

Strategic decisions in setting up child rights impact assessments

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Revue Générale de Droit 2014, pp. 125-151.

ABSTRACT

Establishing a child rights impact assessment (CRIA) requires making strategic choices as regards scope and process. This article focuses on choices regarding (i) the material scope: for which documents will a CRIA be carried out?; (ii) the personal scope: will a CRIA be done only for children (0-18 years), or be extended towards young adults?; and (iii) the relationship to other instruments and processes: will a CRIA stand alone, or be integrated with other impact assessments? The relation between CRIA and other instruments such as child (friendly) budgeting is also discussed. The article illustrates these choices drawing on an evaluation of the experience of implementing the Child and Youth Impact Report (JoKER) in Flanders (Belgium).

Key-words:

Children's rights, child rights impact assessment (CRIA), Child and Youth Impact Report (JoKER), Flanders (Belgium), child budgeting.

RÉSUMÉ

L'établissement d'une évaluation des répercussions sur les droits de l'enfant (ERDE) nécessite de faire des choix stratégiques en ce qui concerne, entre autres, la portée et le processus. Cet article se concentre sur les choix concernant (i) le champ d'application matériel: pour quels documents une ERDE sera-t-elle effectuée? (ii) le champ d'application personnel: une ERDE sera-t-elle faite

seulement pour les enfants (0-18 ans) ou aussi pour les jeunes adultes?; et (iii) la relation avec les autres instruments et processus: une ERDE sera-t-elle autonome ou intégrée à d'autres évaluations de l'impact? Et quelle est la relation entre l'ERDE et la budgétisation (sensible aux besoins) des enfants? L'article illustre ces choix avec l'expérience du Rapport d'impact sur l'enfant et la jeunesse (JoKER) en Flandre (Belgique).

Mots-clés :

Droits de l'enfant, évaluation des répercussions sur les droits de l'enfant (ERDE), rapport d'impact sur l'enfant et la jeunesse (JoKER), Flandre (Belgique), budgétisation (sensible aux besoins) des enfants.

TABLE OF CONTENTS

I.	Introduction	3
II.	Methodology of the JoKER evaluation	6
III.	Scope	7
	A. Material scope	8
	B. Personal scope.....	11
	C. Criterion of application	16
	D. Conclusion	19
IV.	Relation to other instruments	19
	A. Relation to other impact assessments.....	20
	B. Relation to the practice of child budgeting	23

1. Studying national budgets from a children’s rights perspective (‘child budgeting’) and reserving child specific budgets (‘child friendly budgeting’).....	24
2. Difficulties regarding child budgeting.....	26
V. Final reflections	31

I. Introduction

In recent years, child rights impact assessments (CRIAs) have been advanced as a way of contributing to the realization of children’s rights. A CRIA generally implies that the potential consequences of envisaged decisions for (the rights of) children and young people are assessed and, if necessary, addressed or mediated. Since resources are inevitably limited, establishing a CRIA entails making strategic choices as regards, among others, scope and process. This article disentangles some of these choices, analyses the pros and cons of various options, and carefully formulates some recommendations.

Although on a global scale the experience with CRIAs is still relatively modest, (models of) CRIAs have been developed by a variety of actors, including government administrations, children’s rights commissioners and non-governmental organizations. This contribution mainly focuses on CRIAs used within governmental policymaking processes, although CRIA considerations may also be relevant in other contexts. Within the realm of state government, CRIAs have been established at various policy levels, including the sub-state level (e.g. Wales, UK; Flanders, Belgium)¹, the provincial level (New Brunswick, Canada)² and the county level (Shelby, Tennessee, United States).³

¹ Martin Swain, “Children’s Rights Impact Assessment (CRIA) – Wales” (Presentation delivered at Bringing Children in From the Margins: Symposium on Child Rights Impact Assessment, University of Ottawa, Ottawa, 14-15 May 2013).

The following strategic decisions are reviewed with respect to the scope of CRIAs: (i) on what type of instruments will a CRIA be applied (material scope)?; (ii) on whom should these decisions potentially have an impact (personal scope)?; and (iii) what should the link be between the proposed decision and children and young people, for a CRIA process to be triggered (criterion of application)? In addition, attention is paid to the CRIAs' relationship with other impact assessments, on the one hand, and child (friendly) budgeting, on the other. Obviously, the process of setting up a CRIA implies many more decisions regarding, for instance, format, financing and responsible agents. Within the confines of this article, preference is given to addressing questions related to the creation of CRIAs rather than reviewing all possible issues arising. For example, a number of questions remain on the implementation of CRIAs and their actual impact on the rights and well-being of children and young people. Although indisputably relevant, these questions do not directly relate to the setting up of a CRIA, and as such fall outside the scope of this contribution.

The reflections on strategic choices relating to CRIA establishment are illustrated through the experience of the Child and Youth Impact Report (JoKER) in Flanders (Belgium). JoKER is an ex ante impact assessment carried out by the Flemish administration with respect to 'draft decrees' (i.e. legislative proposals based on a government initiative), that have a direct impact on

² The CRIA in New Brunswick is in effect since February 2013, and was developed by the Government of New Brunswick in partnership with the Office of the Child and Youth Advocate. Hubert Cormier, "Child Rights Impact Assessment (CRIA) in New Brunswick – a new experience" (Presentation delivered at Bringing Children in From the Margins: Symposium on Child Rights Impact Assessment, University of Ottawa, Ottawa, 14-15 May 2013).

³ Michael Schmidt & Julie Coffey, "Lessons in Making Child Impact Assessment into a Tool Simple Enough for Everybody in Government to Use" (Presentation delivered at Bringing Children in From the Margins: Symposium on Child Rights Impact Assessment, University of Ottawa, Ottawa, 14-15 May 2013).

the interests of persons under the age of 25.⁴ JoKER was established in 2008 and applied as from 1 January 2009,⁵ as an extension of the 1997 child impact report (KER), which was only applicable to minors.⁶ In 2005, a more general Regulatory Impact Analysis (RIA) was set up, in which JoKER was formally integrated.

Upon request of the Flemish Government, the JoKER process was evaluated by the Children's Rights Knowledge Centre (KeKi) between October 2011 and March 2012. The overall results of this evaluation have been discussed elsewhere.⁷ The present article refers to the findings of the JoKER evaluation to the extent that they are relevant in light of the research questions regarding strategic choices during CRIA creation. The results of the evaluation are moreover placed in a broader context and compared with other cases and additional literature, in order to arrive at internationally applicable recommendations.⁸

⁴ Decree on a renewed youth and children's rights policy, 20 January 2012, art. 4.

⁵ Decree on conducting a Flemish youth and children's rights policy, 18 July 2008.

⁶ Decree establishing the child impact report and the scrutiny of government policy on its respect for the rights of the child, 15 July 1997.

⁷ Ellen Desmet, Hanne Op de Beeck & Wouter Vandenhole, "Walking a tight rope. Evaluating the Child and Youth Impact Report in Flanders" (2014) 22 Int J' Child R (forthcoming); Ellen Desmet, Hanne Op de Beeck & Wouter Vandenhole, *Evaluatie van de kind- en jongereneffectrapportage (JoKER)* (Gent: Kenniscentrum Kinderrechten, 2012), <http://www.keki.be/documents/2012%20KeKi_onderzoeksrapport%20JoKER.pdf>.

⁸ Particular attention is paid to the CRIAs as developed by the governments of Wales and the province of New Brunswick (Canada), given the comparable policy level with the substate of Flanders.

II. Methodology of the JoKER evaluation

The evaluation of JoKER was based on a multimethod design, as such a design provides a more complete picture of a phenomenon and is therefore most suitable for an evaluation research.⁹ More specifically, five different data collection techniques were consecutively applied: (1) a literature review, (2) a document analysis, (3) an electronic survey, (4) two group interviews and (5) an expert consultation.

For the literature review, existing legislation and research regarding impact assessments, as well as literature from related domains (for instance regarding human rights impact assessments and child (friendly) budgeting) was studied. Based on this literature review, characteristics of the JoKER were compared with existing international practices.

The document analysis consisted of screening the 19 JoKER documents that were developed during 2010 and 2011. Examining the content of these JoKERs complemented the results of the electronic survey and the group interviews, the latter being based on the perceptions of the respondents. Together with the results of the literature review, the document analysis also provided input for the development of the standardized questionnaire that constituted the electronic survey.

The different items of this standardized questionnaire were to be answered using response categories ranging from 1 ('I do not at all agree') to 5 ('I completely agree').¹⁰ A total of 179 individuals of five different target groups were invited to fill out the questionnaire: civil servants, the minister's personal staff and advisers, children's rights and youth actors, the Strategic Advisory Councils, and the commissions of the Flemish Parliament. Of this sample, 48 persons completed the questionnaire, resulting in a response rate of 26.81%. This rather low response

⁹ Peter G Swanborn. *Evalueren* (Amsterdam: Uitgeverij Boom, 1999).

¹⁰ For the electronic distribution of this questionnaire, the software package 'Lime Survey' was used.

rate may be due to the fact that individuals with limited knowledge or experience of JoKER may not have been motivated to complete the survey, as it was mailed out to a rather broad selection of people, possibly including individuals who had not yet come into contact with JoKER in their professional activities.¹¹ Descriptive analyses were performed on the data from these 48 survey responses, using SPSS version 20.0.

Following analysis of the survey data, two group interviews were organized – one with members of civil society and one with civil servants – to explore certain aspects of JoKER in more depth. Noteworthy findings from the electronic survey were presented to the groups for discussion and the personal experiences and perceptions of participants, as well as their ideas regarding the future of JoKER, were explored. The goal of these group discussions was to acquire complementary information to enrich the quantitative survey data.

Finally, the findings that arose from of these four data collection techniques were presented to a group of experts who were selected based on their expertise regarding impact analyses, policy evaluation or children’s rights. Suggestions from this group were integrated in the final research report.

III. Scope

The effectiveness of an impact assessment strongly depends on a clear formulation of its scope, which enhances possibilities of straightforward application. For instance, the Flemish JoKER must be applied on draft decrees (material scope), in which the proposed decision “directly

¹¹ This decision was partly based on the consideration not to exclude potentially interesting respondents.

As well, the study – as is the case with many evaluative research projects – was partly envisaged as an ‘action-research’, or a research project in which relevant actors are simultaneously sensitized and educated about the topic under study. Swanborn, *supra* note 9.

influences the interests” (criterion of application) of individuals under the age of 25 (personal scope). These three scope-related issues are hereinafter consecutively discussed.

A. Material scope

A CRIA can be applied to any type of decision: legal instruments, policies, administrative decisions, (development) programme and project proposals, budgets and so forth. Within a state context, at a minimum the following increasingly expansive options can be identified to define the material scope of a CRIA: legislative proposals coming from the government; legislative proposals coming from the government and Parliament; legislative and regulatory proposals; legislative, regulatory and policy proposals; legislative, regulatory, policy and budget proposals. Variations on these demarcations are possible. The UN Committee on the Rights of the Child supports the last and broadest scenario, recommending governments carry out impact assessments for “any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights”.¹²

Which considerations are to be taken into account by governmental actors when delineating the material field of application of a CRIA? A first trade-off concerns the width of the material scope in relation to the depth of the CRIA: the broader the range of instruments on which a CRIA is to be applied, the higher the risk that the CRIA will be undertaken more superficially or in a ‘lighter’ form, given the inherently finite capacities and time resources of the responsible civil servants. A second, related issue concerns the degree of generality or specificity of the instrument at stake. The impact of more general instruments, such as laws, on children and young people may be less clear, whereas regulations will often entail more direct and specific

¹² UN Committee on the Rights of the Child, General Comment No 5: General measures of implementation for the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5, at para 45, 11 IHRR 10 (2004).

consequences for this group. Third, the origin of the instrument may play a role, i.e. whether it comes from the executive or the legislative branch.

With regard to JoKER, a rather restricted approach was taken in relation to its material scope: a JoKER is only required for legislative proposals based on an initiative of the Flemish Government ('draft decrees'). At the time of evaluation, a JoKER was thus not obligatory for regulatory decisions of the Flemish Government, legislative proposals initiated by members of Parliament ('decree proposals'), consent decrees and budget decrees.¹³ According to the civil servants participating in the group interview, the original rationale behind the restricted scope lay in limiting the workload for the civil servants involved.

During the evaluation, it became clear that the different actors involved, from both civil society and government, supported an extension of the JoKER scope towards regulatory proposals, because the latter instruments often have a greater and more direct impact on children and young people than the more general draft decrees. Whereas the civil society actors were also in favour of extending the JoKER obligation towards legislative proposals, the civil servants objected to this idea, on the basis of the following concerns: the safeguarding of free parliamentary initiative, the difficulty of administrative support within the Parliament, the issue of members of Parliament relying on government administration to draft CRIAs, and the possibility of obtaining advice from the Children's Rights Commissioner. The advice of the Children's Rights Commissioner is optional however, and does not necessarily entail an impact assessment. Moreover, in the group interviews it was argued that from the perspective of children and young people it does not make sense that the obligation to undertake an impact assessment depends on the initiator of the legislative proposal (Government or Parliament). The

¹³ The issues around budget decrees are discussed in the section on child (friendly) budgeting, further in this article.

decisive factor should be the potential impact of a measure on children and young people, not its origin.

'Consent decrees' are decrees consenting to cooperation agreements or international treaties. No RIA is required for consent decrees, given the limited policy space available: as these decrees result from international or inter-regional treaties or agreements, it is assumed that a local RIA cannot make much of a difference anymore. For the same reason, in many cases, carrying out a JoKER in relation to a consent decree appeared to have little use. This is especially the case for multilateral treaties where the Flemish Government enters the process only in a late stage. In contrast, a JoKER would be useful *at the start the negotiations*, in relation to cooperation agreements, bilateral treaties and multilateral treaties in which the Flemish Government is involved from the outset. As will be elaborated in the section on RIA, the Flemish Government recently decided, in line with the recommendations of the JoKER evaluation, to align the exception grounds of the JoKER scope with those of RIA to ensure compatibility of both instruments.¹⁴ Currently, no JoKER is required for consent decrees. Despite supporting the non-obligatory character of a JoKER for consent decrees, the JoKER evaluation did strongly recommend a JoKER process at the outset of negotiations on cooperation agreements and treaties in which the Flemish Government is a party from the start.

The participants of the expert round table were of the opinion that theoretically, the JoKER scope should depart from a maximising perspective, and that JoKER should therefore also apply to regulatory decisions, decree proposals, budget decrees as well as consent decrees. In addition, according to the experts, it would in principle be desirable to carry out a JoKER process for regulations that do not have a general scope, such as the issuance of construction permits. They

¹⁴ Commitment expressed on 15 June 2012 by the Flemish Youth department in a meeting of the 'Youth and Children's rights reflection group' - a platform in which policy makers and civil society discuss youth and children's rights initiatives.

emphasized, however, that this would not be feasible for the civil servants and that a pragmatic approach was to be taken, albeit based on a maximising perspective.

Looking abroad, as from May 2014, Ministers in Wales will be obliged to have due regard to the requirements of the UN Convention on the Rights of the Child (CRC) and the first two Optional Protocols “when exercising any of their functions” a wide-ranging field of application.¹⁵ The CRIA developed by the province of New Brunswick also has broad material scope, as it may relate to new or amended policies, programs, regulations and legislations that are considered by the Executive Council.¹⁶ The SHELBY Child Impact Assessment applies to policies, budgets and programs, but is limited to the domains of safety, health, education and land use.¹⁷

B. Personal scope

Secondly, the personal scope of a CRIA must be determined. The ‘obvious’ personal field of application of a CRIA – as evident from its name – is ‘children’, commonly understood as persons below the age of 18, in accordance with the definition provided by the CRC.¹⁸ Arguments may be advanced, however, in favour of a broader personal scope.

¹⁵ Rights of Children and Young Persons (Wales) Measure 2011, art. 1(1). From May 2012 until April 2014, a more limited due regard duty applies, namely with respect to provisions proposed to be included in an enactment, formulations of new policies, and reviews or changes to existing policies (art. 1(2) and (3)).

¹⁶ Cormier, *supra* note 2.

¹⁷ Schmidt & Coffey, *supra* note 3.

¹⁸ In Muslim legal tradition, in contrast, the age of adulthood is not defined by a chronological age criterion, but influenced by the concept of ‘maturity’, See Kamran Hashemi, “Religious Legal Traditions, Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation” (2007) 29 Hum Rts Q 194.

In today's Western European societies, including Flanders, the transition to adulthood is less often demarcated by traditional events— such as getting married or having children – but rather by individual achievements such as (financial) independence and autonomy.¹⁹ 'Being an adult' is generally characterized by being able to take responsibility in defining one's own life path.²⁰ Furthermore, recent socio-cultural and economic developments have caused the transition to adulthood to be postponed for the majority of youth. Young people study longer, remain in their parental home for a longer time, postpone having children, etc. Therefore, the new 'lower limit' for adulthood in sociological studies has been relocated to the period between the ages of 25 and 30.²¹ Through this reconceptualisation, a gap between adolescence and adulthood developed, which has been called 'emerging adulthood'.²²

¹⁹ Hanne Op de Beeck, *Strain en jeugd delinquentie. Een dynamische relatie? Een toets van twee centrale verklaringsmechanismen uit Agnews General Strain Theory* (Den Haag: Boom Lemma, 2012).

²⁰ L Goossens, "Theories of Adolescence" in S Jackson & L Goossens, eds, *Handbook of Adolescent Development* (Hove (UK): Psychology Press, 2006), 11.

²¹ L Goossens, "Adolescent Development: Putting Europe on the Map" in S Jackson & L Goossens, eds, *Handbook of Adolescent Development* (Hove (UK): Psychology Press, 2006), 1; T Lützelberger, "Leaving the parental home in Europe: Cultural Micro Foundations of Welfare systems" (Paper delivered at the 9th Conference of the European Sociological Association, Lisboa, Portugal, 2-5 September 2009); B Tejerina, "Transition to Adulthood and Young's Labour Precarity" (Paper delivered at the 9th Conference of the European Sociological Association, Lisboa, Portugal, 2-5 September 2009); K Van Nuffel. "Gezin en kinderopvang" in V Vettenburg, M Elchardus, L Walgrave & M de Bie, eds, *Jeugdonderzoek belicht: voorlopig syntheserapport van wetenschappelijk onderzoek naar Vlaamse kinderen en jongeren (2000-2004)*, 9 (Unpublished report, VUB, UGent & KU Leuven, TOR, Vakgroep Sociale Agogiek & OGJC, 2004).

²² JJ Arnett, "Emerging Adulthood: A Theory of Development From the Late Teens Through the Twenties" (2000) 55:5 Am. Psychol. 469.

'Emerging adulthood' is described as a self-contained period in life, characterized by its own specific attributes.²³ On the one hand, this period is defined by a much stronger independence than childhood and adolescence. On the other, the future of 'emerging adults' is far from being set yet, allowing for different opportunities to unravel.²⁴ Arnett therefore describes emerging adulthood as the most volatile time in a human life, in which one can freely experiment with different social roles and identities. Additionally, recent neuroimaging research has uncovered that the human brain continues to develop up until the age of 25.²⁵ Based on these ideas, it could be argued that individual development and transition to adulthood do not distinctively end at the legal age of majority, which is 18 years under the CRC.²⁶ Rather, it constitutes a gradual process that, in Western societies, is being increasingly postponed.²⁷ This growing identification of a separate social category of 'youth' or 'emerging adults' is also reflected in the movement claiming recognition of separate rights for young people, as different from both general human and children's rights.²⁸

In line with these observations, three scenarios are possible when drafting policies regarding children's rights and youth. First of all, it is possible to opt for a clear demarcation to apply to children's rights and to keep using chronological age –more specifically the upper age limit of 18

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ SB Johnson, RW Blum & JN Giedd, "Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy" (2009) 45 J. Adolesc. Health 216. The authors do not claim, however, that a clear causal relation between immature behavior and brain immaturity is proven.

²⁶ Unless under the law applicable to the child, majority is attained earlier. CRC, art. 1.

²⁷ Op de Beeck, *supra* note 19.

²⁸ European Youth Forum, *The State of Youth Rights in Europe* (Brussels : European Youth Forum, 2010); Mourad Mahidi, *The Young and the Rightless? The Protection of Youth Rights in Europe* (Brussels: European Youth Forum, 2010).

years – as a criterion, thus applying a different age demarcation for youth policies. In that case, children’s rights policies can be clearly distinguished from youth policies, although for a certain age group, they will overlap. Examples of this first scenario can be found in the children’s rights and youth policies of the European Union, the Council of Europe and the United Nations.²⁹ Second, the development of an integrated children’s rights and youth policy framework, in which both groups are equally and simultaneously targeted, can be opted for. An example of this second scenario can be found in the Flemish (new) children’s rights and youth policy. A third scenario, includes the decision to opt for two separate policies that strongly interact and communicate with each other.³⁰

Which strategic choices emerge as to the personal scope of a CRIA? The traditional age boundary of 18 years seems challenged by both societal and policy evolutions. If the age limit of 18 is maintained, are extra tools, including a ‘youth rights impact assessment’ needed? And if a higher upper age limit is selected (> 18), how will it be ensured that sufficient attention is paid to the specificity of the different age groups? And how will the resulting extra workload for the involved professionals be addressed?

In Flanders, the requirement to carry out a ‘child impact report’ (KER) was initially limited to decisions directly influencing *children’s* interests (under the age of 18).³¹ It is only as of 1 January 2009 that this obligation was broadened to include youth up to the age of 25: the concept of ‘child impact report’ was extended to become a ‘child and youth impact report’ (JoKER).³² In the

²⁹ Ellen Desmet, “Implementing the Convention on the Rights of the Child for ‘youth’: who and how?” (2012) 20 Int J Child R 3, with more discussion about the pros and cons of each of these scenarios.

³⁰ Desmet, *supra* note 29.

³¹ Although KER was already introduced as of July 1997, this only became an obligation for all policy domains in 2001.

³² Decree on conducting a Flemish youth and children’s rights policy, 18 July 2008.

Explanatory Memorandum of the 2008 decree, the age limit of 25 is explained by the argument that individuals older than 25 can be considered (economically) independent. Based on this argument, it is however rather surprising or somewhat incoherent that, for the integrated children's rights and youth policy, the Flemish government opted for an upper age limit of 30 years.

In the JoKER evaluation, opinions regarding the topic of personal scope were mixed. In an open question in the electronic survey on how to improve the quality of JoKER, a reduction of the scope (again) to only minors (under the age of 18) was suggested, based on the argument of the more vulnerable legal position of minors. On the other hand, an expansion of the age criterion to 30 years was also discussed, based on the reasoning that, the JoKER scope would be in line with that of the integrated children's rights and youth policy (and possibly with the broader idea of 'emerging adulthood'). Counterarguments in relation to such an expansion included the larger workload for civil servants along with concern that such an extension may create an administrative abundance, turning the JoKER into a rather formalistic instrument.

Finally, it is important during a CRIA process to consider not only differences between 'children' and 'emerging adults', but also age differences *within* the group of children and youth (such as between babies, toddlers, schoolchildren and teenagers) as well as other sources of diversity. In the evaluation it was found that in some JoKERs, the specific effects of proposed decisions were analyzed separately for 'socially vulnerable children', 'children with low socio-economic status' (SES) or 'children who generally experience fewer opportunities in life'. As these children and youth may experience larger effects of proposed decisions, a separate effect analysis was included in the JoKER when applicable. A similar argument can be made for other characteristics such as gender, nationality, migration status, disability or religion.

The age criterion of JoKER differs from those used in CRIAs in other countries. In Sweden, for example, the upper age limit to apply a CRIA is 18 years, in line with the definition of the CRC.³³ In Scotland, a CRIA by the Scotland's Commissioner for Children and Young People is applied for children and youth up until the age of 18, as well as for youth who are or have been in care up until the age of 21.³⁴ The CRIA form of New Brunswick defines a child as under 19 years of age. The upper age limit of 25, used in Flanders, is thus broader than elsewhere.

In sum, given that, sociologically and politically, the upper age limit of the transition to adulthood may be higher than the demarcation used in the CRC, strategic choices need to be made regarding the personal scope of a CRIA. In the JoKER, an upper age limit higher than the legal majority was used, in line with changing social and economical tendencies in society. Even though this age criterion was criticized during the evaluation study, no consensus arose as to whether to adapt the age limit in either direction. In addition, more emphasis was put on the need for a stronger differentiation during the JoKER process; between minors and youth aged 18-25 and between different age groups within the category of children. Finally, the JoKER evaluation directed attention to other sources of diversity among children and youth.

C. Criterion of application

A final element in the demarcation of the scope of a CRIA concerns the nature of the relationship between a proposed measure and children and young people. Will the CRIA only apply to decisions in which children and young people are a (direct) target group, or also to decisions that may have an indirect impact on them? If an indirect impact is included in the CRIA scope, how

³³ Ministry of Health and Social Affairs. *Strategy to strengthen the rights of the child in Sweden* (Västerås: Edita Västra Aros, 2011).

³⁴ Scotland's Commissioner for Children and Young People, *Children's Rights Impact Assessment: The SCCYP Model* (Edinburgh: SCCYP, 2006).

will this be operationalised? How can the criterion of application be formulated as clearly as possible without excluding potentially relevant decisions?

If a CRIA is limited to decisions in which children and young people are an explicit target group, important measures with possibly far-reaching consequences for children and young people (e.g. on environmental or construction issues) are at risk of staying under the radar. If, on the other hand, a broad criterion of application is used (e.g. “all proposals that may have an impact on children and young people”), an enormous amount of documents may have to be scrutinized.

An important finding from the JoKER evaluation was that the language of the criterion of application in the decree, “if the proposed decision directly influences the interests” (of persons below 25 years), is ambiguous. In relation to the words ‘directly influences’, the JoKER manual correctly points out that decrees that are not directly aimed at children and youth but instead target a different group – such as parents or teachers – or a general audience, may have consequences for children and youth as well. Therefore, the manual requires that *indirect* effects on children and young people are taken into account as well. However, this inclusion of indirect effects in the impact assessment – following the interpretation of the JoKER manual, which the respondents in the evaluation appraised as adequate – does not concur with the formulation of the criterion of application in the decree itself (which only makes reference to ‘*directly influences*’). This may give rise to confusion. In addition, it was mentioned in the evaluation that impact assessments are about *estimating* effects, which implies that aspects of uncertainty should be included in the formulation of the criterion. Thus, it was proposed to change the formulation of the criterion of application to ‘*may directly or indirectly influence...*’ instead of ‘*directly influences...*’.

Considering the focus on the ‘interests’ of children and youth, it was raised that formally, the proportionality of the interest is not taken into account in the decision whether or not to carry out a JoKER. Application of a JoKER, according to civil servants, does not depend on the

interest being large or small: as long as there is an influence of the proposed measure on children and young people, a JoKER is in principle required. Finally, there were warnings of a negative interpretation of the concept of ‘interest’. Specifically, it was noted that this concept may be used in a defensive way, to avoid being overused: “one must have a clear interest before making a complaint”.

The question posed in the CRIA form of New Brunswick is whether the project will “impact” different groups of children, thus providing a broadly formulated criterion of application. The SHELBY Child Impact Assessment equally seeks to “assess the impact” of proposed policies on children and youth; the supporting information is related to both “direct and indirect factors impacting child wellbeing”.³⁵

A way out of the dilemmas emerging in respect to the criterion of application, could be to establish a broad criterion, including both direct and indirect impacts, and to apply a proportionality principle as a threshold for a CRIA process to be triggered. If the estimated (direct or indirect) impact on children and young people is very small to negligible, then it could be justified that no full-fledged CRIA is undertaken.³⁶ The disadvantage of using the principle of proportionality as a device is, however, that a broad margin of appreciation if left to the civil servants involved, there is room for possible abuse. This could be countered by an external and/or objective control on the decision whether or not to undertake a CRIA. Different possibilities to execute such a monitoring exist, for example through an external body consisting of specialist and legal representatives, academics, civil society and/or other members of the community.

³⁵ Schmidt & Coffey, *supra* note 3.

³⁶ A second proportionality test could be applied during the CRIA process itself, by adapting the extent of the CRIA to the size of the interest that is under consideration and the envisaged impact of the proposed measure.

D. Conclusion

In conclusion, the width of the scope should be weighed against the depth of a CRIA process. Opting for a broad scope, be it through a wide range of different instruments, an extended age range or a broadly formulated criterion of application, will inevitably impact on what can be realistically expected from CRIAs. A broad scope should therefore go hand in hand with the necessary investments in human and technical resources. The Flemish Government has chosen for a restricted material scope, a larger personal scope and a broadly interpreted criterion of application. The JoKER evaluation showed support for extending the material scope, maintaining the broad personal scope, but explicitly applying a criterion of proportionality in the decision of CRIA applicability.

IV. Relation to other instruments

A final question addressed in this article, concerns how a CRIA is to be aligned with other relevant instruments, so as to enhance policy coherence, effectiveness and efficiency. To do so, relations are explored between CRIAs and (1) other impact assessments and (2) the practice of child (friendly) budgeting. It is argued that it is in the benefit of children and young people to look at the policy environment in a holistic way. Only focusing on what happens or should happen in relation to children and young people, without taking into account developments and requirements within other policy domains, may in the end be detrimental for children and young people. Children's rights policies or strategies may prove unrealistic, not viable or sustainable, when they come into competition with other instruments.

A. Relation to other impact assessments

Impact assessments are not a privileged or unique tool of the children's rights field. During recent decades, different types of impact assessments have been created, on issues as varied as the environment, human rights, privacy, poverty and, health.³⁷ At levels of government where CRIAs coexist with other types of impact assessments, the question arises as to how these instruments should relate to each other. First, should they be integrated in one general impact assessment framework or remain separate? Second, must every type of impact assessment be carried out for every legal or policy proposal?

The risk of a general or integrated impact assessment – in which an assessment of, for instance, “all impacts on all possible groups” is asked – is that only broad, wide-ranging and more directly visible impacts will be considered. In this way, attention to vulnerable groups or less evident themes (such as the autonomy of children) risk being submerged. Herein lies precisely the rationale for creating ‘particular’ impact assessments, i.e. enhancing attention for the consequences of a proposed measure for one particular group or issue. On the other hand, the parallel existence of a number of different impact assessments, each with their own procedures, formats and requirements, may induce ‘assessment fatigue’ among civil servants. Being overwhelmed with expectations from different sides, they may lose their motivation to properly carry out an impact assessment, or simply may not have the time to do so.

In Flanders, for sometime the child impact report was the only existing impact assessment and thus did not enter into competition with other instruments. The creation in 2005 of a Regulatory Impact Analysis, in order to assess the positive and negative effects of policy options, changed this situation. The aims of RIA were to generate higher support for new regulations, enhance transparency and improve policy coordination. From the outset, it was determined that the KER was to be integrated in the RIA document. The transformation of KER into JoKER in 2008 did

³⁷ Desmet, Op de Beeck & Vandenhole, *supra* note 7.

not alter this: whenever a RIA was undertaken, the JoKER was to be formally integrated into the RIA. Since the material scope of both instruments was not the same, 'independent' JoKERs were also produced, albeit using the RIA template (as RIA does not apply to decrees agreeing to international or interregional treaties or agreements) or alternatively, RIAs did not include a JoKER (for instance, RIAs regarding regulatory decisions).

The choice of formally integrating JoKER in RIA was positively assessed by a large majority of the survey respondents. In the group interviews, the children's rights actors conceived RIA as an instrument of deregulation, whereas the civil servants did not agree with his interpretation. They advanced RIA as a neutral instrument of impact assessment, while JoKER was seen as one-sidedly focusing on children and young people.

On the basis of the evaluation, the Flemish Government was recommended, among others out of considerations of simplification, clarity and efficiency, to align the material scope of RIA and JoKER. In a 2013 circular on RIA, the 'easy' side of this recommendation was followed up, as it was decided that all exceptional grounds for RIA would also apply to JoKER. Today, a JoKER is thus not required any longer for decrees consenting with international or inter-regional treaties or agreements (consent decrees). In other words, no more independent JoKERs (i.e. without a RIA) will exist. The more challenging part of the recommendation, to extend the JoKER scope towards the RIA scope and thus to apply JoKER also to regulatory decisions, has not been taken up. Due to personnel cuts within the Flemish administration, it is moreover highly improbable that this will happen in the near future. This example of the follow-up by the Flemish Government illustrates how pragmatic arguments do play a role in the development of CRIAs, and should therefore be considered in the strategic preparatory process. Consequently, numerous RIAs, mainly regarding regulatory decisions, will be carried out without a formal requirement to pay attention to the impact on children and young people (i.e. to include a JoKER). It can only be hoped that civil servants will develop a spontaneous reflex to also

consider children and young people within their general RIA assessment, even when not legally obliged.

Where different specific impact assessments exist side by side, a second question that arises is how to determine which impact assessment to carry out when. It does not seem feasible or realistic, nor necessary, to go through all particular impact assessments in relation to every proposed measure.

In Flanders, during recent years, various thematic tests have been developed (or are in the pipeline) in relation to, among others, poverty, equal opportunities, Brussels and local governments. They join the JoKER as particular impact assessments, next to the general RIA. To determine which specific impact assessments need to be carried out in relation to a certain proposed measure, a “Quick Scan Sustainable Development” was set up. The Quick Scan is a simple and quick impact assessment, which allows the legislator to identify in an early stage the effects of a proposed measure on the different pillars of sustainable development (social, ecological, economic and institutional). In this way, it is envisaged that the specific impact assessments will be applied “efficiently and proportionally”. Children and young people (under 25) are mentioned as one of the possible target groups. The social pillar refers to “respect for human rights”, which explicitly includes children’s rights. If the Quick Scan indicates that a proposed measure may have an impact on children, young people and/or children’s rights, a full JoKER must be carried out. This Quick Scan is thus a way to manage a multitude of impact assessments.

In conclusion, even with the existence of a general impact assessment instrument (RIA), an urgency was felt in Flanders to establish additional, particular tests as regarding, among others, poverty and equal opportunities. The formal integration of all particular impact assessments in RIA seems a good choice. The development of the Quick Scan offers opportunities, because it stimulates civil servants to think about possible impacts of policy options on children and young

people early in the policy development process. Nevertheless, the Quick Scan may overstep its mark, if filling out the Quick Scan would be considered in itself a sufficient impact assessment, rather than a trigger to launch the actual JoKER process.

B. Relation to the practice of child budgeting

Recently, the practice of child budgeting as an important tool for the implementation and realization of children's rights has become a popular topic for discussion. Among others, this practice was included in General Comment No. 5 (2003) on General Measures of Implementation of the Convention on the Rights of the Child. In this comment, the UN Committee on the Rights of the Child argues for making children visible in budgets:

*“No State can tell whether it is fulfilling children’s economic, social and cultural rights “to the maximum extent of ... available resources”, as it is required to do under article 4, unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly. **Some States have claimed it is not possible to analyse national budgets in this way. But others have done it and publish annual “children’s budgets”.** The Committee needs to know what steps are taken at all levels of Government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns”.*³⁸

Identifying budgets allocated to children was also mentioned in the JoKER evaluation, during the group interview with civil society. Further, international comparative research reveals a

³⁸ UN Committee on the Rights of the Child, *supra* note 42, at para 51 (emphasis added).

positive correlation between ‘child budgeting’ and children and youth’s subjective well-being.³⁹ Therefore, the potential of this children’s rights tool, as well as its relation to CRIA, are explored hereinafter.

1. Studying national budgets from a children’s rights perspective (‘child budgeting’) and reserving child specific budgets (‘child friendly budgeting’)

A distinction must be made between ‘child budgeting’ and ‘child friendly budgeting’. *Child budgeting* refers to studying the content of and processes related to existing (national) budgets, as well as their impact on children.⁴⁰ *Child friendly budgeting* means reserving specific budgets for children. A child budgeting exercise may lead to suggesting a re-allocation of money towards specific initiatives or (policy) domains targeting children.⁴¹ Consequently, the phase of ‘child budgeting’ – analyzing how much of the public budget is spent on children – will generally be followed by a phase of ‘child friendly budgeting’ in which, based on the results of the child budgeting exercise, reservation of child specific budgets is advocated.

Child budgeting aims to put the advancement of child well-being as a first priority in national and local budgets. Child budgeting is most often emphasized in the context of the

³⁹ Bradshaw, Jonathan. “Subjective well-being and social policy” (Paper delivered at the 4th conference of the International Society for Child Indicators, Seoul, 29-31 May 2013).

⁴⁰ Pantin, Dennis A, Donna Ramjattan & Joy Francis. *Child responsive budgeting: the case of Trinidad and Tobago* (UNICEF, 2010)

<http://www.unicef.org/socialpolicy/files/Child_Budgeting_Paper_15Nov01.pdf>; Save the Children UK, Ghana Country Programme, the Institute for Democracy in South Africa (IDASA) and the Centre for Budget Advocacy, ISODEC. *Child-Friendly Budgeting in Ghana* (Save the Children UK, 2007), <<http://www.savethechildren.org.uk/resources/online-library/child-friendly-budgeting-in-ghana>>.

⁴¹ Sarah D’hondt & Siska Van De Weyer, “Child Budgeting” (2014) 1 Tijdschrift voor Jeugd en Kinderrechten (forthcoming).

implementation of children's rights. However, the advantage of child budgeting is also discussed based on economic arguments. For example, a World Bank representative has stated that risky behaviors such as teen pregnancy, school drop-outs, crime and HIV/AIDS prove that not investing in children may bring immense political and economic costs.⁴² Thus, child budgeting does not only support a children's rights policy, it may also bring general economical improvement in the long term.

According to Save the Children UK, child budgeting more specifically has two goals: *"(1) it provides a critical information and analytical resource for civil society advocacy groups who are active in promoting the rights of children; (2) the research analyses provide policy-makers, implementers and legislators with the necessary information to consider the particular needs of children"*.⁴³ Doing so, child budgeting allows investigation and analysis of whether governments provide the necessary services for children and supports advocacy efforts to strengthen children's rights.⁴⁴

As for *child friendly budgeting*, the UN Committee on the Rights of the Child has recommended assignment of a specific percentage of state budgets to be allocated to children, and to include this allocation in national legislation.⁴⁵ Subsequently, UNICEF stated that *"the goal of these children's budgets is the prioritization of children and other socially vulnerable groups in the public expenditure system"*.⁴⁶

⁴² UN Committee on the Rights of the Child. Day of General Discussion on "Resources for the Rights of the Child - Responsibility of States", Recommendations, 21 September 2007, at para 7 (presentation of Patrick Reichenmiller).

⁴³ Save the Children UK et al., *supra* note 40, at 2.

⁴⁴ *Ibid.*

⁴⁵ UN Committee on the Rights of the Child, *supra* note 42, at paras 22-23.

⁴⁶ UNICEF in Pantin et al., *supra* note 40, at 3.

2. Difficulties regarding child (friendly) budgeting

Pantin et al. argue that ‘child budgeting’ as a way of studying national budgets provides a new research topic for many countries, which is why ‘(good) practices’ are limited.⁴⁷ Additionally, this study domain is struggling with a number of conceptual issues, such as the one discussed in the example of Wales (United Kingdom): *“The cost of services for children was not always clearly delineated. For example, housing services are provided to households, rather than individuals [...] one can only estimate how much of this is spent on children because the facilities and many of the staff are shared among several non-children client groups”*.⁴⁸

A similar concern was raised throughout the JoKER study. Respondents underlined that ambiguity exists regarding the limits of child budgeting: can budgets spent in ‘general’ domains, such as safer traffic which also benefits children, be also defined as ‘child budgets’? D’hondt and Van De Weyer recommend inclusion of budgets of all sectors and programs targeting minors exclusively (e.g., budgets regarding education), implicitly (e.g., budgets relating to safer traffic) and even indirectly (e.g., investments in vocational training for youth care workers), which is quite an extensive demarcation.⁴⁹ Save the Children UK argued that child budgeting initiatives should firstly focus on domains that influence children most. However, this organization also takes a rather broad approach by putting forth the domains of health, welfare, education, justice and policing as some of the key sectors for children and youth.⁵⁰ Demarcating the boundaries of the concept of ‘child budgeting’ as a study topic thus remains a difficult and delicate exercise, which was also expressed by the UN Committee on the Rights of the Child through its

⁴⁷ Pantin et al., *supra* note 40.

⁴⁸ *Ibid*, at 9.

⁴⁹ D’hondt & Van De Weyer, *supra* note 41.

⁵⁰ Save the Children UK et al., *supra* note 40.

observation that some states claim it is not possible to analyse national budgets in this way – as cited above. Consequently, the child *friendly* budgeting exercise, i.e. the assignment of a specific budget to be spent on children, and children only, as is advised by the Committee, may be easier to accomplish.

Furthermore, some general difficulties that may affect both child budgeting and child friendly budgeting exercises need to be overcome, such as poor monitoring of the budget process, the unavailability of reliable data on the situation of children and government expenditure in general,⁵¹ a lack of coordination between decision makers regarding resource allocation, and limited awareness of children's rights.⁵² As these variables differ from state to state, it is the state's responsibility to investigate the extent to which these restrictions exist and how they can be overcome. Accordingly, inventorying limits and possibilities regarding 'child (friendly) budgeting', based on international practices, has been specifically recommended to the Flemish Government.⁵³ Nonetheless, in Flanders, no child budgeting nor child friendly budgeting exercises have yet been undertaken.

3. Relation with JoKER/CRIA

CRIA, child budgeting and child friendly budgeting are all tools to implement children's rights into policies and practice. Since CRIA and child budgeting are assessment tools, whereas child friendly budgeting is more of an operational practice, the remainder of this chapter will focus on CRIA and child budgeting.

⁵¹ UN Committee on the Rights of the Child, *supra* note 42, at para 12 (presentation of Lobna Abdellatif); Save the Children UK et al., *supra* note 40.

⁵² UN Committee on the Rights of the Child, *supra* note 42, at para 12 (presentation of Lobna Abdellatif).

⁵³ KeKi, *Draft Omgevingsanalyse voor het Vlaamse Jeugd en Kinderrechten Beleidsplan 2014-2019. Begeleidende uitleg bij het beleidsadvies van het Kenniscentrum Kinderrechten* (Gent: Kenniscentrum Kinderrechten, 2013).

Both instruments are fit to cover all policy domains, from the ‘obvious’ ones primarily directed at children and youth (such as education) to domains in which children and youth may be affected, even though they are not an explicit or specific target group (such as mobility). The transversal character of the two tools was also emphasized by the Committee on its Day of General Discussion on “Resources for the Rights of the Child - Responsibility of States”, as it recommended to “*consider using rights-based budget monitoring and analysis, as well as child impact assessments on how investments **in any sector** may serve “the best interests of the child”*”.⁵⁴ Although this overarching character ensures a broad usability of both tools, it may also cause demarcation problems, as previously noted. This quote of the Committee, including ‘rights-based monitoring and analysis, **as well as** child impact assessments’, constitutes a first indication of the complementarity of both tools.

Clear differences between CRIA and child budgeting can be observed in the methodology, purpose and impact of both instruments. First of all, through a CRIA, the outcomes – positive as well as negative – of a proposed decision for children and young people are assessed and different alternatives explored, in order to allow for the alternative that is in the best interest of children and young people to be selected or to mitigate negative consequences of the selected policy. A CRIA thus serves to limit negative and to enhance positive outcomes for children and youth of envisaged initiatives. Child budgeting, on the other hand, does not include an assessment of negative consequences, but focuses solely on encouraging *positive* results for children and youth through studying which parts of the budget presumably lead to an improvement of their well-being. Public budgets allocated to benefit children and youth are mapped in order to monitor and – if applicable – better organize this allocation.

Second, child budgeting is intended to have greater impact than a CRIA. During the JoKER evaluation, it was argued that the importance given to a child and youth perspective in policy can

⁵⁴ UN Committee on the Rights of the Child, *supra* note 42, at para 30 (emphasis added).

only be clearly observed through tracking the money invested in it. This argument is in line with the statement of Save the Children UK about child budgeting: *“It is often said, that “where policies matter, budgets matter even more” because if policy pronouncements are not visible in the government’s budget, they are unlikely to happen. On the other hand, what the government spends public money on, whether publicly pronounced or not, effectively represents government policy, even implicitly”*.⁵⁵

In sum, CRIAs appear to be broader in approach than child budgeting: positive as well as negative outcomes of a proposed decision are being considered and weighed. Child budgeting, on the other hand, may have more weight than CRIAs. The importance that a certain state attaches to the implementation of children’s rights may be deduced from the budget allocated. It is nonetheless important to note that not all changes that may benefit children’s rights are visible in allocated budgets, such as general changes in attitudes towards children and, increased participation of children in policy-making.

Notwithstanding these differences between CRIAs and child budgeting, the JoKER evaluation showed that the practice of CRIA may approach child budgeting through including budget decrees in the scope of CRIA. Through applying a CRIA on budget decrees, positive as well as negative outcomes for children and youth of the proposed budget are analyzed. Also, the importance that is attached to children’s rights related government decisions can be investigated through charting the budget reserved for children and youth and weighing it against budgets reserved for initiatives towards other target groups where decisions may even be directly or indirectly detrimental to children and young people. In this way, an important constraint often discussed in relation to efforts to maximize resources for children can be met, namely *“the fact*

⁵⁵ Save the Children UK et al., *supra* note 40, at 3.

*that budget priorities and economic policies have traditionally focused on economic growth, neglecting the social aspect and the human rights approach”.*⁵⁶

Child budgeting exercises may thus be incorporated in child rights impact assessments through including budget decrees in the material scope of CRIAs. In the JoKER evaluation, civil society actors emphasized the necessity of including budget decrees into the JoKER scope.⁵⁷ Civil servants, on the other hand, invoked counterarguments, derived from the fact that budget and (substantive) policy cycles run more or less simultaneously and are therefore not attuned to each other. Based on this argument, they considered applying a CRIA to the actual budget decree not feasible. As for the substantive decrees accompanying the budget, they argued that the lack of a CRIA does not appear to be problematic, as the impact of these decrees remains limited.

Comparing the practice of ‘child budgeting’ and CRIA shows that, even though both instruments have their differences, the practice of child budgeting could be approached through including budget decrees in the CRIA scope. This way, CRIA can be aligned with the practice of child budgeting, in order to create a comprehensive framework. If CRIA cannot be applied to budget decrees, a separate budgeting analysis from the perspective of children and young people needs to be executed in order to complement the CRIA practice, as the analysis shows that – even though not all trends beneficial to children’s rights are visible in budgets – money that is spent towards children may constitute a relevant indicator to measure state efforts to strengthen children’s rights. In this way, budget spent towards children and youth can be compared against budgets spent on other target groups or even initiatives that may threaten or disadvantage children and youth’s well being and/or position in society. Nonetheless, the feasibility of the analysis (which policy domains to include, how to define ‘spending on children and youth’, and

⁵⁶ UN Committee on the Rights of the Child, *supra* note 42, at para 11 (presentation of Elizabeth Gibbons).

⁵⁷ The Flemish Youth Council has also urged in a policy opinion to apply JoKER to the budget. Vlaamse Jeugdraad. *Decreet Vlaams Jeugdbeleid, advies 07/11* (Brussels: Vlaamse Jeugdraad, 2007).

so forth) along with the political will to include this type of analysis over different policy domains, are crucial elements to be considered.

V. Final reflections

This article examined some crucial strategic choices to be made in establishing CRIAs, regarding their scope (material scope, personal scope and criterion of application) and the relation of CRIAs to other impact assessments and child (friendly) budgeting. Different options are assessed and illustrated, mainly on the basis of the evaluation of the Flemish Child and Youth Impact Report (JoKER).

A major weakness of JoKER is its limited material scope: a JoKER is only to be drafted for legislative proposals based on an initiative of the Flemish Government, whereas regulatory decisions often have a stronger impact on children and young people. Furthermore, budget decrees are omitted from the JoKER scope, even though budgets spent towards children and youth may constitute an important indicator to assess state efforts towards realizing children's rights. An important strength of JoKER is that the impact of a proposed decision is considered not only in relation to minors, but that persons between the age of 18 and 25 are included. This broader personal scope is in line with socio-economical developments regarding the extended transition from youth to adulthood, as well as with policy tendencies to continue attention on children and young people beyond the cut-off age of 18.

A general trade-off running as a common theme throughout this contribution concerns the balance between available human, technical and financial resources, on the one hand, and the width of a CRIA scope and the quality of its process, on the other. In the end, it often comes down to finding a realistic equilibrium between the ideal of an extensive and thorough CRIA process (which should avoid excessive formalism) and pragmatic considerations of time, energy

and resources (as these will have an unavoidable impact on CRIA quality). Some specific suggestions to approach such a balance are formulated in this article.

In this light, it also appears interesting to investigate how various children's rights instruments, albeit each with their specific goals and scope, can be more attuned to and/or connected to each other. As an example, the possibilities of integrating child budgeting exercises in a CRIA are explored. CRIAs are one instrument for the realization of children's rights and should form part of a more comprehensive children's rights policy. Moreover, as children's rights are typically of a transversal nature and do not occur in a social vacuum, CRIAs should be attuned to (impact assessment) instruments in other policy domains.

A final reflection relates to the framework of reference employed when carrying out CRIAs in practice. As children's rights are broader than just the provisions in the CRC (including for example also other human rights treaties), CRIAs should be based on a more extensive framework of (scientifically grounded) insights, legal considerations and social developments, than uniquely referring to the CRC. Only then will it be possible to fully tap the potential of CRIAs to contribute to the realization of the rights of children and young people.

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