PARIS PRINCIPLES AND THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

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I. INTRODUCTION

Independent thematic human rights institutions have been established by some states to focus on the protection and promotion of one category of human rights or the rights of a vulnerable group. Children are a vulnerable population and, in response, thematic children’s rights institutions have been established at the national and sub-national levels of government, albeit in a relatively small number of states. Leaders of these institutions are given titles such as ombudsperson for children, ombudsman for children, commissioner for children or defender of children. The first of its kind, Norway’s Ombudsman for Children, was established in 1981.

By the early 1990s, however, the international community began to place greater importance on the establishment and strengthening of broad-based national human rights institutions (“NHRIs”). The minimum standards for NHRIs were enshrined in the Paris Principles, which were drafted in 1991 and adopted

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1. Thematic human rights institutions may also be called “specialist” or “specialized” human rights institutions.

2. In this Article, the words “children” or “minors” will be used to denote children and youth up to the age of majority.

by the UN General Assembly in 1993.4 The Paris Principles have been interpreted in more depth by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (“ICC”) through its General Observations and accreditation process.5 In the ensuing years, NHRI—primarily national level human rights commissions and national level human rights ombudsman institutions—have multiplied. Some of these NHRI have a legislative responsibility to focus on children’s rights while other NHRI prioritize children’s rights through their operating practices.

Today, independent human rights institutions that pay special attention to children’s rights are commonly understood to comprise thematic children’s rights institutions at all levels of governance, broad-based NHRI that pay special attention to children’s rights, and sub-national human rights institutions with a focus on children.6 Terms such as “independent human rights institutions for children” or “independent children’s rights institutions”...
“institutions’” (“ICRIs”) are used to describe this institutional mixture. Regardless of their structure, a core function of most ICRIs is to facilitate the domestic implementation of the UN Convention on the Rights of the Child (“CRC”) and its Protocols.

Since great importance has been placed on the establishment of NHRIs that are fully compliant with the Paris Principles, the existence and role of thematic human rights institutions, including thematic children’s rights institutions, are being reevaluated. In recent years, some countries have collapsed thematic children’s rights institutions into broad-based NHRIs while others have established only one comprehensive NHRI. Countervailing factors and forces influence the choice of institutional structure made by governments when deciding whether or not to establish or retain a thematic children’s rights

7. Id. at 1; Nigel Thomas, Brian Gran & Karl Hanson, An Independent Voice for Children’s Rights in Europe? The Role of Independent Children’s Rights Institutions in the EU, 19 INT’L J. CHILD. RTS. 429 (2011); Nigel Thomas, The Role and Impact of Independent Children’s Rights Institutions in the UK and Europe, 33 J. SOC. WELFARE & FAM. L. 279, 280–81 (2011); Brian Gran, The Roles of Independent Children’s Rights Institutions in Implementing the CRC, in THE HUMAN RIGHTS OF CHILDREN: FROM VISIONS TO IMPLEMENTATION 219 (Antonella Invernizzi & Jane Williams eds., 2011). This Article uses the term “independent children’s rights institution” or “ICRI.”

institutions. These include economic factors, efficiency concerns, political attitudes to children’s rights and domestic and regional legal systems. There are also competing functional considerations that influence the decision whether to have a thematic children’s rights institution as opposed to integrating the children’s rights mandate into a broad-based NHRI (or equivalent sub-national human rights institution). The burgeoning international standards on NHRI s and thematic human rights institutions also play a role in influencing the decisions of national governments on the composition of their ICRI(s). This Article focuses on the interplay between the UN Paris Principles as interpreted by the ICC and the practice of the CRC’s treaty committee, the Committee on the Rights of the Child (“CtRC”).

Thematic human rights institutions at all levels of governance (including thematic children’s rights institutions) and sub-national human rights institutions are not considered to be NHRI s pursuant to the Paris Principles as interpreted by the ICC.9 Based on ICC practice, it is impossible for thematic human rights/children’s rights institutions to be deemed by the ICC to be fully compliant with the Paris Principles, which has material implications for these institutions in the UN and regional human rights systems. Only broad-based NHRI s have the capacity to be fully compliant with the Paris Principles. As a result, this Article argues that the application of the Paris Principles by the ICC exerts pressure on states to have one comprehensive NHRI that includes a children’s rights focus and subtly discourages states from establishing or retaining a separate national level thematic children’s rights institution. This Article further argues that while the CtRC originally had a stronger inclination to encourage CRC states to establish thematic children’s rights institutions, this attitude has changed as the Paris Principles have become dominant in the international human rights community. Moreover, the CtRC has exerted almost no pressure on CRC states to establish a national level thematic children’s rights institution as long as they have an NHRI with a focus on children’s rights. While extant thematic

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9. GENERAL OBSERVATIONS, supra note 5, at 101–05, 110. See infra text accompanying notes 100–17 (offering a more detailed discussion).
children’s rights institutions are supported by the CtRC, they are almost never affirmatively recommended. Thus, the CtRC’s practice exerts no appreciable pressure on CRC states to establish thematic children’s rights institutions at the national level, thereby underscoring the influence of the one-NHRI movement set in motion by the Paris Principles.

However, since the Paris Principles do not apply to sub-national human rights institutions, sub-national governments with plenary jurisdiction over children’s rights will probably not be influenced by the UN human rights standards and pressures, at least to the same degree, in their decision-making on thematic children’s rights institutions.

II. INDEPENDENT HUMAN RIGHTS INSTITUTIONS FOR CHILDREN AND THE UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

The CRC contains numerous civil, political, economic, social, cultural and protective rights for children. Its substantive protocols protect children involved in armed conflict and prohibit the sale of children, child prostitution and child pornography. 10 Four general principles of the CRC are: non-discrimination; the best interests of the child; the right to life, survival and development of the child; and the rights of children to provide their views in matters affecting them according to their age and maturity. 11 The CtRC has powers to review periodic reports issued by the state parties and issue recommendations thereon (concluding observations), issue general comments containing detailed interpretations of individual CRC rights or thematic issues related to children’s rights and, pursuant to the Optional

10. E.g., Children in Armed Conflict Protocol, supra note 8, art. 1; Sale of Children Protocol, supra note 8, art. 1.

Protocol on a Communications Procedure, hear complaints and engage in inquiries concerning alleged CRC/Protocol violations.\textsuperscript{12}

Article 4 of the CRC contains implementation obligations for states parties.\textsuperscript{13} Although the treaty drafters discussed the possibility of requiring states to establish domestic human rights institutions to protect children’s rights, the final text of the CRC was silent on the matter.\textsuperscript{14} As discussed further below, the CtRC has interpreted article 4 to include an obligation that CRC parties must establish ICRIs.

\textbf{A. Typology of Independent Children’s Rights Institutions (ICRIs)}

The definitions of ICRIs used by UNICEF’s Office of Research and the European Network of Ombudspersons for Children (ENOC) reflect the influence of the Paris Principles and the work of the CtRC.

UNICEF’s Office of Research defines an independent human rights institution for children as:

A public body with independent status, whose mandate is to monitor, defend and promote human rights and which has a focus on children’s rights, either as specialized institutions [sic] or because it carries out activities specifically focusing on children, with an identifiable department. It can be established at national or sub-national level.\textsuperscript{15}

The definition includes: (1) thematic children’s rights institutions at all levels of governance; (2) NHRI s and sub-national human rights institutions that have integrated children’s rights into their broad human rights mandates based on express child-focused legislative provisions; and (3) NHRI s and sub-national human rights institutions that have integrated children’s rights into their broad human rights mandates in

\begin{footnotesize}
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\item \textsuperscript{12} BUCK, supra note 8, at 92–99; Committee on the Rights of the Child, Off. HIGH COMMISSIONER FOR HUM. RTS., http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx (last visited Nov. 7, 2014).
\item \textsuperscript{13} Convention on the Rights of the Child, supra note 8, art. 4.
\item \textsuperscript{14} GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 408 (1995).
\item \textsuperscript{15} UNICEF OFFICE OF RESEARCH, supra note 6, at xi.
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practice only, but “[t]o qualify as an independent human rights institution for children, this [third] model must feature an identifiable commissioner or unit dedicated to children’s rights.”

Apart from its geographic limitation to institutions located in Council of Europe (COE) member states, ENOC membership is open to both thematic children’s rights institutions at national and sub-national levels of governance and institutions that “form part of an independent national or regional human rights institution.” To obtain ENOC full membership, institutions must satisfy the following criteria: the institution is established by the legislature through legislation that gives it independence, the legislation gives the institution the functions of protecting and promoting children’s rights, the legislation provides for appointment of the institution’s leadership and the term(s) of appointment, there are no statutory limitations on the institution’s ability to set its own children’s rights protection and promotion agenda or that prevent it from undertaking significant core functions suggested in the Paris Principles and ENOC’s standards and an identifiable person(s) must work exclusively on children’s rights promotion and protection.

For the purposes of this Article, I will use the following variation on the UNICEF/ENOC approaches to classification of ICRI:

1. NHRI—national level human rights commissions and national level human rights ombudsman institutions—that address children’s rights within their broad human rights mandates based on an explicit legislative children’s rights mandate that sometimes also requires the appointment of a commissioner/deputy ombudsman for children;

16. Id. at 75–78.


18. Id. Institutions can become ENOC associate members if they can show that they are actively striving to meet these criteria. Id.

2. NHRI s that have a broad human rights mandate and the operating practices of the NHRI prioritize children’s rights, including the designation of an identifiable unit or commissioner/deputy ombudsman dedicated to children’s rights;

3. thematic children’s rights institutions found at national and/or sub-national levels, established with a singular focus on the protection and promotion of children’s rights;

4. human rights commissions and human rights ombudsman institutions found at the sub-national level in federal and decentralized states that have an explicit legislative children’s rights mandate that sometimes also requires the appointment of a deputy ombudsman/commissioner for children; and

5. human rights commissions and human rights ombudsman institutions found at the sub-national level in federal and decentralized states with broad human rights mandates and the operating practices of the institution prioritize children’s rights, including the designation of an identifiable commissioner or unit dedicated to children’s rights.20

NHRI s or broad-based sub-national human rights institutions in categories (1), (2), (4) and (5) will not be classified as ICRIs if they do not have a children’s human rights mandate in law or practice that leads to the designation of a person or

(addressing various ombudsman institutions that have express mandates to protect and promote human rights); HUMAN RIGHTS, STATE COMPLIANCE, AND SOCIAL CHANGE: ASSESSING NATIONAL HUMAN RIGHTS INSTITUTIONS (Ryan Goodman & Thomas Pegram eds., 2012) (assessing national human rights institutions).

20. Classical ombudsman institutions do not constitute ICRIs since they do not have express human rights protection and promotion mandates. There are some classical ombudsman institutions that have explicit legislative duties to protect children through investigation, reporting, auditing and related activities—such as the New South Wales Ombudsman—and there are other classical ombudsman institutions that in practice use the CRC sometimes to support their investigations involving treatment of children. Linda C. Reif, The Ombudsman and the Protection of Children’s Rights, 17 ASIA PAC. L. REV. 27, 27–28 (2009); Bruce Barbour, Ombudsman of N.S.W., Actions Speak Louder Than Words: An Ombudsman’s Office and Children, Address at the International Ombudsman Institute Stockholm Conference (June 11, 2009), available at http://www.theioi.org/downloads/35sfbvStockholm%20Conference_21.%20Workshop%204_Bruce%20Barbour.pdf.
unit/department focusing on children’s rights. If the conditions are satisfied, all five categories of ICRIs are considered to be children’s rights institutions. Scholars also accept this relatively broad conception of an ICRI.

However, as demonstrated further below, only those institutions in categories (1) and (2), i.e., NHRIs, primarily national level human rights commissions and national level human rights ombudsman institutions with broad human rights mandates, are considered both to constitute NHRIIs and to be capable of full compliance with the Paris Principles as interpreted by the ICC. This has ramifications for national level thematic children’s rights institutions in (3) because the CtRC uses the Paris Principles and NHRI terminology in its concluding observations and relevant general comments.

B. Geography of Independent Children’s Rights Institutions

1. Thematic Children’s Rights Institutions

a. National Level Thematic Children’s Rights Institutions

National level thematic children’s rights institutions are found in over twenty countries, with many of them located in Europe. National level thematic institutions in Europe are located in Croatia, Cyprus, Denmark, Finland, Iceland, Ireland, Italy, Lichtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Russia, Sweden and Ukraine. Further, in addition to

21. See supra text accompanying note 18, for ENOC membership requirements; UNICEF OFFICE OF RESEARCH, supra note 6, at xi (defining ICRI).

22. See, e.g., Thomas, Gran & Hanson, supra note 7, at 429–31 (defining an Independent Human Rights Institution for Children (the authors’ term for an ICRI) as an independent institution “with duties and powers to monitor, promote and protect the rights of children”); Thomas, supra note 7, at 281–84 (using ENOC typology for ICRIs); Gran, supra note 7, at 219 (“An ICRI is a type of independent institution that concentrates on monitoring, promoting and protecting children’s rights.”).

23. See UNICEF OFFICE OF RESEARCH, supra note 6, at 317–27 (listing the countries that have national level thematic children’s rights institutions as of August 30, 2013). The Directory does not separate the thematic children’s rights institutions from the general jurisdiction human rights institutions. Id.

24. PRAVOBRANITELJA ZA DJECU [OMBUDSPERSON FOR CHILD], http://www.dijete.hr/en.html (last visited Nov. 24, 2014) (Croat.)
its primary focus on children’s rights in England, England’s Children’s Commissioner also has jurisdiction over non-devolved areas covering the United Kingdom (UK). In other parts of the world, national thematic institutions for children are found in Mauritius, India, Jamaica, Guyana, Indonesia and New

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Zealand. These thematic children’s rights institutions have differing levels of independence and powers. Thematic children’s rights institutions are under consideration in other countries, some of which have not acted on the initiative for years.


27. See, e.g., Comm. on the Rights of the Child, Concluding Observations of States Parties Under Article 44 of the Convention Concluding Observations: Denmark, 56th Sess., Jan. 17–Feb. 4, 2011, ¶¶ 18, 20, UN Doc. CRC/C/DNK/CO/4 (Apr. 7, 2011) [hereinafter CRC, Denmark] (criticizing Denmark because its National Council for Children does not fulfill ombudsman role or it has not established child rights facility inside ombudsman institution); OMBUDSMAN FOR CHILD. PRESIDENT UKRAINE, supra note 24 (showing that Ukraine’s institution is not independent, rather it is under the office of the President); CHILD. RTS. COMMISSIONER UNDER PRESIDENT RUSSIAN FED’N, supra note 24 (showing the Russian institution is under the office of the President and not independent).

28. See, e.g., UNICEF OFFICE OF RESEARCH, supra note 6, at 264, 281 (Argentina’s unimplemented legislation for a Defensor de Derechos de Niños, Niñas y Adolescentes [Defender of the Rights of Children and Adolescents]); id. at 261, 281 (Dominican Republic’s unimplemented legislation); id. at 215 (Namibia’s unimplemented legislation); id. at 281 (thematic children’s rights institution under consideration in Suriname); Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Uzbekistan, Adopted by the Committee at its Sixty-Third Session (27 May–14 June 2013), ¶ 7(c), UN Doc. CRC/C/UZB/CO/3-4 (July 10, 2013) [hereinafter CRC, Uzbekistan] (Uzbekistan’s unimplemented legislation for a children’s ombudsman); Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of China (Including Hong Kong and Macau Special Administrative Regions), Adopted by the Committee at its Sixty-Fourth Session (16 Sept.–4 Oct. 2013), ¶¶ 18–19, UN Doc. CRC/C/CHN/CO/3-4 (Oct. 29, 2013) [hereinafter CRC, China] (stating that Hong Kong, China has not acted on a 2007 Legislative Council motion to establish an independent children’s commission); Comm. on the Rights of the Child, Concluding Observations on the Combined Second to Fourth Periodic Reports Saint Lucia, ¶ 18, UN Doc. CRC/C/LCA/CO/2-4 (June 13, 2014) [hereinafter CRC, Saint Lucia] (stating Saint Lucia intends to establish a children’s advocate).
In some countries, the national level thematic institution coexists with an NHRI that has ICC accreditation confirming full or partial compliance with the Paris Principles. As discussed further below, since only one NHRI in a state is typically accredited by the ICC and the process is based on voluntary application, there are also a few nations where the thematic child’s rights institution also coexists with a non-accredited broad-based national level institution that has some form of human rights protection and/or promotion mandate(s) that may include children’s rights.

b. Sub-National Level Thematic Children’s Rights Institutions

There are a number of federal and decentralized states around the world where children’s matters fall partly or fully within the jurisdiction of sub-national governments. To a certain extent, children’s rights issues can also fall within the purview of municipal governments.

Over ten countries have multiple thematic children’s rights institutions at provincial, state or municipal levels of governance. Many of these sub-national thematic children’s
rights institutions also are found in Europe, including the unusual case of the UK where, under devolution of government, England, Wales, Scotland and Northern Ireland each have a children’s commissioner and, as noted above, England’s Children’s Commissioner also has jurisdiction over reserved and excepted matters.31 Beyond Europe, common law countries such as Canada, Australia and the United States have a number of child advocate or child representative institutions at provincial and state levels of governance, some of which have developed in the child welfare context. Very few federal or decentralized countries have children’s commissioners or ombudspersons at both national and sub-national levels of governance; for the most part, thematic institutions are found only at the sub-national

31. UNICEF OFFICE OF RESEARCH, supra note 6, at 107.
level. Sub-national thematic children’s rights institutions also differ in their levels of independence and scope of powers.

2. **NHRI s and Sub-National Human Rights Institutions as Independent Children’s Rights Institutions**

The past few decades have seen a considerable increase in the number of NHRI s and sub-national human rights institutions that include children’s rights within their broad mandates to protect and promote human rights. In particular, the promotion of NHRI s and the Paris Principles by the UN, ICC, regional groupings of NHRI s, regional international organizations and NGOs has led to the establishment of a considerable number of NHRI s.

While UNICEF research finds that there are approximately two hundred ICRIs at national and sub-national levels of government in over seventy countries, it does not provide the percentage of thematic institutions compared to broad-based

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32. *Id.* at 317–27. The UK and Italy have institutions at both levels, and this is pending in Argentina. *Id.* at 320–24.

33. See, e.g., ACCREDITED NHRI S CHART, *supra* note 5 (noting that as of May 2014, of the 106 NHRI s accredited by the ICC, one hundred were general jurisdiction institutions and six were thematic institutions). Some national level human rights institutions have not applied for ICC accreditation, but if willing and permitted to apply, could receive partial or full Paris Principles compliance ratings, such as certain human rights ombudsman institutions in Western Europe. In addition, sub-national level human rights institutions in federal and decentralized states are not classified as NHRI s, such as those at the state level in Argentina and Mexico, the provincial level in Canada, and the community level in Spain. See Linda C. Reif, *The Shifting Boundaries of NHRI Definition in the International System, in Human Rights, State Compliance, and Social Change Assessing National Human Rights Institutions* 52, 57 (Ryan Goodman & Thomas Pegram eds., 2012) (noting that the “General Observations give some flexibility to the Paris Principles so that human rights ombudsman can certainly meet their requirements” but that subnational and thematic human rights institutions are not considered to be NHRI s); Catherine Renshaw & Kieren Fitzpatrick, *National Human Rights Institutions in the Asia Pacific Region: Change Agents Under Conditions of Uncertainty, in Human Rights, State Compliance, and Social Change Assessing National Human Rights Institutions* 150, 150–51 (Ryan Goodman & Thomas Pegram eds., 2012) (noting the establishment of nineteen NHRI s in the Asia Pacific region); Catherine Shanahan Renshaw, *National Human Rights Institutions and Civil Society Organizations: New Dynamics of Engagement at Domestic, Regional, and International Levels*, 18 GLOBAL GOVERNANCE 299, 302 (2012) (asserting the influence of civil society organizations in lobbying for the establishment of NHRI s based on the Paris Principles).
institutions. However, UNICEF's indicative list of ICRIs can be broken down. If national level institutions are compared, there are approximately fifty-three NHRI s and other national institutions with a child's rights focus compared to only approximately twenty national level thematic children's rights institutions. At the sub-national level, there are approximately six broad-based human rights ombudsman or classical ombudsman institutions with a child rights focus and sixty-five thematic children's rights institutions of various kinds. Thus, at least at the national level a proportionally larger number of ICRIs are NHRI s that include a children's rights focus rather than thematic children's rights institutions. These broad-based NHRI s are found in all regions of the world.

Some countries with legislative provisions on children's rights in the NHRI's legal framework also include a statute-based position of deputy ombudsman or commissioner for children, a post located inside the broad-based NHRI and usually with an accompanying departmental focus on children's rights. For example, this approach has been used in France, Greece,
Nicaragua,39 Australia40 and Ethiopia.41 A number of other NHRIIs have a legislated prioritization of children’s rights, (contained either in the NHRI’s statute or in separate child protection legislation), such as in Hungary,42 Serbia,43 Estonia,44 Montenegro,45 Afghanistan and Ecuador.46 There are also several recent cases in Europe where formerly classical national ombudsman institutions have been utilized in different ways for children’s rights institutions. In the Netherlands, a thematic Children’s Ombudsman was created that is administratively

NHRIs Chart, supra note 5, at 6 (noting Greece’s National Commission for Human Rights has A-status accreditation).

39. UNICEF OFFICE OF RESEARCH, supra note 6, at 77 (noting the establishment of a Procurador [Attorney] for Children and Adolescents in Nicaragua’s Procuraduria para la Defensa de los Derechos Humanos legislation).


41. UNICEF OFFICE OF RESEARCH, supra note 6, at 77 (noting Ethiopia’s Ombudsman for Women and Children, part of Ethiopia’s Ombudsman institution).


46. UNICEF OFFICE OF RESEARCH, supra note 6, at 77.
attached to the country’s classical parliamentary ombudsman institution. In Denmark, rather than strengthen the thematic National Council for Children or add to the responsibilities of the country’s NHRI, the Danish Institute for Human Rights, the government added children’s rights protection responsibilities to the mandate of the Danish Parliamentary Ombudsman.

There are considerably more NHRI s that focus on children’s rights only through their operating practices. To qualify as an ICRI, it must at a minimum designate a children’s rights unit/department or an internal commissioner/deputy ombudsman responsible for children’s rights.

In addition, there are more NHRI s located around the world that have an insufficient focus on children’s rights and so cannot be classified as ICRI s, although their broad-based mandates will

47. KINDEROMBUDSMAN [CHILD. OMBUDSMAN], supra note 24; Children, DE NATIONALE OMBUDSMAN [NAT'L OMBUDSMAN] (Mar. 15, 2011), https://www.nationaleombudsman.nl/kinderen (Neth.). This ICRI is hard to categorize and could possibly be classified as a thematic children’s rights institution.

48. CRC, Denmark, supra note 27, ¶¶ 18–20; see The Ombudsman Act, c. 2, § 7(1) (Den.), available at http://en.ombudsmanden.dk (noting that the Children’s Division investigates complaints by or on behalf of children and inspects public and private institutions for children); see also Christoffer Badse, The Danish Experience: The Danish Institute for Human Rights, in NATIONAL HUMAN RIGHTS INSTITUTIONS IN EUROPE: COMPARATIVE, EUROPEAN AND INTERNATIONAL PERSPECTIVES 29, 51 (Jan Wouters & Katrien Meuwissen eds., 2013) (noting that the “Children’s Office was established at [sic] an integrated part of the Parliamentary Ombudsman office in 2012” and “[t]he DIHR will continue to monitor the efforts and work of the designated office and will provide technical assistance if needed”).

usually encompass children’s rights in whole or in part and they may engage in protection and/or promotion of children’s rights to differing degrees in practice. An example of this type of NHRI is Spain’s national Defender of the People (Defensor del Pueblo), an NHRI that does engage in some investigations that involve children’s rights.\(^\text{50}\) It is always open to these NHRIIs to change their operating practices to prioritize children’s rights sufficiently to move within the definition of an ICRI. In a similar vein, it is always open to the national governments of these states to amend the legislative framework of their NHRI so that it addresses children’s rights expressly, also bringing the NHRI within the ICRI definition.

Since human rights matters may fall fully or partly within the jurisdiction of sub-national governments in federal and decentralized states, human rights commissions and human rights ombudsman institutions have been established at the sub-national levels of governance in these types of states. They may coexist with an NHRI, and jurisdiction over human rights in general and children’s rights in particular may be shared or split between the two levels of government. A few of these sub-national human rights commissions and human rights ombudsman institutions have a legislative prioritization of children’s rights or have instituted operating practices that have enabled them to be classified as ICRIIs. For example, in Spain’s autonomous community of Catalonia, the Síndic de Greuges is required by its legislation to pay attention to children’s rights and appoint a deputy ombudsperson for children.\(^\text{51}\) Similar to the national level, there are numerous human rights institutions at the sub-national level that are not considered to be ICRIIs.

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\(^{50}\) See Defensor del Pueblo, Annual Report Summary 2012, at 12–13, 38–40, 45–51 (Spain) (noting that the Defensor del Pueblo’s duties involving children include processing complaints of families in need of housing and stolen babies, investigating underage offenses, underage unaccompanied minors, visits to juvenile centers, asylum, education, and student rights); see also UNICEF Office of Research, supra note 6, at 105, 323 (noting that Spain’s national Defensor del Pueblo does not have a child rights office and is not listed as an ICRI).

even though their legal mandates include children’s rights to one degree or another.52

C. Threats to Thematic Children’s Rights Institutions: Closure, Merger with an NHRI or Rejection of Model

Even in the early years of life of thematic children’s rights institutions, closure and integration of the institution into the nation’s NHRI occurred. Costa Rica was the second country in the world to establish a thematic institution in the form of its 1987 Defensoría de la Infancia (Defender of Childhood).53 However, in 1993 the institution was closed down and its functions were moved into Costa Rica’s NHRI, the Defensoría de las Habitantes, which created an internal section for children.54 In 1995, the Province of Quebec in Canada merged its children’s rights commission with its broad-based human rights commission.55

In the past decade, more thematic children’s rights institutions have been threatened with closure or merger into one broad-based NHRI. Various economic, efficiency-building, political, legal and other factors played roles in the final decisions. The threat materialized in France at the national level and in Spain and the United States at the sub-national level. In 2011, the Défenseur des Enfants (Defender of Children) was merged into France’s new Défenseur des Droits (Defender of Rights) institution for political, cost-saving and efficiency reasons.56 On June 30, 2012, the autonomous community of

52. See UNICEF OFFICE OF RESEARCH, supra note 6, at 323, 326 (other autonomous community human rights ombudsman institutions in Spain and human rights commissions at the provincial/territorial level in Canada are not listed as ICRI).


54. Id. at 309; see Historical Review, LA DEFENSORÍA DE LOS HABITANTES [OFF. DEFENDER], http://www.dhr.go.cr/la_defensoria (last visited Nov. 22, 2014) (Costa Rica) (discussing how the Defender of Childhood was reconstituted inside the Office of the Defender, which, unlike its predecessor, was independent of the government); LA DEFENSORÍA DE LOS HABITANTES, INFORME ANUAL DE LABORES 2012–2013, at 229 (Costa Rica) (highlighting some of the duties of and policies behind the Office of the Defender).


Madrid closed down its Defensor del Menor (Children’s Defender) in budget cuts connected with Spain’s economic crisis. New Jersey’s Office of the Child Advocate was shut down in 2010 for various reasons. Some of these developments can be seen as one component of a broader movement that includes other European countries such as Sweden, the UK and Hungary to eliminate some or all of their thematic human rights institutions through closure and merger with an NHRI.
In other countries the threat was avoided and the thematic children’s rights institution has been preserved. Financial crisis and budget constraints led to a 2009 proposal by a government-appointed review body to collapse Ireland’s Ombudsman for Children into the country’s classical Ombudsman institution, but this idea was not implemented.  

In the UK, a proposal to merge Scotland’s Commissioner for Children and Young People with the Scottish Human Rights Commission was rejected by a legislative committee, and a suggestion by the Conservative party that they would abolish England’s Commissioner for Children was averted by the 2010 election of a coalition government. During the merger of Swedish thematic human rights institutions into a new Equality Ombudsman, the legislature discussed collapsing Sweden’s Children’s Ombudsman into the new institution but this idea was rejected based on legal considerations. A review of the viability of separate institutions in Croatia, including that of the Children’s Ombudsperson, did not result in the closure of the Children’s Ombudsperson institution.  

In Canada, the British Columbia (“B.C.”) Representative for Children and Youth successfully fought a 2010 attempt by the B.C. government to restrict the Representative’s powers to review Cabinet documents.

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60. Barry O’Halloran & Ruadhán MacCormaic, Merger of State Bodies Would Save €83m, IRISH TIMES, July 17, 2009, at 9; RACHEL HODGKIN & PETER NEWELL, EUR. NETWORK OF OMBUDSPERSONS FOR CHILDREN, ENOC SURVEY 2010: THE ROLE AND MANDATE OF CHILDREN’S OMBUDSPERSONS IN EUROPE: SAFEGUARDING AND PROMOTING CHILDREN’S RIGHTS AND ENSURING CHILDREN’S VIEWS ARE TAKEN SERIOUSLY 40; UNICEF OFFICE OF RESEARCH, supra note 6, at 45 (noting that Ombudsman for Children demonstrated its own relevance, and was protected from merger by need for legislative approval).

61. HODGKIN & NEWELL, supra note 60, at 41.

62. Id. at 40–41 (explaining the broader coverage of CRC rights compared to the Discrimination Act and how the Children’s Ombudsman does not have an individual complaints-handling power whereas the Equality Ombudsman does have such a power with respect to part of its mandate); UNICEF OFFICE OF RESEARCH, supra note 6, at 84.

63. UNICEF OFFICE OF RESEARCH, supra note 6, at 83 (noting that cost-savings with a merger could be partially achieved instead by preserving the institutions and cost-sharing).

64. Id. at 43.
Recently, several countries have attached children’s rights mandates to existing NHRI s or formerly classical ombudsman institutions, rather than establishing or strengthening a stand-alone thematic children’s rights institution. For example, Australia created a Children’s Commissioner inside its existing NHRI, the Netherlands established a Children’s Ombudsman attached to its parliamentary ombudsman institution, Denmark gave child protection functions to its Parliamentary Ombudsman, and both Moldova and Georgia decided to give children’s rights mandates to their NHRI s.\(^{65}\)

Yet, over the same period, a few countries have moved in the other direction. Italy established a national thematic children’s rights institution in 2011, the UK strengthened the statutory human rights protection mandate of England’s Children’s Commissioner in 2014, and some other states continue to consider the establishment of thematic children’s rights institutions.\(^{66}\) Further, in its recent construction of an NHRI by adding a human rights promotion center to its human rights ombudsman, Finland did not collapse the Children’s Ombudsman into the NHRI.\(^{67}\)

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\(^{65}\) See Presidents & Commissioners, supra note 40 (showing that the Children’s Rights Commissioner is part of the Australian Human Rights Commission); Kinderombudsmann [Child. Ombudsman], supra note 24 (showing that the Netherlands’ Children’s Ombudsman is part of the National Ombudsman institution); CRC, Denmark, supra note 27, at 4 (explaining how the CtRC criticized Denmark for not establishing a facility to monitor the implementation of child rights inside the Ombudsman institution); The Ombudsman Act, supra note 48, at chs. 1, 3 (mandating that Denmark’s Parliamentary Ombudsman ensure that existing legislation and regulations be consistent with the CRC); Carver, supra note 59, at 7, 14 (explaining how both Moldova and Georgia respectively incorporated the children’s ombudsman functions into their existing NHRI s).

\(^{66}\) See Autorità Garante per l’Infanzia e l’Adolescenza [Authority Commissioner for Child. & Adolescents], supra note 24 (explaining Italy’s establishment of the Autorità Garante per l’Infanzia e l’Adolescenza [Authority Commissioner for Children and Adolescents] in 2011); Children and Families Act 2014, supra note 25 (enunciating the primary functions of the Children’s Commissioner of England); UNICEF Office of Research, supra note 6, at 215, 281 (addressing countries considering the establishment of a thematic children’s rights institution).

D. Thematic Human Rights Institutions for Children Versus NHRIs: Countervailing Forces and Views

A number of forces can be observed that may be pushing governments away from use of a thematic children’s rights institution and towards the establishment or strengthening of one multi-purpose NHRI (or sub-national human rights institution) with a mandate that includes children’s rights protection and promotion. Indeed, the Office of the UN High Commissioner for Human Rights has issued best practices for the merger and/or transformation of human rights institutions. 68

As reflected in the recent threats to thematic children’s rights institutions described above, these forces include: budgetary pressures that induce states to reduce resources allocated to domestic human rights institutions by funding one multi-purpose human rights institution rather than multiple, often thematic, institutions; related efficiency concerns resulting in the push to cut the number of or eliminate thematic human rights institutions to reduce overlap, duplication of resources and public confusion over which institution has jurisdiction over their complaint; and negative political attitudes towards children’s rights in the domestic sphere. 69 In the legal sphere,

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constitutional enshrinement can protect an institution. This is certainly the case with NHRIAs as a number of them are included in their state's constitution. However, thematic children’s rights institutions are usually not constitutionally protected and so are relatively easier to close.70

There are certainly countervailing forces. For example, domestic scandals about the mistreatment of children may lead to the establishment of a thematic children’s rights institution, which may then be protected if it effectively redresses the situation.71 More generally, the work and profile of a thematic children’s rights institution can protect it from closure or merger with a broad-based NHRI, especially if it also has multi-stakeholder support.72

Regional and comparative law influences can also affect the choice of institutional structure. Thus, given that thematic children’s rights institutions had their origins and are often found in Europe, they might be expected to have more support inside individual European nations. However, as discussed above, the more recent serious threats to thematic children’s rights institutions have occurred predominantly in Europe. In some other regions, the general practice is to have one broad-based NHRI and few or no separate thematic institutions.73

53–67 (explaining specific cases of threats to thematic children’s rights institution).


71. UNICEF OFFICE OF RESEARCH, supra note 6, at 78.

72. See, e.g., Children Need and Deserve a Distinct and Independent Ombudsman for Children, OMBUDSMAN FOR CHILD., (July 16, 2009), http://www.oco.ie/2009/07/children-need-and-deserve-a-distinct-and-independent-ombudsman-for-children (Ir.) (noting the Ombudsman for Children’s opposition to a proposed merger with the Office of the Ombudsman by remarking that the Children’s Ombudsman is the only statutory body endowed with unique powers to ensure the voice of children is protected and heard).

73. For example, in Latin America, the NHRIAs tend to have deputies, internal units or programs for children’s rights. See UNICEF OFFICE OF RESEARCH, supra note 6, at 324–25 (listing Argentina as the only Latin American country considering a separate institution).
Outside of Europe, small concentrations of thematic children’s rights institutions are found at the national and/or sub-national levels in North America, the Caribbean and Australia/New Zealand. 74

Commentators have also discussed the advantages and disadvantages of thematic human rights institutions such as children’s ombudsman or commissioner institutions versus general-purpose NHRIs (or broad-based sub-national human rights institutions) on a functional basis. In favor of thematic children’s rights institutions, given their raison d’être, children’s rights are always the top priority of the institution, whereas an NHRI or sub-national human rights institution may not place the same priority on children. 75 Also, all of the resources of a thematic children’s rights institution will be devoted to children and their rights, whereas when there is one NHRI vulnerable groups such as children may not receive the same level of resources because there will be competition between groups for resource allocation. 76 Further, a thematic children’s rights institution will act as a “focal point” for children and their concerns, enhancing the legitimacy of the institution. 77 It is more likely that thematic children’s rights institutions are legally required to be accessible to children and include children in the work of the institution through, for example, the use of child and youth advisory councils. 78 In contrast, “adult-orientated” NHRIs may not be accessible to children who wish to contact the institution or lodge complaints, and they are less likely to provide for other forms of child participation. 79 However,

74. Id. at 324–27 (listing the North American, Caribbean, Australian and New Zealand independent human rights institutions for children by institution name and indicating which are separate thematic institutions).

75. See Carver, supra note 59, at 9–10 (reviewing arguments that single institutions are not as equipped to handle the specific needs of vulnerable groups who will have to compete for a single institution’s limited resources whereas separate thematic institutions would provide a better focal point for such vulnerable groups).

76. Id.

77. Id. at 9–11.

78. UNICEF OFFICE OF RESEARCH, supra note 6, at 80–81.

79. Id. at 183.
it is easy to marginalize thematic institutions, such as through underfunding and physical location of their premises.\textsuperscript{80}

In contrast, there are many advantages to using a broad-based NHRI. The UNICEF Office of Research states:

The main argument for an integrated institution is the need to build on the interdependence and indivisibility of all human rights and mainstream children’s rights across all areas. The assumption is that a single institution will foster greater communication (which will enhance the cross-fertilization of ideas and sharing of good practices) and favour a unified approach to issues affecting all rights. This can also mitigate potential jurisdiction issues, where a particular problem . . . could fall under the remit of various specialized institutions.\textsuperscript{81}

However, full-spectrum children’s rights mainstreaming does not automatically occur within a broad-based NHRI or sub-national institution.\textsuperscript{82} The requirement that an NHRI or equivalent sub-national institution have a commissioner or deputy ombudsman for children’s rights or an internal department for children’s rights assists in raising the priority of children’s rights within the institution.

A single NHRI is arguably more authoritative and influential than multiple institutions, whereas rights protection can be “fragmented” when multiple institutions exist.\textsuperscript{83} One NHRI can offer consistent service, in particular where a child is suffering from multiple forms of discrimination.\textsuperscript{84} A single NHRI can give


\textsuperscript{81} UNICEF OFFICE OF RESEARCH, supra note 6, at 81. See also Carver, supra note 59, at 13–14 (presenting the three broad arguments supporting a single NHRI, namely diversity and cross-fertilization, consistency of service regardless of the issue involved, and greater cost-effectiveness compared to multiple institutions).

\textsuperscript{82} See Carver, supra note 59, at 13–14 (arguing that willingness and incentives needed). NHRI leadership is crucial to developing this approach to children’s rights.

\textsuperscript{83} UNICEF OFFICE OF RESEARCH, supra note 6, at 82. See Carver, supra note 59, at 18 (arguing that single NRIs experience greater ease and authority in their relationships with government authorities and other bodies over which they have jurisdiction).

\textsuperscript{84} See Carver, supra note 59, at 13–14 (discussing one of the benefits of creating a
equal coverage to all vulnerable populations, whereas when one or more thematic institutions are implemented, some vulnerable groups will be left without their own thematic institution thereby privileging some groups over others.85 Also, the singularity of one NHRI and its consistent message, it is argued, leads to better public awareness of and a higher profile for the institution, which in turn leads to relatively better public support for human rights.86 One NHRI is often more cost-effective than multiple institutions.87 However, there is no guarantee that the government will return the resources saved to the NHRI for improved programmatic and operational use. It is also argued that a single NHRI is more physically accessible than thematic institutions are, but this is also partially dependent on the funding of the institution and whether the NHRI can choose the location of its premises. Further, a single NHRI may not always be effective, for example because its legal framework is flawed or its leadership is politicized or weak, and this affects negatively the entire population.

In review, there are extensive countervailing forces and arguments so that the choice between a thematic children’s rights institution and an NHRI (or broad-based human rights institution at the sub-national level) with a children’s right focus is not clear-cut.

E. UN Paris Principles, the ICC and the Committee on the Rights of the Child: NHRI s with a Children’s Rights Focus Versus Thematic Children’s Rights Institutions

Richard Carver takes the position that international and regional standards on single NHRI s versus multiple domestic human rights institutions are “either non-existent or contradictory.”88 He argues:

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85. Id. at 15.
86. Id. at 20.
87. Id. at 13–15 (establishing how having just one NHRI will reduce staff salaries and infrastructure and IT expenses); UNICEF OFFICE OF RESEARCH, supra note 6, at 83.
In the absence of any clear position in international law, the sole criterion for determining the chosen organizational model should be the greatest effectiveness in promoting and protecting human rights. Generally, the model of a single national human rights institution is likely to lead to greater effectiveness, provided that it is designed with inbuilt guarantees that the interests of particular vulnerable groups will not be neglected and will receive an appropriate level of priority.89

However, evolving UN standards on and attitudes towards NHRI s and thematic children’s rights institutions can be discerned. The CtRC is the UN human rights treaty committee that focuses on thematic children’s rights institutions and NHRI s as domestic mechanisms for CRC implementation. This Article scrutinizes the UN Paris Principles as interpreted by the ICC in relation to ICRIs and the CtRC's position on the Paris Principles and ICRIs, including thematic children’s rights institutions, as displayed in its General Comments and Concluding Observations to CRC state periodic reports.90 This Article attempts to demonstrate that these standards and attitudes do favor the establishment of a single comprehensive NHRI that includes a focus on children’s rights.

This Article does not explore in any detail the attitudes of other UN human rights treaty committees or the UN Human Rights Council Universal Periodic Review (UPR) process towards ICRIs in light of the Paris Principles as interpreted by the ICC.91 Regional organizational standards and attitudes may also play

89. Id.

90. This Article does not include CtRC Concluding Observations on periodic state reports concerning the first two CRC Protocols.

91. See infra text accompanying notes 96–98 on the UPR process and thematic children's rights institutions. In addition to any relevant treaty provisions and General Comments/Recommendations, the Concluding Observations of the other human rights treaty committees on independent monitoring would also have to be reviewed. See, e.g., Linda C. Reif, Ombudsman Institutions and Article 33(2) of the United Nations Convention on the Rights of Persons with Disabilities, 65 N.B. L.J. 213, 214–15 (2014) (treaty committee requires article 33(2) domestic framework to comply with Paris Principles, current lack of certainty concerning committee’s attitude towards, inter alia, inclusion of thematic human rights institutions in a multiple-institution domestic framework).
a role in influencing state behavior. Most regions are clearly following the UN Paris Principles NHRI approach. Europe, as the region with the highest concentration of thematic children’s rights institutions, takes a more tolerant approach to the coexistence of NHRIIs and thematic rights institutions, although even here there is an increasing tendency to favor and refer to broad-based NHRIIs. However, a detailed examination of regional developments is also beyond the scope of this Article.

92. See, e.g., Reif, supra note 33, at 58–61 (discussing how regional organizations and NHRI networks in Africa, Asia Pacific, the Americas and Europe apply the Paris Principles to NHRIIs).

1. The UN Paris Principles and the ICC: NHRIs Versus Thematic Children’s Rights Institutions

The UN Paris Principles are the internationally recognized minimum standards for NHRIs. The ICC was created to support the establishment and strengthening of NHRIs and towards this end it operates an accreditation process for institutions using the Paris Principles as the “international benchmark”, with A-status accreditation denoting full compliance with the Paris Principles, B-status accreditation confirming partial compliance and C-status representing non-compliance with the Paris Principles. As discussed further below, thematic children’s rights institutions cannot obtain A-status accreditation.

Only ICC A-status accreditation of an NHRI opens the door to its full participation in UN human rights mechanisms, including speaking privileges before the Human Rights Council, such as during the UPR process. For example, while children’s...
rights are an important part of the UPR, since thematic children's rights institutions cannot obtain ICC A-status accreditation they only can make written submissions to the UPR.97 Thus, although thematic children's rights institutions


97. UNICEF OFFICE OF RESEARCH, supra note 6 at 166–67; Edward McMahon & Marta Ascherio, A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council, 18 GLOBAL GOVERNANCE 231, 243 (2012); INFORMATION NOTE, supra note 96; Review of the Work and Functioning of the Human Rights Council, H.R.C. Res. 16/21, 16th Sess., annex ¶¶ 9, 13, U.N. Doc. A/HRC/RES/16/21 (Apr. 12, 2011) (stating that the summary of the information provided by other relevant stakeholders should contain a separate section for contributions by the NHRI of the State under review that is accredited in full compliance with the Paris Principles); Institution-Building of the United Nations Human Rights Council, H.R.C. Res. 5/1, annex ¶¶ 3(m), 15(c), U.N. Doc. A/HRC/RES/5/1 (June 18, 2007) (stating that the UPR should ensure the participation of all relevant stakeholders, including nongovernmental organizations, which can provide credible and reliable information). Only some of the thematic children's rights institutions make submissions to the UPR. However, up to mid-2014, the UN UPR summary of stakeholders' information reports were inconsistent in the categorization of thematic children's rights institutions. Some are recorded as NHRI s (and will also be included in this category if they make a joint submission with the country's NHRI). See Human Rights Council, Working Group on the Universal Periodic Review, Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Norway, 6th Sess., Nov. 30–Dec. 11, 2009, at 13, U.N. Doc. A/HRC/WG.6/6/NOR/3 (July 21, 2009) (listing the Norwegian Centre for Human Rights
can contribute to the information gathering, they “cannot directly participate in discussions. They are consequently unable to be vocal in official child rights debates . . .”98 The Paris Principles require that NHRIs have a broad mandate “to promote and protect human rights” that is enshrined in the constitution or legislation, be independent from government, have a pluralist composition, both promote and protect human rights through numerous listed responsibilities, enjoy adequate funding and cooperate with international organizations and other NHRIs.99 The Paris Principles are based on an advisory human rights commission model and do not require states to give NHRIs the power to undertake individual complaints-based


98. UNICEF OFFICE OF RESEARCH, supra note 6, at 166–67.
99. The Paris Principles, supra note 4, at “Competence and responsibilities,” “Composition and guarantees of independence and pluralism.” Listed responsibilities are to: give advice to government on human rights protection and promotion such as on legislation or human rights violations; promote and ensure the harmonization of national law with the country’s international human rights law obligations and the effective implementation of the latter; encourage the state to accede to or ratify international human rights treaties; contribute to the reports which states are required to submit periodically to UN human rights treaty committees and regional institutions and, where necessary, to express an opinion on the subject with due respect for their independence; cooperate with the UN, other UN and regional organizations and NHRIs in other countries; assist in the formulation of programs for the teaching of and research into human rights and take part in their execution; and increase public awareness of human rights. Id. at “Competence and responsibilities.”
investigations.\textsuperscript{100} The ICC has issued a number of General Observations that it calls “interpretative tools of the Paris Principles” that give more detail to the meaning and scope of individual Paris Principles (much like UN human rights treaty committee General Comments).\textsuperscript{101} The General Observations are used: in the NHRI accreditation, reaccreditation and special review procedures; to instruct NRHIs on the development of their own processes and mechanisms to ensure Paris Principles compliance; and to persuade governments to change laws and practices as may be needed to comply with the standards contained in the General Observations.\textsuperscript{102} It is stated that “[i]f an institution falls substantially short of the standards articulated in the General Observations, it will be open for the [ICC] to find that it was not Paris Principle compliant.”\textsuperscript{103}

While both the Paris Principles and the ICC General Observations are soft law norms, the ICC has stated:

The establishment and strengthening of National Institutions pursuant to the Paris Principles falls within the set of international human rights commitments made by States. It is therefore the responsibility of the State to ensure that it has in place a Paris Principle-compliant national institution.\textsuperscript{104}

In May 2013, the ICC placed its General Observations into categories, one of which, “Essential requirements of the Paris Principles”, contains those General Observations that are “direct interpretations of the Paris Principles” and another, “Practices that directly promote Paris Principles compliance”, includes those General Observations “which are drawn from the [ICC’s] extensive experience in identifying proven practices to ensure independent and effective National Institutions in line with the

\textsuperscript{100} See id. at “Additional principles concerning the status of commissions with quasi jurisdictional competence” (stating “[a] national institution may be authorized to hear and consider complaints”).

\textsuperscript{101} ICC REPORT, supra note 95, ¶ 1.8, at 4; GENERAL OBSERVATIONS, supra note 5, ¶ 6, at 47.

\textsuperscript{102} ICC REPORT, supra note 95, ¶ 1.8(a)–(c), at 4–5; GENERAL OBSERVATIONS, supra note 5, at ¶ 6, at 47.

\textsuperscript{103} ICC REPORT, supra note 95, ¶ 1.8(c)(i), at 5; GENERAL OBSERVATIONS, supra note 5, ¶ 6(c)(i), at 47.

\textsuperscript{104} GENERAL OBSERVATIONS, supra note 5, ¶ 2, at 46.
Paris Principles.” 105 A third category addresses “Procedural issues”. 106 Further, the ICC has stated that it will apply its General Observations to “every National Institution, regardless of its structural model type”, thereby including not just all types of human rights commissions/institutes but also, for example, all types of human rights ombudsman institutions. 107 However, as discussed further below, in the Paris Principles as interpreted by the ICC, “national institution” or NHRI does not mean “domestic institution” and does not include sub-national institutions.

The Paris Principles require that a national institution “shall be vested with competence to promote and protect human rights” and “shall be given as broad a mandate as possible”. 108 ICC General Observation 1.2, classified under essential requirements of the Paris Principles, takes this further, stating that the institution’s mandate should be interpreted broadly to “promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights.” 109

Also, the Paris Principles require NHRIs to “[m]aintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions).” 110 While the Paris Principles do not expressly exclude thematic rights institutions, this is implied by the Principles’ tenor. Further, ICC General Observation 1.5 on “Cooperation with other human rights bodies”, classified under

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105. Id. ¶ 9, at 47–48.
106. Id. ¶ 1.12, at 5.
107. Id. ¶ 7, at 47, ¶ 1.7, at 66. I use “human rights ombudsman” as the generic term to include single-leader institutions that are purely human rights oriented as well as institutions that have hybrid ombudsman maladministration/human rights mandates and powers, regardless of their various titles (e.g., defender of the people, civil rights protector).
109. GENERAL OBSERVATIONS, supra note 5, ¶ 1.2, at 53.
110. The Paris Principles, supra note 4, at “Methods of operation” para. 1(f), at 6. The Paris Principles use the word “jurisdictional”. This is seen to be a translation error; the word “judicial” is more accurate.
essential requirements of the Paris Principles, is more explicit, stating:

Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.111

While there is nothing explicit in the Paris Principles on the number of NHRIs that a state should maintain, it can be argued that the Paris Principles implicitly consider that a nation will have only one NHRI given references to the broad mandate of the institution. ICC General Observation 6.6, classified as a procedural issue, avoids taking a legal position on the matter. However, in essence General Observation 6.6 does indicate that the ICC favors one comprehensive NHRI to the exclusion of thematic and other human rights institutions, as it “acknowledges and encourages the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive national human rights institution”.112 Also, General Observation 6.6 stipulates that only in very exceptional circumstances will more than one national institution in a nation be accredited by the ICC.113 Of the 106 NHRIs accredited by the ICC by May 2014, only six of the many thematic human rights institutions around the world had applied for and received ICC accreditation, and most are located in countries where there is no broad-based NHRI.114 No independent children’s rights institutions were accredited. Of the six accredited thematic institutions, none had A-status

111. GENERAL OBSERVATIONS, supra note 5, ¶ 1.5, at 61 (emphasis added).
112. Id. ¶ 6.6, at 100.
113. See id. (noting also the participation limitations imposed if more than one national institution from a state is accredited).
114. See ICC, ACCREDITED NHRIS CHART, supra note 5, at 8–9 (listing institutions in Belgium, Bulgaria, Sweden, Switzerland and Hong Kong (China) as the thematic institutions that have applied for and received ICC accreditation).
designation, three had B-status and three had C-status accreditation.\textsuperscript{115} The ICC had accredited more than one national institution in a country in only two cases, one of which treated devolved governments in the UK equivalent to independent states.\textsuperscript{116}

In combination, these ICC General Observations that elaborate on the meaning of the Paris Principles have the effect of excluding thematic human rights institutions at all levels of governance and sub-national human rights institutions from being classified as NHRI\text{\textels}s. Accordingly, the Paris Principles are only directly applicable to, and instruct states to establish, national level human rights institutions that have broad human rights protection and promotion mandates covering all human rights. Thus, all thematic children's rights institutions and all sub-national human rights institutions found in categories (3), (4) and (5) of my typology are not considered to be NHRI\text{\textels}s. Rather, they are classified as “other domestic institutions established for the promotion and protection of human rights” or “other human rights bodies”. As a result, in most cases they will not be able to apply for ICC accreditation and will not obtain an authoritative confirmation of their partial or non-compliance with the Paris Principles. This will occur because, for example, an NHRI in their country is already accredited or the institution is a sub-national body. Even if a national level thematic children's rights institution can and does apply for ICC accreditation because their state does not have an ICC-accredited NHRI, they will not receive A-status denoting full compliance with the Paris Principles because of their limited focus on children and children’s rights. While the CRC and other children’s rights instruments applied by thematic children’s rights institutions cover a full spectrum of rights, the rights and the institutions do not apply to or protect the rights of adults.\textsuperscript{117}

\begin{itemize}
  \item \textsuperscript{115} Id. at 1, 8–9.
  \item \textsuperscript{116} Id. at 1, 6–8 (listing Great Britain, Northern Ireland, and Scotland separately with each having A-status NHRI\text{\textels}s and Bulgaria having one B-status NHRI and one B-status thematic national institution). Although the UN considers the UK to be one state, the ICC has given the Great Britain, Scotland and Northern Ireland human rights commissions separate A-status accreditations. Id. at 6, 8.
  \item \textsuperscript{117} There may be other problematic issues as well such as insufficient
Pursuant to the Paris Principles as interpreted by the ICC through its General Observations, only broad-based national level human rights commissions/institutes and national human rights ombudsman institutions, the types of ICRIIs found in categories (1) and (2) of my typology, are encompassed by the Paris Principles and are capable of fully complying with the Paris Principles and achieving ICC A-status accreditation. Although the Paris Principles and the ICC General Observations are not legally binding on states, they have soft normative influence on national governments as the importance of NHRI compliance with the Paris Principles is reaffirmed in various UN human rights fora, the ICC and regional organizations. In effect, the Paris Principles as interpreted by ICC General Observations and ICC accreditation practice exert pressure on states either to avoid the establishment of separate national thematic institutions for children or to collapse an existing children’s ombudsman/commissioner into one comprehensive NHRI with a mandate that includes the protection and promotion of children’s rights.

2. The CRC and the Committee on the Rights of the Child: Thematic Children’s Rights Institutions and Broad-Based NHRIIs with a Child Rights Focus

As noted earlier, the CRC does not contain any explicit provisions on NHRIIs or other domestic ICRIIs. However, in 2002
the CtRC issued General Comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (General Comment No. 2).\textsuperscript{118}

General Comment No. 2 states that independent NHRIs are important mechanisms that are included within states parties’ article 4 commitments on CRC implementation.\textsuperscript{119} It states that the CtRC has “welcomed the establishment of NHRIs and children’s ombudspersons/children’s commissioners and similar independent bodies” in CRC states.\textsuperscript{120} The Comment provides detailed standards for the structure and powers of such institutions, and stipulates that NHRIs should be structured to comply with the Paris Principles.\textsuperscript{121} According to the CtRC:

\begin{quote}
[E]very State needs an independent human rights institution with responsibility for promoting and protecting children’s rights. The Committee’s principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children’s rights. It is essential that promotion and protection of children’s rights is “mainstreamed” and that all human rights institutions existing in a country work closely together to this end.\textsuperscript{122}
\end{quote}

Although General Comment No. 2 recognizes that “[s]pecialist independent human rights institutions for children, ombudspersons or commissioners for children’s rights” have been established in a number of CRC parties, it does not expressly require the establishment of thematic children’s rights institutions.\textsuperscript{123} General Comment No. 2 uses “NHRIs” throughout to cover all institutions working for children’s rights, including thematic children’s rights institutions. Given the Paris Principles,

\begin{footnotes}
\textsuperscript{119}. Id. ¶ 1.
\textsuperscript{120}. Id.
\textsuperscript{121}. Id. ¶ 4.
\textsuperscript{122}. Id. ¶ 7.
\textsuperscript{123}. Id. ¶ 6.
\end{footnotes}
ICC interpretation of the Paris Principles and the resulting boundaries on the definition of an NHRI, the General Comment’s use of the term NHRI to encompass thematic children’s rights institutions is incorrect. As discussed above, thematic institutions instead are classified as “other domestic institutions established for the protection and promotion of human rights”.

General Comment No. 2 also states:

Where resources are limited, consideration must be given to ensuring that the available resources are used most effectively for the promotion and protection of everyone’s human rights, including children’s, and in this context development of a broad-based NHRI that includes a specific focus on children is likely to constitute the best approach. A broad-based NHRI should include within its structure either an identifiable commissioner specifically responsible for children’s rights, or a specific section or division responsible for children’s rights, or a specific section or division responsible for children’s rights.124

While the CtRC does not make distinctions between developed and developing countries in terms of whether a CRC party can rely on limited resources to avoid establishment of a thematic children’s rights institution, it seems reasonable to consider that developed and middle-income states will be those most likely to have the resources to establish a thematic children’s rights institution and that developing states can rely more justifiably solely on an NHRI with a children’s rights focus. However, the General Comment’s language permits developed states facing budgetary problems to justify their failure to establish a thematic children’s rights institution or its closure as long as they have an NHRI with a children’s rights focus.

General Comment No. 2 also provides extensive provisions on the mandate and powers that should be given to NRHIs working for children and their rights. Many of these channel the Paris Principles and include: a legislative mandate (and constitutional entrenchment if possible); a broad mandate for protecting and promoting human rights that incorporates the CRC, its Protocols and other relevant international human

124. Id. ¶ 6.
rights instruments; a range of powers that will enable them to fulfill their mandate; jurisdiction over the public authorities and “all relevant public and private entities”; independence through, for example, reasonable levels of funding and the institution’s freedom to determine its own agenda; a composition that is a pluralistic representation of civil society groups involved with human rights; transparent and competitive appointment procedures; accessibility for all children, especially vulnerable minors and children in institutions; and independent reporting on children’s rights directly to the legislature and public.\(^\text{125}\)

In contrast to the Paris Principles, however, General Comment No. 2 states that “NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children.”\(^\text{126}\) General Comment No. 2 emphasizes the centrality of children: NHRIs should be accessible to all children and they must involve children in their work, through direct contact, interaction, consultation and other mechanisms such as advisory children’s councils.\(^\text{127}\) NHRIs are directed to work with human rights and children’s rights NGOs and they should engage in regional and international cooperation on children’s rights matters.\(^\text{128}\) Further, NHRIs should have powers to “support children taking cases to court” including bringing actions on children’s matters and should have intervener status

\(^{125}\) Id. \(\S\) 8–12, 15, 18, 25. Paragraph 19 of General Comment No. 2 provides a nonexhaustive list of activities that NHRIs should engage in to implement the CRC and children’s rights, including: launching investigations on receipt of a complaint or own-motion; conducting inquiries; drafting and publicizing reports, opinions and recommendations; reviewing the adequacy and effectiveness of law and practice; promoting harmonization of national law and practice with the CRC and other relevant international human rights law and promoting the effective implementation of the latter through the provision of advice; encouraging the state to ratify or accede to relevant human rights treaties; ensuring that a child-impact analysis is applied to the law-making process, laws and policies; ensuring that the views of children are expressed and heard on matters affecting their human rights; promoting public awareness and understanding of children’s rights and undertaking research and education; and visiting facilities where children are detained and care institutions to inspect the conditions and making recommendations for improvement. Id. \(\S\) 19.

\(^{126}\) Id. \(\S\) 13 (emphasis added).

\(^{127}\) Id. \(\S\) 15–16.

\(^{128}\) Id. \(\S\) 26.
in actions “to inform the court about the human rights issued involved in the case.” 129 Also, in some contrast to the Paris Principles, General Comment No. 2 provides that NHRI s should make independent contributions to the periodic state reporting process to the CtRC and the reporting processes under “other relevant international instruments”. 130 NHRI s should “monitor the integrity” of state reports to international treaty bodies on children’s rights but, while governments can consult with “independent human rights institutions” during the drafting of their periodic reports to the [CtRC], it is inappropriate for the NHRI to draft the government report or form part of the government delegation. 131

Some of the other CtRC General Comments also refer to NHRI s and/or thematic children’s rights institutions and they exhibit a similar flexibility concerning the structure of the ICRI and use of terminology that equates thematic children’s rights institutions with NHRI s. For example, CtRC General Comment No. 5 on General measures of implementation of the CRC looks with favor on the establishment of a wide variety of domestic “child-focused and child-sensitive bodies” including “children’s ombudspersons and children’s rights commissioners”, yet also refers to the need for independent NHRI s or “human rights institutions” to monitor CRC compliance. 132 CtRC General Comment No. 9 on the rights of children with disabilities states that the domestic independent monitoring mechanism used by a CRC party can be a broad-based NHRI or a thematic institution and classifies thematic institutions as NHRI s: “National human rights institutions can take many shapes or forms such as an Ombudsman or a Commissioner and may be broad-based or specific.” 133 Several other General Comments are more vague or

129. Id. ¶ 14.

130. Id. ¶ 20.

131. Id. ¶¶ 20–21. The Paris Principles are not as clear, as they call on NHRI s to “contribute” to periodic state reports submitted to UN and other treaty committees/bodies. The Paris Principles, supra note 4, at “Competence and responsibilities” ¶ 3(d).

132. General Comment No. 5, supra note 11, ¶ 9; see also id. ¶ 27 (referring to NHRI s), ¶ 46 (referring to independent human rights institutions) and ¶ 65 (referring to independent NHRI s and human rights institutions interchangeably).

133. Comm. on the Rights of the Child, General Comment No. 9 (2006): The Rights
appear to support thematic children’s rights institutions. For example, General Comment No. 12 on the right of the child to be heard states that CRC parties should “[e]stablish independent human rights institutions, such as children’s ombudsmen or commissioners with a broad children’s rights mandate.”

However, recent General Comment No. 16, on state obligations regarding the impact of the business sector on children’s rights, refers only to NHRIs. In addition, the new CRC Communications Procedure Protocol distinguishes between NHRIs and thematic children’s rights institutions. In indicating that the Protocol will reinforce and complement domestic children’s rights remedial mechanisms, the Preamble recalls “the important role that national human rights institutions and other relevant specialized institutions, mandated to promote and protect the rights of the child, can play in this regard.”

However, there is no limitation on the types of third parties that...
can submit communications on behalf of the child victim, so that presumably all types of ICRIs can make these submissions to protect children’s rights as long as the Protocol’s other admissibility criteria are satisfied and the institution’s legal framework permits this activity. In addition, all types of ICRIs can assist potential complainants in other ways.

A review of the CtRC’s Concluding Observations to state periodic reports issued over the period between January 2009 and June 2014 uncovers a generally consistent approach of the CtRC with respect to ICRIs. The CtRC always took the position that a domestic ICRI is required, but was not insistent that a separate thematic institution for children be used, even in cases where the CRC party is an industrialized, well-resourced state, as long as the CRC party had established a general NHRI (e.g., human rights commission or human rights ombudsman) with an explicit and meaningful children’s rights focus. The CtRC often recommended the establishment or strengthening of a child’s rights department, unit or specialization located within the broad-based NHRI and/or the appointment of a commissioner or deputy ombudsman for children’s rights. If a CRC party did

137. See Communications Procedure Protocol, supra note 8, art. 5(1) (stating “communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments”). Other admissibility criteria include the need for the consent of the victim unless the author can justify acting without such consent, and exhaustion of domestic remedies. Id. art. 5(2).

138. See UNICEF OFFICE OF RESEARCH, supra note 6, at 181–82 (informing children and others about the communications procedure, advising on eligibility, supporting complainants, providing documentation to the CtRC, monitoring state compliance with the CtRC’s views).

not have an institution in place, the CtRC often recommended that an “independent monitoring mechanism” or an independent NHRI be established or operationalized for children’s rights without any express reference to the need for a thematic children’s rights institution.140


Although many of the countries examined in this period were developing states with resource limitations, a number of industrialized or middle-income CRC parties without the same kind of resource constraints were scrutinized. Even when industrialized or middle income CRC parties were reviewed, the CtRC typically approved of or accepted a child rights unit inside a broad-based NHRI or recommended that an internal unit be established in an NHRI. In several cases, the CtRC at its Sixty-Fourth Session (16 Sept.–4 Oct. 2013), ¶¶ 17–18, UN Doc. CRC/C/STP/CO/2-4 (Oct. 29, 2013) (recommending the establishment of an independent mechanism for monitoring human rights, including child rights); Comm. for the Rights of the Child, Concluding Observations on the Fourth Periodic Report of Yemen, ¶¶ 19–20, UN Doc. CRC/C/YEM/CO/4 (Feb. 25, 2014) (recommending the establishment of NHRI with child rights observatory); CRC, Saint Lucia, supra note 28, ¶¶ 18–19 (recommending the establishment of an independent human rights mechanism in full compliance with Paris Principles and noting the intention of the state to establish a thematic institution). See CRC, Denmark, supra note 27, ¶ 20 (recommending the establishment of a child rights facility within Ombudsman system); see Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Netherlands, 50th Sess., ¶¶ 16–17, UN Doc. CRC/C/NLD/CO/3 (Mar. 27, 2009) [hereinafter CRC, Netherlands] (welcoming the establishment of Children’s Ombudsman within Netherlands Ombudsman institution and recommending creation of a human rights institution or children’s ombudsman in Aruba and Netherlands Antilles); Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Greece, 60th Sess., May 29–June 15, 2012, ¶¶ 15–16, UN Doc. CRC/C/GRC/CO/2-3 (Aug. 13, 2012) (recommending a continuity of the mandate of the Child Rights Department in the Greek Ombudsman); Comm. of the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Australia, 60th Sess., May 29–June 15, 2012, ¶¶ 17–18, UN Doc. CRC/C/AUS/CO/4 (Aug. 28, 2012) [hereinafter CRC, Australia] (welcoming establishment of National Children’s Commissioner (inside Australia’s Human Rights Commission) but expressing concern over its initial allocation of resources); Comm. on the Rights of the Child, Concluding Observations on the Second Periodic Report of Andorra, Adopted by the Committee at its Sixty-First Session (17 Sept.–5 Oct. 2012), ¶ 19, UN Doc. CRC/C/AND/CO/2 (Dec. 3, 2012) (recommending an expanded role of NHRI in children’s rights work); Comm. on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Germany, ¶¶ 17–18, UN Doc. CRC/C/DEU/CO/3-4 (Feb. 25, 2014) [hereinafter CRC, Germany] (recommending NHRI mandate at national and sub-national levels to receive and address violations of child rights); CRC, Portugal, supra note 49, ¶¶ 19–20 (recommending adequate resources for the NHRI in the promotion and protection of children).
recommended that an NHRI be established or an existing institution be reformed to turn it into an independent NHRI.\textsuperscript{142}

With respect to CRC parties of all levels of development, occasionally the CtRC recommended that a CRC party establish either an NHRI with a child rights unit (or a child rights unit if an NHRI already existed) or a thematic children's rights institution such as a children's ombudsperson.\textsuperscript{143} The CtRC

\textsuperscript{142} See CRC, Japan, supra note 30, ¶¶ 17–18 (recommending the establishment of NHRI and noting absence of information on municipal-level children's ombudspersons); Comm. on the Rights of Children, Concluding Observations on the Combined Second and Third Periodic Reports of Monaco, Adopted by the Committee at its Sixty-Fourth Session (16 Sept.–4 Oct. 2013), ¶¶ 16–17, UN Doc. CRC/C/MCO/CO/2-3 (Oct. 29, 2013) (recommending an expanding role of Adviser for Appeals/Mediation by providing it with a mandate to monitor human rights, including children's rights).

stated that a thematic children’s rights institution such as an ombudsperson for children would be preferable to an NHRI with a children’s rights unit in only one concluding observation in the period under review. If a state already had a thematic children’s rights institution in place or was planning to establish one, the CtRC held them to this commitment and made recommendations on strengthening or establishing it. In most

a separate mechanism, e.g., ombudsperson for children; CRC, China, supra note 28, ¶¶ 19–20 (for Hong Kong, recommending the establishment of either a children’s commission as referred to in Legislative Council motion or another independent human rights institution); Comm. on the Rights of the Child, Concluding Observations on the Combined Second to Fourth Periodic Report of the Congo, ¶¶ 20–21, UN Doc. CRC/C/COG/CO/2-4 (Feb. 25, 2014) (recommending establishment of a specific mechanism for children’s rights inside or outside NHRI).


of these countries with a thematic children’s rights institution, the state in question also had an NHRI.146 The CtRC recommended the establishment of a children’s ombudsman when there was already an NHRI in the state in only a few cases.147

When federal or decentralized states with sub-national governments were reviewed, the CtRC either made positive comments about thematic children’s rights institutions in place at the sub-national levels or criticized weaknesses in these thematic institutions. The CtRC occasionally discussed the lack of monitoring oversight at the sub-national level.148

Federation, supra note 30, ¶¶ 16–17 (recommending that “the State party introduce a transparent and competitive process, regulated by law, for nominations and appointments to all posts of commissioners for children’s rights”); CRC, India, supra note 30, ¶¶ 21–22 (recommending the strengthening of the independence of national child rights commission and sub-national commissions and expediting establishment of commissions in remaining states); CRC, Indonesia, supra note 26, ¶¶ 17–18 (noting “the Commission has a limited mandate, lacking the explicit authority to investigate” and recommends “necessary measure to strengthen the mandate”). But see Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on Czech Republic, 57th Sess., May 30–June 17, 2011, ¶¶ 16–17, UN Doc. CRC/CZ/CZE/C/CO/3-4 (Aug. 4, 2011) (recognizing initial efforts to establish a Children’s Ombudsman and recommending the establishment of an independent body).

146. See ICC, ACCREDITED NHRIS CHART, supra note 5, at 2–9 (listing NHRIs in Indonesia, South Korea, Luxembourg, Russian Federation, Ukraine, Argentina and Nicaragua as A-status accredited NHRIs, Norway’s NHRI as a B-status accredited NHRI and Romania’s NHRI as a C-status accredited NHRIs).


148. See CRC, Australia, supra note 141, ¶¶ 17–18 (expressing appreciation for children’s commissioners or independent guardians in all Australian states/territories);
In almost all cases, the CtRC recommended that the ICRI comply with the Paris Principles and reflect the standards in the CtRC’s General Comment No. 2. In recent cases where thematic children’s rights institutions are discussed, the CtRC has called for the thematic institutions to be fully Paris Principles compliant which, as discussed above, is impossible given the current interpretation of the Paris Principles. The CtRC was also consistent in requiring that the children’s rights mechanism, whether separate or part of an NHRI: be independent; have the mandate to monitor, promote and protect children’s rights; have the power to receive and investigate complaints from or on behalf of children concerning violations of their CRC rights in a child-friendly and expeditious manner; have sufficient financial, human and technical resources to guarantee its efficacy and independence; and be accessible to children, especially those in vulnerable situations. On occasion, the CtRC also called on CRC parties to raise awareness of the institution and its complaints procedure among the public, children and their parents and to permit the ICRI to provide remedies for breaches of children’s rights under the CRC.

In conclusion, in the 2009 to mid-2014 period there was almost no pressure exerted by the CtRC on CRC parties to establish thematic children’s rights institutions as long as they

CRC, Bosnia & Herzegovina, supra note 139, ¶¶ 7–8 (noting that past recommendations were not implemented by government); CRC, Canada, supra note 147, ¶ 23 (emphasizing that provincial thematic institutions have limited mandates and not all children are aware of these complaints procedures); CRC, Germany, supra note 141, ¶¶ 17–18, (calling to strengthen German NHRI over sub-national levels); CRC, Russian Federation, supra note 30, ¶¶ 16–17 (noting numerous problems with regional commissioners); CRC, India, supra note 30, ¶ 22 (recommending that the State party “[e]nsure the independence of the NCPCR and all other Commissions at all levels”). But see Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations on Spain, 55th Sess., Sept. 13–Oct. 1, 2010, UN Doc. CRC/C/ESP/CO/3-4 (Nov. 3, 2010) (no discussion by CtRC of independent monitoring in Spain despite existence national Defensor del Pueblo (human rights ombudsman), equivalent institutions in some autonomous communities and the now-closed Community of Madrid children’s defender); supra text accompanying notes 50, 57 (noting that Spain’s Defensor del Pueblo is not an ICRI given insufficient focus on children’s rights, highlighting Madrid’s closure of its Children’s Defender because of budget cuts).

149. CRC, India, supra note 30, ¶ 22; CRC, Indonesia, supra note 26, ¶ 18; CRC, Guyana, supra note 26, ¶ 19; CRC, Canada, supra note 147, ¶ 23; CRC, Ukraine, supra note 145, ¶ 16.
established or maintained a broad-based NHRI that complied with the Paris Principles and had a children’s rights focus, including a distinct department or unit for children’s rights and/or a distinct commissioner or deputy ombudsman responsible for children’s rights. Thematic children’s rights institutions were accepted and supported by the CtRC, and in some cases the CtRC gave the CRC party a choice to establish either an NHRI or a thematic children’s rights institution. However, thematic children’s rights institutions were almost never affirmatively required. In addition, the CtRC’s emphasis on Paris Principles compliance (as enhanced by General Comment No. 2) increased the pressure on CRC parties to use one comprehensive NHRI rather than a thematic children’s rights institution.

III. CONCLUSION

Thematic children’s rights institutions at all levels of governance, NHRI with a legislated children’s rights responsibilities or sufficiently precise operating practices (child rights department/unit and/or deputy tasked with children’s rights oversight) and equivalent sub-national human rights institutions are broadly defined as ICRIs in current parlance. All types of ICRIs can play a valuable role in applying the CRC in the domestic sphere and improving children’s rights protection and promotion. The CtRC provides important oversight of all ICRIs in CRC states, inter alia, providing General Comments on institutional structure and roles and making recommendations on the establishment and strengthening of ICRIs in their Concluding Observations on periodic state reports.

In recent years, a few thematic children’s rights institutions have been closed down or merged with a broad NHRI. In some other countries, governments have established or extended the mandate of their NHRI to include attention to children’s rights rather than creating a separate children’s rights body. Thematic children’s rights institutions continue in operation at the

150. Recommendations for the establishment of thematic children’s rights institutions were made for only three CRC parties that had not already expressed an intention to establish a thematic institution: Kuwait, Tajikistan, Canada and Uzbekistan. CRC, Kuwait, supra note 144, ¶ 20; CRC, Tajikistan, supra note 147, ¶ 13; CRC, Canada, supra note 147, ¶ 23; supra note 145.
national level in over twenty countries, mainly in Europe, at the sub-national level in over ten countries, and new institutions are contemplated in a handful of other nations.

Many countervailing forces operate to push governments either in the direction of a single comprehensive NHRI (or equivalent sub-national institution) that includes children’s rights oversight or towards a separate thematic children’s rights institution that may exist alongside a comprehensive NHRI. CRC states will make their decisions on the configuration of their ICRIs based on their unique environments and the forces in play domestically and internationally. However, they also have to take into account their CRC obligations and they are increasingly influenced by the UN Paris Principles, the standards on NHRIIs that have permeated through most of the UN and regional human rights systems.

Based on the Paris Principles and ICC General Observations, thematic children’s rights institutions are not considered to be NHRIIs and can never be fully compliant with the Paris Principles due to their thematic and non-comprehensive jurisdiction over human rights in the country. Consequently, the soft law effect of the Paris Principles as interpreted by the ICC through their General Observations and accreditation process is to pressure states in the direction of one NHRI that integrates children’s rights into its comprehensive mandate and to reject the use of thematic human rights institutions such as children’s ombudspersons and children’s commissioners.

The CtRC provides greater detail to CRC states parties’ obligations through, inter alia, their General Comments and Concluding Observations to state reports. In particular, General Comment No. 2 of the CtRC states that it is a CRC obligation to establish independent NHRIIs\(^\text{151}\) although it seems to include thematic children’s rights institutions within the NHRI definition. General Comment No. 2 does not require states to establish thematic children’s rights institutions, approaching the decision on a resource availability basis.

A review of the Concluding Observations of the CtRC over the 2009 to mid-2014 period demonstrates that the CtRC

\(^{151}\) General Comment No. 2, supra note 118, ¶ 1.
does not use the availability of resources as a factor in its recommendations on organizational choice for ICRI. Rather, the CtRC’s main concern is that the CRC party has some form of national level ICRI in place with a child’s rights focus. In the vast majority of CRC party reports examined where there is no ICRI in place, the CtRC does not recommend that the state establish a thematic children’s rights institution. Thus, almost all of the CRC states examined during the review period were under no pressure from the CtRC to use a thematic institution such as a children’s commissioner or children’s ombudsperson. Combined with the effect of the Paris Principles as interpreted and applied by the ICC, NHRI such as broad-based national human rights commissions and human rights ombudsman institutions with a sufficient focus on children’s rights will satisfy both the CtRC and the ICC as to institutional form.

In addition, the CtRC often calls for compliance of the ICRI with the Paris Principles. This is completely appropriate where a NHRI such as a human rights commission or a human rights ombudsman is involved. However, in some cases the CtRC applies the Paris Principles to thematic children’s rights institutions and has called for their full compliance with the Paris Principles. As this Article demonstrates, the ICC considers that national level thematic children’s rights institutions are not NHRI. Thus, the Paris Principles do not apply to thematic children’s rights institutions and a thematic institution such as a children’s rights commissioner or ombudsperson will never achieve full compliance with the Paris Principles based on ICC General Observations and practice. Full compliance with the Paris Principles can only be achieved if a thematic children’s rights institution is totally transformed into a general purpose national level human rights commission or human rights ombudsman with a mandate to protect and promote all human rights.