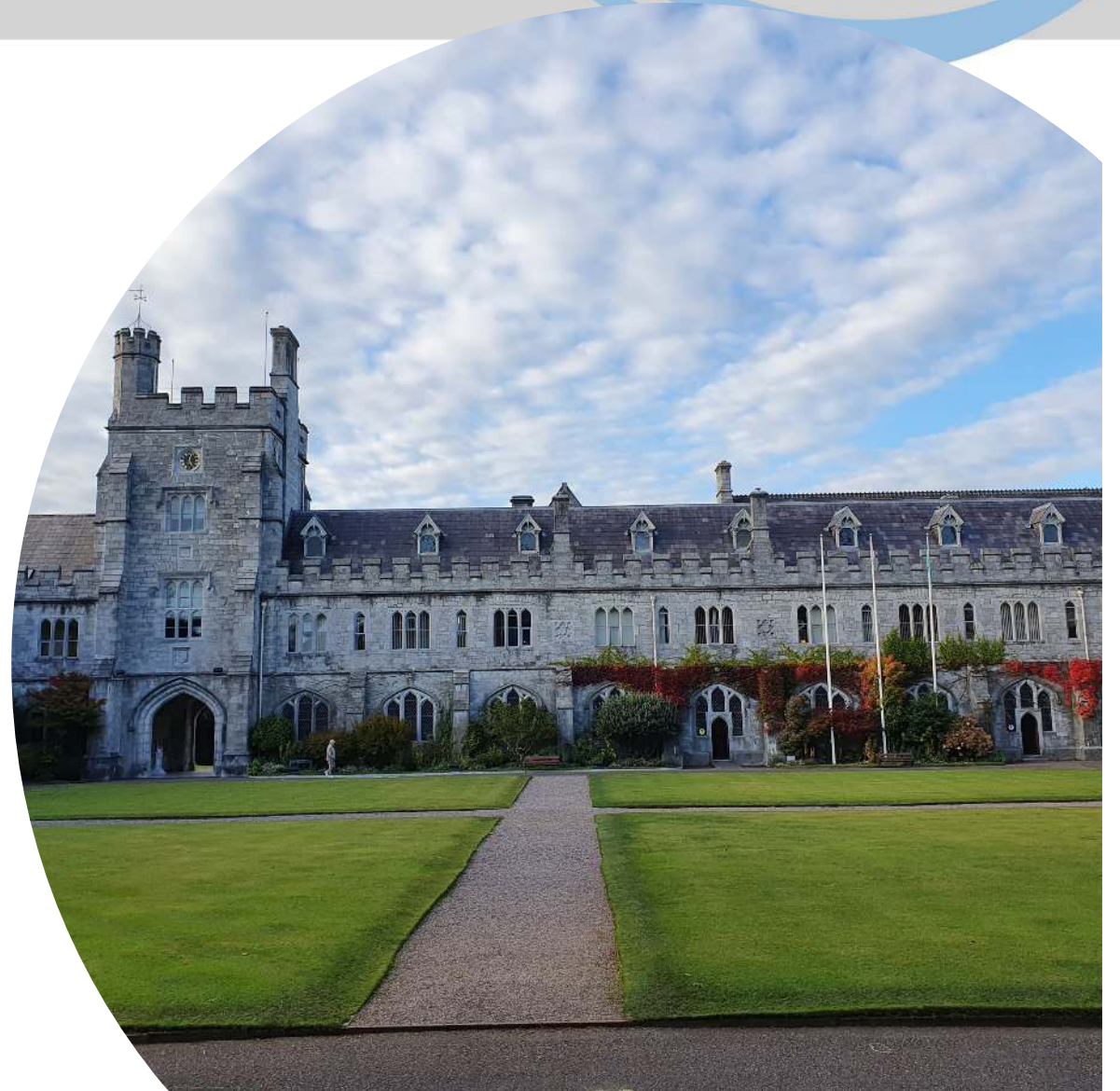


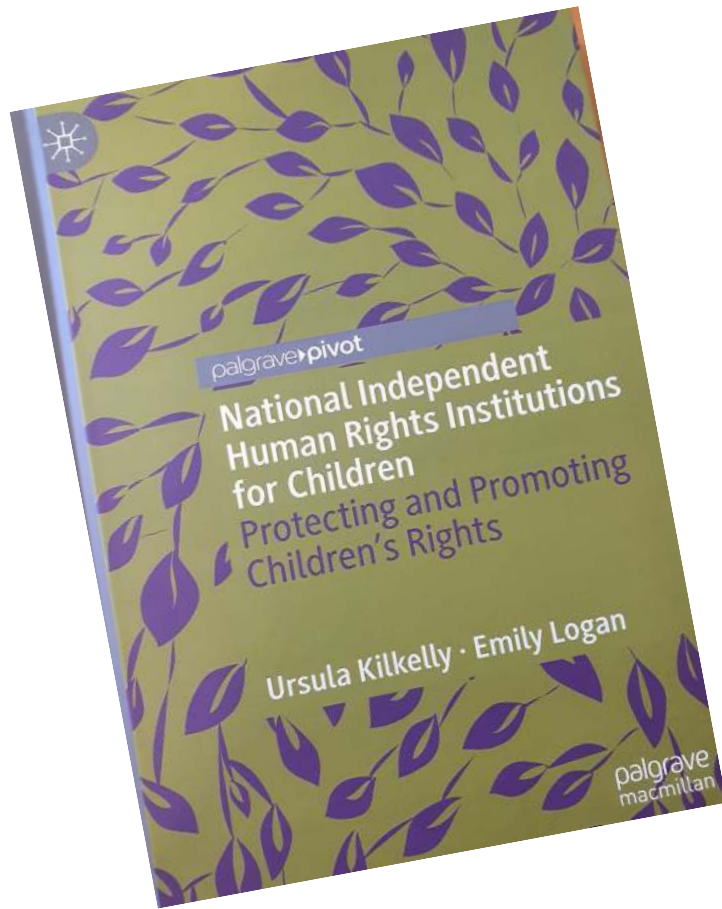
Professor Ursula Kilkelly
UCC/Leiden

Access to Justice for Children
- advocating for rights and
remedies

UNSW, 1 September 2022



Learning from within and in collaboration



Interdependency between Children's Rights and Children's Access to Justice

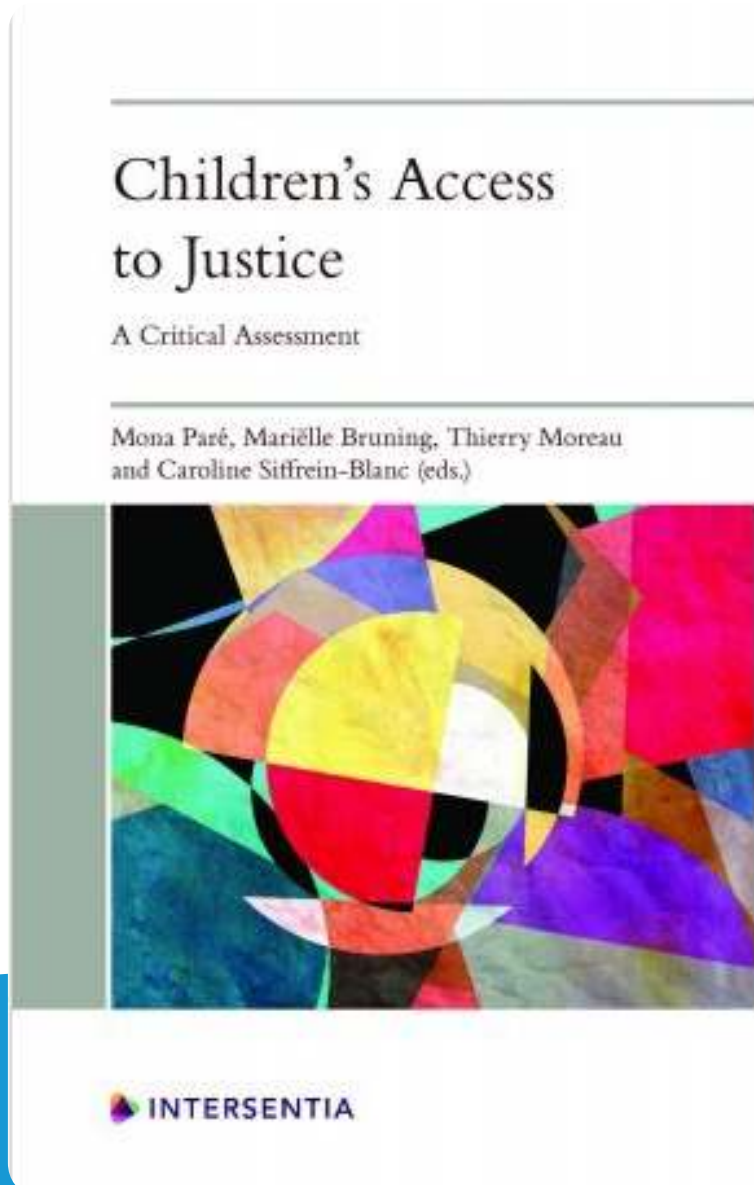
Effective remedies considered integral to children's rights enforcement (GC No 5)

Children's 'special and dependent status' creates real difficulties for them in pursuing remedies for breaches of their rights

States need to give 'particular attention' to ensuring that there are 'effective, child-sensitive procedures' available to children and their representatives

Child-friendly information, advice, advocacy, access to independent complaints procedures and to the courts with necessary legal and other assistance

Access to justice - a 'just and timely remedy for breaches of children's rights'



Access to justice for Children

Two dimensions of effectiveness

Access - easily reached
and used, trusted,
timely and appropriate

Justice - restoration,
reparation, symbolic,
reform

Access to Justice



LITIGATION



MONITORING



INVESTIGATIONS
AND INQUIRIES



COMPLAINTS

Accessing Justice for children through Litigation

Advantages:

- Can hold government to account legally and in public
- Can be immediately and directly effective
- Can bring about reform, over time and as part of a wider strategy
- Best for acute cases perhaps

Disadvantages:

- Can be inaccessible to children, esp in institutional care/detention
- Can be a slow and expensive process
- Subject to applicable legal standards
- Procedural and practical barriers
- Remedies are not always timely nor effective



WA government breaks laws with 'solitary confinement' of youth detainee, court rules

Former Ashley Youth Detention Centre detainees lodge class action over alleged abuse

Four men awarded €100 damages over breach of constitutional rights after Oberstown incident

Feltham boy's solitary confinement breached human rights

Accessing Justice for Children through Monitoring

Advantages

- Regular, independent and robust – crucial esp in places of detention
- Over time inspectors can track reform
- Enables children to have safe access to independent authority
- Linked to public scrutiny, media attention and advocacy

Disadvantages

- Can become detached or institutionalised
- Visitor syndrome – can be easy to hide
- When they're gone?



Accessing Justice for Children through Inquiry

Advantages

- A public and symbolic means of accessing justice for children
- Can be highly accessible and inclusive – strengthen community
- Can deliver accountability, through a public process
- Scope can be used to maximise impact

Disadvantages

- Too little, too late
- Can become politicised
- Difficult to ensure appropriate and fair reparation
- Recommendations reach for systemic failure
- Impact is variable

Ryan Report that shocked nation offers much but gaps in the detail still remain

On 20 May 2009, Ireland made international headlines when the Report of the Commission to Inquire into Child Abuse (CICA) was published.



SUN, 19 MAY, 2019 - 19:50



Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings

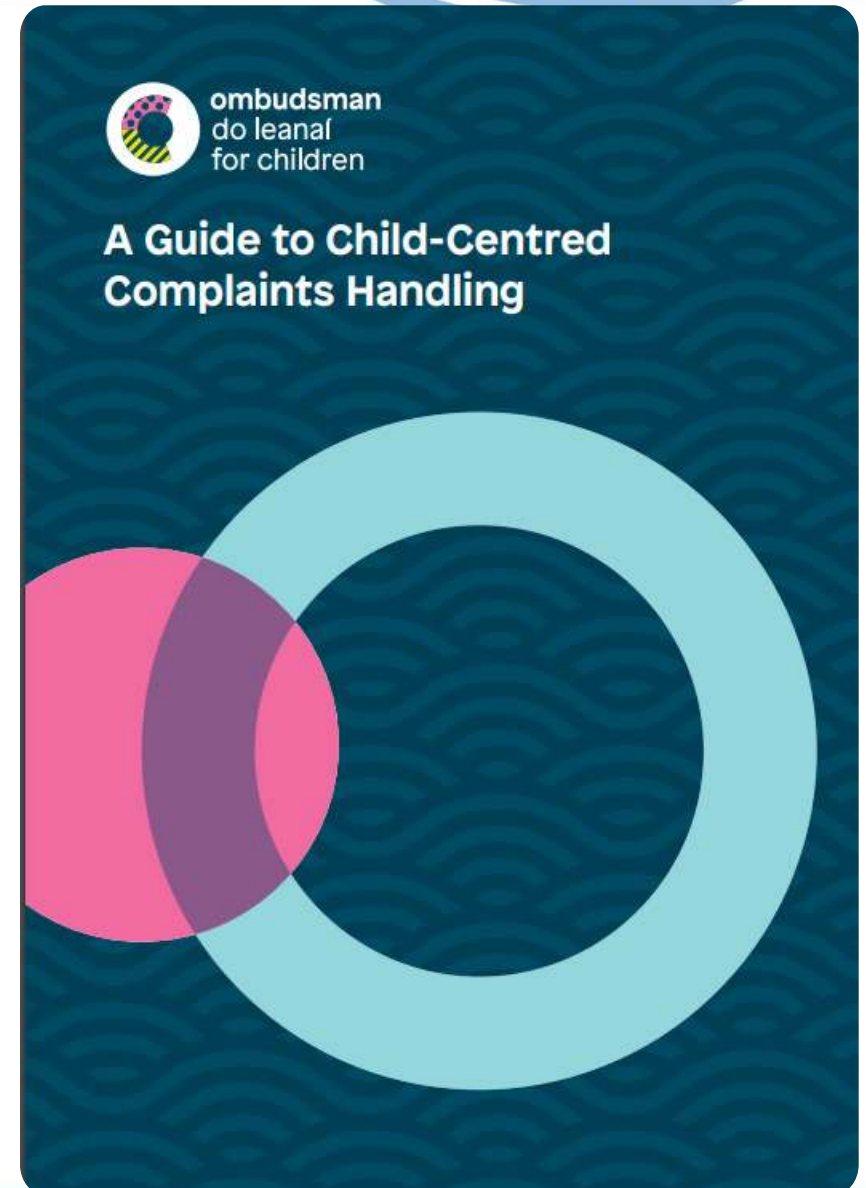
Accessing Justice for Children through Complaints

Advantages

- Most accessible to children, most timely and most effective
- Focus on immediate restoration of rights
- Offer systematic way to promote continuous improvement in the implementation of children's rights
- Can strengthen a culture of respect and trust

Disadvantages

- Difficult to build trust and confidence in complaints mechanisms, esp in closed settings
- Resolution of complaints can be challenged by organisational culture
- Transparency and monitoring of complaint handling effectiveness is key



Open and accessible

Focused on the child's best interests

Engage proactively with the child's views

Transparency and communication - be clear

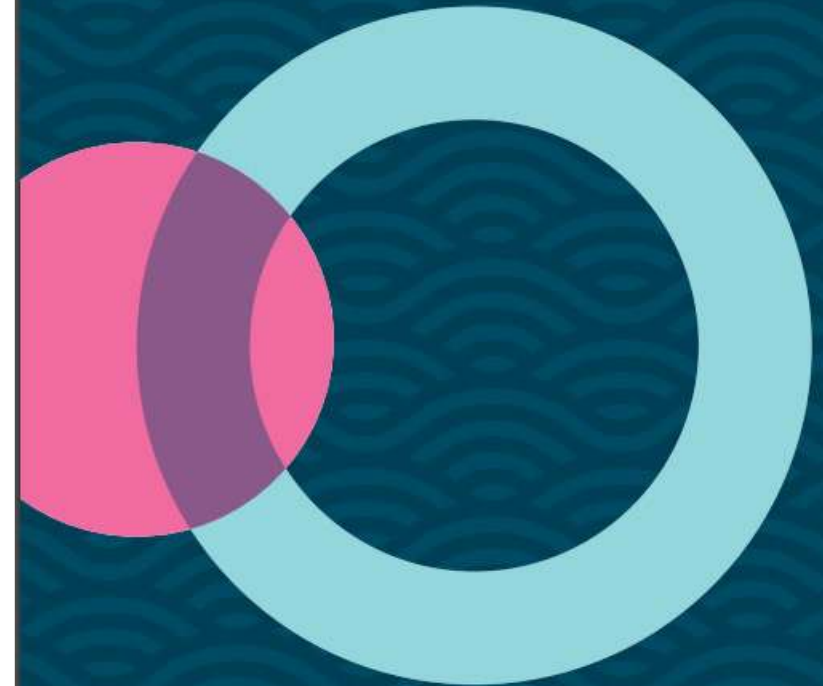
Timelines - beware of impact of time

Fairness - inclusive, individualised approach

Monitoring and review



A Guide to Child-Centred Complaints Handling



Concluding remarks

Access to Justice – where to from here?

CRC established that children are rights holders and the state is a duty bearer

Failure to protect rights includes a failure to ensure access to justice but systemic issues rarely receive the attention they deserve

Effective child-friendly complaints, remedies and monitoring mechanisms must be embedded throughout the justice system – partnered with young people – to ensure they are **trustworthy** and **fit for purpose**

Advocacy for these mechanisms must become **as important** as advocacy for substantive rights protection.

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