



A COMMISSIONER FOR CHILDREN'S RIGHTS IN THE FLEMISH COMMUNITY IN BELGIUM

This text is based on a chapter in B. FRANKLIN (2001): *New Handbook of Children's Rights*, Routledge, Taylor & Francis and on contributions for the Ghent International Interdisciplinary Course in Children's Rights of the past years.

INTRODUCTION¹

I inspired by the CRC², other relevant international guidelines³ and examples from other countries, the Flemish⁴ Parliament voted a law⁵ on July 15th 1997 establishing the function of Children's Rights Commissioner and the Children's Rights Commissioner's Office.

A public, official exam, outside parliamentary discussion, was set up to select the first Commissioner, who got officially appointed by the Flemish Parliament on May 13th 1998. After an initial period of setting up the office and recruiting a multidisciplinary staff the Commissioner's Office really got started in January 1999.

The law sets out the main principles and tasks of the new office. It is, in general, an independent spokesperson on the parliamentary level, a megaphone for children on a political forum where they are not represented. They may not have their own place on the political forum, but they do take up their place in our current society, here and now. They are civilians like everybody else, experiencing effects of policy decisions in their daily life too. The Children's Rights Commissioner's Office is there to watch out for their rights and interests.

The link with the parliamentary level, as opposed to the executive level, is very important for the democratic and independent status: all political actors (parties) can be addressed and we do not depend on the policy or the cabinet of one single Minister.

Before getting into the actual work of the Children's Rights Commissioner, it is important to touch on the position of children in our society.

¹ This text contains the general framework of the Flemish Commissioner for Children's Rights. For more specific information on activities, projects, campaigns etc., please check www.kinderrechten.be (all in Flemish)

² The UN Convention on the Rights of the Child, approved by the General Assembly on Nov. 20th 1989.

³ E.g. the so-called Riyadh guidelines, Par. 57

⁴ Belgium is a federal state, divided in several authority levels, of which the Flemish Community is one.

⁵ In the Belgian legislature the word "law" is specifically reserved for national legislation, where as the legislation of Communities and the Regions is called a "decree". For the sake of better understanding I will however use the word "law", since a decree has a similar power, but can cause confusion as to terminology.

THE AMBIGUOUS POSITION OF CHILDREN

Over the past years a lot has been written about the changing position children take up within changing societies⁶. At this very moment however, they are at a certain ideological crossroad.

First, their status is one of simultaneously being “not yet” on the one hand and being “already” on the other. The distinction between those two remains to be made by adults, who sort of label children when and where to be competent or not. We can illustrate this by the following example from the current reality in this country.

In the area of penal law, minors have been, for a long time, protected in the sense that they were legally considered to be incapable to commit criminal acts. A whole separate legislation and social service was worked out to handle the problem of juvenile delinquency: children were not punished but “helped” and re-educated. Such legislation was not primarily aimed at repression but more at social control. The past years however, a new debate was introduced in search of a more appropriate (more repressive?) answer to the apparently increasing delinquency by minors⁷. More and more people think that juveniles are indeed responsible for their criminal acts and they should be punished accordingly. The debate on their capacity under penal law is actually going on in the Justice and Welfare departments. Age-limits of 12 can be heard...

At the same time, there is a debate on the age from which young people can freely consent in and engage in sexual acts. One proposal, which gave cause to heated debate, consisted of lowering that age from 16 to 14. The proposal never came through: the majority of adults consider young people unable to handle their own sexuality under the age of sixteen. (Needless to say not a single young person took part in the debate.)

So, at the same time, within one society and political climate, we discover different notions of competence and responsibility. Children are considered to be able to commit crimes at, let's say 14 years of age, while he/she is at the same time considered incapable to develop and experiment with his/her own sexuality.

⁶ VERHELLEN, E. (1998, 1999, 2000): *Understanding children's rights*. Ghent University, Centre for Children's Rights (with contributions from a.o. M. De Paepe, F. Mortier, M. Flekkoy, B. Franklin, P. Jaffé, J. Qvortrup, M. de Winter)

⁷ It remains to be confirmed whether there is an actual increase of crime by youth, or whether it is more an increase in the public attention for crime committed by young people.

Other examples of competence we find in the recognition of children as consumers, as semi-professional sportsmen, while they remain incompetent and unable to start legal procedures or to take part in the political life.

Second, we see a contradiction in having rights but being unable to exercise them. We may have a 15-year-old Convention, but this does not mean the work is done. Actually, we received some questions from children asking us whether there was anything for them to celebrate. They now learn, slowly but still, that they have rights but they also learn that they can't enforce them when their rights are violated. Isn't this a strange and ambiguous message we send across? Stating that minors are people too and that they therefore should enjoy all human rights is an incomplete statement as long as they have to rely on the goodwill of adults to ensure that their rights are really respected. Although new legislation (on e.g. student councils and the possibility to be heard by a judge) has been voted over the past years, an overall right to participate is still far from reality.

Third, there is a difference in our view of children as individuals and of children as a group, a social category. This issue is elaborated by a.o. J. Qvortrup. Policymakers don't tend to view minors as a permanent social category within society. They see them mostly as adults in the making. When they do get some attention as a group, it is mostly in a negative way. We can see that in the way the media for example report about young people. While most people like (their) kids, sometimes even beyond adoration, society as a whole is not very positive about youth in general. Youth has a negative connotation and is often linked with problems such as unappreciated youth subculture, truancy, drug (ab)use, delinquency etc. Space for children and young people has become scarce and in policy and budgetary allocations there is hardly any specific attention for this group of citizens. It seems that people who do not vote, are not mentioned on the political agenda.

FUNCTIONS OF THE COMMISSIONER'S OFFICE

The decree formulates different tasks for the Children's Rights Commissioner and the team.

Recommendations for policymakers

In general the Children's Rights Commissioner's Office has to monitor the **implementation of the Convention on the Rights of the Child**. This includes checking whether legislation is consistent with the principles of the Convention on the Rights of the Child, giving **advice** on how the Convention on the Rights of the Child can be put to practice and stimulating a child friendly policy in which the position of children can be strengthened. In this area most work has to be done on the participation issue, since this is the most debated element of the Convention on Children's Rights.

Several recommendations have been given to the Flemish parliament and other authorities on different topics:

- family mediation,
- youth care,
- youth work,
- media,
- foster care and adoption,
- juvenile justice,
- sports,
- education,
- health,
- discrimination,
- student councils,
- urban planning etc...

After a recommendation has been submitted to parliament, our work is officially done. Then it is up to parliament members to either act upon it or not. Some recommendations have been transformed into new legislation, while other have been without any follow-up until now.

Communication

We also **inform** the general public, children as well as adults, on the contents and the importance of the Convention on the Rights of the Child and we raise awareness on children's issues.

We organize campaigns, mass events and projects to make the convention known to people and to work on a change in peoples' attitudes towards children and young people. We publish and distribute books, leaflets, an annual journal for young people and created a website, set up for kids, young people and adults.

Up until now, the campaigns focussed more specifically on participation-rights and were aimed at children aged 8-12. We focus on this group because we believe in their competence. Also, when they learn about their rights at a young age, they'll be able to enjoy those rights all through childhood and adolescence. The campaign-focus on participation rights is based on the notion that those are indeed the most forgotten rights. Awareness-raising about those rights is needed even more than for the provision and protection rights.

In this work, we also develop networking strategies with relevant partners on the field.

Examples:

- school participation project
- K-30 and Megafoon
- Children's rights festival and - village

Research

The decree also states that we need to do **studies** on the living conditions of children. This is indeed a very important, yet difficult, task. An efficient child policy requires knowledge of children. This knowledge is at this date still too fragmentary and too little. How do children feel at school, how do they relate to their parents, how important are media to them etc...? Those are all questions that we have been answering from an adult view for a long time, while the perspective of children themselves can be very different. Only when we start working from the child's perspective, we will be able to find the correct answers to their questions and needs.

We have set out different research projects and we try to follow up on research publications on children and young people

Throughout several research projects we have been gathering data on how children view their daily life at home, in school and in their neighbourhood:

- children and their views on communication within the family,

- Kliksons (35.542 views on leisure time and the neighbourhood)
- Children and divorce
- Isolation within youth care.

Ombudswork

The Children's Rights Commissioner's Office also receives and investigates **complaints** on possible violations of children's rights or handles questions on children's rights in individual cases. In this work we can act in different ways: giving advice to children, referring them to the adequate help services when needed, mediate and investigate.

This ombudstask is fundamentally different from any social or judicial service. We do not handle cases in the sense of solving a problem, but we investigate whether any of the children's rights have been violated or not. If there is a problem or a need for specific help or support, we refer the child to the most adequate services.

The ombudswork is not always easy since many of the complaints touch on the relationship between children and adults, mostly parents and teachers. It is very delicate to step into this relationship and tell adults what to do.

Of all the activities, recommendations and results we have to **report** annually to the Flemish Parliament. We do so every year around november 20th, taking advantage of the situation to put children's rights on the agenda both on the level of politics and in the media. The annual report can also serve as an instrument to put pressure on policymakers. If a certain recommendation is not carried out we can report about that and stimulate the discussion.

Every year the official report is also translated in a more popular and 'younger' version and distributed through schools, libraries, youth services etc. because we feel that, in the end, we need to answer for what we do to children and young people in the first place.

COMPETENCES

The competences of the Children's Rights Commissioner's Office are of a **structural** nature. We cannot decide or interfere in individual cases but we can give general policy recommendations. Since we are not elected politicians, these recommendations are not binding, only **advisory**.

In handling the complaints we do have broad **investigatory powers**: we have access to relevant documents, visit institutions, demand explanations.

In our annual reports we can also comment on current affairs and on children's policy.

Every year, the Flemish parliament gives us an annual budget, based on what we ask for. Up until now, our request has always been honoured and we have always received all necessary financial support.

WORKING PRINCIPLES

It is obvious that the **Convention on the Rights of the Child** is our most important instrument: both as a checklist and an agenda. The first refers to the more reactive work, checking laws and practices on their compliancy with the Convention, looking into violations of rights, while the second points to the more pro-active work of stimulating child friendly measures and decisions and working on the promotion of rights.

We try to work on the basis of the **mandate from children**. It is, in the end, children who should draw up our agenda and decide what our focal points should be. To be able to do so however, we will first need to invest in making ourselves known to children, as well as what the Children's Rights Commissioner's Office can do for them. Translated to the ombudswork we will only investigate a case when we are sure that the child itself wants us to. Many complaints are still filed by adults⁸, and we check, where possible, if the child shares the adult's view on the case. If not, we will refer the adult to other, more appropriate services.

In our work it is important to bring out the **emancipatory** powers of the Convention on the Rights of the Child, in a way that we should no longer advocate for children, but organize ways for children to advocate for themselves. We need to focus on children's own capacities, instead of patronizing them. In this

⁸ The first year, 38% of the complaints were from children.

context we work mostly on the participation rights, moreover because that 'P' is generally less known by adults than the other two P's (protection and provision). The resistance towards children's rights is still rather prominent, especially towards the participation-issue.

Within the Children's Rights Commissioner's Office we also took the option to work and raise awareness on the more **basic** provisions –school, play, youth work, media- and space for children in general, more than to focus on the more problematic areas. Not that matters like child abuse, youth care and such are not important, but those areas are usually dealt with in modern societies like ours. What we want to make clear is that children have the right to be seen and heard and taken into account, also when they do not have or cause problems for society. They are part of society, here and now, as they are and as such they deserve the necessary attention on all public policy matters. This is in many ways working on a change of attitude towards children more than on immediate results.

The Children's Rights Commissioner's Office works as a team, which is conceived in a **multidisciplinary** way (law, criminology, sociology, social work, media science ...).

TARGET GROUPS

Needless to say that **children and young people** are our most important target group. We either reach them directly through our informative flyers, stickers and other material and through events like the Children's Rights Village. Indirectly they are the target group in the sense that we try to influence policies for their benefit and to strengthen their position in society.

The advisory work is aimed at **policy makers**, being the Flemish Parliament mostly, but other political fora can be addressed as well: the federal parliament, the Flemish government.

We realize however that making reality of children's rights will never be possible without targeting the **adult society** as well. In the beginning it is the adult society that will have to make the shift towards more child friendly practices: parents, teachers, social workers, politicians, doctors and all other adults who are related to children (everyone so to speak). Through conferences, debates, representations and media we make the message of the Convention on the Rights of the Child clear to the broader public and translate it to the daily life in

Flemish society. We also offer children's rights education to relevant professional groups.

QUALITY REQUIREMENTS⁹

A framework of quality requirements has been drafted by the Committee on the Rights of the Child in its second general Comment¹⁰. The Committee considers what it calls 'Independent Human Rights Institutions for children' (IHRI) to be of major importance in the promotion and protection of Children's Rights in the member states. I will briefly go through some elements of the GC and compare them to our situation in Flanders.

The concept of a IHRI for children, more known as the children's ombudsman, was also promoted during the UN Special Session on Children, held in New York in May 2002. In the outcome document¹¹ of that important Session reference was made to 'independent ombudspersons' as one of the possible measures to be taken up by member states to improve their Children's Rights policies.

Statements on the importance of IHRI (par. 1-7)

According to the committee the IHRI are an important mechanism to promote and ensure the implementation of the Convention on the Rights of the Child and it is even stated that the establishment of such institutions falls within the scope of the obligations under art. 4 of the Convention. This in itself is already a

⁹ Such criteria were also discussed on the Commemorative meeting on the Tenth Anniversary of the Convention on the Rights of the Child in Geneva, sep. 30th – oct.1st 1999. A working group within ENOC also worked on quality standards, based on the Paris Principles for human rights institutions. Those standards will be discussed at the next ENOC annual meeting (Oct 10-12, Paris). When agreed upon they will be published on the ENOC website: www.ombudsnet.org

¹⁰ These general Comments can be found on the Committees website (www.unhchr.ch/html/menu2/6/crc) General comment nr. 2: *The role of Independent National Human Rights Institutions in the promotion and the protection of the rights of the child*, CRC/GC/2002/2.

Earlier, in 2001, the European Network of Ombudspersons for Children, ENOC, also drafted quality standards for children's ombudspersons, that were also based on the 'Paris principles', adopted during the World Conference on Human Rights, held in Vienna in 1993. ENOC then 'translated' these general quality requirements into the children's ombudswork context. For all information, see www.ombudsnet.org (under 'what's new?').

¹¹ UN, General Assembly, 27th Special Session, May 2002, Resolution adopted by the General Assembly, A/RES/S-27/2: *A world fit for children* (www.unicef.org/specialsession/docs_new/documents/A-RES-S27-2E.pdf)

very firm statement by the Committee. Member states are in this way encouraged to either establish IHRI or to improve their status or functions. Also, throughout the reporting process the Committee looks for information within the member states on whether or not there is an IHRI for children.

Reasons for establishing an IHRI, besides the Convention on the Rights of the Child itself, are a.o.:

- the fact that children are, more than adults, particularly vulnerable for violations of their rights,
- the fact that children's opinions are still rarely taken into account and that they hardly play a role in policy making and the political process,
- the fact that children themselves can hardly ever react autonomously on violations of their rights and are thus very dependent of others, and
- the fact that their access to organizations that may protect their rights, is rather limited.

Par. 7 contains such a fundamental statement in my opinion, that it deserves a full citation:

"It is the view of the Committee that every state needs an IHRI 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."

⇒ Flemish office: the Flemish parliament has indeed followed up on the Committee's comment by establishing such an office by law.

Mandate and powers (par. 8,9, 13, 14, 20, 21)

The Committee formulates certain characteristics for the highest attainable level of performance of such institutions, such as:

- a constitutional or at least legal basis,
- a broad scope in the mandate regarding the Convention on the Rights of the Child and its additional protocols and other relevant human rights instruments,
- clearly defined functions, powers and duties,
- clearly defined investigating powers (hearings, requesting information, access to children's institutions, etc...),

- having powers not only towards the state but also towards all relevant public and private entities,
- having the power to investigate individual complaints on violations of Children's Rights and to promote effective remedies for it, including the power to take cases to court or to intervene in court cases, or to act as mediator,
- the power to report independently on the status of Children's Rights towards the Committee and not to be included in the drafting or presentation of the government's report on the government's behalf.

⇒ Flemish office: the legal basis provides certain powers, gives the office a broad mandate although not all powers were established (e.g.: unable to take cases to court or to intervene in procedures)

Accessibility and participation (par. 15-18)

IHRI are of no use if they are not easily accessible for children themselves, both geographically and physically. Especially to the more vulnerable groups of children, IHRI should make a surplus effort to reach them.

A direct contact, consultation and involvement of children within the IHRI's functioning must be ensured. An IHRI for children must play, in other words, an exemplary role in the realization of art. 12 of the Convention on the Rights of the Child: the right of children to express their views and opinions in all matters that affect them and to have these taken seriously. Not only in their own work, the views of children should be incorporated but IHRI should also develop and promote participatory strategies in general and promote suitable ways of communicating with children.

⇒ Flemish office: we are easily accessible and children and young people have an input on our work through the ombudscases, contacts and (research-) projects. However, this remains a permanent issue, which always leaves room for improvement.

Recommended activities (par. 19)

In the General Comment a wide range of activities is listed. This list of 20 items is not exhaustive but it indicates which activities are considered to be important by the Committee. Just to mention a few:

- to investigate, on complaint or on its own initiative, violations of Children's Rights,
- to publicize opinions and statements on Children's Rights issues,

- to promote harmonization of legislation with the Convention on the Rights of the Child and its optional protocols and other relevant human rights instruments,
- to draft a so-called alternative report on the state's Children's Rights policy and the implementation status of the Convention on the Rights of the Child,
- to promote the contents of the Convention on the Rights of the Child, esp. the major principles and raise awareness on Children's Rights,
- to keep under review the adequacy and effectiveness of law and practice relating to Children's Rights protection,...

⇒ Flemish office: we comply with most - but not all - activities in this list. In reality, not one of the existing IHRI's will be able to succeed in performing all these functions, but it can still serve as a guiding list. E.g. the Swedish ombudsman does not deal with individual cases, our Flemish office cannot start a court procedure, not all IHRI's make reports to the Committee etc...

Relation with state parties, NGO's and international partners (par. 25-29)

It must be very clear that it is the state that is responsible for implementing the Convention on the Rights of the Child and to make Children's Rights happen. It cannot pass on this obligation to the IHRI.

However IHRI have to stimulate this process and could work on supportive strategies for the state parties to enable them to meet the Convention's requirements.

IHRI and NGO's are not competitors in the field of promoting Children's Rights. They are, on the contrary, partners and have a complementary role towards one another.

International cooperation between IHRI is vital, not only to support one another but also to work together on Children's Rights issues that are transnational.

- Within Europe, e.g., there is ENOC , the European Network of Ombudspersons for Children¹². This network serves as a colleague forum, where strategies and experiences can be shared, common problems are discussed, and common statements are formulated. The network also meets with the Committee in Geneva and promoted the participation of IHRI's in both the reporting process in Geneva and the UN Special session.

¹² See www.ombudsnet.org (this site can be consulted but is currently under revision by the office of the Norwegian Children's Ombudsman).

- On the eve of the UN Special Session, IHRI's worldwide held the first meeting of a Global network, in which a statement for the Session was discussed and prepared. More specifically, it stressed the importance of the Children's Rights concept and the Convention on the Rights of the Child throughout the session, in which the Convention on the Rights of the Child itself at times, seemed to play a minor role in the discussions.

⇒ Flemish office: all through our work, we work closely together with several NGO's and other organizations working with children and young people (research projects, events etc.)

PITFALLS AND VULNERABILITY

During the first working years, it became clear that we have to watch out for different forms of improper use of the Children's Rights Commissioner's Office. We are established to stimulate the implementation of the Convention on the Rights of the Child, to advise on child friendly policies and to be there for children themselves. Sometimes, adults contact us with questions or topics which are in fact their own, not the children's. This is not what we should be working on, especially since there are many services for adults already.

Another difficulty is the balance we need to keep between reactive and proactive work. It is reasonable to expect that an instance as the Children's Rights Commissioner's Office will work mostly in a reactive manner during the first years of its existence. This also has to do with the necessity to work diplomatically and slowly if we want to get results in the long run.

The fact that we work for such a varied target group can also raise problems. Children themselves, from 0 to 18, are already a very diverse group. The work towards them has to be adapted for the different age groups, which takes a lot of time and effort. But we also need to reach the adult society and the policymakers. Public messages aimed at one group can cause misunderstandings with the other. Diplomacy is needed here too, without giving in on the essential children's rights message.

Some people have the wrong idea on what we actually do. Many of them think we can solve every problem like a deus ex machina and they don't always understand that we cannot overrule decisions of judges, school boards and other competent bodies. Some also think we are yet another social service where they can find

help for their concrete problem, while we are more of a referral service, working on a structural level.

It is also not up to us to make political or policy decisions. To each his own responsibility. While we continuously work on putting children's rights on the political agenda, we do not decide on political priorities. While we send information to the Committee in Geneva, we do not work on the country's official report. While we have been established by the Flemish Parliament, it is no excuse for the parliament to not work in children's rights too.

We may be working towards politics, we are never part of it!

CONCLUSION

Promoting children's rights is a never-ending story: hitting on the same nail again and again, at first having to create the "market" in a way, getting people interested and convinced of the importance of human rights in general and children's rights in particular.

It may be a bumpy road at times but it sure is never boring.

Ankie Vandekerckhove
Children's Rights Commissioner
Belgium, Flemish Community