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Independent Children's Rights Institutions as Facilitators of Dialogue between Children and the State: An Opportunity for Mutual Empowerment?

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ABSTRACT
The role of independent children's rights institutions is a multifaceted one, which can lead them to be pulled in many different directions. For most such institutions the Convention on the Rights of the Child (CRC) provides a fundamental underpinning for their work, and many institutions place particular emphasis on Article 12 and on children's rights to participation more generally. At the same time a principal focus of activity is on influencing law and policy in their national jurisdictions. In this paper we explore some ways in which these separate objectives can be combined in ways that challenge, or at least compensate for, children's exclusion from political influence. Drawing on research conducted with independent children's rights institutions in Europe, we point to some weaknesses in the current pattern of activity which can lead to a lack of impact, and some examples of how institutions can engage more effectively, both with children and with powerful actors, by promoting and facilitating dialogue between them.

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INTRODUCTION

The role of independent children's rights institutions is a multifaceted one, which can lead them to be pulled in many different directions. For most such institutions the Convention on the Rights of the Child (CRC) provides a fundamental underpinning for their work, and many institutions place particular emphasis on Article 12 and on children's rights to participation more generally. At the same time, a principal focus of activity is on influencing law and policy in their national jurisdictions. In this paper, we explore some ways in which these separate objectives can be combined in ways that challenge, or at least compensate for, children's exclusion from political influence. Drawing on already published research conducted with European institutions, we point to some weaknesses in the current pattern of activity which lead to a lack of impact, and some examples of how institutions can engage more effectively, both with children and with powerful actors, by promoting and facilitating dialogue between them.

In what follows we first revisit some of the most useful theories and models of children's participation, followed by a review of the purposes and methods of working of independent children's rights institutions (drawing on our research, which included a survey of members of the European Network of Ombudspersons for Children). We then look directly at the potential for dialogue and mutual empowerment, with examples from the second phase of our research, a case study of practices in two institutions. We conclude by suggesting some ways forward that build on these insights.

Children's participation: theories and models

The theory and practice of children's participation has been heavily influenced by Article 12 of the CRC, which speaks of a child's right to express a view and have it considered. This has tended to encourage a discourse of participation in terms of 'voice' and 'listening'. Thorne (2002:251) argues that 'voice' should be regarded as a "metaphor for political recognition, self-determination, and full presence in knowledge." However, in actuality, it is often used in ways that are much weaker.

More recent discussions of children's participation have sought to go beyond a simplistic account in terms of 'voice' and 'listening', bringing an understanding of the importance of context and the significance of relationships. Key concepts in these discussions have been those of *dialogue* and *space*. A dialogic approach recognises that children's participation emerges from mutual interdependencies, recognition, and respect for children's diverse views (Smith, 2002; Fielding 2007; Fitzgerald *et al.*, 2010; Cockburn 2013). The (physical and, even more, the social) *space* in which dialogue takes place is increasingly seen as of crucial importance to the quality of the process and the positive engagement of all parties, particularly children (Percy-Smith, 2006; Wyness, 2006; Mannion, 2010). It has also been pointed out that the discourse of 'voice' can distract attention from the importance of non-verbal communication (Kellett 2009) and also that of participation as joint *action* (Percy-Smith and Thomas 2010).

While retaining somewhat uncritically the basic concept of 'voice', Lundy (2007) aims to flesh it out with a model based on four key elements of *space*, *voice*, *audience*, and *influence*. She argues that children must be given the opportunity to express a view, facilitated to express their views, which must be listened to and then acted upon (as appropriate); and also that they should be enabled to follow up on the impact of their voices. Her model aims to unpack the elements of Article 12 CRC in a practical way and is offered as an approach to inform

understanding, develop policy, and evaluate practice. It *spatialises* participation and takes account of power and stresses relational aspects and the supportive role of adults (Crowley, 2012). It 'highlights the inefficacy of voice operating in a vacuum' (Kellett 2009: 238). However, it still assumes a process in which children and young people express their views and then adults make the decisions.

Shier's (2001) model of 'pathways to participation' has a different purpose. A response to, and development from, Hart's (1992) 'ladder', it aims to characterise different levels of participation and to identify what organisations need to do in order to move their policy and practice to a level where children are participating with maximum effectiveness. The five levels are:

1. Children are listened to.
2. Children are supported in expressing their views.
3. Children's views are taken into account.
4. Children are involved in decision-making processes.
5. Children share power and responsibility for decision-making.

The model identifies three stages of commitment at each level, characterised as 'openings', 'opportunities' and 'obligations'. An opening appears when a worker is ready to operate at a particular level; an opportunity occurs when the resources are available to operate at that level and an obligation is established when it becomes the policy of the organisation to operate at this level.

Percy-Smith and Thomas (2010) argue that real participation has to be built from the grassroots, enlarging participants' capacities as active citizens and going beyond 'having a say' in making decisions. Creating space for children's participation is time-consuming and demands hard work, resources, flexibility, innovation, attention to context (Theis 2010) and avoidance of paternalism (Parkes 2013). There is some evidence that effective participation can improve the skills and confidence of children, and also of adults, and so can be empowering for both groups (Cockburn 2010; Hurd 2011; Crowley 2012; Tisdall 2015). Participation can be empowering for children if they have access to information and direct contact with decision-makers, have a choice as to whether and how they take part and are supported by an independent adult whom they trust (Hodgson 1995; Treseder, 1997). In participation, children should be empowered to shape the process and outcome, and should have access to sources of political power in order to challenge oppressive authorities and structures (O'Kane 2003; Lansdown 2006).

This brings us to questions of children's participation in politics and government. An inescapable part of the background to this is that children are by definition disenfranchised. They are not entitled to vote or stand for election, and to a wide extent are not regarded as citizens. One implication of this disenfranchisement is that they do not have the rights of access to politicians and officials that adults are assumed to have; nor are they routinely consulted or provided with information about political choices, as adults are in a fully functioning representative democracy. One response to this is to challenge children's exclusion from the category of citizen, including their exclusion from the suffrage (Wall and Dar 2011). Another response is to assert the importance of alternative, compensatory mechanisms for children to engage, to have a voice, and to exercise some influence.

As Cockburn (2013) notes, until very recently children were generally considered 'non-citizens', and were not present in citizenship theory except in the context of citizenship education, as 'future citizens'. Proponents of forms of children's citizenship include Jans (2004), Invernizzi and Milne (2005), Moosa-Mitha (2005), and Liebel (2008). In various ways, these and other authors propose enlarging or modifying the concept of citizenship to fit the

social situation of children. For example, Jans (2004) calls for a 'child-sized' citizenship incorporating playful and ambivalent forms of participation, as a dynamic process rather than a standard set of rights and responsibilities, so that children can actively participate in a society in which children and adults are interdependent. Moosa-Mitha (2005) proposes a 'difference-centred' citizenship for children as 'differently equal' members of society. Young (cited in Cockburn, 2013: 230) calls for a 'differentiated citizenship' which is based on ' agreed, overarching, universal principles premised on equality.' Cockburn, however, is concerned that this might reinforce children's differences from adults and so impair their involvement in socio-political affairs.

Tisdall and Davis (2004) look at the potential for children's inclusion in 'policy networks'. Policy networks occur when there is an exchange of information between groups and government (or between different groups or parts of the government) and this exchange of information leads to the recognition that a group has an interest in a certain policy area. Tisdall and Davis (2004) argue that in these networks children should be regarded as 'core insiders' rather than outsiders. Core insiders are able to bargain and exchange with policymakers over a range of issues (Maloney *et al.*, 1994). In these ways, the State and children can seek to persuade each other in relation to the implementation of children's rights.

If we understand power in a Foucauldian sense as productive and relational, so that the power of children and adults is 'co-dependent' rather than mutually exclusive (Gaventa and Cornwall, 2006; Gallagher, 2008; Mannion, 2010), then we can begin to think in terms of Wang's (1999) concept of 'mutual empowerment' of state and society – in this case children – as a conceptual device and a political opportunity for social transformation and political democratisation, the key to which is developing appropriate mechanisms for interaction.

The question we want to address is whether there may be a role for independent children's rights institutions in these processes. First, we need to consider what are the purposes of such institutions, and their typical ways of working.

INDEPENDENT CHILDREN'S RIGHTS INSTITUTIONS: PURPOSES AND WAYS OF WORKING

A distinction is sometimes made between independent children's rights institutions (ICRIs) and independent human rights institutions for children (IHRICs), where the former refers to stand-alone institutions dedicated solely to promoting and defending children's rights, and the latter to sections or departments of general human rights institutions with a particular focus on children. For convenience here, we use the former term to refer to all such institutions, including those established at a sub-national or regional as well as a national level, and regardless of whether they are called Ombudsman, Commissioner, Defender or Advocate, so long as they have a legal mandate to protect and advocate for children and their rights.

Such institutions began to be established or demanded in the 1980s, the first being the Children's Ombudsman in Norway. At the time, Melton (1987) attributed the need for independent institutions to the lack of a political structure for the representation of children, which had three consequences: children's interests were outside the arena of interests of policy; policy was fragmented and uncoordinated in the absence of thorough research on children; and children's own concerns were missing from the foundations of policy. These points remain valid now, in the 21st century.

The greatest impetus for establishing ICRIs came with the adoption of the CRC in 1989, and further with the United Nations Committee on the Rights of the Child's General Comment on 'the role of independent national human rights institutions in the promotion and protection of the rights of the child' (Committee on the Rights of the Child 2002), which called on States Parties to establish and support independent institutions 'for the promotion and monitoring of the implementation of the Convention'.

Although the General Comment outlines a wide range of activities which may be expected of institutions (para. 19 lists 20 items in an 'indicative, but not exhaustive, list of the types of activities which NHRIs [national human rights institutions] should carry out in relation to the implementation of children's rights in light of the general principles of the Convention'), the Committee places particular emphasis on the views of children:

> 16. NHRIs have a key role to play in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention, by Government and throughout society. This general principle should be applied to the establishment, organization, and activities of national human rights institutions. Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. Children's councils, for example, could be created as advisory bodies for NHRIs to facilitate the participation of children in matters of concern to them.

In Europe, which has the greatest number of independent children's rights institutions worldwide, the European Network of Ombudspersons for Children (ENOC) offers a summary of aims of member institutions, which again is wide-ranging but includes the aim " to provide a channel for children's views and to encourage government and the public to give proper respect to children's views."[3]

In a survey of ENOC member institutions conducted in 2012 (Imanian and Thomas, 2019), we found that the four top priorities were identified as being:

1. to influence law, policy, and practice;
2. to promote full implementation of the CRC;
3. to promote awareness of children's rights among children and adults;
4. to encourage the government to give proper respect to children's views (our emphasis).

A little reflection will show how these aims interact and depend on each other. In particular, we argue that bringing together priorities 1 and 4 can be a powerful way to give substance and traction to the work of independent children's rights institutions. Our research suggested that institutions could have an important role as interlocutors between children and the State, so empowering both to engage in more effective dialogue, and thus enabling children to have a real impact on policy.

The survey showed that a range of contextual factors made a difference to how institutions operated and what they could achieve, that the mechanisms used by IHRICs to achieve their objectives were also mixed, and in particular that the level of children's participation varied considerably. When institutions were asked to identify which rung on Hart's 'ladder of children's participation' (1992) best described the level of children's engagement in their work, the largest number (15 out of 33) opted for 'children consulted and informed', followed at some distance (8 out of 33) by 'adult-initiated, shared decisions with children' (Imanian and Thomas, 2019). When asked to rank their most influential stakeholders, eight respondents put children first and five put them last, indicating a wide variation in practice. (Seven put government first, seven parents, other NGOs or in one case the media.) The aggregated rankings are shown in Table 1 (Imanian 2016).

3 http://enoc.eu/?page_id=2345

Table 1. Stakeholders' actual and ideal influence: overall rankings

	Stakeholders' Actual Influence	**Stakeholders' Ideal Influence**
1	Government	Children
2	NGOs	NGOs
3	Parents	Parents
4	Children	Government
5	Media	Media
6	Religious Organisations	Religious Organisations

Table 1 also gives respondents' ideal rankings of stakeholders' influence – that is, how much relative influence they would like them to have. This shows that overall they would want to see children at the top of the rankings, rather than government as it actually appears. The survey revealed that institutions' principal objectives were generally around 'influencing law and policy', 'full implementation of the CRC', and 'raising awareness of children's rights', reflecting their top three priorities. For most institutions their *expected* impacts related to those objectives, but *actual* impacts were often different, substantially so in 60-70% of cases (Imanian and Thomas, 2019).

When we looked in more depth in a subsequent phase of the research (see below), we found evidence to suggest that integrating the fourth priority ('encourage the government to give proper respect to children's views') could make a difference in terms of impact, as well as fulfilling the aim of promoting children's participation rights. This is explained more fully in the following section.

The independence and legal powers of ICRIs are crucial in establishing their distinctive role, in national contexts that may feature a wide variety of public bodies and NGOs, all engaged to a greater or lesser extent in the promotion of children's rights. Although the precise mandates of institutions may differ substantially from one country to another, it has been argued that in general their success in making a real difference occurs when they combine their independent standing with *soft power*, meaning "the capacity to report, to convene, to mediate and to influence lawmakers, government bodies, public institutions and public opinion" (UNICEF 2013:2) and that what distinguishes an effective institution is the ability to influence those with direct responsibility for policy and practice.

Doek (2008) argues that monitoring the implementation of the CRC must include the promotion of children's voices and their participation in making decisions affecting their lives, and that ICRIs should aim to broaden this awareness among the wider community, for example by campaigning for the involvement of children in local and national policy development and implementation.

One of the most effective ways for moderating child-adult power relations has to be the full engagement of children in affairs related to them. This implies that ICRIs should try to find ways of putting pressure on decision-makers and implementing the CRC that are, at the same time, empowering for children's participation. Special attention should be paid by ICRIs to empower children toward active participation in legislation and policy work.

THE CASE STUDY RESEARCH AND EXAMPLES OF GOOD

Our research aimed to understand the concept of 'impact' in relation to independent children's rights institutions. The approach was framed by critical realism and 'realistic evaluation' (Pawson and Tilley 1997), and took the form of a survey as reported above, followed by case studies of two selected institutions. The case study research also drew on methods of appreciative inquiry (Cooperrider *et al.* 2003). The aim was to explore how staff and stakeholders of the institutions understood the impact and to explore practical ways in which they could evaluate and demonstrate their impact.

The two institutions are referred to as 'the Ombudsman' and 'the Commissioner'. The context in which they operated, and the reasons for selecting them, are explained in Imanian (2016) and Imanian and Thomas (2019), as part of a fuller account of the research and its findings. In this paper, we focus specifically on some examples of good practice identified in the case study research, which serve to illustrate what we mean by facilitation of dialogue and mutual empowerment. The first two examples are from the work of the Ombudsman, and the second two were projects of the Commissioner.

The Survivors' Group and the 'Care Tour'

The survivors' group consists of 12 young people who are or have been in alternative care. They meet once a month with support from an NGO. Initially, the main purpose was to develop tools for children and young people in care to discuss their experiences, but during the course of this they began to focus on the importance of young people's engagement in the care system and started holding focus groups for young people in care to give them an opportunity to share their thoughts and become empowered. When the Ombudsman visited the group, she offered to support a 'tour' of the country by the group, to meet other children and young people in care. A report of the tour was published and more than 20,000 copies have been distributed across the country.

A member of the group recalled:

> When we saw [the Ombudsman] we realized that some people wanted to listen to us. She forwarded our experiences to the policymakers and [took us to meet] the child-friendly politicians which are a group of politicians that [the Ombudsman] does her lobbying and working with them. After the meeting, there was a session in the Parliament and politicians discussed making or changing a law. So it was bang on time... If she had not come to see us, we would have still been doing the meetings in our small group and small NGO.

The report of the tour made an important contribution to the public debate on the quality of child welfare services in the country. It happened to coincide with the death of a child to which the Ombudsman demanded an investigation, and urged the government to listen to children when evaluating services. A working group to improve child welfare was established by the Government, and a member of the survivors' group was included in the group.

In this case, the ICRI initiated the conversation between the decision-makers and children and young people in alternative care who had been silent until then. Reflecting on the experience, the Ombudsman commented, "We hope children [will] be acknowledged as insiders of child welfare development. In the care tour, the perspective of children and young people was transmitted into changes of law and policy."

'Child Friendly Municipalities'

This was a contribution to a government programme for child and youth policy, which included a goal that every municipality should have a system for children and young people's

participation. The Ombudsman conducted a survey with members of the Children's Parliament to find out how children felt about local government services, and in particular whether they felt able to influence the affairs of their municipality. Two out of five children (42%) said that they had no influence on their municipality's decisions, in the sense that they could express an opinion and be listened to. Children also said that a municipality fit for children and young people to live should have opportunities for learning, moving, playing, hobbies and eating well, a safe living environment and adults with the right attitudes towards children, who are interested in their opinions.

Following the survey, a group of children and young people from municipalities with experience of participation made a statement for decision-makers, and a workshop was led by young people for the officials in the Ministry of Finance who were responsible for municipality reform. The workshop provided an opportunity for the officials to learn about how to dress up, plan, and address the children when meeting with them. The Ombudsman's Advisory Board would continue to be involved in the process of municipal reform as it proceeded. Through this project, the Ombudsman empowered children and young people through establishing structures for their participation in municipalities, and the municipalities through training on how to listen to, and interact with children and young people.

Age discrimination project

The Commissioner supported children and young people to lobby for changes to proposed legislation to prevent age discrimination in the provision of goods, facilities, and services so that children and young people would be protected from practices such as requiring them to leave their school bags outside shops or not preventing them from entering shops at certain times or in groups.

The Commissioner's young advisory group sought to challenge public impressions of children and young people, appearing on television and radio with a campaign for children's rights in the media, and conducting research into 'young consumers'. On the strength of this work, the Commissioner was able to engage with policymakers and promote amendments to the legislation.

This project was built, in a timely manner, on one of the Commissioner's previous activities with children and young people, and had a focus on the discrimination faced by children and young people in their everyday lives, inspired by the Commissioner's Young Advisory Group.

Participation Awards

The Commissioner's Participation Awards were developed through a participative process for young people to identify and reward public sector best practice. The aim was to encourage government and decision-making bodies to enable the participation of children and young people in decisions and policies that affect them, by celebrating good practice. The award panel consisted of a diverse group of young people who worked together to develop criteria for the awards and then formed the panel of judges.

Evaluation of the project through feedback from those involved showed that young people felt that they were strongly involved in the development of the awards process and in recognition, while applicants found that the awards highlighted the good work being done in the area of youth participation and encouraged more organisations to provide meaningful opportunities for young people to get involved in decision-making.

The award panel comprisedxa diverse group of young people (in terms of geographical spread and social background) who sat down together and created criteria for these awards. Then, they judged each of the applicants according to the values of the awards which were:

engage, listen, rights, voice, respect, involve, equality, change. The criteria can show how children and young people evaluate 'participatory' projects and activities.

According to the Commissioner, the "awards helped in discovering that, in so many of the departments, there had been attempts to engage children and young people and listen to them." Participating organisations and government departments found it very encouraging to see so many organisations involving children and young people in decision-making processes across a number of policy areas. Applicants found that the awards highlighted the good work being done in the area of youth participation and encouraged more organisations to provide meaningful opportunities for young people to get involved in decision-making. This shows the role the role ICRIs can play in facilitating a dialogue even amongst the adults in an appreciative way.

General comment

In all the above examples it is instructive to focus on *who* takes part, *what* is said, and *how* it is implemented. For example, while the Care Tour was about the silent voices of children and young people in alternative care, the Age Discrimination project was about the voices of many young people who face discrimination, as expressed by the youth panel advisors. As for 'what', this could be about the burdens of age discrimination, or about the everyday lives of young people and how many of them are affected by negative stereotypes. 'How' could refer to the appreciative approach and how it has led to the discovery of good practice in different organisations and government departments, and also how young people can learn to appreciate the difficulties in implementing a participatory approach and the practicalities of it in real life.

DIALOGUE AND MUTUAL EMPOWERMENT

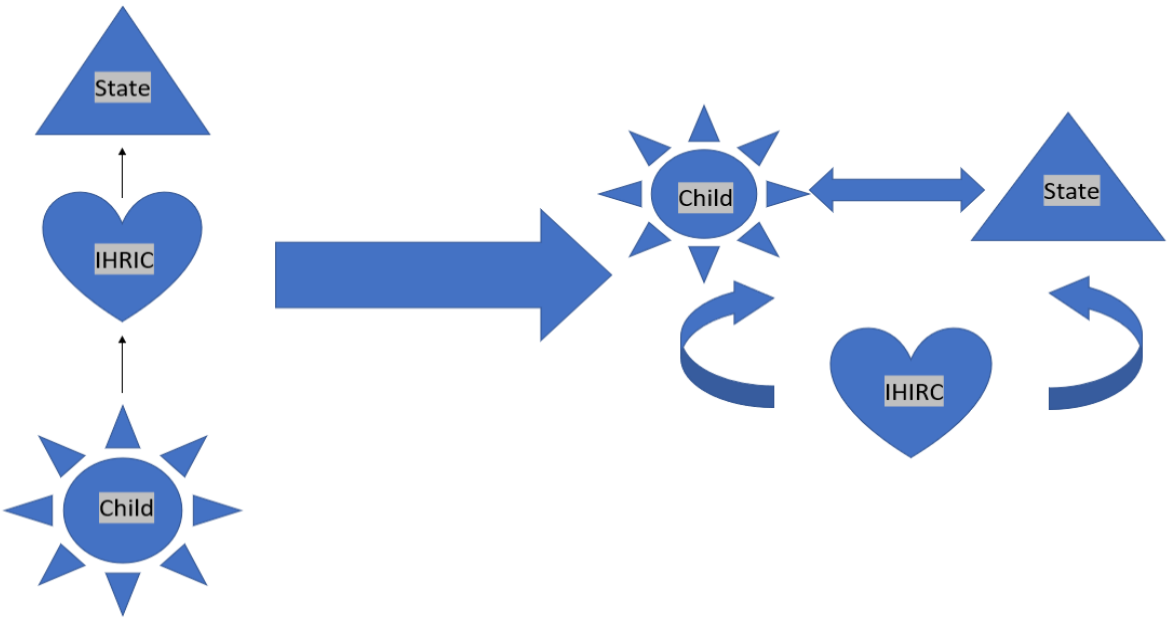
As we have noted, independent children's rights institutions rely heavily – and appropriately – on the CRC as a foundation for their work. However, it may be helpful also to look at their role in the light of work that has been done in the field of childhood studies to understand the operation of power, the character of intergenerational relations, and the scope for children's agency. The CRC is not the last word on children's rights, and certainly is not the last word on children's place in society. There are emerging strands of research that reflect critically on the United Nations' definition of children's rights (Reynaert *et al.*, 2012; Larkins *et al.*, 2015), challenge the positioning of children as recipients of adult intervention rather than as actors (Cordero Arce, 2012) and draw attention to ways in which children may both define and claim rights for themselves (Liebel, 2012; Hanson and Nieuwenhuys, 2013).

Our case study research reminded us that it can take time for those in positions of authority to acquire confidence in children's competency, to move beyond beliefs that children are already well looked after or that they cannot know what is good for them, or that children's rights are in conflict with parents' rights. Children's rights institutions work hard to challenge these beliefs, but often have to repeat the efforts when politicians move on and are replaced. This means that work on raising awareness and building child participation has to happen alongside the work on legislation and policy.

When children are taken seriously, they are more able to participate in matters concerning them. But children and State actors both have to learn how this can be done; skill development and capacity building are needed on both sides. In the examples of good practice that we saw, the case study institutions helped to train decision-makers on how to listen to children effectively, how to provide a suitable setting, etc. They also trained their young advisors and helped them acquire the confidence to communicate their ideas and experiences. By using an appreciative approach (for example the 'participation awards') and applying an ethos of hope (exemplified by the 'care tour') they have begun to create a friendly relationship between State and child, rather than a competitive one.

As noted above, Lundy (2007) argues that children must be given the opportunity to express a view, and must be facilitated to express their views, which must be listened to and acted upon, as appropriate, and they should also be given the chance to follow up on the impact of their voices. This is what the case study institutions have been aiming to do. Further than that, in their best practices, they have worked to enable adults to listen to children, to create an ongoing conversation with them, as recommended by the Committee on the Rights of the Child, and to give real weight to their opinions. As one child told the Council of Europe (2011: 5) "Adults don't listen when I think differently". That is why we propose that there should be greater emphasis on work to support ongoing dialogue between children and the State.
Habermas (1981) argues that " Ombudsman can direct the quality of the dialogue itself between the government and its citizens, and shape it through a customer-friendly and communicative approach. In this way, aspects of a democracy of deliberation and participation can gain more attention as part of the democratic process" (cited in Beke 2009: 128). This insight can equally well be applied to Ombudsman for children. Of course, other organisations such as NGOs can also have a role in facilitating dialogue between State actors and children. However, it is arguable that children's Ombudsman (to stay with that term for a moment) is in an especially strong position to establish and embed such relationships, precisely on account of their legal status, duties and powers, and the respect which they can command. The activities of our case study institutions that were identified (by themselves, by their stakeholders or by the researchers) as their best practices do provide some indication that 'directing the quality of the dialogue' is an activity that suits them well. Some of the other activities undertaken by both institutions were subject to more criticism, particularly from outside observers, as being rather less effective Although children's rights institutions will doubtless continue to have a job to do in advocating for changes in law and policy on the basis of their own observations and analysis, and on the strength of what children tell them in a variety of conversations, there does seem to be an important, even a crucial task of facilitating direct and effective conversations between children and those with the power to make things happen. The different processes are illustrated in Figure 1.

Figure 1. IHRICs and Mutual Empowerment of Children and State



CONCLUSION

Through a process of 'mutual empowerment' (Wang 1999), State actors and children can both increase their capacity to achieve change and their understanding of each other's position, becoming part of a policy network in which children are 'core insiders' who begin to understand the practicalities of change in law and policy, including the timescales required for some kinds of change (and are also in a stronger position to challenge some of those constraints).

Such empowerment can increase 'the potential for children's participation to be political, to challenge and insist on change' and question the situation of children as 'secondary citizens' (Tisdall and Bell 2006:116). These processes (for example, the participation awards or municipality reform, see the previous section) can build an appreciative relationship between politicians and children. In a face-to-face encounter, both parties will learn how to engage in a conversation and talk about their needs and solutions, about what can be done and what cannot. We propose that the activities we have characterised as 'mutual empowerment' can make a real difference in realising children's human rights, and add sustainability to the impacts of independent children's rights institutions if they are done systematically and strategically. In the longer term, this can enable institutions to go beyond the CRC and enable children to be recognised more fully as citizens.

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