

# EVERY CHILD'S RIGHT TO BE HEARD

A RESOURCE GUIDE ON THE UN COMMITTEE  
ON THE RIGHTS OF THE CHILD GENERAL COMMENT NO.12



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**GERISON LANSDOWN**

**Save the Children is the world's leading independent children's rights organisation, with members in 29 countries and operational programmes in more than 120. We fight for children's rights and deliver lasting improvements to children's lives worldwide.**

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Cover photo: Children watch a performance by fellow students at a school in El Oro, Ecuador. (Photo: Edward Naranjo and Maruska Bonilla/Save the Children)

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## FOREWORD

Since the adoption of the UN Convention on the Rights of the Child in 1989, Article 12 – the provision that children have a right to express their views and have them taken seriously in accordance with their age and maturity – has proved one of the most challenging to implement. Although understanding of childhood and attitudes towards children differs widely across cultures, the experience of the Committee on the Rights of the Child has been that the reasons for excluding children from participation in matters that affect them are remarkably consistent across different parts of the world: children lack competence; they lack knowledge and judgement; involving them in decisions is to place too heavy a burden on them; parents know what is best for their children; giving children a voice will lead to excessive demands, bad behaviour; disrespect for elders; participation will expose children to risk of harm. However, we have learned over the past 20 years that these concerns are not borne out by the evidence. Time and again, experience shows that children – even very young children – given the time and opportunity, demonstrate not only that they have views, experiences and perspectives to express, but that their expression can contribute positively to decisions that affect the realisation of their rights and wellbeing.

Article 12 is important as a fundamental right: it is a measure of our human dignity that we are able to be involved in decisions that affect us, consistent with our levels of competence. It is also a means through which other rights are realised. It is not possible to claim rights without a voice. Children who are silenced cannot challenge violence and abuse perpetrated against them. The capacity to learn is restricted without the chance to question, challenge and debate. Policy-makers cannot identify the barriers to fulfilling children's rights if they do not hear from children about the existence and nature of those barriers. And the right to be heard applies to every

aspect of a child's life – at home, in school, in healthcare, in play and leisure, in the media, in the courts, in local communities, and in local and national policy-making, as well as at the international level.

However, although much progress has been made in many countries, with countless positive examples of legislation, policy and practice, it remains the case that for too many children across the world, the right to be heard remains unrealised. Those from more marginalised groups are disproportionately denied the opportunity – for example, girls, children with disabilities, children from indigenous groups, children with undocumented parents, children in conflict with the law, and those living in extreme poverty. The Committee is committed to strengthening the capacity of governments to introduce the measures necessary to implement Article 12. From its dialogue with governments, it is clear that while many are committed to meeting their obligations to promote ways of giving children a voice, they lack the knowledge, confidence or capacity to achieve that goal.

The Committee, therefore, recommends this resource guide as a major contribution to achieving change. It elaborates the General Comment developed by the Committee, providing practical help on implementation through examples of legislation and policy, guidelines for practitioners, evidence from research, and examples of meaningful participation in practice. It draws together experiences from around the world to enable governments to learn from each other, build on existing developments, and broaden understanding of the scope and meaning of Article 12. The evidence it produces demonstrates that not only is it possible to create environments in which children can make a significant contribution to their own and others' lives, but that doing so brings real benefits. Sustained action across the fields outlined in the publication will serve to

build environments in which children are recognised as active citizens, contributing both to decisions that affect their own lives as well as to their communities and wider

society. Strengthening skills, confidence and capacity for democratic participation during childhood will also bring lifelong benefits.



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## ABBREVIATIONS

ENOC	European Network of Ombudspersons for Children
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
MDG	Millennium Development Goal
NGO	Non-governmental organisation
NPA	National Plan of Action
PRSP	Poverty Reduction Strategy Paper
RRS	Rights Respecting Schools
SRHE	Sexual and reproductive health education
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime

# INTRODUCTION

This resource guide is based on and elaborates the UN Committee on the Rights of the Child General Comment No. 12, 'The Right of the Child to be Heard'. The full text of the General Comment can be found at: <http://www.ohchr.org/english/bodies/crc/comments.htm>

"It was my first experience of hearing a document based on the voices of children including my own voice. After listening to it, I thought, 'Children can change the world if they are given a chance. We have to fight for that chance.'" Jehanzeb Khan, 12 years old, Pakistan, on his experience at the UN Special Session on Children, 2002

The United Nations Convention on the Rights of the Child (UNCRC), which was adopted by the UN General Assembly in 1989, included a provision that introduced a right of all children capable of forming a view to be heard and to be taken seriously. The provision, outlined in **Article 12** of the Convention, states that:

- 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
- 2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.*

It was a new concept in international law, and posed a challenge to most countries throughout the world, where a culture of listening to children was not widespread or even acceptable. Over the past 20 years, many governments, alongside civil society organisations, have begun to grapple with the implications of this new obligation to recognise children as citizens, as participants and as active contributors both to decisions within their own lives and to the wider society. However, there

is still a lack of understanding, and often of confidence, among governments as to what it means to listen to children, and how to introduce the necessary measures to fulfil that responsibility.

Accordingly, in June 2009, the Committee on the Rights of the Child, the international body established to monitor governments' implementation of the UNCRC, adopted a General Comment on the Right of the Child to be Heard. This General Comment elaborates in detail the scope of Article 12, and how the Committee expects governments to interpret their obligations to children under its provisions. It is intended to provide an elaboration of *what* action governments are expected to take to implement Article 12, and how to interpret its meaning. This resource guide has been produced as a companion document to sit alongside the General Comment, largely following its structure, to provide governments with more detailed practical guidance on *how* to implement it. In addition to a fuller explanation of how to understand the obligation to listen to children and take them seriously, it provides:

- illustrative examples of laws and regulations that have been adopted by some governments to give effect to the right embodied in Article 12
- illustrative examples of guidance and policy that have been adopted by some governments, professional bodies and other institutions to give effect to the right embodied in Article 12
- suggested practical guidance on how to create the opportunities for children to be heard
- evidence from research, for example, regarding the impact of children's participation, or children's concerns in particular settings

- illustrative examples from around the world of initiatives undertaken to enable children to participate in decisions and actions that affect them
- basic requirements for ensuring child participation that is ethical, safe and effective
- the arguments to be made to demonstrate the positive outcomes associated with realising the right of children to be heard and taken seriously.

The child's right to be heard is, as yet, far from being fulfilled for the majority of children around the world. The aim of this handbook is to try to make easier the task of governments in moving that agenda forward. It seeks to demonstrate not only that it is eminently possible to fulfil the obligations associated with Article 12, but also that there are profound benefits associated with doing so. It provides an opportunity for governments to explore the potential for building on the experiences of other countries and regions in implementing Article 12.

It is aimed primarily at governments, national and local government officials, policy-makers and parliamentarians, although it will also be valuable for those advocating with governments. Article 12 extends to matters relating to health, education, child protection, child welfare, juvenile justice, planning, transport, economic development and social protection. Therefore, even though there may be a lead department focusing specifically on children, it is important that all relevant government departments make use of the guidance the handbook contains.

This resource guide is not a toolkit on how to engage with children and young people. There are many such resources available and the present publication does not seek to replicate them. Instead, details of the *UNICEF Child and Youth Participation Resource Guide*, which includes a broad range of publications providing detailed guidance on the practicalities of promoting child participation, have been included in the Appendix.

### KEY TO BOXES AND SYMBOLS

The resource guide contains boxes with illustrative examples, research evidence, policy and practical guidance, as well as a summary of key points. These are indicated as follows:



Research and evidence



Examples of practice



Legislation



Policy or guidance



Summary

# CHAPTER ONE

SETTING THE CONTEXT



# CHAPTER ONE

## SETTING THE CONTEXT

### BACKGROUND

#### WHY LISTENING TO CHILDREN IS IMPORTANT

Participation contributes to personal development

Participation leads to better decision-making and outcomes

Participation serves to protect children

Participation contributes to preparation for civil society development, tolerance and respect for others

Participation strengthens accountability

#### ADDRESSING THE ARGUMENTS AGAINST CHILDREN'S PARTICIPATION

## CHAPTER ONE

# SETTING THE CONTEXT

“The right to speak is the right to be listened to; in practice there is a gap between speaking and being listened to.”

Young people at Shaking the Movers conference, ‘Speaking Truth to Power: Civil and Political Rights of Children’, Carleton University, Canada, 2007

### BACKGROUND

Article 12 of the UNCRC establishes the right of children to be involved in decisions that affect them, both as individuals and as a group. This right to be heard and taken seriously is one of the fundamental values of the Convention. It is not only a free-standing right, but the Committee on the Rights of the Child has identified Article 12 as one of its four general principles.<sup>1</sup> In other words, it must be considered in the implementation of all other rights, and as one of the general measures of implementation of the UNCRC.<sup>2</sup>

Article 12, together with the other key civil rights in the UNCRC, recognises the child as an active agent in the exercise of his or her rights. This right of active engagement has been broadly conceptualised as **‘participation’**, although the term itself is not used in Article 12. Of course, children have always participated in many ways within societies; for example, at the community level, through play and the arts, and in their economic contribution to their families. In the context of Article 12, however, the term participation has evolved, and is now very widely used, as a shorthand term to describe the process of children expressing their views and having them taken seriously. Participation can be defined as **an ongoing process of children’s expression and active involvement in decision-making at different levels in matters that concern them. It requires information-sharing and dialogue between children and**

**adults based on mutual respect, and requires that full consideration of their views be given, taking into account the child’s age and maturity.**

Children can form and express views from the earliest age, but the nature of their participation, and the range of decisions in which they are involved, will necessarily increase in accordance with their age and evolving capacities. Young children’s participation will be largely limited to issues relating to their immediate environment within the family, care facilities and their local community. However, as they grow older and their capacities develop, their horizons broaden and they are entitled to be involved in the wide range of issues that affect them from the immediate family to the international level.

There has been progress, since the adoption of the UNCRC in 1989, at local, national, regional and global levels, towards putting this principle into effect. At the UN General Assembly Special Session on Children in 2002, States Parties affirmed their commitment to the realisation of Article 12.<sup>3</sup> This commitment was given further emphasis in the UN General Assembly Omnibus resolution in November 2009 which urged governments to:

*“Assure that children are given the opportunity to be heard on all matters affecting them, without discrimination on any grounds, by adopting and/or continuing to implement regulations and arrangements that provide for and encourage, as appropriate, children’s participation in all settings, including within the family, in school and in their communities, and that are firmly anchored in laws and institutional codes and that are regularly evaluated with regard to their effectiveness.”<sup>4</sup>*

<sup>1</sup> The other general principles are Article 2, on non-discrimination, Article 3, on best interests and Article 6, on the right to life and maximum survival and development.

<sup>2</sup> See General Comment No. 5, ‘General Measures of Implementation for the Convention on the Rights of the

Child’ (Arts 4, 42 and 44, para 6), CRC/GC/2003/5 for an elaboration of the general principles.

<sup>3</sup> UN General Assembly, *A World Fit for Children*, A/RES/S-27/2, 11 October 2002

<sup>4</sup> UN General Assembly, *Promotion and Protection of Children’s Rights*, A/C.3/64/L.21/Rev.1



### EVIDENCE OF PROGRESS

At the World Summit for Children in 1990, children were brought to New York, dressed in their national costumes, and their role was limited to accompanying their respective national delegates. By contrast, for the UN Special Session for Children in 2002 children throughout the world had been involved for months beforehand in local, national, regional and international consultations and meetings to prepare their agendas and concerns. In most cases, they were able to elect their representatives to go to New York, where a separate Children's Forum was held in advance of the Special Session. At the Special Session, the children presented their demands to the world leaders and participated at all levels throughout the process – as members of government and NGO delegations, as chairs, speakers and as participants from the floor. They produced their own final statement and influenced the entire process. In other words, they were active participants. Huge progress had been achieved in strengthening their engagement beyond the passive role they had played in the 1990 meeting.

Across the world, governments, as well as civil society organisations, professional bodies, academic institutions and development agencies as well as UN bodies, have taken action to try to give effect to this right to be heard. Books have been written, research has been undertaken, thousands of initiatives have been introduced, and spaces for children's voices have been created, from the school to the global community. Children have been engaged in advocacy, social and economic analysis, campaigning, research, peer education, community development, political dialogue, programme and project design and development, and democratic participation in schools. Some governments have introduced constitutional reform, legislation and policies to give effect to Article 12. The last 20 years have been a period of advocacy to promote and legitimate the concept of participation, and of exploration of strategies for translating it into practice. Indeed, for many people, children's rights have become synonymous with participation.

Nevertheless, the right to be heard and taken seriously remains elusive for most children across the world. And even where it is implemented, it is often only in limited aspects of a child's life and largely through short-term projects and programmes. Full implementation of Article 12 continues to be impeded by many long-standing practices, cultures and attitudes, and by political and economic obstacles. Furthermore, younger children and girls, as well as many other marginalised and minority groups, face particular barriers in the realisation of this right. There is also concern about the quality of much of the practice that does exist. There is a need for better understanding of what Article 12 involves; the benefits of its implementation; how to implement it for children of all ages; and the approaches needed to achieve meaningful and ethical participation in decision-making.

The real challenge now is to apply the learning from the past 20 years to embed participation as a sustainable right for all children, in all areas of their lives.



## WHY LISTENING TO CHILDREN IS IMPORTANT

“If you had a problem in the Black community, and you brought in a group of White people to discuss how to solve it, almost nobody would take that panel seriously. In fact, there’d probably be a public outcry. It would be the same for women’s issues or gay issues. But every day, in local arenas all the way to the White House, adults sit around and decide what problems youth have and what youth need, without ever consulting us.” Jason, 17, Youth Force Member, Bronx, NY

There are widely held views that children lack capacity to make informed contributions to decision-making, that doing so may place them at risk and that their participation will have adverse effects on family and school life. However, the experience of child participation around the world provides a growing body of evidence, not only that these concerns are unfounded, but that participation has a widespread positive impact. If adults are to fulfil their obligations to promote the best interests of children, they need to listen to children themselves. The Committee on the Rights of the Child considers that recognising the right of the child to express views and to participate in various activities, according to her or his evolving capacities, is beneficial for the child, the family, the community, the school, the state and democracy.

### Participation contributes to personal development

The realisation of the right to be heard and to have views given due weight promotes the capacities of children. There is a growing body of evidence that routinely

taking children’s views and experiences into account – within the family, at school and in other settings – helps develop children’s self-esteem, cognitive abilities, social skills and respect for others.<sup>5</sup> Through participation, children acquire skills, build competence, extend aspirations and gain confidence. A virtuous circle is created. The more children participate, the more effective their contributions and the greater the impact on their development. Children acquire competence in direct relation to the scope available to them to exercise agency over their own lives. The most effective preparation for building self-confidence is to achieve a goal for oneself and not merely to observe someone else achieving that goal. Children who are highly marginalised find it very hard to achieve this on their own and need support through organised participation if they are to realise their potential.

### Participation leads to better decision-making and outcomes

Adults do not always have sufficient insight into children’s lives to be able to make informed and effective decisions on the legislation, policies and programmes designed for children. Children have a unique body of knowledge about their lives, needs and concerns, together with ideas and views which derive from their direct experience. This knowledge and experience relates to both matters affecting them as individuals and matters of wider concern to children as a group. It needs to inform all decision-making processes affecting children’s lives. Decisions that are fully informed by children’s own perspectives will be more relevant, more effective and more sustainable.

<sup>5</sup> See for example, R Kränzl-Nagl and U Zartler, ‘Children’s participation in school and community. European perspectives’ in B Percy-Smith and N Thomas (eds) *A handbook of children and young people’s participation. Perspectives from theory and practice*, Routledge, London, 2009; K Covell and R B Howe, *Rights, respect and responsibility. Report on the RRR initiative to Hampshire County*

*Education Authority, Children’s Rights Centre, Cape Breton University, Nova Scotia, Canada, 2005; and P Kirby with S Bryson, Measuring the magic. Evaluating and researching young people’s participation in public decision making, Carnegie Young People Initiative, London, 2002.*



### **PARTICIPATORY EDUCATION LEADS TO ENHANCED LEARNING IN COLOMBIA<sup>6</sup>**

Evidence of how much more children can achieve through a democratic and socially relevant education can be seen in the New Schools programme in Colombia. Through this programme, schools have introduced a flexible curriculum with mixed-age classrooms which allow children to learn individually and in groups, with the teacher able to function as a facilitator. They have also developed structures that enable children to function as a democratic community. For example, one school has developed a forest conservation project in which the children are seeking to save the mountain slope by planting native species of trees. Part of the challenge is for the children to educate local villagers about the problem of using wood for firewood and for sale. The children collect seeds from existing trees to establish a nursery, which will ultimately result in replanting all the slopes with native trees in close collaboration with the adults of the community. The strength of the programme lies in the wide range of abilities children acquire, backed up by the opportunity to learn through practice. Beyond the basic skills of literacy and numeracy, they learn environmental science, development and sustainability, processes of democracy and decision-making, and how to formulate and present arguments, and they acquire negotiation skills. A key element of the educational process is that, by being respected, children learn to take responsibility for the project, with the support of committed adults.



### **CHILDREN AS COMMUNITY LEADERS IN EGYPT<sup>7</sup>**

A participatory sanitation and hygiene education programme is bringing a transformational change in the socio-economic conditions of communities living in remote villages of Egypt. The programme is involving children in a process of change to improve the habitats in which they reside. It is based on training a group of committed children on various aspects of sanitation and hygiene education, and making them leaders in an initiative designed to have an immediate impact on the living conditions of their respective communities. They are equipped with the skills and the scientific knowledge to undertake this task. The programme includes disseminating information about the nutritional value of various kinds of food. Emphasis is placed on the need to have a balanced diet, which includes fruits, milk and vegetables, rather than just meat. Lessons on environmental protection are also part of the programme. For example, the students are educated in the importance of keeping the rivers clean, and stress is laid on the civic responsibility not to pollute public spaces.

The impact of the training programme is already evident in the daily lives of the villagers. Eleven-year-old Asmaa, who lives with her extended family of 20 people in Zarazra village in Sohag, Upper Egypt, says many of her habits have changed since joining the programme. She explains that she has become confident enough to take a lead role in ensuring that other children in the village benefit from the knowledge she has received. *“Whenever I see other children throwing rubbish on the street or in the river, I tell them not to and I explain why. They do listen to me, and are willing to learn just like I was. I also tell them never to swim in the river or the canal, because they might get sick, which is what we have learned at school.”* Her mother, Labiba, is proud of her daughter: *“The conditions in our village are poor. But it is the children’s progress that gives otherwise impoverished families hope.”*

<sup>6</sup> R Hart, *Children’s Participation: the theory and practice of involving young citizens in community development and environmental care*, UNICEF, New York, 1997

<sup>7</sup> Adapted from: UNICEF *Empowered for Good: Case Study No. 1* [http://www.unicef.org/wash/index\\_documents.html](http://www.unicef.org/wash/index_documents.html)



## CHILDREN INFLUENCING THE PARLIAMENTARY PROCESS IN NIGERIA AND SERBIA

Child participation has had an impact on the parliamentary process in Nigeria by increasing parliamentarians' awareness of children's rights. For example, the process has played a significant role in the passage of Nigeria's Children's Rights Act.<sup>8</sup> During the public hearing on the draft bill, members of the Children's Parliament made a special presentation, called 'Voices of Nigerian Children – Children are an Investment and not an Expenditure'. The children made their views known in their own language and urged parliamentarians to pass the legislation in order to improve the situation of Nigerian children. Following the public hearing, the child parliamentarians paid courtesy calls on the President of the Senate and the Speaker of the House of Representatives, urging the parliamentary leaders to ensure the prompt passage of the bill. The children were invited to sit in the galleries of both houses during the debate and consideration of the bill's provisions.

Similar headway has been made in Serbia where child participation has led to greater awareness of children's rights among MPs, local officials, districts and municipalities.<sup>9</sup> Regular meetings take place between MPs and children so that their voices are heard. This helps to build children's trust in parliament, and contributes to building a culture of democracy.

### Participation serves to protect children

The right to express views and have them taken seriously is a powerful tool through which to challenge situations of violence, abuse, threat, injustice or discrimination. Children traditionally have been denied both the knowledge that they are entitled to protection from violence, and the mechanisms through which to challenge this situation. The consequent silencing of children and the abuse they experience has had the effect of protecting abusers rather than children. However, if they are encouraged to voice what is happening to them, and provided with the necessary mechanisms through which they can raise concerns, it is much easier for violations of rights to be exposed.<sup>10</sup> The self-esteem and confidence acquired through participation also empower children to challenge abuses of their rights. Furthermore, adults can act to protect children only if they are informed about what is happening in children's lives; and often it is only children themselves

who can provide that information. Violence against children in families, schools, prisons and institutions, or exploitative child labour will be tackled more effectively if children themselves are enabled to tell their stories to those people with the authority to take appropriate action.

It is also important to recognise that protective approaches which entail children being completely dependent on adult support run the risk of children being abandoned without resources when that adult protection is withdrawn.<sup>11</sup> This was a point made strongly in 2000 by the youth delegates to the Winnipeg conference on war-affected children, who stressed that they no longer wanted to be cast in the role of passive victims.<sup>12</sup> Rather, they wanted recognition that, although they had suffered in their experiences of war, they had also developed coping strategies to deal with those situations and wanted to use their experiences in contributing to their

<sup>8</sup> UNICEF, *Guide to working with Parliaments*, UNICEF, New York, 2009

<sup>9</sup> Ibid.

<sup>10</sup> See, for example, C Willow, *The right to be heard and effective child protection*, Save the Children, Bangkok, 2010

<sup>11</sup> W Myers and J Boyden, *Strengthening children in situations of adversity*, Refugee Studies Centre, Oxford, 2001

<sup>12</sup> G Cockburn, *Meaningful youth participation in international conferences: a case study of the international conference on war-affected children*, CIDA, 2001

communities. In both the European and South East Asian youth consultations for the Third World Congress against Commercial Sexual Exploitation of Children, it was stressed that participation was a foundation for protection against commercial and sexual exploitation.<sup>13</sup> In the strategy arising from the consultation, the delegates emphasised the importance of partnerships

with children that enhanced the capacities of children themselves to address abuse. It suggested that this be achieved through providing information, promoting inclusion of children at all levels of activity, supporting children in accessing the media, and enabling children to participate in awareness-raising programmes at local, national and regional levels.



### RESPONDING TO CHILDREN'S VIEWS ON HOW THEY CAN BE PROTECTED<sup>14</sup>

A local non-governmental organisation (NGO) had supported a primary school outside a brothel in Bangladesh. Children attended the school during the day, then returned to their mothers in the brothel in the evening. Several girls approached the NGO to say they did not want to return home because they feared being initiated into prostitution. The staff and girls discussed the matter with the mothers and for two years the girls slept in the offices of the NGO. Eventually the NGO raised enough funds to build a safe home for the children; the mothers contribute financially to their children's education and upkeep. There is no equivalent safe home for boys, and some girls do return to the brothel. However, the NGO's receptiveness to the children's own solutions undoubtedly improved their protection and life chances.



### INCREASING VULNERABILITY BY DENYING CHILDREN A VOICE

In Zimbabwe, government policy in respect of reproductive health is simply to promote abstinence. In a study of adolescent reproductive health rights, 42% of the adolescents reported a lack of information on forms of contraception, and in the absence of official provision of information, adolescents acquire it from unreliable and ill-informed sources.<sup>15</sup> This leads to misconceptions, which increase rather than reduce exposure to harmful behaviours, such as 60% of respondents believing that family planning leads to infertility, and many others that condoms weaken sperm and that contraceptives cause viruses. The problem is compounded by the fact that adolescents are not entitled to seek medical help or advice in confidence. Staff are required by law to seek parental consent before providing advice or services.

Similarly, a survey of adolescents in the transition countries, which are changing from a centrally planned to a market economy, found that over 50% reported having little or no information about HIV and AIDS and 60% felt that they had little or no information about sexual relationships. Keeping adolescents in ignorance disempowers them and denies them the opportunity to develop their understanding and to take increasing responsibility for their own protection in accordance with their evolving capacities.

<sup>13</sup> Youth recommendations to the East Asia and the Pacific Regional Preparatory Meeting for the World Congress III, Bangkok, Thailand, 14–19 August 2008, and Europe and CIS Child and Youth Preparatory Forum for the World Congress III against Sexual Exploitation of Children and Adolescents, 31 October to 2 November 2008, Düsseldorf

<sup>14</sup> Adapted from: K Heissler, *Background paper on good practices and priorities to combat sexual abuse and exploitation of children in Bangladesh*, UNICEF, Dhaka, Bangladesh, 2001

<sup>15</sup> *State of denial: adolescent reproductive rights in Zimbabwe*, Center for Reproductive Law and Policy and Child Law Foundation, New York, 2002

**Participation contributes to preparation for civil society development, tolerance and respect for others**

Respecting children and providing them with opportunities to participate in matters of concern to them is one of the most effective ways of encouraging them to believe in themselves, to gain confidence, and to learn how to negotiate decision-making with other people. Children's involvement in groups, clubs, committees, non-governmental organisations (NGOs), boards, unions and other forms of organisation offers them opportunities for helping to strengthen civil society, learning how to contribute towards community development, and recognising that it is possible to make a positive difference. Participation also offers opportunities for children from diverse backgrounds to build a sense of belonging, solidarity, justice, responsibility, caring and sensitivity. Democracy requires a citizenry with the understanding, skills and commitment to building and supporting its institutions. It is through participation that children can develop those capacities, starting with negotiations over decision-making within the family, through to resolving conflicts in school, and contributing to policy developments at the local or national level. It can equip children to learn to respect differences and resolve conflicts peacefully, and to strengthen their capacity to arrive at win-win solutions. Democracy also requires both direct and indirect participation: children can participate either directly,

representing themselves as individuals, or as representatives of others, with a clear mandate from the group they represent and equally clear accountability to that group. Supporting a child's right to be heard in the early years is integral to nurturing citizenship over the long term. In this way, the values of democracy are embedded in the child's approach to life – a far more effective grounding for democracy than a sudden transfer of power at the age of 18.

**Participation strengthens accountability**

Building opportunities for children to engage in issues of concern to them in their local community not only contributes to civic engagement, but also strengthens capacity for holding governments and other duty-bearers to account. Knowledge of one's rights, learning the skills of participation, acquiring confidence in using and gathering information, engaging in dialogue with others and understanding the responsibilities of governments are all vital elements in creating an articulate citizenry. Governments have a key role to play in ensuring that citizens have the awareness, commitment and capacity to challenge government action or inaction through democratic and peaceful means, and to contribute to positive policy-making and improved allocation of resources. Building these opportunities for children from the earliest ages will contribute significantly to the creation of accountable and transparent governance, not only at the government level but in all arenas children and young people inhabit.



### CHILDREN INFLUENCING LOCAL GOVERNANCE IN TANZANIA<sup>16</sup>

Child participation is a key mechanism for ensuring that all the structures of the government, including local authorities, are made aware of children's rights. In Tanzania, children's councils, comprising children under the age of 18, have been formed to raise policy-makers' awareness about key issues of concern to children in the local community. Children are elected to the council for a two-year period. The election is an important element in the functioning of these councils as it inculcates democratic values among the children. An inclusive approach to membership is adopted, with fair representation being accorded to children with disabilities, as well as other vulnerable children. A child standing for election articulates a number of reasons for joining the council, including the desire to improve their knowledge of children's rights and of children's position within society, and the desire to assist children in need.

The council draws up a work plan to establish its priorities for the coming year. Priority issues identified have included school drop-out as a consequence of lack of money, child labour, poorly performing schools, parents neglecting to take their children for vaccination at local clinics, parents not allowing their children to participate in the meetings of the children's councils because of their own lack of knowledge on children's rights, abuse of children by parents (especially stepmothers), and alcohol abuse by parents.

The formation of children's councils has a noticeable impact on the local governance process. Local government representatives have accepted the need to involve children in decision-making at the local level, recognising children's unique knowledge of their own lives and concerns. The existence of children's councils has made policy-makers aware of the need for a children's budget at local governance level, strengthened communication between children and officials, and led to better service delivery. For example, orphans infected by HIV and AIDS are now being helped to get to school and are being taken to medical centres to be given antiretroviral vaccine. There is more effective identification of vulnerable children such as street children, child labourers and orphans. The children's councils have also had a positive impact on children at the personal level. Children involved in the work of the councils are better equipped for participation: they are better informed about their democratic rights and responsibilities, are more engaged with community matters, and are more assertive.

<sup>16</sup> Adapted from: K Mtengeti and M Couzens, *Creating Space For Child Participation In Local Governance in Tanzania: Save the Children*

and *Children's Councils, Research on Poverty Alleviation*, Children's Dignity Forum (CDF), Tanzania, 2010; see: [www.repoa.or.tz/](http://www.repoa.or.tz/)



## A FIVE-YEAR PLANNING PROCESS: CHILDREN LEADING THE WAY IN INDIA<sup>17</sup>

The government of Karnataka, in south-western India, has been trying for several years to initiate a localised planning process, in which each local government within the State is expected to assess its own needs and develop its plans for five years ahead, with the active involvement of its constituencies. These five-year plans are to be the building blocks for a state-level planning process. However, many local governments do not have access to the required information, skills and support to develop such plans. In 2004, the State made several attempts to build local government capacity to embark on a decentralised planning process for the next five years. Concerned for Working Children (CWC) was asked to support the 56 *gram panchayats* (village councils) in its local jurisdiction to develop their own plans. CWC agreed, on condition that there was high-level participation of children in the planning process.

The output was amazing. The children's plans were comprehensive and substantiated with statistics and data. Groups and issues, such as the problems facing people with disabilities, environmental concerns and issues related to mobility and transport, were covered for the first time in a five-year plan. The children also recorded the history of their villages and degradation of resources, made maps that were accurate and informative, and often proposed solutions as well. The adults, especially the members and staff of the *gram panchayats*, were astounded and in many cases shamefaced, because the plans they themselves had drafted were very poor in comparison. As a result, the children's plans by and large became the official plans. But more than that, it has rejuvenated the *panchayats*. The officials and elected representatives seem to be sensing a purpose and relevance to their work. They see their *panchayats* in a new light and have gained a deeper understanding of village needs and concerns. The gap between the local government and the people has diminished.

A survey of the 56 *gram panchayats* shows that education and school-related issues recur in all the children's plans: compound walls, libraries, high school inaccessibility, school playgrounds, drinking water, toilets, midday meals and teachers. Children also made a major difference to the planning process. Previously, the plans used to be hijacked by powerful individuals to improve their own lives, 'people's participation' being a mere slogan that was useful during elections. Now, women, children and entire *panchayats* contribute to the children-led plans through regular meetings and data collection, and for the first time the whole *panchayat* felt it owned the plan. The involvement of children, their enthusiasm, their unerring sense of justice and their compassionate response to people's problems is what drew adults into this process. If children had not been the prime movers, adults would not have been involved in such large numbers and the task of drawing up the plans would have remained with the secretary of the *gram panchayat*, with some inputs from various elected members. Adults are cynical and wary of change because of their conditioning through experience of the 'real world', whereas children still have hope and the belief that they can change the world. Their efforts, when they bear fruit, also serve as a role model for adults, who once again begin to have hope. Children also grow up, and if they have a positive experience of participation in governance, they will carry that with them into adulthood.

<sup>17</sup> Adapted from: Concerned for Working Children, *A Unique Revolution: Children lead the way to decentralisation and civil society*

*participation*, Bangalore, 2004, cited in *International NGO Journal* Vol. 1 (3), pp. 032–040, December 2006

## ADDRESSING THE ARGUMENTS AGAINST CHILDREN'S PARTICIPATION

Despite recognition in international law through the UNCRC that child participation is a fundamental human right, and despite the powerful arguments as to the benefit it brings, there is still considerable resistance to its realisation. The arguments include:

**Children lack the competence or experience to participate.** But children have different levels of competence in respect of different aspects of their lives. Even very small children can tell you what they like or dislike about school and why, can produce ideas for making a lesson more interesting, can offer help to other children. Provided they are given appropriate support and adequate information and are allowed to express themselves in ways that are meaningful to them – pictures, poems, drama, photographs, as well as more conventional discussions, interviews and group work – all children can participate in issues that are important to them. Indeed, babies and toddlers can be seen as participating in varying degrees depending upon the willingness of adults to listen to what they are saying. For example, a study of Japanese nursery school children found that most disputes were resolved by the children themselves, with skilful use of compromise

and bargaining, often involving moral justifications.<sup>18</sup> Such evidence demonstrates the capacities of young children to engage effectively in taking responsibility, and negotiating solutions. The creation of settings that maximise their opportunities to explore and initiate activities themselves is a means of fulfilling the spirit of the UNCRC.

Indeed, there are many areas where young children can demonstrate equal or superior competence; for example, in their capacity to acquire IT skills, remember where things are, use their imaginations, express creativity, love and compassion, mediate between arguing parents, show willingness to forgive, learn new languages. In order to respect this competence in various areas, adults must learn to hear and see what children are saying and doing without rejecting it simply because they are young.

**Children must learn to take responsibility before they can be granted rights.** But newborn babies have rights and they cannot be expected to carry responsibilities. And one of the more effective ways of encouraging children to accept responsibility is to first respect their rights. If children are given the chance to share their ideas in a group and to have them taken seriously, then they will learn that others, too, have a right to be heard which must also be respected.

### BUILDING COMPETENCE IN VERY YOUNG CHILDREN IN THE UK<sup>19</sup>

In one nursery in the UK, with 20 children up to the age of four years, the staff decided that the children could help themselves to fruit and water when they wanted to. Initially, the children asked for permission, until they understood that they could help themselves. Some spilt the water, but they learned to mop up the spills and to pour the water more carefully, as they acquired experience. In being consulted in this practical way about what they actually preferred, the children were able to behave more responsibly and the staff were free to do other things.

<sup>18</sup> M Killen M and L Nucci, 'Morality, autonomy and social conflict' in M Killen and D Hart (eds) *Morality in Everyday Life*, Cambridge University Press, New York, 1995

<sup>19</sup> J Miller, *Never too young: How young children can take responsibility and make decisions*, National Early Years Network/Save the Children, London, 1997





### CHILDREN LEARNING TO TAKE RESPONSIBILITY IN SCHOOL IN ENGLAND<sup>20</sup>

A junior school (7–11 years) in a particularly deprived area of England had been characterised by high levels of violence, disaffection, bullying and truancy. A new headteacher decided to involve the whole school community in making the school a safe and effective educational environment. She consulted with all the children, as well as teachers and administrative staff, on what changes were needed. The outcomes of the consultation included:

- the establishment of a school council in which the children had genuine power; they were involved, for example, in the development of all school policies and in the recruitment of staff
- regular 'circle time' where all the children in the class had an opportunity to discuss any issues of concern
- the creation of a 'bullying box' where children could give information, in confidence, about having been bullied
- the appointment of 'guardian angels' – children who volunteered to befriend children who were without friends, being bullied, or simply in need of support
- the appointment of child mediators who would help children resolve conflicts in the playground.

As a result of these changes, the children were happier, achieved better educational results, and acquired considerable skills of negotiation, democratic decision-making and social responsibility. The experience demonstrated that young children are capable of accepting considerable levels of responsibility when invested with trust and support. Indeed, children can act to protect themselves and others when their rights are respected. The provision of training and encouragement for the child mediation system enabled the children to help each other without having to turn to adults, although adults were available if they were needed. By respecting and investing in children's active engagement, the children acquired skills and confidence that would have been denied them in a more traditional and authoritarian environment.

**Giving children the right to be heard will take away their childhood.** Article 12 does not impose an *obligation* on children to participate. Rather, it provides a *right* for children to do so. And it is a romanticised view of childhood to imagine that they are not making decisions and taking responsibilities from a very early age. Even small children in very protected environments might be involved in making decisions about friendships, coping with parental divorce and negotiating between parents in conflict, deciding what games to play and negotiating rules. Children's right to be heard, in fact, is critical to improving the nature and quality of the childhood they experience. And for many children it can help them reclaim their stolen childhood, as evidenced in the example below.

**It will lead to lack of respect for parents.** Listening to children is about respecting them and helping them learn to value the importance of respecting others. It is not about teaching them to ignore their parents. Indeed, Article 29 of the UNCRC clearly states that one of the aims of education is to teach children respect for their parents. Listening is a way of resolving conflict, finding solutions and promoting understanding – all of which are beneficial for family life. It can be difficult for some parents to respect children's right to participate when they feel that they themselves have never been respected as possessors of rights. Nevertheless, this does not imply the need to hold back from encouraging children to participate but, rather, the need to be sensitive in doing

<sup>20</sup> P Alderson, *It's our school*, Institute of Education, London, 1998



### CHILDREN PARTICIPATING TO CLAIM CHILDHOOD RIGHTS IN NICARAGUA<sup>21</sup>

A group of children aged between 8 and 12 years, working in the coffee plantations in Nicaragua, met together to plan a campaign to defend their right to play. They were concerned that *“A lot of kids work on farms and plantations and they come home worn out, so they don’t get to play. At harvest time the kids work all day and there’s no time to play.”* The problems are compounded by parental attitudes: *“Our parents believe that boys have more rights, and they give them more freedom than the girls. Parents tell girls, ‘go and find a job to do, and don’t be playing.’”*

They consulted with other children who expressed the view that play was important because:

- It’s our right – and not just children, also big people.
- It makes us feel good.
- It helps us share and express our feelings.
- It helps us make friends and not be shy.
- It helps kids relate to older people and feel respected.
- It helps boys and girls relate to each other with respect.
- We learn to share games, because not everyone knows the same games.

Accordingly, they undertook research into the state of play within their communities, how girls were discriminated against, and what forms traditional play had taken within the community. They followed up the research by holding public meetings, and approaching the District Children and Youth Committee to promote positive attitudes towards children’s right to play. The Committee responded positively to the children’s message and has agreed to develop its own action plan for a “more playful municipality”.

so. Children should not be led to believe that they alone have a right to have a voice; wherever possible, their families should be involved in the process. Large changes in a society often take a generation to get fully recognised or accepted. In some parts of the world, recognition of a child’s right to a voice within the family has begun to surface, but efforts are required to ensure its progression.

**Children cannot have the right to be heard until this right is respected for adults.** But if societies are to build more opportunities for their citizens to be heard, it is important that this process begins with children. Encouraging children from the earliest ages to engage in critical enquiry, challenge abuses of rights, and acquire the confidence and capacity to express their views will contribute to wider societal change. Furthermore, as children have

exercised their right to be heard, often they have also actually opened up spaces for adults’ participation, and served as role models inspiring adults to demand their right to be heard.

**Children’s rights is a Western concept being imposed on other countries.** It has been argued that the very concept of child participation, which promotes the visibility and individual rights of a child, is a Western-imposed principle, which conflicts with the cultural commitment to the primacy of the family in many other cultures. However, there was no interference by ‘Western’ powers in the independent process of debate and ratification of the UNCRC by sovereign governments of north, south, east and west. In the African region, for example, the Organisation for African Unity (now the African Union), recognising the importance of children’s rights, developed a Charter

<sup>21</sup> ‘Nicaraguan Children’s Right to Play Campaign, 2010’, [www.commonthreads.org.uk/righttoplayupdates.htm](http://www.commonthreads.org.uk/righttoplayupdates.htm)



### SEEING CHILDREN PARTICIPATE PROMOTES PARENTAL SUPPORT FOR THAT PROCESS

Evidence from families whose children have opportunities for participation presents a consistent pattern. There is often initial resistance: fear that children will be distracted from their school work or from domestic responsibilities, concern that it will make them lose respect for their parents or that they as parents lack the competence to get involved. However, once parents are informed about the aims of the initiative and its methodology, these fears almost invariably diminish and are replaced by a growing pride in their children's achievements.<sup>22</sup> Indeed, in a UNICEF review of the impact of child participation in South Asia, many parents and children cite improved family relationships, and contributions to the local community, as positive outcomes associated with participation.<sup>23</sup> Parents value children's increased confidence and skills. Many expressed the view that participation had opened up new opportunities for their children. Some parents felt that their children were more respectful to them after being involved in participatory initiatives, and others that their daughters' enhanced confidence meant that they were better placed to cope with their future lives. In some cases, children felt that parental attitudes had changed, and that this had led to less physical punishment.

Interestingly, in one project in Pakistan which involved working boys, local community members expressed the view that their activities had brought about change in the attitudes of the whole community. The children, too, felt that adults were less rigid and friendlier towards them as a result of the project. These benefits are also evident in a project in the Maldives to raise parental awareness of the value of listening to children, particularly in the context of growing levels of delinquency, drug misuse and family breakdown. The programme seeks to help parents become more responsive to their children, by providing them with the necessary skills. It also provides older siblings with ideas on how to communicate with and stimulate smaller children to grow and develop through interaction: the aim is to help them see that children need more than simply being watched. As a consequence of this work, many fathers, as well as mothers, have come to realise the benefits of dialogue and communication with their young children, some regretting that they did not understand its importance when their other children were younger.

on the Rights and Freedoms of the Child, taking the UNCRC as a starting point, and adapted it to the African context. The Charter reaffirms the importance of children being afforded a voice and being taken seriously, both within judicial and administrative proceedings and at the wider societal level.<sup>24</sup> In addition, history and mythology of the non-Western world has many examples of children and young adults who have had a 'defining' role in their own lives and in the lives of their communities long before the UNCRC came into being in the modern world.

Furthermore, these concerns fail to acknowledge the strong affirmation of the family and respect for its privacy embodied within the UNCRC. In its preamble, the Convention recognises the family as the fundamental group of society, necessary for children's development and entitled to protection in order to provide for the growth and wellbeing of all its members. Article 5 stresses the obligation of the state to respect the rights and responsibilities of the family, Article 18 imposes obligations on the state to provide support for parents, and Article 29 asserts that one of the aims

<sup>22</sup> G Lansdown, 'Involving children in shaping our work', internal Save the Children study, London, 2003

<sup>23</sup> UNICEF Regional Office South Asia, *Wheel of Change, Children and Young People's Participation in South Asia*, Kathmandu, 2004

<sup>24</sup> Articles 4 and 7, African Charter for the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force 29 November 1999

of education is for children to develop respect for their parents. In other words, the continued viability and strength of the family is central to the realisation of children's rights.

It is also important to recognise the strong concept of community, mutuality and responsibility embodied within the human rights discourse. Indeed, Article 29 of the Universal Declaration of Human Rights states that "Everyone has duties to the community in which alone the free and full development of his personality is possible." The significance of the word 'alone' here is that it recognises that individuals do not exist as isolated beings but live in societies, towards which they must act responsibly if they are to develop their true humanity.<sup>25</sup> Understood in this way, it becomes clear that human rights affirm rather than challenge much of the cultural underpinning of many societies across the world.

That said, it is probably true to say that the practice of listening to children and taking their views seriously is not sufficiently recognised in the culture of any society. But the fact that people have been treated in a particular way in the past does not justify continuing to do so in the future. As new standards of respect for human rights evolve, so behaviours and cultures need to adapt to reflect those changes. For example, in most societies, women have traditionally been denied access to power, to economic equality, and to protection from violence. However, it is now widely recognised that attitudes towards women must change and that there must be legal protection to promote their equality with men. So it is with children; the UNCRC challenges all cultures to review their attitudes and behaviour towards children. The way in which these changes are introduced needs to be sensitive to cultural traditions and religious beliefs, but these should not be used to deny children the right to be heard.

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<sup>25</sup> F Klug, *Values for a Godless Age*, Penguin, London, 2000



### UNDERSTANDING PARTICIPATION IN THE AFRICAN CONTEXT<sup>26</sup>

Participation of children as stated in the UNCRC is often seen as foreign, superficial and alien to the African and Ugandan culture. In any discussions on issues concerning children, it elicits political, cultural, social and emotional concerns. It is often challenged as elitist and interpreted as an intrusion into the jurisdiction of the family head and a threat to parental authority. Although adults believe that children have rights to life, health and education, many are not convinced children have the right to participate in such community issues as decision-making. Child participation is restricted because African family relationships are divided into categories and role expectations are clearly defined. In some communities children are not allowed to speak among adults without permission and doing so can bring disgrace on the parents and is punishable.

However, child participation has been practised in the African context for decades. But the form of participation in traditional African society is beginning to disappear because modern-day living has led to the loss of these practices. The misunderstanding that child participation causes today emerges from old contexts. Many African traditions practise child participation without realising that they are doing so – making it possible for children to access useful information and contribute to decisions. Sitting round the fire, sharing folklore, stories and songs, elderly people always gave children the opportunity to participate actively. This included questions and answers, the sharing of opinions and personal interpretation of the messages in a story. Dances within the community also prompted discussions around cultural practices and morals. While some of these forums had negative aspects such as encouraging stereotyping, early marriage and the subordination of women, they nevertheless do solicit the views of children.

Although children's rights are enshrined in laws that were developed outside Uganda, these arose from the practices of different communities around the world and have been accepted by the Government of Uganda as good principles for Uganda. The differences arise in the articulation of rights, which generally have not been directly translated into any of the African languages. A broader and clearer understanding of what child participation is and the development of skills and knowledge on how to involve children within institutions are required, if child participation is to be promoted effectively.

<sup>26</sup> *The National Child Participation Guide for Uganda, Creating an Environment for Children to be Heard*, Ministry of Gender, Labour

and Social Development, Uganda Child Rights NGO Network and UNICEF-Uganda, 2008



**CHILDREN'S PARTICIPATION:**

- acknowledges children's fundamental right to be part of every decision that affects them
- applies to all children in all countries without exception, including babies and very young children
- necessitates learning new ways of listening and hearing the forms of communication by children of different ages
- represents a challenge to all governments, requiring not only a cultural change, but also the introduction of new legislation, policies, services and programmes
- demands different ways of working, and necessitates bringing children in to social, economic, political and cultural debates
- respects children, along with adults, as citizens of their societies: they have a stake now, as well as in the future, in what happens in their lives
- recognises the unique and invaluable contribution that children can make to building the society around them
- leads to multiple benefits including personal development, improved decision-making and outcomes, greater protection, and enhanced capacity for citizenship and democratic engagement
- offers a win-win outcome.

# CHAPTER TWO

LEGAL ANALYSIS OF ARTICLE 12



# CHAPTER TWO

## **LEGAL ANALYSIS OF ARTICLE 12**

### **ARTICLE 12 PARA 1**

- Assuring the right to express views
- Every child capable of forming his or her own views
- The right to express views freely
- The right to express views on all matters affecting them
- The obligation to give due weight in accordance with age and maturity

### **ARTICLE 12 PARA 2**

- The right to be heard in judicial or administrative proceedings
- The right to be heard directly or through a representative body
- Representation in a manner consistent with procedural rules of national law



## CHAPTER TWO

# LEGAL ANALYSIS OF ARTICLE 12

In order to understand Article 12, it is necessary to unpack the language and look in detail at the meaning of each of its provisions. This chapter looks at the specific wording of the text of Article 12 and provides an analysis of how the Committee on the Rights of the Child interprets that wording and the consequent implications for law, policy and practice. The detailed guidance on how to implement those provisions in a range of different contexts is elaborated in the subsequent chapters of the handbook.

### ARTICLE 12, PARA 1

#### I Assuring the right to express views

Article 12 states that its provisions must be “*assured*” to the child. In other words, governments have an obligation to take

all appropriate measures to ensure that it is fully realised for all children. This means that the necessary legislation and policies must be in place to enable all children to exercise their right to be heard. Additional measures will be needed to ensure that groups of children likely to experience social exclusion are afforded equal rights to be heard. For example, children with disabilities, who are often denied the right to education, and marginalised within their communities, will need support to enable them to express their views. Article 7 of the UN Convention on the Rights of Persons with Disabilities emphasises that children with disabilities must be able to exercise their rights to express views and have them taken seriously on an equal basis with others and that they should be provided with age- and

#### TIPS AND TECHNIQUES ON LISTENING TO CHILDREN WITH COMMUNICATION DIFFICULTIES<sup>27</sup>

**‘Communication Passport’** – This can be a form or leaflet that belongs to a child and provides information on how they communicate, for example, how they will indicate ‘yes’ and ‘no’.

**Communication tools** – Pictures of items and symbols; perhaps the most important one is the ‘stop’ symbol.

**Planning a meeting** – If you are planning to meet with a child, write a letter to the child in words and symbols, letting them know that you are going to visit them. Include a picture of yourself with the letter.

**Helping the child prepare for a meeting** – A blank board can be used and the child could be helped to stick on pictures and symbols representing what they want to say.

**‘All about me’** – It is good for children with communication difficulties to have pictures of people in their life who are important to them.

**‘Medical Passport’** – This could be pictures of different types of medication for different ailments. The child could then point at the appropriate one and show other people if, for example, they have a stomach upset or headache.

**‘Talking Mats’** – These can be developed to help children prepare for different situations. Pictures can be taken of children going to different events or settings, such as the doctor’s surgery. These can then be put into sequence and talked through with the child.

**‘Chat Box’** – This can be a box filled with pictures or objects of reference that the young person can use to symbolise what they want or need; for example, a spoon means that they are hungry; a ball or doll means they want to be able to play; a range of different smiley and non-smiley faces could be used to enable the child to express how they feel.

**Mosaic approach** – It is important to use different forms of communication, depending on the situation and the particular needs of the child.

<sup>27</sup> See [www.triangle.org.uk](http://www.triangle.org.uk) for further information on communication with children with disabilities.

disability-appropriate assistance to enable them to do so. Governments should ensure that children with disabilities are equipped with, and supported to use, whatever mode of communication is necessary to facilitate the expression of their views.<sup>28</sup> Efforts must also be made to enable children who speak minority languages to have opportunities to express their views.

The obligation under Article 12 applies to children as individuals, to specific groups of children and to children collectively. For example:

- Children as individuals must be heard when decisions or actions are being taken that affect them specifically, such as in judicial or administrative proceedings, in matters of medical treatment, in decisions over where and with whom they live, or levels of contact with parents following separation or divorce.
- Specific groups of children – such as girls, children with disabilities, or children from indigenous communities – must be heard when legislation or policies are being introduced which affect them. In the education field, for example, this might

include proposals relating to hygiene and sanitation, inclusive education, strategies to make schools more physically accessible, or policies concerning bilingual education.

- Children as a constituency must have opportunities to be heard and to inform the development of legislation, policies and programmes that affect all children, such as national plans of action (NPAs), Poverty Reduction Strategy Papers (PRSPs), access to healthcare, or protection from all forms of violence.

## 2 Every child capable of forming his or her own views

Article 12 applies to every child “*capable of forming his or her own views*”. The Committee stresses that governments should start from a presumption that a child has the capacity to form a view: it is not up to the child to prove her or his capacity. Nor is it necessary for the child to have a comprehensive understanding of an issue affecting her or him: simply that she or he is capable of forming a view on the matter. Children from the very youngest ages are able to form views, even where they are not able to express them verbally. Tiny babies, for

### RIGHTS IN THE CONSTITUTION<sup>29</sup>

One approach to ‘assuring’ the right to be heard is to incorporate the principle into the Constitution, thereby establishing it as an overarching entitlement in all matters affecting children. For example:

**Constitution of Ecuador 1998** – contains extensive references to the rights of children, including the “right to be consulted in matters affecting them”.

**Constitution of Finland 1995** – has been amended by the addition of a sentence providing that: “Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.”

**Constitution of Poland 1997** – provides that: “Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.”



<sup>28</sup> Article 7, para 3, UN Convention on the Rights of Persons with Disabilities

<sup>29</sup> D O'Donnell, *The Right Of Children To Be Heard: Children's right to have their views taken into account and to participate in legal and administrative proceedings*,

UNICEF Innocenti Research Centre, Florence, 2009, <http://www.juvenilejusticepanel.org/resource/items/D/a/DanielODonnellUNICEFIRCRRightChildrenToBeHeardApr09EN.pdf>



### ESTABLISHING THE RIGHT TO BE HEARD IN LEGISLATION

- **In Kazakhstan, the Rights of the Child Act, 2002** provides that every child has the right to express his or her opinion, the right to freedom of conscience and the right to participate in public life.
- **In South Africa, Article 10 of the Children’s Act 2005** states that: “Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.” The particular significance is that Article 10 falls within the General Principles chapter of the Children’s Act, which is like a mini Bill of Rights, and that it applies not only in the Children’s Act, but in all laws and actions.
- **In Australia, the Child, Youth and Families Act 2005** requires that decisions affecting children “be reached by collaboration and consensus, wherever practicable”. Everyone involved in the decision-making process must be “provided with sufficient information, in a language and by a method that they can understand, and through an interpreter if necessary, to allow them to participate fully in the process [and they should be] provided with the opportunity to involve other persons to assist them to participate fully in the process”.

example, speak a complex 'language' and adults who can 'read' it can provide more sensitive and appropriate care.<sup>30</sup> Indeed, the Committee interprets the term 'views' as going beyond developed views, to include feelings, insights, interpretations, concerns and ideas. Implementation of Article 12

requires recognition of and respect for non-verbal forms of communications such as play, body language, facial expression, or drawing and painting, through which very young children make choices, express preferences and demonstrate understanding of their environment.



### EVEN THE YOUNGEST CHILDREN'S RIGHTS MUST BE RESPECTED

The Committee on the Rights of the Child, in its General Comment No. 7, Implementing Child Rights in Early Childhood, states that:

“Respect for the young child’s agency – as a participant in family, community and society – is frequently overlooked, or rejected as inappropriate on the grounds of age and immaturity. In many countries and regions, traditional beliefs have emphasized young children’s need for training and socialization. They have been regarded as undeveloped, lacking even basic capacities for understanding, communicating and making choices. They have been powerless within their families, and often voiceless and invisible within society. The Committee wishes to emphasize that Article 12 applies both to younger and to older children. As holders of rights, even the youngest children are entitled to express their views ... Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language.”<sup>31</sup>

<sup>30</sup> General Comment No. 7, 'Implementing Child Rights in Early Childhood', CRC/C/GC/7, 2005

<sup>31</sup> Ibid.

The UNCRC therefore does not impose a lower age limit on the right to participate, and the Committee on the Rights of the Child discourages the introduction of age limits, either in law or in practice, that restrict the child's right to participation in decision-making. It also emphasises the necessity to ensure that children with disabilities are enabled to exercise their right to participate on an equal basis with other children.<sup>32</sup>

### 3 The right to express views freely

The child has the “*right to express those views freely*”. This means that children must be able to express views without pressure. They must not be manipulated or subjected to undue influence from others. The child must be allowed to express his or her own views and not those of others. It is also important to recognise that **Article 12 does not imply any obligation on children to express their views**. It is a right not a duty, and the child can choose whether or not to exercise it.

In order to express views freely, children need:

- information which is relevant, appropriate and made available in forms and at a level which they can understand. They also need to have information from anyone responsible for taking decisions affecting the child, about options available to them, the nature of any decisions that are being taken, and their consequences
- ‘spaces’ where they are afforded the time, encouragement and support to enable them to develop and articulate their views clearly and confidently. For example, if a school is involving children in its governing body, it needs to provide time for children to prepare for meetings, or other forums where they can express their views. It also needs to ensure that they are provided with information in forms that

they can understand, that all members of the governing body are respectful of the children and that the children are given the time and opportunity to speak in meetings. Efforts must be made to explain any language or issues that might be unfamiliar to the children

- safety to explore and express their views without fear of criticism or punishment. Children should feel confident that they are allowed to express concerns and opinions, even when they challenge those of adults. For example, children in Nicaragua have observed that when they participate in evaluation projects with non-governmental organisations (NGOs), only the positive things they say about the NGOs ever get reported. It is necessary for children to feel safe to articulate negative concerns and criticisms, and for those views to be taken seriously.

### 4 The right to express views on all matters affecting them

The *Manual of Human Rights Reporting* states that the right recognised in Article 12 applies “*in all matters affecting*” children, even those not specifically covered by the UNCRC, when those same questions have a particular interest for the child or when they might affect his or her life, for example, issues relating to the environment or transport.<sup>33</sup> Most aspects of decision-making from the family to the international level have either a direct or an indirect impact on children and can therefore be defined as legitimate matters of concern; for example, schooling, transport, budget expenditure, urban planning, poverty reduction or social protection. The Committee supports a very wide interpretation of “*all matters affecting*” children, recognising that so doing enables children to engage in the social processes of the community and society, and that it can also enhance the quality of solutions.

<sup>32</sup> General Comment No. 9, ‘The Rights of Children with Disabilities’, CRC/C/GC/9, September 2006

<sup>33</sup> M S Pais, ‘The Convention on the Rights of the Child’ in *Manual of Human Rights Reporting*, OHCHR, Geneva, 1997

### 5 The obligation to give due weight in accordance with age and maturity

“Yes, most schools have a school council, but when you’re doing the actual thing, like the meeting or whatever, and they listen to you for that hour or half an hour, and after that you don’t hear anything about it, it’s all just forgotten about. It’s like, what was the point in expressing all your views when they don’t even do anything about it?” Group of children in the UK<sup>34</sup>

The views of the child must be “given due weight in accordance with the age and maturity of the child”. It is not sufficient to listen to children. It is also necessary to give their views serious consideration when making decisions. Their concerns, perspectives and ideas must inform decisions that affect their lives. However, the weight to be given to children’s views needs qualifying. It must take account of the age and maturity of the child: in other words, the child’s level of understanding of the implications of the matter. It is important to note that age by itself does not necessarily provide guidance as to children’s levels of understanding. Many very young children can display a high level of maturity.

The impact on the child of any particular matter must also be taken into account. The greater the impact on the life of a child, the more important it is to ensure that an appropriate assessment of the child’s age and maturity has been undertaken. For example, if a healthy young child expresses a view that she wishes to play outside in the cold, the consequences will not be serious: she can return inside if it is uncomfortable. The level of risk is low. However, if, for example, a child soldier wishes to return home to his community from a camp, a decision about this must take into account the level of risk he is likely to be exposed to, and how well he understands the nature of that risk.

When it is not possible to comply with the child’s views, he or she should always be informed of the decision and the reasons behind it.

In considering the weight to be given to the child’s views, it is also necessary to pay attention to Article 5 of the UNCRC, which stresses that the direction and guidance provided by parents, legal guardians, or members of the extended family or community must take account of children’s evolving capacities to exercise their rights<sup>35</sup> (see also page 36 for a more detailed

### CHILDREN’S CAPACITY TO TAKE RESPONSIBILITY<sup>36</sup>

Research into young people’s lives in rural Bolivia indicates that from the ages of 13–16 years they are negotiating decisions about future work or education and, despite major structural constraints limiting their choices, are nevertheless exercising clear agency in deciding whether to stay at school or to start work, whether to work within the local community or to migrate to seek better financial possibilities, whether to opt for a rural or an urban lifestyle. Furthermore, they exhibit a strong sense of family responsibility and their choices are heavily influenced by the importance of balancing their own wishes with the needs of the family. This research highlights the fact that not only do young people of this age demonstrate the capacity to make informed choices based on realistic assessments of the options available to them, but that in doing so, they are aware of and able to take account of other perspectives than their own.

<sup>34</sup> C Davey, T Burke and C Shaw, *Children’s Participation in Decision-Making: A Children’s Views Report*, National Participation Forum, 2010

<sup>35</sup> G Lansdown, *The Evolving Capacities of the Child*, UNICEF Innocenti Research Centre/Save the Children, Florence, 2005

<sup>36</sup> S Punch, ‘Youth transitions and interdependent adult-child relations in rural Bolivia’, *Journal of Rural Studies*, 18 (2): 123–133, 2002

explanation). The greater their capacities, the more autonomy and responsibility to take decisions for themselves they should be given.

## ARTICLE 12, PARA 2

### I The right to be heard in judicial or administrative proceedings

Article 12, para 2 specifies that in order to ensure the realisation of the right embodied in para 1, children have the “*right to be heard in any judicial or administrative proceedings affecting [them]*”.<sup>37</sup> The Committee emphasises that this provision applies to all relevant judicial proceedings related to children’s lives. This includes, for example, cases of decision-making in respect of separation of parents, and custody, care and adoption; children in conflict with the law; child victims of physical or psychological violence, sexual abuse or other crimes; healthcare; social security; unaccompanied minors; asylum-seeking and refugee children, and those who have been victims of armed conflict and emergencies. The reference to administrative proceedings extends the entitlement to be heard in proceedings to include, for example, education, health, environment, living conditions, or protection. Both types of proceedings may involve alternative dispute mechanisms such as mediation and arbitration.

The right to be heard applies to proceedings which are both:

- initiated by the child, such as a complaint against ill-treatment, or appeal against a school exclusion
- initiated by others in which the child has an interest, such as parental separation or adoption.

Children are entitled to know what rights they have to be heard, how they will be able to be heard in any proceedings and

how decisions are made. Governments therefore are encouraged to introduce legislative measures that will require any decision-makers in judicial or administrative proceedings to provide information to children about the process for listening to them, how their views will be considered and what weight will be given to their views, as well as the mechanisms that will facilitate the exercise of this right. (See also pages 51–62 for more information on what measures are needed to give effect to the right to be heard in proceedings.)

### 2 The right to be heard directly or through a representative body

Children have a right to be heard “*either directly or through a representative or appropriate body*”. In other words, children who are capable of forming a view themselves should be given an opportunity to decide how they wish to be represented, and whether to be heard directly. The Committee recommends that, wherever possible, the child must be given the opportunity to be *heard directly in any proceedings*.

However, in some circumstances there will be procedural rules which require that this is done through a representative. Where this is the case, it is important to take account of the following issues:

- It is the child’s own views that must be transmitted, rather than those of the representative. The role of the representative must not be confused with the obligation to ensure that the best interests of the child are a primary consideration. (see also page 32 on best interests). The views of the child must be conveyed accurately to the proceedings, irrespective of whether their representative considers that those views, if acted on, would be in the child’s best interests.

<sup>37</sup> Article 12(2) also needs to be read in conjunction with Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which sets out the right of every person to

have access to the courts for the determination of his or her rights and obligations.



## EXAMPLES OF LEGISLATION ESTABLISHING CHILDREN'S RIGHT TO BE HEARD IN JUDICIAL PROCEEDINGS

### South Africa

The Children's Act 2005 introduces a general principle that children can bring matters before the court and then goes on to affirm that when they are involved in court proceedings, their views must be properly considered:

#### Section 14

Every child has the right to bring, and to be assisted in bringing, a matter to a court, provided that matter falls within the jurisdiction of that court.

#### Section 61

- (1) The presiding officer in a matter before a children's court must –
- (a) allow a child involved in the matter to express a view and preference in the matter if the court finds that the child, given the child's age, maturity and stage of development and any special needs that the child may have, is able to participate in the proceedings and the child chooses to do so;
  - (b) record the reasons if the court finds that the child is unable to participate in the proceedings or is unwilling to express a view or preference in the matter; and
  - (c) intervene in the questioning or cross-examination of a child if the court finds that this would be in the best interests of the child.

### Latin America

Most countries in Latin America have children's codes, many of which recognise the right of children to be heard in legal and administrative proceedings.<sup>38</sup>

#### *Guatemalan Children's Code, Articles 119(a) and 123(b)*

The children's code in Guatemala recognises the right of all children to be heard at all stages of judicial proceedings, and states that this must be in their own language, thus enabling the rights of indigenous children to be heard.

#### *Paraguayan Children's Code, Article 19*

In Paraguay, children can bring cases to specialised child courts which have competence over cases concerning paternity, guardianship, custody, foster care, adoption, child abuse, child labour and issues surrounding health and education. The judge is obliged to listen to the child, according to their age and maturity, before resolving any matter before the court.

**Costa Rica** and **Colombia** both have general laws within their children's codes which require that children's right to be listened to be taken seriously in judicial and civil proceedings.

### Tunisia

#### *Child Protection Code, Article 10*<sup>39</sup>

"The Code guarantees the child the right freely to express his or her views, which should be taken into consideration in accordance with his or her age and degree of maturity. To that end the child will be given a special opportunity to express his or her views and to be heard in all legal procedures and with regard to all social and educational measures concerning his or her situation."

According to the State Party Report of the Tunisian government, "That provision has, since its entry into force, been implemented several times, both through the intervention of the Child Protection Officers and the family court, the juvenile court or the juvenile tribunal. Indeed, article 35 requires the Child Protection Officer and the family court, in the event of a notification, to listen to the child and to take his or her views into consideration. Article 90 calls on the juvenile court to hold discussions in the child's presence with all parties concerned on the procedures to be taken, with the child having a free hand commensurate with his or her degree of maturity to discuss such measures."

<sup>38</sup> Taken from D O'Donnell, *Law Reform and Implementation of the Convention on the Rights of the Child*, UNICEF Innocenti Research Centre, Florence, 2007

<sup>39</sup> Third periodic report of Tunisia to the Committee on the Rights of the Child, CRC/C/TUN/3, 10 November 2008

- The representative must not seek to represent the interests of any other person, such as the parents, or institution or body such as a residential home or local municipality. Their role is exclusively to represent the views of the child.
- The method chosen for conveying views is determined by the child, where the child is competent to do so (see page 56 for more information on determining competence).
- Representatives must have the necessary knowledge and understanding of the relevant proceedings and how they work in order to advise and support the child effectively. They must also have experience of working with children and, where relevant, must have had training in communicating with children with disabilities.
- The representative may be the child's parent, a lawyer, or a social worker or other type of advocate. However, in some circumstances there will be a conflict of interests between the child and their most obvious representative. For example, where there is a dispute between parents over custody, or where there is concern relating to abuse of the child by a parent, it is not appropriate for the child to be represented by her or his parent.
- Codes of conduct should be developed for representatives who are appointed to represent the child's views.

### **3 Representation in a manner consistent with procedural rules of national law**

The opportunity for representation must be “*in a manner consistent with the procedural rules of national law*”. This provision should *not* be interpreted as allowing possible inadequate solutions contained in procedural law to restrict or prevent enjoyment of this fundamental right. On the contrary, governments are encouraged to comply with the basic rules of fair proceedings, such as the right to a defence and the right to access one's own files. The provision indicates the need for special procedures to ensure the implementation of the child's right to be heard.

Where any rules of procedure are not adhered to, it must be possible for the decision of the court or administrative authority to be challenged and overturned, substituted or referred back for further judicial consideration.





## NEW ZEALAND CODE OF CONDUCT FOR CHILDREN'S LAWYERS (EXTRACT)<sup>40</sup>

### Guiding principles

- Children must be given reasonable opportunities to be heard in any judicial and administrative proceedings affecting them.
- Children have the right to express their views and their views must be taken into account.
- In all proceedings affecting the child, s/he must be given reasonable opportunities to express his or her views.
- Children have the right to information about the case in which they are involved, including information on the progress and outcome of that case, unless the lawyer considers that it would be contrary to the welfare and best interests of the child.
- Children have the right to competent representation from experienced and skilled lawyers.

### Role of lawyer for the child

- The lawyer is to provide independent representation and advice to the child.
- The lawyer has a duty to put before the Court the views of the child but should not require the child to express a view if he or she does not want to do so. However, the lawyer shall not be required to put before the Court any views expressed to him or her in confidence.
- Where a conflict arises between a child's views and information relevant to the welfare and best interests of the child, the lawyer shall:
  - discuss with the child the issues and the lawyer's obligations;
  - attempt to resolve the conflict with the child;
  - advise the Court of the lawyer's position and, in the case where the lawyer is unable to resolve the conflict and as a matter of professional judgment can advocate only the child's views, invite the Court to appoint a lawyer in respect of welfare and best interests issues.

### Representation of particular children

- The lawyer shall represent the child in accordance with the child's welfare and best interests.
- In deciding whether or not the child by virtue of their age, maturity or disability is unable to express a view, or able to express a view but his or her age, maturity or disability are such that any view should be treated with caution, the lawyer shall be guided by the presumptions that, first, the older the child, the more representation shall be in accordance with the child's instructions, and, secondly, the younger the child, the more representation shall be in accordance with the child's welfare and best interests.
- The lawyer has a duty to see that other factors that impact on the child's welfare and best interests are put before the Court.
- The lawyer has a duty to put before the Court any views which the child may express but should not require the child to express a view if he or she does not want or is not able to do so. However, the lawyer shall not be required to put before the Court any views expressed to him or her in confidence.
- In determining what best serves the child's welfare and best interests, the lawyer must take into account the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child's sense of time.

<sup>40</sup> Extract from: 'Practice note – Lawyer for the Child: Code of Conduct', Family Court of New Zealand, [http://www.justice.govt.](http://www.justice.govt.nz/courts/family-court/practice-and-procedure/practice-notes/practice-note-lawyer-for-child)

[nz/courts/family-court/practice-and-procedure/practice-notes/practice-note-lawyer-for-child](http://www.justice.govt.nz/courts/family-court/practice-and-procedure/practice-notes/practice-note-lawyer-for-child)



### A CHECKLIST FOR REPRESENTATION OF CHILDREN IN THE USA<sup>41</sup>

The National Association for the Counsel of Children, in the United States, encourages all jurisdictions to adopt a system of legal representation of children which satisfies the following checklist. The representation scheme should ensure that each of the following children's rights or needs is satisfied through a combination of systemic safeguards, advocacy duties, and basic advocacy issues.

#### A. Systemic safeguards

- Children need competent, independent, and zealous attorneys. The system of representation must require the appointment of competent, independent, zealous attorneys for every child at every stage of the proceedings. The same attorney should represent the child for as long as the child is subject to the court's jurisdiction.
- Children need attorneys with adequate time and resources. The system of representation must include reasonable caseload limits and at the same time provide adequate compensation for attorneys representing children.
- Children need attorneys who understand their role and duties. The system of representation of children must be well defined by statute, bar standards, administrative guidelines, supreme court directive or other documents such that every attorney appointed for a child can understand his/her precise role and duties, and such that an attorney can be held accountable for performance of those duties.
- Children need an opportunity to present their positions to the court through counsel. The system of representation must provide the child with an opportunity for his/her needs and wishes to be expressed to the court.
- Children need confidential communication with their attorneys. The attorney has a duty to explain the extent of confidentiality in developmentally appropriate language.
- Children need to be involved as litigants in the entire litigation process, including any post disposition, termination of parental rights, and adoption proceedings. The system of representation must recognize the child as a party to the litigation and must include the child in all phases of the litigation, including the opportunity to participate in arguments and jury selection where applicable, offer exhibits, call witnesses, examine and cross examine witnesses and engage in motions and discovery processes. The child must also be given notice of all proceedings and copies of all pleadings.
- Children need judicial review of adverse decisions. The system of representation must provide an opportunity to appeal an adverse ruling.
- Children need to be able to hold their attorneys accountable. The system of representation must provide recourse for ineffective assistance of counsel.
- Children need an attorney with a fair opportunity to be effective in the court system. The system of representation must include a court system that devotes adequate time and resources to cases.

*continued opposite*

<sup>41</sup> [http://www.naccchildlaw.org/resource/resmgr/docs/nacc\\_standards\\_and\\_recommend.pdf](http://www.naccchildlaw.org/resource/resmgr/docs/nacc_standards_and_recommend.pdf)



## **A CHECKLIST FOR REPRESENTATION OF CHILDREN IN THE USA** *continued*

### **B. Advocacy duties**

- Children need attorneys who fully understand their cases. The attorney must perform a full and independent case investigation.
- Children need meaningful communication with their attorneys. The attorney must observe the child, and dependent upon the child's age and capabilities, interview the child. The attorney must engage in regular and meaningful communication with the child. Children need to participate in making decisions that affect their cases. The attorney has a duty to involve the child client in the process, whether under a client directed model or advocate directed model. The attorney has a duty to explain his/her role to the child in developmentally appropriate language.
- Children need loyal attorneys. The child's attorney is prohibited from representation that would constitute a conflict of interests.
- Children need the full benefit of legal counsel. The attorney must provide competent, independent and zealous representation for each client. The attorney must have adequate time and resources to devote to the child's case, and to understanding his/her role and duties, insuring confidentiality, and full active participation in all stages of the child's case.

### **C. Advocacy issues**

- Children need permanence. The attorney must advocate for timely resolution and permanent resolution (absent compelling reasons to the contrary) of the case.
- Children need their immediate and basic needs met. The attorney must advocate for food, shelter, clothing, and safety, including a safe temporary placement where necessary and for educational, medical, mental health, and dental needs.
- Children need family relationships. The attorney must advocate for continuation of appropriate familial relationships and family preservation services where appropriate.
- Children need to be protected from unnecessary harm that can result from legal proceedings. The attorney must advocate for the utilization of court processes that minimize harm to the child, and make certain that the child is properly prepared and emotionally supported where the child is a witness.



**ARTICLE 12 MEANS THAT GOVERNMENTS MUST:**

- introduce legislative, procedural and administrative measures to ensure that all children can be heard
- take account of the views of all children, however young they are
- create the opportunities for children to be able to express their views freely and without coercion or fear
- listen to children on all the issues that matter to them
- take their views seriously, bearing in mind their age and maturity
- provide for children to be heard in all legal and administrative proceedings
- allow children to be heard in proceedings either directly or through a representative
- make sure that there are basic rules of fair proceedings so that children are represented properly.

# CHAPTER THREE

ARTICLE 12 AND LINKS WITH OTHER ARTICLES IN THE UNCRC



# CHAPTER THREE

## **ARTICLE 12 AND LINKS WITH OTHER ARTICLES IN THE UNCRC**

### **GENERAL PRINCIPLES**

Articles 12 and 2

Articles 12 and 3

Articles 12 and 6

### **CIVIL RIGHTS AND FREEDOMS**

Articles 12 and 13

Articles 12 and 14

Articles 12 and 15

Articles 12 and 16

Articles 12 and 17

### **EVOLVING CAPACITY AND THE EXERCISE OF RIGHTS**

Articles 12 and 5

## CHAPTER THREE

# ARTICLE 12 AND LINKS WITH OTHER ARTICLES IN THE UNCRC

Article 12 needs to be understood both as a fundamental right and also as a general principle which must be taken into account in the realisation of all other rights. In other words, when considering how to implement the right to education, to the best possible health, or to alternative care, whether in relation to a decision concerning an individual child or to a policy affecting all children, the views of children must be taken into account. This broad understanding of children's right to be heard is reflected in 'A World Fit for Children' in which governments committed themselves "to develop and implement programmes to promote meaningful participation by children, including adolescents, in decision-making processes, including in families and schools and at the local and national levels".<sup>42</sup>

The UNCRC cannot be fully realised if the child is not respected as a subject with her or his own views on the rights enshrined in the respective articles and their implementation. The right of children to express views is a means through which they can realise other rights. For example, by creating a mechanism through which children can complain if they are being sexually abused, they are able to trigger action to protect themselves from that abuse.

Moreover, there are some rights in the UNCRC that have particular significance in relation to Article 12. Article 12, as a general principle itself, is linked to the other general principles of the Convention:

- Article 2 – the right to non-discrimination
- Article 3 – primary consideration of the best interests of the child
- Article 6 – the right to life, survival and development.

It is also closely linked to the articles related to civil rights and freedoms, in particular:

- Article 13 – the right to freedom of expression
- Article 14 – the right to freedom of thought, conscience and religion
- Article 15 – the right to freedom of association
- Article 16 – the right to privacy
- Article 17 – the right to information.

Finally, it needs to be understood in relation to Article 5, which addresses parental guidance and the evolving capacities of the child.

### GENERAL PRINCIPLES

The Committee on the Rights of the Child has determined that Articles, 2, 3, 6 and 12 of the UNCRC must be understood not only as rights of children but also as general principles to be applied in the realisation of all other rights. Accordingly, Article 12 must be considered in the development of any legislation, policies or programmes undertaken to implement the other three general principles.

#### Articles 12 and 2

*"It is difficult for children, particularly girl children, who are exploited mentally and physically, to speak out and develop. They lack self-esteem and hate themselves."*

Children from an urban community in Delhi<sup>43</sup>

The right to non-discrimination is an inherent right guaranteed by all human rights instruments, including the UNCRC. Article 2 of the Convention provides that every child has the right not to be discriminated against in the exercise of his or her rights, including those provided under Article 12, on grounds of race, colour, sex,

<sup>42</sup> 'A World Fit for Children', adopted by the UN General Assembly Special Session on Children, 2002, para. 32, subpara. 1

<sup>43</sup> P Ray, 'Children in the most difficult circumstances' in B Percy-Smith and N Thomas (eds) *A Handbook of Children*

*and Young People's Participation. Perspectives from theory and practice*, Routledge, London, 2009

language, religion, political or other opinion, ethnic or social origin, property, disability, birth or other status. The Committee stresses that appropriate measures must be taken to address discrimination of vulnerable or marginalised groups of children such as girls, those affected by poverty or armed conflict, very young children, children without parental care, including children in institutions, children with disabilities, children living with HIV and AIDS, refugee and displaced children, stateless children, street and working children, children in conflict with the law and children belonging to indigenous and minority groups, to ensure that they are encouraged and enabled to participate in decision-making on an equal basis with all other children.

In practice, it remains the case that customary attitudes and practices in most societies continue to undermine and place severe limitations on the enjoyment of this right. Discrimination against certain groups of children remains widespread. Governments are required, therefore, to take active measures to raise awareness and educate society about the negative impact of such attitudes and practices and to encourage attitudinal changes in order to achieve full implementation of the rights of every child under the UNCRC. In particular, special attention must be paid to the right of the girl child to be heard. Gender stereotypes and patriarchal values can serve to silence girls. Within families, in schools as well as in the wider society, they are not afforded the opportunity to express their views; and even where they are, those views are given less weight than would be afforded to boys' views. Support needs to be provided to overcome these barriers and bring an end to discrimination against girls in the realisation of the right to be heard.

It is also important that governments take account of the obligation in Article 7 of the UN Convention on the Rights of Persons with Disabilities to ensure that children with disabilities are provided with the necessary assistance and equipment to enable them

to freely express their views, and that those views are given due weight on an equal basis with other children. Article 21 of the Convention on the Rights of Persons with Disabilities, on freedom of expression and opinion, and access to information, provides details of the measures that States should introduce to enable people, including children, to exercise that right. This might include production of materials in special media, interpreters, such as signers for deaf children, and special training for parents, teachers and other adults.

### Articles 12 and 3

Article 3 states that in all actions concerning children, whether undertaken by a public or a private welfare institution, courts, administrative authorities or legislative bodies, the best interests of the child are a primary consideration. Other articles (for example, Article 9, parental separation; Article 18, parental responsibility for children; Article 20, alternative care; Article 21, adoption; Article 37, deprivation of liberty; and Article 40, parental presence in judicial hearings) lend further emphasis as to how and where the principle must be applied. This principle establishes an obligation on governments to introduce laws, policies and practice to ensure that all actions affecting children take account of the best interests of children. This obligation extends to the action of private and public institutions, and public authorities as well as legislative bodies. The extension of the obligation to "legislative bodies" clearly indicates that every law, regulation or rule that affects children must be guided by the "best interests" criterion.

Consideration of the child's views, in accordance with Article 12, must be an integral part of determining the child's best interests. In any decision made by adults as to the best interests of the child, due weight must be given to the child's expressed wishes in accordance with his or her age and maturity. Adults need to hear directly from any child capable of forming a view, in order to make decisions as to





### NZEVE SCHOOL FOR THE DEAF: CHILDREN GUIDING AND SHAPING THEIR OWN LEARNING IN ZIMBABWE<sup>44</sup>

Children with disabilities often miss out on sexual and reproductive health education (SRHE). A school in Zimbabwe for hearing-impaired children adopted a programme to overcome this exclusion through the participation of children themselves. The children had found that an existing SRHE manual was not very user friendly for hearing-impaired children and it did not address some of their specific vulnerabilities. Accordingly, the school worked in collaboration with the children to adapt the manual specifically for their use. In this way, children have shaped their own education.

The approach taken by the school was to gather children's opinions on existing SRHE materials, to see which aspects of this information were confusing or could be improved. In particular, children explained that certain words were difficult to express in sign language and that illustrations helped them grasp content more quickly. They also suggested that hearing-impaired characters be used in the examples, role plays and scenarios. After making these adaptations, the school took the revised materials back to children for a second round of feedback. This step was important because the children could see that their suggestions had been incorporated, which gave them a sense of ownership over the document and encouraged them to come up with even more ideas and recommendations. Meanwhile, the process itself provided children with the opportunity to review SRHE topics a number of times, helping them to absorb and retain the information. Teachers, too, had an opportunity to provide feedback on the manual.

his or her best interests. Steps to ensure that this happens are mandatory under the UNCRC. However, once the child has been heard, and his or her views given due consideration, Article 3 may lead to a final decision that differs from the child's expressed wishes. When this happens, the child must be informed of this decision, explaining how his or her views were considered, and why the decision was made as it was.

Article 3 applies equally to actions affecting individual children, and children as a group. For example, any decision concerning where a child will live following parental separation must be based on what would be in the best interests of the child and not on any principle of fairness or justice for the parent. In making the judgement, the child's views must be heard. Equally, if the best interests of a large group of children are at stake, for example, when planning and implementing a transport system, the best interests of the child in relation to access, cost and safety

must be considered, and this obligation must be met by ensuring that children's own views are heard.

The two articles, and the general principles they establish, are complementary: Article 3 establishes the objective of achieving the best interests of the child, while Article 12 is one of the means through which the determination is reached. Article 3 cannot be implemented without regard to Article 12. As noted in General Comment No. 3, on 'HIV/AIDS and the Rights of the Child', "*Interventions are found to benefit children most when they are actively involved in assessing needs, devising solutions, shaping strategies and carrying them out, rather than being seen as objects for whom decisions are made.*"<sup>45</sup>

The best interests principle does not override other rights in the UNCRC and so should not be used to 'trump' the child's right to express views; for example, to exclude a child from court hearings where

<sup>44</sup> CW Fanelli and M Mushunje, *Child Participation in Education Initiatives*, Catholic Relief Services Zimbabwe, 2007

<sup>45</sup> General Comment No. 3, 'HIV/AIDS and the Rights of the Child', CRC/GC/2003/3, 2003

testifying is considered to be potentially harmful. Rather, in accordance with the child's age and maturity, efforts should be made to provide the child with appropriate information and support to make informed choices regarding his or her participation, and to explore ways of enabling the child to express his or her views in ways that will avoid such harm. Legal standards and practices are needed that provide a conducive and protective environment, enabling children to participate in an atmosphere of mutual respect, trust and understanding. (See also Chapter 5.)

### Articles 12 and 6

Article 6 of the UNCRC acknowledges that every child has an inherent right to life and requires that governments create the necessary environments and opportunities to ensure, to the maximum extent possible, the survival and development of every child. The expression of views and the experience of being taken seriously is an important means of strengthening children's development. Participation leads to greater levels of competence, which in turn enhances the quality of participation.<sup>46</sup> Participation is not only a means by which children can effect change but also an opportunity for developing a sense of autonomy, independence, heightened social competence and resilience.<sup>47</sup>

However, effective participation is not guaranteed. Like adults, children need opportunities to build competence and confidence through direct experience. Such skills are neither innate nor an inevitable consequence of social maturation. They develop in accordance with experience,

with adults' assumptions of competence and the levels of responsibility afforded to the child. The development of competence takes place throughout life. Yet, in too many situations, in too many countries, adults fail to play a facilitating role in helping children make their own decisions, or extending children's competence. Rather, they impose their solutions rather than helping children come to their own conclusions.<sup>48</sup>

Education should play an important role in optimising children's development and must do so through the creation of opportunities for children to participate and exercise increasing levels of decision-making and responsibility. However, in practice, schools too often deny, rather than facilitate, opportunities for collaborative participation and the exercise of responsibility.<sup>49</sup>

General Comment No. 1 on 'The Aims of Education' makes it clear that "*education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life*". It goes on to stress that "*the participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights*".<sup>50</sup> In other words, schools should be playing a key role in building children's competence, and governments need to take action to build more participatory and democratic school environments (see page 100) in order to fulfil their obligations, not only under Article 12, but also under Article 6.

<sup>46</sup> R Rajani, *Discussion paper for partners on Promoting Strategic Adolescent Participation*, UNICEF, New York, 2000

<sup>47</sup> J M Richman and L G Bowen, 'School failure: an ecological interactional-developmental perspective' in M Fraser (ed.) *Risk and Resilience in childhood: an ecological perspective*, NASW Press, Washington, DC, 1997, pp. 95–116

<sup>48</sup> C Hallett, C Murray and S Punch, 'Young people and welfare:

negotiating pathways' in C Hallett and A Prout (eds) *Hearing the voices of children: Social policy for a new century*, RoutledgeFalmer, London, 2003

<sup>49</sup> T Hammarberg, *A school for children with rights*, UNICEF International Child Development Centre, Florence, 1997

<sup>50</sup> General Comment No. 1, 'The Aims of Education', CRC/GC/2001/1

## CIVIL RIGHTS AND FREEDOMS

The realisation of Article 12 is directly linked with other civil rights and freedoms in the UNCRC. These rights have to be understood and implemented holistically. Together, they assert the status of the child as a subject of rights, entitled to exercise these rights on his or her own behalf, in accordance with evolving capacities.

### Articles 12 and 13

The right to freedom of expression embodied in Article 13 is often confused with Article 12. However, while these two articles are strongly linked, they do elaborate different rights. Freedom of expression relates to the right to hold and express opinions, and to seek and receive information through any media. It asserts the right of the child not to be restricted by the State in the opinions she or he holds or expresses. Therefore, the obligation it imposes on the State is to refrain from interfering in the expression of those views, or in access to information, while protecting the right of access to means of communication and public dialogue.

By contrast, Article 12 relates to the expression of views specifically about matters that affect the child, and the right to be involved in decisions and actions that have an impact on his or her life. This explains why Article 12 does not allow the imposition of the restrictions on freedom of expression set out in Article 13(2). Article 12 imposes an obligation on the State to introduce active measures to enable the child to be heard and to take his or her views seriously. Freedom of expression in Article 13 requires no such engagement or response. However, creating an environment of respect for children to express their views, consistent with Article 12, also contributes towards building children's capacities to exercise their right to freedom of expression.

### Articles 12 and 14

Article 14 recognises the right of children to freedom of thought, conscience and religion. It also respects the right and responsibility of parents or, when applicable, legal guardians, to provide direction to the child in the exercise of this right, in a manner consistent with the child's evolving capacities. Taken together with Article 5, it implies that once children are competent to make a decision for themselves, they should be granted the freedom to adopt or reject whatever religion they choose. However, any direction provided by parents must be in conformity with the whole of the UNCRC, and therefore take account of Article 12, and not involve physical or emotional coercion.

### Articles 12 and 15

Article 15, the right to freedom of association and peaceful assembly, is an important vehicle for promoting the right of children to express views and pursue the implementation of their rights. Children need to be able to meet with others, form their own associations and groups in order to develop and articulate their views and create spaces where these can be communicated to others. Such opportunities for organised participation can be of particular value for children from the most marginalised communities. Governments should support and encourage children's organisations and child-led initiatives, and consider the introduction of legislation or regulations that enable and support children to form and register their own associations. However, children should not be required to join membership groups, particularly those that are linked directly or indirectly with military structures or with a specific political regime.

### Articles 12 and 16

Children are entitled to respect for privacy and confidentiality, consistent with Article 16. Compliance with this obligation is essential if children are to be able to express their views safely, without fear of retribution.

### Articles 12 and 17

Fulfilment of the child's right to information, consistent with Article 17, is a prerequisite for the realisation of the right to express views. Children need access to information in formats appropriate to their age and abilities, on all issues of concern to them. This applies to information, for example, relating to their rights, any proceedings affecting them, national legislation, regulations and policies, local services, and appeals and complaints procedures. In accordance with both Articles 17 and 42 (the obligation to make the provisions of the UNCRC widely known), governments should include children's rights in the school curricula. Access to the media is also an important means both of promoting awareness of the right of children to express their views, and of providing opportunities for that expression.<sup>51</sup> For example, one of the main Norwegian newspapers devotes one page every day to comments from children, and very often there is a reference on the front page to the most interesting comment. The media should be encouraged to include children in the development of programmes and articles, and to create opportunities for children to plan and lead media initiatives covering the topic of their rights. Governments should take action to ensure that the media are accessible and sensitive to children.<sup>52</sup>

There is growing concern globally about the exploitation and abuse of children through social networking sites, as well as unwanted and inappropriate exposure to extreme forms of online pornography.<sup>53</sup> A balance needs to be found between the need to promote opportunities for access to the Internet while also protecting children from harm. In the context of the new social media, children's own knowledge of how they use the Internet, what risks they take and how they seek to protect themselves, is a vital resource in promoting greater safety. However, in reality, it will never be possible to build a totally safe online environment. Children therefore need to be involved in discussions about how to protect themselves from harmful information and exposure to risk, and empowered to take safe and informed decisions about their online behaviour.

## EVOLVING CAPACITIES AND THE EXERCISE OF RIGHTS

### Articles 12 and 5

Articles 12 and 5 are closely linked. While Article 12 addresses the right to be heard, Article 5 implies that competent children should be able to exercise rights for themselves. It states that governments must respect the responsibilities, rights and duties of parents, legal guardians, or members of the extended family or community as provided for by local custom, to give appropriate direction and guidance to the child in her or his exercise of the rights recognised in the UNCRC. In other words, parents or other legal guardians are vested with rights and responsibilities in view of children's lack of capacity and need for protection. However, Article 5

<sup>51</sup> Day of General Discussion on the Child and the Media, 1996, [www.unhchr.ch/html/menu2/6/crc/doc/days/media.pdf](http://www.unhchr.ch/html/menu2/6/crc/doc/days/media.pdf)

<sup>52</sup> Ibid.

<sup>53</sup> G Lansdown, *Protection of children from violence, sexual abuse and exploitation in the online/offline merged environment*, UNICEF Innocenti Research Centre, Florence, 2011

also states that any direction and guidance provided must take account of the evolving capacities of the child. The more the child himself or herself knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for the child must allow the child to exercise those rights for himself or herself. This means that as children acquire capacities, so they are entitled to an increasing level of responsibility for the regulation of matters affecting them.<sup>54</sup> For example, every child, from birth, has the right to the best possible health, and access to health services. While the child is very young, parents have the right and responsibility to give consent to medical treatment and services on behalf of the child. However, as the child acquires greater levels of understanding and competence, the right to give consent should transfer from the parent to the child.

Article 5 makes no mention of age as a factor in determining levels of capacity, thereby recognising that it is the

demonstration of the requisite skills, knowledge and understanding, rather than simply reaching a given age, that should influence the exercise of rights. And of course, the experience of being enabled to express views and have them taken seriously can play a key role in building children's capacity to demonstrate that competence. However, in practice, it will be necessary to introduce some age limits; it is not possible to assess every individual child in relation to capacity in all aspects of legislation. There is a need for gradual benchmarks of increasing emancipation of children (for example, driving a car or access to certain films) and also for age limits to ensure protection from exploitation (for example, in relation to employment or marriage).<sup>55</sup> Governments are encouraged, however, to try to take account of Article 5 when introducing legislation to establish age limits relating to children's exercise of their rights.

<sup>54</sup> General Comment No. 5, 'General Measures of Implementation for the Convention on the Rights of the Child', 2003

<sup>55</sup> See G Lansdown, *The Evolving Capacities of the Child*, UNICEF Innocenti Research Centre, Florence, 2005, for a more detailed discussion of these issues.



## NEW ZEALAND – AN EXAMPLE OF LEGISLATION RESPECTING CHILDREN'S EVOLVING CAPACITIES

### Does your policy need an age limit?

The Ministry for Youth Affairs in New Zealand issued guidelines for government departments and public bodies when determining age limits in law and policy. The aim is to make certain that youth ages are used:

- effectively and consistently in the broader policy context
- without discriminating negatively or unjustifiably.

The guidelines suggest the following series of steps when formulating any age-related policy:

#### Step 1

*Is a youth age really necessary?*

- What purpose would it serve – ie, protection, empowerment, determination of entitlements or definition of responsibilities?
- Have potential alternatives been given careful consideration?

#### Step 2

*Choose the appropriate age*

- What is the desired purpose of establishing the age limit?
- Will it be in the child's best interests and, if so, how?
- Is the age limit consistent with other laws?
- How will it affect children's ability to participate in decisions that affect them and their broader participation in society?
- Is the age limit consistent with the UN Convention on the Rights of the Child?

#### Step 3

*Can you justify the youth age?*

- Does the age limit discriminate against young people? It is not acceptable to treat young people differently just because of their age.
- Does the age limit impede access to benefits or entitlements for young people?
- Will the age limit affect some groups of young people more than others and thereby indirectly discriminate?

#### Step 4

*Seek young people's contributions*

Consulting young people in the decision-making process will mean:

- better understanding of the best interests of young people
- avoiding assumptions that 'adults know best'
- increased likelihood of respect for the law by young people.

#### Step 5

*Be clear about why you have chosen a youth age*



**WHEN IMPLEMENTING ARTICLE 12, GOVERNMENTS  
NEED TO RECOGNISE THE FOLLOWING:**

- It is a fundamental right, and also a general principle.
- It must be respected in the realisation of all other rights.
- No child must be discriminated against – every child has an equal right to be heard.
- Positive discrimination may be needed to ensure participation of some children; for example, children with disabilities, children from indigenous communities.
- When deciding children’s best interests, you need to listen to children’s point of view, although this does not mean that children’s wishes must or can always be complied with.
- Participation is a way of enhancing children’s optimum development.
- Participation is linked with other civil rights – to freedom of expression, religion, conscience, and association, as well as rights to information and privacy.
- The way in which children can participate will change as they grow older.
- Children should be enabled to take increasing levels of responsibility for the exercise of their rights as their capacities evolve.

# CHAPTER FOUR

OVERARCHING MEASURES FOR IMPLEMENTING ARTICLE 12





# CHAPTER FOUR

## OVERARCHING MEASURES FOR IMPLEMENTING ARTICLE 12

1. Review and withdraw restrictive declarations and reservations to Article 12
2. Introduce legislation
3. Establish independent human rights institutions
4. Provide training on Article 12 for all relevant professionals
5. Ensure appropriate conditions for enabling children to express views
6. Combat negative attitudes

Note: Children are not a homogeneous group. Girls and boys, children of different ages, those who do not speak the majority language, children with disabilities, children living with HIV and AIDS, children living in poverty – all have an equal right to express their views and have them taken seriously. In all contexts, efforts must be made to accommodate these differences to ensure that no child is discriminated against in the exercise of this right.

It will be necessary to introduce a range of general measures across government in order to create an environment in which Article 12 can be realised for all children. In most countries, governments will need to undertake proactive measures to build a culture of respect, backed up by legal entitlements, in order to shift prevailing attitudes and practices that silence and marginalise children, and deny them any opportunity to be heard or taken seriously.

### **1 Review and withdraw restrictive declarations and reservations to Article 12**

The Committee on the Rights of the Child has consistently expressed concern about declarations and reservations that appear to challenge full recognition of the child as a subject of rights, and emphasises that States should commit themselves to reviewing and withdrawing any such limitations on the right of the child with regard to Article 12.<sup>56</sup> In its Day of General Discussion on the Right of the Child to be Heard it “urged States Parties that have made reservations on the application of articles 12, 13, 14, 15 and 17 of the CRC to consider their withdrawal”.<sup>57</sup>

### **2 Introduce legislation**

The right to be heard must be established in legislation. It cannot be allowed to rely on well-meaning individuals or institutions. It is an entitlement, not merely a matter of good practice. Governments will need to review or amend their legislation to ensure that it introduces the necessary mechanisms to provide children with the right to be heard,

access to appropriate information, adequate support where necessary, feedback on the weight given to their views and procedures for complaints, remedies and redress. Examples are provided throughout this resource book on legislative measures that governments around the world have introduced to give effect to this right:

- in all civil and criminal proceedings in which a child is involved, including the right to bring proceedings
- in matters affecting children as individuals such as in healthcare, family proceedings, adoption, education
- as a group or constituency, such as the right to establish school councils, or children’s parliaments, or to be consulted in government policies at national and local levels.

### **3 Establish independent human rights institutions**

Independent human rights institutions or children’s commissioners or ombudsmen should be established with a broad children’s rights mandate.<sup>58</sup> Such offices can play a vital role in helping populations and politicians understand the reality of children’s lives, making children more visible, providing a channel for getting children’s own views across to government and to the public, and promoting respect for children’s views throughout society. They need to work directly with children to ensure that their work is directly informed by the concerns and priorities of children themselves. In General Comment No. 2 on National

<sup>56</sup> R Hodgkin and P Newell, *Implementation Handbook on the UN Convention on the Rights of the Child*, UNICEF, New York, 2007

<sup>57</sup> Committee on the Rights of the Child, Report on the 43rd Session, September 2006, ‘The Right of the Child to be Heard’

<sup>58</sup> *National Human Rights Institutions*, Centre for Human Rights Professional Training Series No. 4, Centre for Human Rights, Geneva, 1995

Human Rights Institutions, the Committee on the Rights of the Child highlights the importance of involving children directly in the work of such institutions.<sup>59</sup>

The UN human rights system has developed principles and guidelines for national human rights institutions, known as the Paris Principles, which set out the functions which need to be included in their mandate.<sup>60</sup> Beyond these core principles, additional specific aims have been developed for commissioners or ombudsmen for children which have implications for Article 12, including:<sup>61</sup>

- to provide a channel for children's views
- to encourage the government and the public to give proper respect to children's views
- to promote structures that will enable children to exercise rights for themselves
- to collect and publish data on the recognition and enjoyment of children's human rights and/or encourage the government to collect and publish adequate data
- to promote awareness of the human rights of children among children themselves and among adults

- to conduct investigations and undertake or encourage research
- to review children's access to, and the effectiveness of, all forms of advocacy and complaints systems, for example in detention, other institutions and schools and in relation to violence within the family, and including a review of children's access to the courts
- to respond to individual problems or complaints from children or those representing children, and where appropriate to initiate or support legal action on behalf of children.

Many countries across the world now have such institutions. Governments which have not yet established the post of ombudsman or commissioner for children's rights are encouraged to do so and to ensure that it complies with the Paris Principles in respect of its competence, breadth of mandate, and independence necessary to promote and protect children's rights effectively. Information and guidance is available on the website of the European Network of Ombudspersons for Children (ENOC). Although focused on Europe, much of the material has relevance internationally.<sup>62</sup>



### INVOLVING CHILDREN IN THE WORK OF THE COMMISSIONER

The Scottish Commissioner for Children and Young People (SCCYP) has developed a strategy for involving children and young people.<sup>63</sup> To ensure that their involvement is meaningful and practical, they are divided into the following age groups:

- Reference Group, 14–21 years to support and advise SCCYP on matters of organisational development
- Consultation Groups, 5–13 years, to advise on policy, recruitment and communications, and on how to involve younger children
- Early Years Events, 0–4 years, to gather the views of very young children through play, stories and consultations with play workers, nursery nurses and parents.

In line with Article 12 (1) of the UNCRC, children's level of influence is given due weight in accordance with their age and maturity.

<sup>59</sup> General Comment No. 2, CRC/GC/2002/2, 2002, paras 16 and 17

<sup>60</sup> 'Principles relating to the Status of National Institutions': the Paris Principles, adopted by the UN General Assembly in December 1993, 48/134

<sup>61</sup> European Network of Ombudspersons for Children, Information and Training Pack, <http://www.ombudsnet.org/docs/informationandtrainingpack.pdf>

<sup>62</sup> [www.ombudsnet.org](http://www.ombudsnet.org)

<sup>63</sup> [www.sccyp.org.uk](http://www.sccyp.org.uk)



### LISTENING TO CHILDREN ACROSS EUROPE<sup>64</sup>

A recent survey of how children's rights ombudsmen and commissioners in Europe listen to children found that most of the organisations sought to discover children's opinions, some on a nationwide basis. For example, France and Scotland have organised national consultations with 2,500 and 16,000 children respectively and then advocated on the basis of the children's ideas. Others said they tried, wherever possible, to hear from children affected by particular issues; for example, Finland has sought the views of Sami and Roma children of their experiences, and Ireland has published the life stories of asylum-seeking children. A number hold children's conferences and workshops or carry out online surveys. Denmark said that its institution has established a representative panel of approximately 2,000 12-year-old children who complete online questionnaires three or four times a year, the results of which are used for campaigning.

#### 4 Provide training on Article 12 for all relevant professionals

Governments need to provide sustainable and continuing pre- and in-service training for all professionals working with and for children on the UNCRC, including Article 12, and how to implement it. Such training needs to be provided for lawyers, judges, police, social workers, community workers, psychologists, caregivers, residential and prison officers, teachers at all levels of the educational system, medical doctors, nurses and other health professionals, civil servants and public officials, asylum officers and traditional leaders. It is necessary to integrate such training into professionals' core curricula. This will mean working with:

- professional bodies, such as paediatric societies, to support them in adapting existing curricula
- civil society organisations that currently provide capacity-building programmes for professionals to incorporate children's rights into their curricula and to collaborate with governments in creating effective children's rights curricula within mainstream training

- universities and other academic and training institutions to encourage the incorporation of children's rights education and to build the capacity of teaching staff to provide training on children's rights.

In terms of content, children's rights education from the perspective of Article 12 needs to include:<sup>65</sup>

- an **overall introduction to the UN Convention on the Rights of the Child**, the rights it embodies and its significance in recognising children as active subjects of rights, entitled to participate in decisions that affect them in accordance with their age and maturity
- analysis of the implications of the UNCRC, and of Article 12 for the **practice of the individual professional**; for example, learning to listen to and respect children's views, their evolving capacities, and their right to confidentiality, to freedom of expression and conscience, to information and to their personal and physical integrity. Training also needs to address how to approach and reconcile perceived tensions between parental or adult and children's rights

<sup>64</sup> R Hodgkin and P Newell, *The role and mandate of children's ombudspersons in Europe: Safeguarding and promoting children's rights and ensuring children's views are taken seriously*, European Network of Ombudspersons for Children, Strasbourg, 2010

<sup>65</sup> See [www.cred-pro.org](http://www.cred-pro.org) for more information on strategies for developing children's rights education programmes for professionals.

- analysis of the implications of the UNCRC for **the way services for children are developed, managed and resourced**, whether these relate to, for example, education, healthcare, child protection, or juvenile justice. Training needs to highlight the importance of engaging with children to ensure that their expertise, experience and concerns are reflected in the development of services. For example, is the service equally accessible for all children, what changes are needed to remove barriers that serve to discriminate against girls, children with disabilities, poor children, children in rural communities and others? Is the service designed to promote the best interests of children? How can it be improved to ensure that it promotes the rights of children?
- An introduction to the **responsibilities of professionals to work as advocates with and for children** in the realisation of their rights. Doctors, teachers and other professionals bear witness to the impact of government policy, or lack of it, on the rights and wellbeing of children. They need to be supported to listen to children, take their experiences seriously and engage in active advocacy for change, either by supporting children to speak for themselves or by collaborating with children to focus public attention and that of the policy-makers on their concerns.

### 5 Ensure appropriate conditions for enabling children to express views

Article 12 is a right not a privilege. It is therefore necessary to create an environment in which children can express views in all areas of their lives and to ensure that this entitlement is embedded within legislation and regulations. Domestic law needs to incorporate provisions that uphold the right to participation in the informal arena of family life, in children's

school and community life, in healthcare, in institutions, and in childcare settings, as well as in all formal judicial and administrative proceedings. It will be necessary to review existing laws, regulations and administrative instructions to ensure that they fully reflect the obligations in Article 12. For example, South Africa's Children's Act introduces a general principle that *"Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration."*<sup>66</sup> (Further details of what legislation is required will be dealt with in the relevant section of the resource guide.)

Efforts should be made to review and evaluate the effectiveness of those provisions on a regular basis. This might be done by research with children to find out:

- How many children know about the right to express their views?
- What percentage of children have successfully used those provisions?
- What was the impact of expressing their views?
- What percentage of children would have liked to express views but were unaware of their right to do so?
- How should the provisions be better promoted to improve children's awareness of them?
- How should the procedures for expressing views be improved to make them more accessible and effective?
- What structures and mechanisms are in place for them to express their views?
- How safe are children when they express their views openly?

Efforts need to be made to disaggregate any such data, in particular according to age and disability.

<sup>66</sup> Section 10, Children's Act 2005, South Africa



### STILL A LONG WAY TO GO<sup>67</sup>

Recent research on the application of Article 12 in judicial proceedings indicates that it is still far from the norm for children to be heard, even in Europe where most countries do have legislation affirming the right of children to express their views in legal proceedings:

- In Denmark in 2003, only about 20% of children were heard in divorce contact cases. A study of complex divorce cases in 2004 found that only about one-quarter of children were given the opportunity to express their views. Just 52% of 7- to 11-year-olds were offered an interview as part of case processing; the main reasons given for this were social workers' heavy caseload and, remarkably, their "lack of confidence" in interviewing children.
- A survey in Iceland in 1998 found that less than one-third of children were asked to give their views to child welfare committees. A representative for the child was appointed in just 0.01% of cases.
- Research in Sweden between 1999 and 2001 showed that, although children's views were elicited much more than in the past, documentation of their views occurred in only about half the cases and there was little record of children's views affecting the outcome of decisions.



### SUGGESTED STANDARDS/INDICATORS FOR CREATING AN ENVIRONMENT FOR CHILDREN'S PARTICIPATION

#### 1 Measuring legal entitlements to participate

- Child-friendly court procedures are introduced for child victims and witnesses, eg:
  - courts are obliged to consider children's views when deciding matters affecting them
  - mechanisms for recording and using children's statements are introduced in child protection proceedings
  - legal information and education is provided for children.
- Representation for children is provided through legal aid mechanisms.
- Respect is given to children's evolving capacities, eg:
  - minimum ages of consent to treatment have been introduced
  - children are entitled to confidential medical counselling
  - children have freedom of thought, conscience and religion, in accordance with their evolving capacities.
- Children are entitled to be heard at all stages of child protection procedures.
- Children are entitled to be heard in civil judicial proceedings affecting them, including divorce, separation, and adoption.
- Children in public care are entitled to be involved in decision-making processes affecting their lives.
- All schools are required to establish democratic school councils.
- Family law includes provisions on parental obligations including the obligation to involve children in decisions affecting them.

#### 2 Measuring the right of access to information

- Education is compulsory and free for all children.
- Information is available from a wide range of sources.
- Children have access to independent information from various sources: radio, television, libraries, books, press, Internet, helplines.

*continued overleaf*

<sup>67</sup> D O'Donnell, *The Right of Children to be Heard: Children's right to have their views taken into account and to participate in legal and*

*administrative proceedings*, UNICEF Innocenti Research Centre, Florence, 2009



## **SUGGESTED STANDARDS/INDICATORS FOR CREATING AN ENVIRONMENT FOR CHILDREN'S PARTICIPATION** *continued*

- Children have the opportunity to use broadcast media to communicate their own views.
- Information is readily available in child-friendly and accessible formats that are appropriate for children of different ages and disabilities.
- Human rights education is included in the school curriculum.
- Human rights education is provided in outreach programmes for children out of school.
- Children have knowledge about their rights, and how to realise them.

### **3 Measuring awareness-raising on children's participation rights**

- Children's rights training, including a focus on participation, is introduced at pre- and in-service levels for all professionals working with and for children, including teachers, doctors, nurses, lawyers, judges, police, psychologists, social workers, prison staff, and staff working in institutions.
- Programmes of parent education on child rights are developed and made widely available.
- Policy-makers are sensitive to and aware of children's right to participation.

### **4 Measuring opportunities, mechanisms and structures to influence public decisions**

- Children are consulted on local and national government legislation, policies, services and resource allocations.
- Children provide feedback on the quality, accessibility and appropriateness of public services for children.
- Children are represented in local and national governance bodies.
- Children have the right to establish their own organisations.
- Democratic child-led organisations are supported at national and local level.
- Children have meaningful opportunities to control their own organisations.
- Children's inputs are given serious consideration in decision-making processes.
- Budget allocations take account of children's perspectives.

### **5 Measuring respect for children's participation in their daily lives**

- Children are consulted within families when decisions affecting them are being made.
- Schools provide a child-friendly, participatory learning environment.
- Children are involved in decision-making processes concerning their own healthcare, consistent with their evolving capacities.
- Children can access confidential healthcare services, including, for adolescents, reproductive healthcare.
- Confidential mechanisms (such as child helplines) are in place for children to complain and to seek redress in cases of abuse, without fear of reprisals.
- Children participate in local community actions or decision-making processes.
- Children are involved in developing indicators for child-friendly cities and communities.
- Child-friendly cities and communities are introduced.

## **6 Combat negative attitudes**

"The police shouldn't stop and harass us... they should learn to talk to us properly. If we want to ask them for information then we should have the right to do so... We are children and even we have a lot of rights." Boy rag-picker, 12 years old.<sup>68</sup>

Implementation of Article 12 will require a change in the culture and attitudes towards children in most societies. Children tend to be invisible in decisions and policy-making, even where those decisions and policies directly affect them. It is assumed that adults know best and can make informed

<sup>68</sup> C O'Kane, 'Street and Working Children's Participation in Programming for their Rights: Conflicts Arising from Diverse

Perspectives and Directions for Convergence', *Children, Youth and Environments* 13(1), Spring 2003.

and wise decisions in the absence of input from children themselves. Bringing about change in these attitudes and practices needs leadership from governments in the way they talk about children, promote respect for them and recognise them as citizens within society. This positive cultural environment can be engendered by:

- **Challenging negative views about children.** Governments should avoid using pejorative or negative stereotypes about children. Too often, children, particularly adolescents, are characterised as problems, and defined as a whole by the behaviours of a small minority. Governments should seek to reinforce positive images of children, in public speeches, in press releases, in interviews. This can be done by focusing on the strengths, abilities and achievements of children and young people, and on their contributions to society. Furthermore, governments should actively champion respect for children in the face of hostile media reporting and the activities of lobby groups seeking to influence government policy without reference to children, or indeed, of those seeking to limit the rights of children.

- **Engaging children as citizens.**

Governments' approach in policy-making should openly endorse and reinforce respect for children as citizens and active members of society capable of and entitled to civic engagement. In this way, opportunities can be made for children to be more visible, and through their engagement begin to demonstrate their capacity for participation.

- **Making the case for participation.**

Governments can play a key role in making the arguments for children's participation, highlighting the benefits this can bring at all levels of society. They should raise the matter in all public forums and with different audiences in order to convey a strong message that not only do children have a right to participate in all matters that affect them but that their active engagement brings clear and sustainable benefits.

### GOVERNMENTS PROMOTING CHILDREN'S PARTICIPATION

In **Uganda**, the government, in partnership with UNICEF, has produced a guide to children's participation aimed at people working in relevant institutions and organisations, including schools, healthcare providers, legal institutions, probation and welfare institutions, local councils, non-governmental organisations, community-based organisations, and the media. The guide provides useful information and emphasises the responsibility of all these agencies for involving children and young people in any issues that affect them. In so doing it sends a powerful message throughout society as to the importance of listening to and engaging children as actors in their own lives.<sup>69</sup>

In the **Philippines**, the government has developed a 25-year national framework for promoting children's participation. This was developed in collaboration with children themselves, and includes indicators for monitoring the implementation of the right to participate, as well as the recommendations of the children and young people involved.<sup>70</sup>

<sup>69</sup> *The National Child Participation Guide for Uganda, Creating an Environment for Children to be Heard*, Ministry of Gender, Labour and Social Development, Uganda Child Rights NGO Network and UNICEF-Uganda, 2008

<sup>70</sup> Cited in the Philippines National Framework for Child Participation, 2000–2025, Council for the Welfare of Children, National Early Childhood Care and Development Coordinating Council





### **CHANGING ADULT ATTITUDES, EXPANDING YOUNG PEOPLE'S INFLUENCE IN COLOMBIA<sup>71</sup>**

In 2006, Plan Colombia initiated a six-year project to create broader societal change through developing young people's life skills and enabling them to reduce violence and conflict in their families and communities. It also encouraged adult caregivers to view adolescents as a solution to widespread problems such as violence, rather than as a cause of the problem. Between 2006 and 2008, 3,500 adolescents, 120 teachers and 300 parents participated in orientation and training sessions to increase their understanding on issues of gender, violence, social inequality and sexuality as well as the development of young people's potential.

Using creative forms of communication, the project provided adolescents with the opportunity to express themselves in different settings and through different channels, such as through a young people's magazine called *Caja Magica* ('Magic Box'). The project included designated days to celebrate and strengthen the relationship between children and their parents, facilitating intergenerational discussions on domestic conflicts and violence and helping the children and adults to work together to develop solutions.

As a result of this work, young people were given the opportunity to contribute to the formulation and implementation of public policy issues concerning them. Boys and girls participating in the project took part in a policy-making programme called 'The Young – Potential for Development'. Three project participants have since taken part in a national working group formed to promote implementation of the government's youth policy. Another key success was the increased and improved participation of adolescents in the development of communal development plans, which form the basis of the country's regional development plan.

<sup>71</sup> Adapted from: *Children as Active Citizens: Addressing discrimination against children's engagement in civil and political processes*, Plan International, 2009



**THE GENERAL MEASURES NEEDED  
TO IMPLEMENT ARTICLE 12 ARE:**

- introduction of or amendments to legislation to ensure that the right of children to be heard is established as a matter of entitlement in all relevant aspects of their lives
- the establishment of independent human rights institutions to advocate for and to support children in getting their voices heard
- training for all professionals who work with children so that they are able to respect and protect children's rights in their day-to-day practice, in their institutions and in their advocacy on behalf of children
- establishing standards or benchmarks against which to measure the extent to which children's participation is being realised, and backing these up with research and independent evaluations
- the promotion of a positive environment by use of language, by active engagement with children themselves, and by challenging traditional attitudes which assume either that when children speak out it is disrespectful or rude, or that they have nothing useful to contribute to decisions that affect their lives.

# CHAPTER FIVE

OBLIGATIONS RELATING TO JUDICIAL AND ADMINISTRATIVE PROCEEDINGS



# CHAPTER FIVE

## **OBLIGATIONS RELATING TO JUDICIAL AND ADMINISTRATIVE PROCEEDINGS**

### **GENERAL STEPS TO BE TAKEN IN ALL PROCEEDINGS**

1. Preparation
2. The hearing
3. Assessment of the capacity of the child
4. Feedback on the weight given to the views of the child
5. Complaints, remedies and redress

### **OBLIGATIONS RELATING TO SPECIFIC PROCEEDINGS**

Divorce and separation  
Separation from parents and alternative care  
Adoption and *kafalah* of Islamic law  
The child offender  
Child victims and child witnesses  
Immigration and asylum proceedings

### GENERAL STEPS TO BE TAKEN IN ALL PROCEEDINGS

The responsibility to listen to and take seriously what children have to say needs to be understood by all those involved in judicial and administrative proceedings. These might include:

- court welfare officers
- social workers
- probation officers
- judges and magistrates
- lawyers
- mediators
- parents.

All these different actors will have a role to play either throughout or at different stages of the proceedings. Whenever a child is involved in a proceeding, the child's right to be heard should be respected at every stage. When developing the policies and regulations relating to these stages, it would be advisable to involve children who have direct experience of such proceedings. Their understanding of the challenges and barriers they themselves faced, as well as knowledge of what works, and why, would be an invaluable source of guidance. Obviously, the nature and level of children's understanding will vary considerably according to their age and maturity. For very young children, for whom the purpose and meaning of court procedures themselves would not be understood, it is not possible or appropriate to seek to involve them directly in the process.

#### I Preparation

Children are likely to feel very confused and vulnerable when facing a court hearing. Being small and young, less powerful than the adults in control, and without experience of how things work, can lead to them feeling threatened and intimidated by the process. The provision of clear and practical information about the process is an important way of allaying those fears and helping children participate effectively,

Proper preparation is essential. Children need information about their rights to participate, what will happen and how decisions are made. They cannot express their views or talk about the issues if they are not provided with appropriate information. As soon as they are in contact with the justice process, whatever the nature of those proceedings, they should be provided with the following information:

#### ■ Children's role in the proceedings

Those responsible must ensure that, consistent with their age and maturity, children know and understand:

- their rights – the specific rights the child has in the relevant proceedings, including the right to be heard, and how this will be implemented
- how the system works, including what will happen to the child, the role he or she may play in it and the different procedural steps
- what support will be available for the child in the process and any systems available to protect them during the hearing
- the appropriateness and consequences of different options in or outside the court proceeding
- any charges that are being made, or how a follow-up to a complaint will be dealt with
- any mechanisms which can be used to review decisions affecting the child
- the availability of services, such as health, psychological or social, or organisations that can provide support, and how to access them and how to access any support to pay for the services
- that they have a right either to communicate directly to the proceedings or to do so through a representative.

It is important that efforts are made to ensure that they are aware of the possible consequences of this choice. For example, if the child is heard directly, she or he will have the opportunity to respond to any questions by the judge, or other decision-maker, thus ensuring that her or his views are fully understood

- the impact those views will have on any decision that is made – for example, children should be informed from the outset that their right to be heard and to have their views taken into consideration does not imply that the subsequent decision will be grounded in all or any such views.

■ **The practical arrangements**

The child, again in accordance with age and maturity, also needs to be given full information about the practical arrangements for the hearing so that she or he knows as far as possible what to expect. For example, she or he needs to know:

- how, when and where the hearing will take place
- who the participants will be
- how long it is likely to last
- what the format of the meeting will be
- who will be present
- the availability of any protective measures
- what degree of privacy and confidentiality will apply to the child's views
- who is allowed to speak
- how his or her views will be taken into account
- when any decisions will be made and by whom
- how that will be communicated to the child.

The way in which the information is provided is also important. All information provided for children must be in a format appropriate for their age. It may be helpful to develop child-friendly information packs which address the questions children are likely to have when facing a judicial or administrative proceeding. This could be undertaken in partnership with children themselves to ensure that the pack addresses the concerns they have. However, written materials alone may not be sufficient. It is also often necessary to talk the issues through with the child directly. Providing the parents or legal guardians with the information should not be an alternative to communicating the information to a child. In many circumstances, both the child and

the parents or legal guardians should receive the information.

**2 The hearing**

Children often face difficulties in pursuing breaches of their rights and gaining access to justice. There are two key issues to address – ensuring the **legal** right of the child to be heard, and ensuring an **environment** where the child feels sufficiently confident to talk. Children cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for their age.

■ **Ensuring the legal right to be heard requires that:**

- any child who has sufficient understanding has access to the court
- efforts are made to eliminate barriers for the child, such as: the cost of the proceedings; the lack of legal counsel; travel costs and protection to enable them to travel to, and if necessary find lodgings in the town where the hearing will take place; protection from reprisals where they are reporting a case of abuse of rights violation to the authorities
- free legal aid, of high quality, is provided
- lawyers represent the views of the child and ensure that their opinions, when they are old enough to express them, are brought before the court. Appointing a person to represent the child's best interests does not, of itself, fulfil the obligation to ensure that the child has an opportunity to make their views known. Professional opinion as to the best interests of the child may conflict with the child's own views. In such circumstances, governments must also ensure that the child's views are also heard and given due weight
- judges respect the right of all children to be heard and provide them with all necessary information on how use this right to effectively
- children's views are taken seriously
- a child is never forced to give their opinion.



### AN EXAMPLE OF INFORMATION PROVIDED TO CHILDREN THROUGH A WEBSITE<sup>72</sup>

The Child and Youth Advocate for the Province of Alberta in Canada has developed a website providing children and young people with comprehensive information about what happens in all family court procedures they are likely to be involved in. The following is just one example of the information included on the website:

#### **Custody Agreement with Youth**

Youth who are 16 years of age or older, who cannot live safely at home and who are living independently from the parent could sign a voluntary agreement, called a custody agreement, with a caseworker. The youth and the caseworker will develop a plan that includes where the youth will live and what financial support will be provided.

If you are 16 years of age or older and you have signed a custody agreement to receive services, you can expect to:

- Take part in case planning and have a copy of the plan so you know what responsibilities you and other people have;
- Have your viewpoints and interests listened to;
- Have your cultural, social and religious heritage respected;
- Have your unique cultural, social and religious heritage respected, if you are Aboriginal;
- Talk to your caseworker about information on your file. Your caseworker will know what information can be shared. For more information about confidentiality, go to “*What is Private*”;
- Have ongoing contact with important people in your life, like your brothers and sisters, unless there are reasons why this contact could be harmful to you. Questions? Speak up – ask your caseworker;
- Contact the Office of the Child and Youth Advocate, if you feel no one is listening to you. **With your permission**, the Advocate could also involve someone from your family or community to help you represent your rights, interests and viewpoints; and have decisions about you reviewed by:
  - Mediation or some other way of resolving conflict;
  - An administrative review;
  - The Appeal Panel

#### **Other questions?**

- Don’t hesitate to ask your caseworker about visits, a spending allowance, education, graduation, health care, recreation, clothing or anything else. If you don’t understand what is going on or what decisions are being made about you – speak up!
- Tell an adult you trust if you are having a problem, especially if you are being abused or mistreated. Tell someone if you feel that your cultural values are not being respected.
- If you have any questions about what you can expect while you are receiving services under a custody agreement, ask your caseworker, your caregiver or the Child and Youth Advocate.
- Remember, there are people who can help you!

<sup>72</sup> [http://advocate.gov.ab.ca/home/OCYA\\_Youth\\_home.cfm](http://advocate.gov.ab.ca/home/OCYA_Youth_home.cfm)

■ **Creating a child-rights-friendly environment requires that:**<sup>73</sup>

- in all proceedings, children are treated with respect for their age, their special needs, their competence and level of understanding
- children are familiarised with the layout of the court and the court actors – it may be helpful to enable the child to visit the court in advance of the hearing to get a sense of what it looks like
- courts are made less intimidating, for example, by judges wearing less formal clothing, by enabling the child to see what is going on, and by the introduction of more informal seating
- language appropriate to the child's age and level of understanding is used, in order to make them feel at ease
- all court decisions are explained as well as the underlying reasons for them, so that the child understands why the decision has been made and what the implications are or will be
- when children are heard or interviewed in judicial and non-judicial proceedings, judges and other professionals interact with them with sensitivity, avoiding unnecessary interviews or intimidation
- children are allowed to be accompanied by their parents or, where appropriate, an adult of their choice, unless doing so would not be in the child's best interests
- interview mechanisms such as video or audio-recording or pre-trial hearings in camera are used whenever possible; but where the child must be in court, sight screens are arranged to protect the child where appropriate
- children are protected from any images or information that could be harmful to their welfare. In deciding on disclosure of possibly harmful information to the child, the judge should seek the advice of other professionals, such as psychologists and social workers
- court sessions involving children are adapted to the child's pace and attention span, with regular breaks and hearings that do not last too long
- disruption and distractions in between court sessions are kept to a minimum
- as far as possible, interviewing and waiting rooms are arranged for children in separate facilities
- confidentiality is ensured for the child.



**NORWEGIAN CHILD ACT. SECTION 31**<sup>74</sup>

As and when the child becomes able to form his or her own point of view on matters that concern it, the parents shall listen to the child's opinion before making a decision on the child's personal situation. Attention shall be paid to the opinion of the child, depending on the age and maturity of the child. The same applies to other persons with whom the child lives or who are involved with the child.

When the child reaches the age of seven, he or she shall be allowed to voice his or her views before any decisions are made about the child's personal situation, including which parent he or she is to live with. When the child reaches the age of 12, the child's opinion shall carry significant weight.

<sup>73</sup> See also General Comment No. 10, 'Children's Rights in Juvenile Justice', CRC/C/GC/10, Feb 2007

<sup>74</sup> Act No. 7 of 8 April 1981 relating to Children and Parents (The Children Act), Ministry of Children and Equality, Last amended spring 2010



**3 Assessment of the capacity of the child**

A child should not be excluded from a hearing solely on the basis of age. The courts should begin with a presumption of

capacity. Only where the court has genuine concerns, based on evidence that the child lacks capacity, should a child be denied the right to express his or her views.

**PSYCHOLOGICAL RESEARCH ON CHILD WITNESSES<sup>75</sup>**

There has been significant psychological research about the memory, suggestibility and communication capacity of children. It establishes that while children can be reliable witnesses, children's memories are less well developed than those of adults.<sup>76</sup> Children are more suggestible than adults and have greater difficulty in communicating what they know. There is no research, however, that compares the honesty of children and adults.

As children become older, their memory improves. Even children as young as four years can provide accurate information about what happened to them one or even two years earlier.<sup>77</sup> Interestingly, although older children and adults can give more information than younger children can about past events that happened to them, older children are more likely than younger children to provide inaccurate information about past events. Research also reveals that children are more likely to consistently recall information about the core elements of an experience than about peripheral elements, and thus inconsistencies about incidental details (such as descriptions of clothing or setting) in their stories may not be an important marker as to the accuracy of their testimony.<sup>78</sup>

A major concern regarding child witnesses is their potential suggestibility. As a result of repeated or misleading questions, the memory of a witness may become distorted. It is possible for a person who has been subjected to repeated, suggestive questioning to develop 'memories' of events that did not in fact occur. While children, especially young children, are more suggestible than adults, there is great variation between individuals of the same age in suggestibility and in resistance to suggestion. There is a large body of experimental research about the suggestibility of children, as well as some research about the suggestibility of adults.<sup>79</sup>

The way in which children are questioned can also greatly affect what they are able to communicate. Research studies reveal that children and adults generally provide more information in response to specific questions rather than to the open-ended questions that are typically posed during direct examinations of witnesses.<sup>80</sup> Children, especially young children, may lack the cognitive capacity to provide meaningful and consistent answers to questions that involve frequency of events, time or size, or that require explanation of motive ('why' questions), though if asked they will usually try to answer. In addition, 'yes or no' questions are problematic because children, especially young children, may have a bias towards producing 'yes' answers, and when asked such questions by unfamiliar adults, young children will rarely respond with 'I don't know'.<sup>81</sup>

<sup>75</sup> N Bala, K Ramakrishnan, R Lindsay and K Lee, 'Judicial Assessment of the Credibility of Child Witnesses', *Alberta Law Review* (2005) 42 Alta. L. Rev. 995 - 1017

<sup>76</sup> M Bruck, S J Ceci and H Hembrooke, 'Reliability and Credibility of Young Children's Reports from Research to Policy and Practice', *American Psychologist*, 53:2, 136, 1998

<sup>77</sup> See, eg, Carole Peterson, 'Children's Long-term Memory for Autobiographical Events', *Developmental Review*, 22, 2002, p. 370.

<sup>78</sup> Carole Peterson, Lisa Moores and Gina White, 'Recounting the Same Events Again and Again: Children's consistency across multiple interviews', *Applied Cognitive Psychology*, 15, 2001, p. 353

<sup>79</sup> For reviews see, eg, Bruck, Ceci and Hembrooke (note 76 above), p. 144; Thomas D Lyon, 'Applying Suggestibility Research

to the Real World: The case of repeated questions', *Law and Contemporary Problems*, 65, 2002, p. 97

<sup>80</sup> Karen J Saywitz et al., 'Children's Memory of a Physical Examination Involving Genital Touch: Implications for reports of child sexual abuse', *Journal of Consulting and Clinical Psychology* 59, 1991, p. 682; Karen J Saywitz and Thomas D Lyon, 'Coming to Grips with Children's Suggestibility' in Mitchell Eisen, Gail S Goodman and Jodi A Quas (eds) *Memory and Suggestibility in the Forensic Interview*, Erlbaum, Hillsdale, NJ, 2001, p. 85

<sup>81</sup> Carole Peterson and Melody Grant, 'Forced-choice: Are Forensic Interviewers Asking the Right Questions?', *Canadian Journal of Behavioural Science*, 33, 2001, p. 118

There are two stages in determining the capacity of the child:

■ **Does the child have the capacity to form a view?**

Wherever the child is capable of forming a view, and wishes to do so, consideration should be given to enabling the child to express their views to the court. And as pointed out earlier, the Committee on the Rights of the Child stresses that very young children are capable of forming a view on matters affecting them. If the court is making a decision affecting a child, it is always important to make sure that it is as fully informed of the child's perspectives as possible, including the views of very young children. For example, where a decision concerning the placement of a child is being made, it is imperative that the court is aware of what the child feels about the proposal. In cases where a young child has been abused, she or he will have memories and views about what happened, and her or his evidence will be vital to the court, and to the pursuit of justice. Therefore, every effort should be made in all cases to ensure that the child has the opportunity to express their views to the court.

■ **What weight should be attached to the child's views?**

The court is obliged to give due weight in accordance with the age and maturity of the child. In other words, if the child is competent to understand the implications of their views, then these should be a significant factor in settling an issue or

making a judgment. It will be necessary to develop standards for assessing the capacity of the child. One model which has been adopted in respect of health decisions, but can be applied with equal relevance to judicial proceedings, identifies four standards for assessing capacity:<sup>82</sup>

- **Ability to understand and communicate relevant information** – The child needs to be able to understand the alternatives available, express a preference, articulate concerns and ask relevant questions.
- **Ability to think and choose with some degree of independence** – The child needs to be able to exercise a choice without coercion or manipulation and to think through the issues for him or herself.
- **Ability to assess the potential for benefit, risk and harm** – The child must be able to understand the consequences of different courses of action, how they will affect him or her, the risks involved and the short- and long-term implications.
- **Achievement of a fairly stable set of values** – The child needs to have some value base from which to make a decision.

It is important in applying these tests not to impose a higher requirement of competence than would be applied to adults, many of whom may struggle to meet these thresholds.

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<sup>82</sup> C Harrison et al., *Bio-ethics for clinicians: Involving children in medical decisions*, Canadian Medical Association, Ottawa, 1997



### WHAT IS MEANT BY 'COMPETENCE'?

In the context of the criminal justice system in the United States, competence is defined as “sufficient ability to consult with his attorney with a reasonable degree of rational understanding as well as factual understanding of the proceedings against him”.<sup>83</sup> Additional abilities have become accepted as part of the criteria, including ability to understand the charges, current legal situation, relevant facts, legal issues and procedures, the role of court personnel and potential legal defences, and the ability to relate to the defence lawyer, explain pertinent facts, tolerate the stress of the trial and behave appropriately in court.<sup>84</sup>

#### 4 Feedback on the weight given to the views of the child

Children are entitled to know what decision has been made about them, and to be informed about how her or his views were considered. This feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously. Feedback may be given by the judge or by the child's lawyer where they have one. The explanation of any decision or judgment should be given to the child in a language adapted to the child's level of understanding and should give the necessary information on possible measures that could be taken, such as appeal or complaint mechanisms.

#### 5 Complaints, remedies and redress

*“We fear headteachers more than the army, police or parents. We want a free phone line to report what we see.”* Child in Rwanda<sup>85</sup>

Children are entitled to have access to appeal or complaints procedures when their right to have their views heard and given due weight is disregarded and violated. As the Committee on the Rights of the Child has made clear: *“For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the CRC and consistently referred to in the other six major international human*

*rights treaties.”*<sup>86</sup> It is therefore important to introduce legislation that makes this right explicit, and provides children with safe, accessible and speedy routes through which to make complaints. The procedures for applying to courts and using complaints procedures should be accessible, child-friendly and widely publicised. Measures should also be put in place to enable children to seek redress under international law using regional and international human rights mechanisms and courts. National bodies should exist to which children can complain about breach of their rights under the UNCRC. An Optional Protocol to the UNCRC has been adopted by the UN Human Rights Council which establishes an international communications procedure for children to be able to allege violation of their rights. Once it enters into force, and in those countries which ratify it, children should be informed about how to use this procedure, when all other avenues of complaint have been exhausted.<sup>87</sup>

In some jurisdictions, there is legislation that provides for the nullification of any decision made by the court if a child has not been properly consulted. Such legislation can be a powerful means of holding the courts accountable to the child.

<sup>83</sup> US Supreme Court, *Dusky v United States*, 362 US 402, 1960

<sup>84</sup> R Redding, *Adjudicative competence in juveniles: Legal and clinical issues*, Juvenile Forensic Evaluation Resource Center, University of Virginia, Charlottesville, 2000; and also G B Melton et al., *Psychological evaluations for the court*, Guilford, New York, 1997

<sup>85</sup> K Pells, 'No-one ever listens to us: Challenging Obstacles to the Participation of Children and Young People in Rwanda' in

B Percy-Smith and N Thomas (eds) *A Handbook of Children and Young People's Participation*, Routledge, London, 2010

<sup>86</sup> See the Committee's General Comment No. 5, 'General Measures of Implementation for the Convention on the Rights of the Child', 2003, para. 24.

<sup>87</sup> [http://www.crin.org/law/crc\\_complaints/](http://www.crin.org/law/crc_complaints/)



### NICARAGUA ENSURES CHILDREN'S VIEWS ARE HEARD

The right to participate in legal proceedings is not only required in the law, but failure to consult children and to respect Article 12.2 of the UNCRC will lead to the nullification of all of the court proceedings. (Nicaragua Children's Code, Article 17)

Access to complaints mechanisms will need to include:

- **Access to the courts.** There should be no lower age limit precluding children's access to the courts to seek redress, although the child's competence to understand the implications of the proceedings will have to be determined. States should consider setting up a procedure whereby proceedings can be initiated on behalf of a child, where the child lacks the capacity to do so for her or himself, just as there are mechanisms or procedures in many States for appropriate representation of people with severe learning difficulties and of elderly people who lack capacity.
- **Access to independent complaints procedures.** Children need access to independent complaints procedures which provide remedies for rights violations in all aspects of their lives, including in alternative care, schools and all other institutions. Complaints procedures must provide robust mechanisms to ensure that children are confident that using them will not expose them to risk of violence or punishment. Again, age should not be an impediment for a child to access complaints mechanisms. Wherever possible, children should have access to independent advocacy to help them use the procedures effectively. The powers of the procedure should be clearly explained to the child, and also the possibility of ultimate appeal to the courts if they are dissatisfied with the result of a complaint.

Children will need help in exercising their right to make a complaint when their rights are violated or when they wish to challenge a decision of a court or other proceeding. Help should be provided to children in all settings:

- In institutions such as schools, daycare centres, children's homes, hospitals or penal institutions, children should be able to contact an ombudsman or a person in a comparable role, in order to voice their complaints. Children should know who these persons are and how to get access to them.
- In family conflicts, a child should be able to turn to a person in the community. This might be a social worker or community development worker. Governments should also consider the provision of access to confidential counselling and advice services.
- In courts, free legal representation should be made available to children to facilitate initiation of these procedures.



## AN EXAMPLE OF A SOCIAL SERVICES STATUTORY COMPLAINTS PROCEDURE

The following complaints procedure has been established in the United Kingdom to enable children in local authority care to make a complaint; for example, if they are unhappy about a service they have received, a decision made concerning their life, the way they were involved in a decision, or an experience of abuse by a member of staff:

*There are three stages to the procedure. However, you may not have to go through all of these. It will depend on how satisfied you are with our response at the end of each stage.*

### Stage 1 – Resolution

You can make your complaint:

- Over the telephone
- In writing
- In person, to the member of staff you know best
- By email using the online form

We want you to tell us what you are unhappy about and what you would like the service to do to put it right. An advocate can be provided to assist you if need help with your complaint. However, we may not be able to investigate an issue that happened more than 12 months ago. Once we have received your complaint, you will be sent an acknowledgement letter within two working days. The letter will tell you who will be looking into your complaint and how long you can expect to wait for a response. Most complaints are resolved at this stage. After our investigations are complete, you will receive a letter explaining the outcome within 20 working days.

### Stage 2 – Investigation

At the end of Stage 1 if you are not satisfied with the outcome you can choose to have your complaint investigated further. The Social Care Complaints Manager will contact you directly to discuss the detail. However, it may be more appropriate to ask the officer who has investigated your complaint at Stage 1 to look again at the issues you remain unhappy with. This may be all that is needed to resolve the complaint to your satisfaction. If it is decided that a Stage 2 Investigation is necessary, an investigating officer independent of the service complained about is then appointed. An external independent person is also necessary to shadow the investigation to ensure that the process is fair and thorough.

So we can be sure of what we are to investigate, you will be asked to sign a definition of complaint. This will consist of the issues you remain unhappy with after Stage 1 and your desired outcome (what you want the service to do to put things right). Once we are clear on your definition and outcome, the investigation can start and you will receive a letter telling you when your complaint has been registered. The investigation will then commence. The investigating officer and independent person will contact you to arrange a meeting to discuss your complaint and how they plan to investigate it. Once a draft report is ready, you may be asked to comment on what has been found. If you wish to ask for any changes to this report, please discuss this with the investigating officer.

After the investigation is complete, a senior manager responsible for the service complained about will adjudicate on your complaint. You should receive a letter within 25 working days (in complex situations, this could take up to 65 working days), confirming:

- What was found;
- What the service has decided to do about it;
- Why the decisions were reached;
- What to do should you remain unhappy.

You will be kept informed of any delays.



## **AN EXAMPLE OF A SOCIAL SERVICES STATUTORY COMPLAINTS PROCEDURE** *continued*

### **Stage 3 – Review Panel**

When you receive the written outcome of Stage 2, you will also be sent details of how to ask for the complaint to be heard by a Review Panel. If you wish the Review Panel to consider your complaint, you must apply within 20 working days of receiving the written outcome to Stage 2. A Review Panel is made up of three panel members independent of the Local Authority who will consider your complaint and advise the Local Authority on what they could do to put things right. A separate leaflet is available on the Review Panel Process. Once you have received your final outcome from the Chief Executive, it will include information about what you must do if you remain unhappy.

### **Are there any other ways to complain?**

Yes. You can contact: Your local Councillor; A Solicitor; Your MP; The Local Government Ombudsman.



## A CONFIDENTIAL COMPLAINTS MECHANISM RUN BY CHILDREN IN INDIA<sup>88</sup>

### **Makkala Panchayats**

The concept of *Makkala Panchayat* (children's *panchayat* or village council) was conceived as a village-centred programme to address the problems faced by children, in collaboration with the local government and children themselves. It empowers children to participate at the local level through an electorate consisting of all working children (6–18 years old) in the village, with representation for all children including school-going children. Each *Makkala Panchayat* consists of a president, vice-president and members (12–18 years old), and all the children of the village (aged 0–18) are registered in it. Each *Makkala Panchayat* has a *Makkala Mitra* or adult children's friend who is selected by the children themselves on the basis of their sensitivity to children's needs and, most importantly, their readiness to help and guide them in times of crisis and need.

### **Makkala Anche Pettige (Children's Post Box)**

This is a facility for children to write about physical, mental or educational problems that they face but cannot express to the *Makkala Mitra* directly. Children can also write about their experiences to other children, or use the Post Box to share their skills with others.

#### **Why Makkala Anche Pettige?**

- To find solutions to personal problems that cannot be shared in public
- To write about issues and put them in the box
- To write stories, poems and put in the box
- To find solutions to educational and other problems faced by children.

#### **Where should the Post Box be placed?**

- It should be placed in each Ward where it can be accessed by all children
- Children should decide on the actual location of the Post Box
- The elected members of the respective Ward are responsible for the operation of the Post Box
- It should be opened every week.

#### **Who will open the Post Box?**

- *Makkala Mitra* should open the Post Box
- *Makkala Mitra* should keep the names in the letters confidential
- Children can also give a letter directly to the *Makkala Mitra*.

<sup>88</sup> Adapted from: The Concerned for Working Children, *The Makkala Panchayat Protocol*, India, 2004



### **STEPS TO BE TAKEN IN ALL JUDICIAL AND ADMINISTRATIVE PROCEEDING INCLUDE:**

- preparing children by providing them with accessible information about:
  - their role in the hearing, including their rights at each stage, the support they can be given, how they can participate, and how their views will be considered
  - the practical arrangements such as when the hearing will take place, and where, how long it will last, who will be there, what protection he or she will be provided with, and when and how decisions will be made
- ensuring that the child can be heard effectively in the hearing by the introduction of legal rights which are properly implemented, and creating child-friendly, safe and accessible courts
- assessment of the capacity of the child by consideration of whether the child is able to form a view of the issues being addressed and, if so, what weight must be attached to those views. There should be a presumption in favour of the child's capacity
- feedback to the child so that she or he knows exactly what decisions have been made and why
- mechanisms for the child to make a complaint, or seek a remedy or redress if her or his right to be heard has not been properly implemented.



## OBLIGATIONS RELATING TO SPECIFIC PROCEEDINGS

The following section sets out the specific obligations on governments to ensure that children are able to express their views in different judicial and administrative

proceedings and to have those views given due weight.

### Divorce and separation

Children's views are often disregarded when the courts are determining where a child should live, and the nature of any



### UK RESEARCH INTO CHILDREN'S VIEWS OF THE COURTS<sup>89</sup>

Research in the UK into children's experiences when their parents are separating or divorcing found that:

- Most of the children liked the idea of someone appointed by the court to help them have their say in the proceedings. Indeed, some children would have liked to go to court and tell the judge directly.
- Some children were clearly ignorant, confused and made anxious knowing that their parents were going to court to contest residence or contact. They wanted to go to court but were intimidated by the thought of doing this.
- Almost all of the children were confused at one stage or another as to who was involved in their case, and what court proceedings entailed. This included the 'guardian' who was appointed to represent their views.
- Where the children did understand (or thought they did) that the guardian's role was to 'represent' them, they thought that this must mean that their views would be accurately reported to the court. If this did not appear to be what happened, they were particularly annoyed and upset. They also resented what they saw as breach of confidentiality when the guardian passed on information they had thought would be kept secret.
- Where the children had established effective, supportive relationships with their guardian and/or solicitors, they reported having been made more confident, in terms of being able to get their views over to the court, but also of being treated with respect, and in the case of teenagers, of being regarded as young people capable of having their own independent opinion.

#### Implications

- **The importance of reliable information.** Children often do not know how to ask for information that would help them understand what is happening. Lack of information leads to anxiety and confusion. It is not enough to distribute leaflets to parents to encourage them to keep their children informed, or to give children themselves leaflets (however well designed) explaining the nature of family court proceedings. Children caught up in these disputes need a much more sophisticated and personal source of support and information, ideally right from when the case has been put down for a first hearing.
- **Meeting children's support needs.** Children need emotional comfort and support throughout the litigation process. Without it they are more likely to be 'lost', withdrawn, depressed, intimidated or angered by their contact with the family justice system.
- **Giving the child a voice in court.** Children need a person to help them have a say in proceedings who is independent of their parents, and who they trust and who can explain what is happening throughout the process.
- **Making courts child-friendly.** Children want courts to be more child-friendly and to work in such a way that they could, if they so wished, put their view directly to the judge, or at least meet the person who was making important decisions about them.

<sup>89</sup> Gillian Douglas, *Representing Children in Private Law Proceedings: Hearing the children and clarifying the role*, [www.uea.ac.uk/swk/iccd2006/Presentations/wed\\_am/Douglas](http://www.uea.ac.uk/swk/iccd2006/Presentations/wed_am/Douglas)

access arrangements, following divorce or separation. Parents may feel that by keeping things from children they are protecting them. They may find it difficult to share with their children the difficulties they are facing within their marriage. However, the evidence from children indicates clearly that they are almost always more aware of the difficulties than their parents give them credit for, and it is the uncertainty and fear of decisions being made without their involvement which is the cause of most distress. Not only will involving them reduce these anxieties, it will also ensure that any decisions that are made take into account their wishes and feelings. Parents are frequently too preoccupied with their own pain and distress when a marriage fails, to take adequate account of the concerns of the child. And children will often be reluctant to express their views to parents when they are concerned that this might exacerbate the conflict between their mother and father. Therefore the opportunity for children to be able to articulate their concerns to a third party is extremely important. Article 12 does require that children's views concerning their future family life are solicited and given due weight in accordance with the children's age and maturity. However, children should never be forced to express a view when they do not wish to do so. And they should never be expected to choose between parents.

In order to ensure that the right to be heard is established as a matter of entitlement for every child capable of forming a view, it is necessary to consider the introduction of the following legislation, regulations and practice:

- When courts are making orders affecting children, they must always find out whether the child's views have been sought and addressed. It must not be left to the individual judgement of the courts. This can be achieved in a number of ways:
  - The courts can require that parents seek their children's views and report to the courts on both what the children want and how their views have been accommodated.
  - The court can appoint a 'guardian' or advocate to speak with the child, ascertain their views and report these to the court.
  - The court can hear from the child directly. Where the child is of sufficient age and understanding, the judge should invite the child for a hearing in private to give them the opportunity to express their views about any proposals made for their future and what they would like to happen. It is then up to the child to choose whether or not to use that invitation.
- Further consideration could be given to the introduction of a provision whereby decisions will be rendered invalid unless appropriate measures to ascertain the child's views have been undertaken. This will place an active obligation on the courts to ensure that they have made all the efforts necessary to hear what children have to say.
- Children should be afforded the right to challenge any arrangements that have been made on their behalf, either at the time of their making or subsequently. As children grow older and their circumstances and life styles change, arrangements made at the time of a divorce may cease to be appropriate. It is important for children to have the opportunity for any arrangement to be reviewed and adapted to take account of any changes in their situation. This right should apply both to decisions made by the court and to informal arrangements made by the parents.
- In either of these circumstances, the child should be given the opportunity to express views to the court, either directly or through a representative. The role of the representative should be made clear to the child so that they understand exactly what help and support they are entitled to, what will happen during the proceedings, how they can communicate

their views to the courts and what degree of confidentiality they will be afforded.

- Children should be entitled to information on their rights to express their views in these circumstances, and how to realise those rights. Civil codes should set out the obligations of the courts to provide information to children.

### Separation from parents and alternative care

Many children have to live apart from their parents, temporarily or permanently, either because their parents are unable to look after them or because they have faced or are at risk of violence, neglect or abuse within their families. When decisions



## RESPECTING CHILDREN'S VIEWS WHEN PARENTS DIVORCE

### Bosnia and Herzegovina<sup>90</sup>

The Constitution of Bosnia and Herzegovina and the Entity Constitutions guarantee freedom of opinion and expression for every child, as well as for all citizens. This principle is particularly applied in the case of parental divorce: the opinion of the child is respected concerning which parent the child wants to live with if he or she is capable of expressing this wish. The wish of a minor is also respected concerning recognition of paternity when the minor reaches the age of 16.

### Andorra<sup>91</sup>

In the event of annulment of marriage, separation or divorce, the judge must, wherever possible, seek the opinion of the minor child, when taking measures relating to his or her education and to custody. Similarly, in case of adoption, the judge must hear the opinion of the minor, this being mandatory from the age of 10 and optional before that age. Once the minor attains the age of 12, his or her consent is necessary for agreement to adoption.



## WHAT CHILDREN WANT WHEN PARENTS DIVORCE – A CHILDREN'S BILL OF RIGHTS<sup>92</sup>

The following suggestions highlight some of the views expressed by children who have been through their parents' divorce:

- Recognise that we love and need both parents.
- Don't turn us into messengers. Mum and Dad should talk to each other directly.
- Don't say bad things about our other parent.
- Don't grill us about what is going on at our other parent's home.
- Don't ask us to take sides.
- Don't make us feel like we're being disloyal to you if we enjoy being with our other parent.
- If you have something angry to say to our other parent, don't say it around us.
- Don't purposely forget important clothing or gear when we are going to our other parent's place.

<sup>90</sup> Committee on the Rights of the Child, States Party Report, Bosnia and Herzegovina, CRC/C/11/Add.28

<sup>91</sup> Committee on the Rights of the Child, States Party Report, Andorra, CRC/C/61/Add.3

<sup>92</sup> <http://www.divorcecentral.com/parent/kidbill.html>

are made about alternative placements for children, either through the courts or informally by welfare agencies, children also have the right to be heard, and the views given weight in those decisions. Article 9(2) requires that in any proceedings to consider separation of a child from his or her parents, “*all interested parties*” must be given an opportunity to participate. Clearly, the child is an interested party, and all children capable of forming a view must therefore have the opportunity to express those views. This means that measures must be introduced to ensure that:

- children are able to give their views throughout the process of assessment, separation and placement
- when care plans are being drawn up, children have the opportunity to be present at any discussions or meetings
- in any court proceedings affecting them, they are made party to the proceedings and have access to representation where required<sup>93</sup>
- where the court appoints a guardian to advise the courts on the best interests of the child, the child is also entitled to separate representation to ensure that their views are also presented to the court
- consideration is also given to mechanisms such as alternative dispute resolution in which respect for the child's right to be heard is assured.<sup>94</sup>

### THROUGH THE EYES OF YOUNG PEOPLE<sup>95</sup>

Research in British Columbia, Canada, with children and young people, solicitors, judges and service providers led to the following recommendations for improving the family court processes – including support for young people's meaningful participation in decisions affecting them.

#### 1. Changes in attitudes and approaches so adults in the Family Justice System can better support young people and their participation, including:

- Approaching young people with trust, respect and understanding;
- Building a common framework for professionals who work in the system so they can work together better to support young people;
- Education and training for decision-makers and those supporting young people so they are better informed about young people's rights and what works best for young people;
- Practice standards, screening and certification to ensure that those people who work with young people are doing a good job for them and their families;
- Monitoring and evaluation of the system to ensure that it is doing a good job in supporting young people and their families.

#### 2. Improved support to young people directly, including:

- Information for young people in a way they understand;
- One caring adult to support each young person and their participation in the family court system.

#### 3. Improvements in the system to support young people's participation, including:

- Legislative and procedural rule changes: a presumption that all young people will participate in decisions affecting them;
- A dedicated, integrated, less adversarial family justice system;
- A process that focuses on the young people affected by decisions, and helps family disputes end more quickly;
- An array of options to support the meaningful participation of young people;
- An advocacy role for the British Columbia Representative for Children and Youth.

<sup>93</sup> Day of General Discussion, 'Children without Parental Care', 2006, CRC/C/153

<sup>94</sup> Ibid.

<sup>95</sup> *Through the eyes of young people: Meaningful participation in British Columbia family court processes*, IICRD/Law Society of BC, 2006, [www.iicrd.org/familycourt](http://www.iicrd.org/familycourt)

**Adoption and *kafalah* of Islamic law**

Article 21(a) states that in any adoption proceedings or *kafalah* of Islamic law, “persons concerned” must have given their informed consent. The child is clearly a concerned person. The Committee on the Rights of the Child notes that a number of countries have introduced an age limit, above which the child is required to give formal consent to an adoption, or decisions relating to custody and access. However, wherever possible, it is important to introduce the necessary mechanisms to ensure that no child capable of forming a view is adopted against their express wishes, at whatever age, and to ensure that no age limit applies to the right to express a view in these proceedings. The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption requires that, in adoptions, the child must be provided with appropriate information and counselling, and give consent to the adoption where this is required. Any consent must be given freely, without inducements.

**The child offender**

Thousands of children get caught up every day in criminal justice systems which fail to create opportunities for them to defend themselves effectively or to gain access to justice. The system, too often, is intimidating, alienating, hostile, and designed for adults. Much of the change needed lies beyond the scope of this handbook, and is dealt with in the General Comment on Juvenile Justice.<sup>96</sup> But one of the main barriers is that there are no mechanisms which ensure that children can be heard properly. All the general provisions relating to the preparation and the hearing, detailed on pages 51–62, apply equally to children in criminal justice proceedings, but some specific additional measures are needed to ensure that the right of children to be heard is fully recognised in criminal proceedings.

- Any child who is alleged to have, accused of having, or recognised as having infringed penal law has the right to be heard during



### EXAMPLES OF LEGISLATION TO GIVE CHILDREN THE RIGHT TO CONSENT TO ADOPTION

#### Section 233, Children’s Act 2005, South Africa

- (1) A child may be adopted only if consent for the adoption has been given by –
- each parent of the child, regardless of whether the parents are married or not: provided that, if the parent is a child, that parent is assisted by his or her guardian;
  - any other person who holds guardianship in respect of the child; and
  - the child, if the child is –
    - 10 years of age or older; or
    - under the age of 10 years, but is of an age, maturity and stage of development to understand the implications of such consent.

#### Section 137(6) Child and Family Services Act R.S.O 1990, Ontario, Canada “Consent of person to be adopted”

An order for the adoption of a person who is seven years of age or more shall not be made without the person’s written consent.

<sup>96</sup> General Comment No. 10, ‘Children’s Rights in Juvenile Justice’, CRC/C/GC/10, February 2007



### A JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS<sup>97</sup>

On 12 February 1993, T and V, when they were 10 years old, had played truant from school and abducted a two-year-old boy, James Bulger, from a shopping precinct, taken him on a journey of over two miles and then battered him to death and left him on a railway line to be run over. The proceedings which followed against the two offenders gave rise to a judgment of the European Court of Human Rights which was publicly much debated.

In respect of the right to a fair trial enshrined in Article 6 of the European Convention of Human Rights, the Court clearly stated that *“in respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition”*. The Court also noted that, although the applicant's legal representatives were seated ... *“within whispering distance”*, it is highly unlikely that the applicant would have felt sufficiently uninhibited, in the tense courtroom and under public scrutiny, to have consulted with them during the trial or that, indeed, given his immaturity and his disturbed emotional state, he would have been capable outside the courtroom of cooperating with his lawyers and giving them information for the purposes of his defence. The Court found accordingly a violation of Article 6.<sup>98</sup>

all stages of the judicial process.<sup>99</sup> This will include:

- in the pre-trial stage
- when arrested and interviewed by the police, and by the prosecutor and the investigating judge
- through the adjudication and disposition process; and
- in the implementation of any imposed measures.

Specialised, free legal aid systems are needed, to provide children with qualified support, assistance and representation to ensure that this right is fully realised. However, children should not be compelled to give testimony. They have the right to remain silent if they so choose.

- When measures are applied to divert children from the juvenile justice system, children must always be given the opportunity to give free and voluntary consent. They must also be provided with legal and other advice and assistance on whether the diversion offered is appropriate and desirable, and on the possibility of review of the measure. Parental consent to

a proposed diversionary measure cannot replace the consent of the child.

- Children must be informed promptly and directly about the charges against them in a language they understand. They must also have information about the juvenile justice process and what measures might be taken by the court.
- The proceedings should be conducted in an atmosphere enabling the child to participate and to express him or herself freely. All the measures described on pages 51–54 need to be implemented to ensure that the child does not feel too intimidated to speak.
- The court and other hearings of a child in conflict with the law should be conducted behind closed doors. The child's privacy must be protected. Exceptions to this rule should be very limited, clearly outlined in national legislation, and only made when doing so would clearly be in the best interests of the child.
- Children must be provided with opportunities to appeal against any decision by which they are found guilty.

<sup>97</sup> 'Children and prisons: what can we do better?', 2009 Janusz Korczak Lecture organised by Thomas Hammarberg, Commissioner for Human Rights, and given by Maud de Boer-Buquicchio, Deputy Secretary-General of the Council of Europe (Tromsø, 18 June 2009)

<sup>98</sup> Cases of *V. v United Kingdom* and *T. v United Kingdom* of 16 December 1999

<sup>99</sup> See General Comment No. 10, 'Children's Rights in Juvenile Justice', CRC/C/GC/10, 2007, for a more detailed elaboration.

- Consideration should be given to the introduction of traditional or restorative justice procedures which focus on rehabilitation and provide non-retributive mechanisms for children to express their views and have them taken into account.<sup>100</sup> Restorative justice is an approach that emphasises the importance of repairing the harm caused by crime. When victims, offenders and community members meet to decide how to do that, the results can be transformational.
- If a child is deprived of his or her liberty, on any ground, she or he has the right to challenge the legality of the deprivation of liberty before a court or other competent body.
- Children in custody must be provided with the opportunity to make requests or complaints, without censorship, to the central administration or judicial authority. Children need to have access to information about these mechanisms. The system for using any complaints mechanism must be straightforward and accessible. And the child must not be exposed to any risk or punishment if she or he does make a complaint.

When planning reform of juvenile justice, governments should also consider consulting children who have been through the system.

The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) emphasise that “*young persons should have an active role and partnership within society and should not be considered as mere objects of socialisation or control*”. The Guidelines note that increasingly, the voices of children involved in the juvenile justice system are becoming a powerful force for improvements, reform and the fulfilment of rights. Children can also be involved in the formulation, development and implementation of proposed policies and programmes. They can provide valuable insights into what needs to be done to reform them to bring them better into line with international human rights standards, as well as how to achieve better outcomes. Too often, the punitive approach adopted by governments simply confirms children in a life of crime. Interviews with children about their experiences within the justice system often demonstrate graphically the vicious cycle of youth offending, arrest, trial, imprisonment, release and recidivism. They can therefore contribute their experiences towards positive reform. In this way, consulting with children not only can contribute to more effective legislation, policy and practice, but it can play a therapeutic role for the children involved.

### APPLYING PRINCIPLES OF RESTORATIVE JUSTICE<sup>101</sup>

Restorative justice is an approach which moves away from a merely punitive response to the child, by actively seeking to engage them in taking responsibility for their actions. It requires that:

- children participate fully
- restitution is offered to the victim
- the child has the opportunity to acknowledge the harm that he or she has caused
- a sense of community is restored.

Any measures to divert the child from criminal activity should be commensurate with the offence and take into consideration the child's age and individual circumstances, the child's willingness to cooperate, the impact of the crime on victim and community, any previous offence and opportunity for diversion, and the availability and strength of family and community support.

<sup>100</sup> See the following website for information on models of restorative justice with children: <http://www.restorativejustice.org/university-classroom/02world/mideast/children>

<sup>101</sup> *Juvenile Justice: modern concepts of working with children in conflict with the law*, Save the Children, 2004



### INVOLVING CHILDREN IN BANGLADESH IN REFORM OF THE PRISON SYSTEM<sup>102</sup>

The aim of this research was to discover and document the views and experiences of children who had been either in jail or virtually incarcerated in a state 'shelter home'. Street children in Bangladesh often get arrested and sent to prison and/or are held in protective custody in what are known as 'shelter homes' but which are really prisons for all practical purposes. The research was based on the participation of 14 street children who, over a two-year period, took part in a consultation process among themselves, with other children and with non-governmental organisations (NGOs). Information was gathered from children, and subsequently discussed in depth, through a range of initiatives:

- A video was made, looking at the experiences of three children from the group.
- Research was carried out on the numbers and condition of children held in Dhaka Central Jail, a correctional centre, and state and private shelters.
- Research was carried out into the abuse of children in protective custody. A workshop on children's justice issues, using the findings of the research and the video, was held with representatives of government organisations, NGOs, the media, etc.
- A workshop involving 120 children from different social backgrounds was held to discuss 'State violence against children'. A list of recommendations came out of the children's discussions at this workshop, and was directed at a wide range of audiences: parents, government departments, the police, the courts, jail authorities, NGOs, the media, politicians, and other children. Following the workshop, a booklet was produced for the UNCRC Committee meeting on 'State violence against children' in Geneva in September 2000.



### DENIS – AN EDITOR-IN-CHIEF BEHIND BARS IN MOLDOVA<sup>103</sup>

Denis, aged 18, is the Editor-in-Chief of the first newspaper in Moldova for people in prison. The newspaper, *AerZona*, is published in the Lipcani Penitentiary for Minors, with UNICEF support.

Victor Rusu, deputy chief of the penitentiary and coordinator of *AerZona*, recounts: *"When we started this newspaper, the boys here were not very willing to write. They did not see any point in working on a newspaper. However, now many people want to see their names on its pages. Some write poems, or tell their life story, while others write dreams of their future life. For many years, Denis had been a street child. He was sent to the correctional institution for theft. This newspaper and the position of Editor-in-Chief have given self-confidence back to Denis."*

At the planning meetings, Denis listens to everyone; he praises those who are industrious ones and criticises those who lack initiative. He talks about his own experience: *"People constantly make mistakes, but if you do not give them a second chance, they will make mistakes again. The three years I have spent here made me understand that you have to live and not merely exist. There is not much time left before my release, but I am not afraid of freedom any more. I already know what to do with my hands. I've learnt to write, use the computer; I know the basics of layout. It is something, isn't it?"*

In five months, when he has finished serving his sentence, Denis will pass his duties to another boy who may also see salvation in journalism. And if not salvation, then at least a chance not to be excluded from society when he is released. That was the philosophy of the project, financed by UNICEF and carried out by the NGO, Youth Media Centre. Even though not all the 100 or so young people in the correctional institution take an active part in publishing this newspaper, all of them are loyal readers. *"At the beginning we used to read it only in the penitentiary. But the residents started to send it home to their parents and friends. Now there is a real fight for each issue, and we have to make 100 extra copies,"* says Denis.

<sup>102</sup> Ibid.

<sup>103</sup> [http://www.unicef.org/ceecis/reallives\\_4277.html](http://www.unicef.org/ceecis/reallives_4277.html)



**Child victims and child witnesses**

In many countries, there is a reluctance to involve child victims and witnesses of a crime as witnesses in court proceedings. However, under Article 12, they must be

given an opportunity to fully exercise their right to freely express their views.<sup>104</sup> This is often challenging because in many cases the child, particularly in abuse cases, is often very young, and is likely to be suffering from the



### UN GUIDELINES ON JUSTICE IN MATTERS INVOLVING CHILD VICTIMS AND WITNESSES OF CRIME<sup>105</sup>

The following extract from the child-friendly version of the Guidelines produced by UNICEF and the United Nations Office on Drugs and Crime (UNODC) provides information for children on protecting their right to be heard in the justice system:

#### What are your rights?

You have the right to be heard and to express views and concerns. This means you have a right to give your opinion, to be listened to and taken seriously. All children have the right to say what they think should happen when adults are making decisions about their lives. This includes decisions made in a legal process. As children grow, they will have more responsibility to make choices that affect their lives. Professionals and other people in the justice system should make every effort to allow child victims and witnesses to express themselves freely and in their own way about what they think and feel by:

- Making sure that child victims and witnesses are able to talk about their worries and fears about taking part in the justice process. Children should be allowed to decide how they give their testimony and encouraged to talk about their feelings after the trial is over;
- Making sure that adults take the worries, fears and opinions of children seriously. When it is not possible to do something the child has asked, it is important to explain, so that the child understands why. People involved in the justice process – such as policemen or judges – are interested in what you want to tell them. Do not hesitate or feel stupid because you can't find your words or you don't know how to explain what you have to say. Just help them to understand that you have something to say, and they will help you. If you want to speak to someone in particular and you don't want other people to hear what you say, you can ask to speak to this person in private, without other people there.

#### Making rights real

Professionals should receive training:

- To learn about human rights, especially the rights of the child. This includes the understanding that child victims and witnesses are not all the same and have different needs;
- To learn the correct way to behave when working with children and how to explain their work to children;
- To learn how to speak to children of all ages so that children feel comfortable and understand what is going on. This includes listening to children and helping to reassure them if they are confused or afraid;
- To learn ways of questioning children that will not frighten or harm them but will help to reveal the truth.

<sup>104</sup> United Nations Economic and Social Council resolution 2005/20, 'Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime', United Nations Economic and Social Council resolution 2005/20, in particular arts. 8, 19 and 20. Available at: [www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf](http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf).

<sup>105</sup> For the official version of the UN Guidelines see Economic and Social Council resolution 2005/20 of 22 July 2005. This child-friendly version, which has been produced by UNICEF and UNODC with the support of the Innocenti Research Centre and the International Bureau for Children's Rights (IBCR), is meant as guidance for children and for professionals working with children, and is not an official UN document.

trauma associated with the abuse. A balance has to be found between, on the one hand, the need to pursue justice in order to hold the perpetrator to account, and on the other, avoidance of further abuse of the child through damaging and painful court proceedings. Particular care is therefore needed to ensure that every effort is made to diminish the risk to the child.

**Creating a safe and accessible environment for the child**

In order to ensure that the proceedings do not serve to further traumatise a child witness, consideration needs to be given to:

- availability of health, psychological and social services for the child
- availability of protection for the child during the hearing
- boundaries on the form of questioning allowed by the defence lawyers
- the time frame for the process – ensuring that it does not drag over a long period
- privacy and confidentiality for the child – the media and public should never be allowed in the courtroom
- avoidance of repeated testimonies

- possibility for interviewing the child outside of the courtroom in child-friendly interview rooms and the admissibility of this material through audio or video tapes
- the avoidance of the child needing to see the abuser – use of video recordings, screens or separate rooms
- information on the possibilities of receiving reparation, and the provisions for appeal.

Additional measures are needed to ensure that any child with a disability can be heard effectively. Article 13 of the Convention on the Rights of Persons with Disabilities requires that age-appropriate accommodations are made for children with disabilities to ensure their effective access to justice. Such measures would relate to issues including: physical access to the court; access to sign interpreters; advocates with whom the child can communicate, and who can represent the child's views; access to information in appropriate formats; and forms of questioning that promote the child's understanding and capacity to express their views.



**EGYPT'S AMENDED CHILDREN'S ACT NO. 126 OF 2008, SECTION 116 BIS (D)**

“Child victims and witnesses shall have the right to be heard and treated with dignity and compassion, enjoy the full respect for their physical and psychological and moral safety, have the right to gain access to health and social care and legal assistance, enjoy rehabilitation and reintegration to society in line with guiding principles of the United Nations on the provision of justice to child victims and witnesses.”



**CHILDREN AS WITNESSES: CREATING A SUPPORTIVE ENVIRONMENT**

The following suggestions from a court in Jersey in the Channel Islands provide guidance for judges and magistrates, as well as court officials, child welfare officers and lawyers, on how to create an environment in which children who are appearing before the court as witnesses can be helped to give evidence effectively and without experiencing unnecessary trauma and distress or inappropriate treatment:

*continued opposite*



## CHILDREN AS WITNESSES: CREATING A SUPPORTIVE ENVIRONMENT

*continued*

- **Identify cases involving child witnesses on the defendant's first appearance in court.**
- **Set a timetable.** Don't let the case drag on. Keep making progress. Don't accede to spurious applications to adjourn.
- **Identify the issues in the case at an early stage.** This is vital to be able to manage disclosure, rule on admissibility and generally prevent delay. Formal admissions may be made and eliminate the need for the child, for example, to have to see photographs of their own injuries.
- If the child will have to refer to their own body, consider having a **diagram** prepared.
- **Deal with legal arguments where possible before**, not on the day of the trial with the child waiting to give evidence.
- **Find out the child's views** as to how they would like to give evidence – some might prefer to be in court with screens.
- **If using technology, make sure it works** and that those in court can operate it.
- **Can the child give evidence from another building by video link?** Do you really need the child in the court?
- If you have to use the court, ensure a **pre-court visit and practise using the video/TV link**. Does the child need to see inside the courtroom at all?
- Make sure there are **separate exits and entrances** to keep the child away from other witnesses and the defendant or, if there are not, ensure different arrival and departure times so they don't meet.
- **Ensure the child has refreshments and something to do** while waiting.
- How old is the child? **Check understanding of language and attention span.** Give direction as to breaks and the type of language in which questioning will be allowed.
- **Who will accompany the child? The child should get to know the person first.** Ideally a trained witness-support volunteer (who must have been subject to vetting for suitability to work with children).
- **Ensure the supporter knows how to alert you** to a child not understanding or becoming distressed (yellow card to suggest the child is becoming uneasy, red card to stop?).
- **Has the child been taken through any literature** designed to explain court procedure?
- **Meet the child.** It may be beneficial as you will have to speak to the child during the trial and the child will have confidence in you. Visit the prosecution and the defence counsel but make it clear that you are in charge.
- **Wigs and gowns, on or off?** Ask the child.
- **Timing of child's evidence.** Children are generally more alert in the mornings so it is better to take their evidence then. If there is to be legal argument, start that the afternoon before.
- **When should the child view the video?** If the court is to view a lengthy video, consider when it is best that the child sees that. It may be better that the child sees it the day before and arrives in court after the court has seen the video.
- **Who can the child see?** Ensure that the child cannot see the defendant either in court or via a TV link.
- **Who should be able to see the child on the TV link or behind the screen?** Advocates, judge and jury. The defendant, the press and the public do not need to see the child and it could be very distressing to the child to know that they would be seen.
- **Is it in the interests of justice that the public be in court?** Forbid publication of the identity of children and do not allow any prurient member of the public to see the case for whatever dubious reasons. Perhaps one nominated member of the press is sufficient.
- **Cross-examination.** Keep counsel under control as to their questioning and body language. Do not ask a child to look at photographs of their own injuries or point to intimate parts of their bodies. A body diagram might help.
- **Saying thank you.** Thank the child at the end of their evidence. Research shows that children had a better experience of court, even if the defendant was acquitted, if they were supported throughout and thanked at the end.
- **Feedback.** Ask parties for feedback at the end. You can always improve.

**Addressing the capacity of the child as a witness**

The child is often the only witness to the abuse she or he has suffered. Accordingly, unless she or he is able to give evidence in court, a case will often get dropped, the perpetrator gets away with impunity, and the child is denied justice. Three common concerns are raised, all of which can be addressed:

■ **Children are not competent to give evidence.** Courts in many countries are unwilling to accept the validity of young children as witnesses. Furthermore, the tests that are applied to assess children's capacities do not allow children to express themselves effectively. Too often, judges and others in judicial proceedings underestimate children's capacities, or fail to provide adequate tests through which to assess the child's competence. Accordingly, many competent children are denied the chance to give evidence. The courts should start

with a presumption of competence. Judges need to be given training on how to provide an environment in which young children can express themselves, and tools need to be developed through which children can demonstrate their levels of competence effectively.

■ **Children are prone to fantasy and are therefore less likely than adults to tell the truth.** The testimony of a child should not be presumed invalid or untrustworthy by reason of his or her age and maturity. There is no evidence that children are more likely to lie than adults.

■ **Children are thought to be harmed by appearing in court.** If all the measures outlined above are implemented, they will significantly reduce the potential for harm to the child. It is also important to recognise that failure to prosecute may also place the child at risk, and have important implications for the child's confidence in the justice system.

**APPROACHES TO DETERMINING THE COMPETENCE OF A CHILD WITNESS<sup>106</sup>**

**Determining intelligence and memory.** With a young child, asking questions about family, school, counting, and knowledge of the alphabet and colors can provide a broad sense of the child's intelligence and memory. With older children, more difficult intellectual skills can be assessed, such as basic reading, math, or other problem-solving tasks. Parents or guardians also can usually provide information about their child's intelligence and memory. If a parent or guardian's credibility in providing such information becomes an issue or is in question, teachers typically can provide information about the child's intelligence and memory and they usually are less biased reporters. If a child witness is found to have significant deficits in intelligence and/or memory, this may be grounds to challenge competence.

**Ability to observe, recall, and communicate.** A good way to assess a child's ability to observe, recall, and communicate experiences is to ask a parent or guardian of the child (outside the child's presence) to provide detailed descriptions of recent and distant past memorable events that the child experienced or witnessed. The child can then be asked (outside the presence of the parent or guardian) what he or she recalls about those events, and the two accounts can be compared. Examples of recent experiences might include what the child ate that day or who the child saw

*continued opposite*

<sup>106</sup> Taken directly from S B Carter, *Child Witness Competency: When Should the Issue be Raised?*, [www.forensicexperts.net/.../Competency%20to%20testify%20SBC.doc](http://www.forensicexperts.net/.../Competency%20to%20testify%20SBC.doc)



### APPROACHES TO DETERMINING THE COMPETENCE OF A CHILD WITNESS *continued*

that day. Examples of distant past events might include what happened on the child's birthday, a memorable holiday, a field trip, or a vacation. Of course, this procedure would only produce valid results if neither the child or the parent/guardian knew about the procedure before it was initiated. The child's teacher can also provide information about the child's ability to experience events and report them with accuracy since such situations often arise in a classroom setting.

**Understanding of truth and lies.** In order to assess a child's understanding of the concepts of truth and lie, questions about right and wrong, real and make-believe, and truth and lie typically are asked. However, it is important to recognize that some types of questions are more developmentally appropriate than others. For example, when assessing children's understanding of these dichotomies, interviewers routinely ask children if they know the *difference* between them. However, asking children to explain the difference between two concepts is a more developmentally difficult task than asking what each concept means. In other words, questions such as, "What does it mean to tell the truth?" and "What does it mean to tell a lie?" are more developmentally appropriate for young children than asking, "What is the difference between the truth and a lie?"

It also is important to recognize that very young children often are unable to answer even these easier questions in a narrative form due to their underdeveloped language skills. This does not necessarily mean that four-year-olds do not understand the meaning of truth and lies. It also does not mean that the open-ended questions should not be asked. The relevant question is whether a child who is placed in a courtroom situation, and asked questions about an event they either witnessed or experienced, can distinguish what is the truth and what is a lie. Therefore, situationally relevant questions should be asked when assessing a child's competence to testify, such as:

- *If I told your mum that you just yelled at me, would that be the truth or a lie?*
- *If you told your mum that I hit you, would that be the truth or a lie?*
- *If you told your teacher that something bad happened to you, but it really didn't happen – you were making it up – would you be telling the truth or a lie?*

Competent children should be able to consistently provide correct answers to these multiple-choice questions.

**Meaning of taking an oath.** Children usually are not familiar with the word, *oath*, but most recognize the word, *promise*. Because taking an oath and making a promise are similar concepts, it is more developmentally appropriate and more productive to ask children if they know what it means to make a promise. Furthermore, substituting the word, *promise*, for the word, *oath*, when swearing in child witnesses is a more effective approach.

Young children may not be able to readily answer the question, "What does it mean to make a promise?" If this is the case, follow-up questions also should be asked to better assess the child's understanding, such as:

- *If you promise your mum that you are going to eat your lunch, what should you do? and Why?*
- *If you promise to tell the truth today, what should you do? and Why?*

**Understanding the consequences of not telling the truth.** Children also should be asked what might happen, both to the child and the person being lied about, if they said something happened to them and it was not true. Examples of such questions are:

- *When you get caught telling a lie, what usually happens to you?*
- *If you said that your classmate hit you and it was not true – you were making it up – what could happen to you for lying?*
- *If you said that your sister hit you and it really didn't happen, but your dad believed you, what could happen to your sister?*

Only if the child struggles with responding appropriately to questions about promising, should the issue of competence be raised.



### CHILD WITNESSES IN THE US COURTS: AN ILLUSTRATION OF THE IMPORTANCE OF USING APPROPRIATE TOOLS TO ASSESS COMPETENCE

The importance of using appropriate tools to assess competence is exemplified in a study undertaken in the United States to determine the competence of 192 children, aged 4 to 7 years, who had allegedly been mistreated, to act as child witnesses.<sup>107</sup> The study found that many prosecutors fail to ask questions that children can understand and accordingly, many cases get dropped because they cannot demonstrate that children are capable of understanding the importance of telling the truth.

The usual approach is to ask children if they know what would happen to them if they told a lie in court. But children are unwilling to identify themselves as liars, even hypothetically. They insist, instead, that they are not going to lie. Judges interpret this refusal as evidence of failure to understand the question, whereas it can often be the result of the imbalance of power between the child and the judge and a fear of even theoretical acknowledgement of the possibility of lying. The research found that, among the children who exhibited an understanding of the difference between the truth and a lie, 69% failed to explain the difference adequately when using traditional approaches adopted by the courts. The researchers developed a child-friendly test that asks children to identify when story characters are telling the truth and the consequences of the character's actions. The child-friendly test demonstrates that children in the same age group are able to understand the concept of truth and the consequences of telling a lie.

### Immigration and asylum proceedings

Children who come to a country following their parents in search of work or as refugees are in a particularly vulnerable situation. Many have been through frightening and traumatic experiences, and may have a profound fear of people in authority. Therefore, it is of particular importance to ensure that efforts are made to create safe spaces for them in which they can express their views about what has happened to them, and be involved in any plans and decisions to be made concerning their future. There are a range of circumstances when it will be necessary for migrant or asylum-seeking children to be able to express their views in order to ensure that their rights are realised.<sup>108</sup>

#### In immigration proceedings

Identification and referral mechanisms for dealing with separated and unaccompanied children need to be designed in such a way that they enable vulnerable children to

express their needs, wishes and concerns, and their own personal assessments as to what action is needed to protect their best interests. Without such information, immigration officers may make decisions affecting, for example, trafficked children, or those escaping a forced marriage, to return a child to an abusive or dangerous environment which may be detrimental to their wellbeing, or even life threatening. Procedures therefore need to be tailored to meet the needs of children and ensure that they are provided with all relevant information, in their own language, on:

- entitlements and services available, including help with communication
- the asylum process and other immigration procedures
- family-tracing services and the situation in their country of origin.

To help in this process, and build the confidence of the child, a guardian or adviser should be appointed free of charge.

<sup>107</sup> K J Saywitz and T Lyon, *Sensitively assessing children's testimonial competence*, Harbor-UCLA Research and Education Institute, Los Angeles, 1999

<sup>108</sup> For more information on the rights of asylum-seeking children, see General Comment No. 6, 'Treatment of Unaccompanied and Separated Children outside their Country of Origin', CRC/GC/2005/6, 2006

**In asylum procedures**

All asylum procedures involving children need to ensure that they are able to provide an account of their experiences. Without the opportunity to hear from the child, it will be impossible to identify her or his individual needs. Often the child will be the only source of information. However, as a result of the circumstances associated with the asylum claim, children may be reluctant to talk about what has happened to them and the problems they have experienced. In order to help children overcome these barriers and communicate their experiences without fear, provision should be made to inform children, in a manner they can understand, as to:

- their right to seek and enjoy asylum
- how the process will work and what stages are involved
- what entitlements and services are available for them while they go through the process
- the care arrangements which will be put in place for them

- family tracing and information on the situation in the country of origin
- their right to privacy and confidentiality, which will ensure that they can express their views without coercion, constraint or fear.

A guardian and legal representative should be appointed free of charge to support the child through the asylum process and to ensure that any child capable of forming a view on decisions affecting them is provided with the necessary information to do so.

In addition, adjudicators and others involved in procedures to determine the asylum claims of children should be trained and skilled to ensure that children have the opportunity to participate as directly and fully in this process as their age and maturity allows and to evaluate accurately the reliability and significance of the views expressed by children.



### EXTRACTS FROM THE UN HIGH COMMISSIONER FOR REFUGEES (UNHCR) GUIDELINES ON INTERNATIONAL PROTECTION: CHILD ASYLUM-SEEKERS<sup>109</sup>

**8** Even at a young age, a child may still be considered the principal asylum applicant. The parent, caregiver or other person representing the child will have to assume a greater role in making sure that all relevant aspects of the child's claim are presented. However, the right of children to express their views in all matters affecting them, including to be heard in all judicial and administrative proceedings, also needs to be taken into account. A child claimant, where accompanied by parents, members of an extended family or of the community who by law or custom are responsible for the child, is entitled to appropriate direction and guidance from them in the exercise of his/her rights, in a manner consistent with the evolving capacities of the child. Where the child is the principal asylum-seeker, his/her age and, by implication, level of maturity, psychological development, and ability to articulate certain views or opinions will be an important factor in a decision maker's assessment

**65** Due to their young age, dependency and relative immaturity, children should enjoy specific procedural and evidentiary safeguards to ensure that fair refugee status determination decisions are reached with respect to their claims.

**68** An independent, qualified guardian needs to be appointed immediately, free of charge in the case of unaccompanied or separated children. Children who are the principal applicants in an asylum procedure are also entitled to a legal representative. Such representatives should be properly trained and should support the child throughout the procedure.

**69** The right of children to express their views and to participate in a meaningful way is also important in the context of asylum procedures. A child's own account of his/her experience is often essential for the identification of his/her individual protection requirements and, in many cases, the child will be the only source of this information. Ensuring that the child has the opportunity to express these views and needs requires the development and integration of safe and child-appropriate procedures and environments that generate trust at all stages of the asylum process. It is important that children be provided with all necessary information in a language and manner they understand about the possible existing options and the consequences arising from them. This includes information about their right to privacy and confidentiality enabling them to express their views without coercion, constraint or fear of retribution.

**69** Appropriate communication methods need to be selected for the different stages of the procedure, including the asylum interview, and need to take into account the age, gender, cultural background and maturity of the child as well as the circumstances of the flight and mode of arrival. Useful, non-verbal communication methods for children might include playing, drawing, writing, role-playing, story-telling and singing. Children with disabilities require "whatever mode of communication they need to facilitate expressing their views".

**70** Children cannot be expected to provide adult-like accounts of their experiences. They may have difficulty articulating their fear for a range of reasons, including trauma, parental instructions, lack of education, fear of State authorities or persons in positions of power, use of ready-made testimony by smugglers, or fear of reprisals. They may be too young or immature to be able to evaluate what information is important or to interpret what they have witnessed or experienced in a manner that is easily understandable to an adult. Some children may omit or distort vital information or be unable to differentiate the imagined from reality. They also may experience difficulty relating to abstract notions, such as time or distance. Thus, what might constitute a lie in the case of an adult might not necessarily be a lie in the case of a child. It is, therefore, essential that examiners have the necessary training and skills to be able to evaluate accurately the reliability and significance of the child's account. This may require involving experts in interviewing children outside a formal setting or observing children and communicating with them in an environment where they feel safe, for example, in a reception centre.

<sup>109</sup> UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, Geneva, 1997 (hereafter "UNHCR, *Guidelines on Unaccompanied Children Seeking Asylum*"),

<http://www.unhcr.org/refworld/docid/3ae6b3360.html>, in particular Part 8





**IN ORDER TO ENSURE THE RIGHT TO BE HEARD IN SPECIFIC PROCEEDINGS, THE FOLLOWING MEASURES ARE NECESSARY:**

- In divorce and separation – legislation and regulations must be introduced to ensure that no orders are made concerning a child capable of forming a view, without finding out the views of that child.
- When separating a child from her or his parents – measures must be taken to ensure that the child has the right to be heard throughout the process of assessment, separation and placement, is involved in the drawing up of plans for her or his future, and has access to representation when required.
- In adoption and *kafalah* – a child who is capable of forming a view must give consent to the adoption, and no child should be adopted against his or her wishes.
- When the child is accused of an offence – the child must be informed of charges, be properly represented at all stages, and be able to appeal against any decision. The proceedings must be child friendly and conducted in privacy to enable the child to feel confident in expressing his or her views.
- When the child is a witness to an offence – the child should, wherever possible, be enabled to give evidence in order to hold perpetrators to account. To reduce the trauma and stress in doing so, measures must be put in place to create safe and accessible court environments including protection for the child during the hearing, rules governing cross-examination, avoidance of repeated testimonies, use of video recording and screens. Effective measures should be introduced to assess the capacity of the child to give evidence.
- In immigration and asylum proceedings – the child should have access to interpretation, to an adviser or guardian to help them through the process, to information about their rights, and to privacy and confidentiality to enable them to speak without fear.

# CHAPTER SIX

IMPLEMENTING ARTICLE 12 IN DIFFERENT SETTINGS

UNICEF/NYHQ2009-1844/SUSAN MARKISZ



# CHAPTER SIX

## IMPLEMENTING ARTICLE 12 IN DIFFERENT SETTINGS

### IN THE FAMILY

Support and guidance for parents  
Parental responsibilities and the law

### IN ALTERNATIVE CARE

Legal right to be involved in individual decisions relating to all aspects of the care system  
Legal right to be consulted in the development of care services  
Access to information  
Independent and safe complaints mechanisms  
Independent inspectorate  
Independent monitoring body  
Consultative mechanisms

### IN HEALTHCARE

Involvement in decision-making  
Access to confidential medical counselling  
Consent to treatment  
Participation in the development of health services

### IN EDUCATION

Involvement of children in individual decisions affecting their education  
Participatory child-centred learning  
Democratic school environments  
Participation in education policy  
National student organisations

### IN PLAY, RECREATION, SPORT AND CULTURAL ACTIVITIES

### IN THE MEDIA

### IN THE WORKPLACE

### IN SITUATIONS OF VIOLENCE

## CHAPTER SIX

# IMPLEMENTING ARTICLE 12 IN DIFFERENT SETTINGS

“Where, after all, do universal human rights begin? In small places, close to home – so close and so small they cannot be seen on any maps of the world. Yet they are the world of the individual person ... Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.” Eleanor Roosevelt<sup>110</sup>

The right to be heard extends to every part of children’s lives. While much impressive work has been undertaken in recent years to create opportunities for children to participate in the public arena, it is important not to forget that equal investment needs to be made in addressing the opportunities for children to be heard in their day-to-day lives – in the family, at school, in their healthcare, in institutions, in play and recreation, and in the workplace.

### IN THE FAMILY

The family is the ideal framework for the first participatory experiences for children. It can provide the opportunity for children to learn to express their views in a safe and supportive environment where they feel valued and respected. It offers preparation for child participation in the wider society.<sup>111</sup> During the Day of General Discussion on ‘The Role of the Family in the Promotion of Children’s Rights’, the Committee reaffirmed the importance of the family in creating a participatory environment for the child.<sup>112</sup> Such an approach to parenting serves to promote individual development, enhance family relations, support children’s socialisation and play a preventive role against all forms of violence in the home and family. However, the experience of children in many families throughout the world is of a very different nature. More common is an assumption of a hierarchical relationship where children are expected to obey, be quiet, accept and acquiesce to parental authority.

### ADDRESSING THE CULTURAL CONTEXT<sup>113</sup>

In some African countries, Article 12 has been one of the most challenging rights to implement, largely because local cultures do not view parents as having a responsibility to consult with their children. A recent study of parents and children in Ghana found four key factors in child-rearing practices which serve to reinforce the inability of children to express their views on matters of concern to them: the relationship between dependence and obedience; the perception of childhood as never-ending, with deference for elders expected even when children grow up and marry; the view that children are inferior to elders and must never challenge them; and, finally, the assumption that parents ‘own’ children and therefore have a right to control them.

However, the study also found that there were opportunities for greater involvement of children in decision-making. The children indicated that, in practice, they were often able to exchange opinions with their mothers (although rarely with fathers), who in turn did often consult them, as long as it was done in the privacy of the home. Where parent–child relationships were stronger, there was far more potential for improving the opportunities for listening to children, provided it was done in a manner that respected and acknowledged the importance of cultural values.

<sup>110</sup> Eleanor Roosevelt (1958) speaking on the tenth anniversary of the Universal Declaration of Human Rights, to which she was a major contributor.

<sup>111</sup> Committee on the Rights of the Child, Report on the 7th Session, September/October 1994, CRC/C/34, paras 192 and 193

<sup>112</sup> A Twum-Danso, ‘The Construction of Childhood and the Socialisation of Children in Ghana’ in B Percy-Smith and N Thomas (eds) *A Handbook of Children and Young People’s Participation*, Routledge, London, 2010

<sup>113</sup> Day of General Discussion on The Right of the Child to be Heard, September 2006

Article 5 of the UNCRC recognises the rights and responsibilities of parents, or other legal guardians, to provide appropriate direction and guidance to their children, but emphasises that this is to enable the child to exercise his or her rights, and requires that the direction and guidance be undertaken in a manner consistent with the evolving capacities of children. In other words, as children acquire capacities, so they are entitled to take an increasing level of responsibility for the decisions that affect them. The Committee stresses that “Parents ... should be encouraged to offer ‘direction and guidance’ in a child-centred way, through dialogue and example, in ways that enhance children’s capacities to exercise their rights including the right to participation.”<sup>114</sup> Of course, respecting children’s views does not mean that children can do or say whatever they want. The UNCRC does not challenge the right of parents to provide direction and

guidance to children but it does require that they listen to them, take account of their views and recognise children’s right to take responsibility for decisions and the exercise of their own rights in accordance with their evolving capacities.

### Support and guidance for parents

The UNCRC requires governments to “render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and [...] ensure the development of institutions, facilities and services for the care of children”.<sup>115</sup> A key aspect of such assistance would involve education and counselling that offers support to parents and other family members, to encourage positive and sensitive relationships with young children and to enhance understanding of children’s rights and best interests. Such programmes should build on existing positive behaviours

## AN ASSESSMENT OF CHILDREN’S PARTICIPATION IN THE FAMILY IN SOUTH AFRICA<sup>116</sup>

In South Africa a systematic, informative assessment of children’s participation in the family was undertaken over a five-month period in 2006. The assessment was undertaken by the Community Agency for Social Enquiry (CASE). Some key findings from the study reveal that the level of interaction between children and caregivers is dependent on the context or issues at hand. Across the research sites, children tended to engage in discussion with their female caregivers more easily than with their male caregivers. Child participation increased with age and was highest in decisions concerning education. Generally boys had more influence in decision-making than girls. In decisions concerning economic and household activities there appeared to be room for negotiations, for example, children were expected to do chores, but might negotiate which chores they would do – though such chores tend to be linked to clearly defined gender roles. Social decisions were the most likely to tend toward being an adult’s decision after consultation with the child. There was also a clear gender difference in the way boys and girls were able to participate in social decisions, with boys having more freedom and choice than girls.

Based on the findings from the assessment, key recommendations were outlined to promote child participation in the family context in South Africa. These included efforts to address misconceptions about children’s rights and child participation practice; undertaking interventions at a number of levels including the school, community and possibly the legislative process; and drawing on existing cultural norms that can be viewed as supporting participation (such as children taking on roles of responsibility in the household) when addressing this issue.

<sup>114</sup> General Comment No. 7, ‘Implementing Child Rights in Early Childhood’, CRC/C/GC/7, 2005

<sup>115</sup> UNCRC, Article 18 (2)

<sup>116</sup> From ‘Cultivating Children’s Participation’, abridged version of *Participation is a virtue that must be cultivated*, Save the Children Sweden, 2008

and attitudes, and disseminate information on the rights enshrined in the Convention. International research in developed and developing countries has provided incontrovertible evidence that early interventions in support of healthy physical, mental and social development have long-lasting positive effects on children's all-round development, on their performance in school, on their relationship with others, and on their productivity well into adult life. Not only are these early interventions long lasting, they are much less costly than repairing problems that develop as a result of delayed or damaged development.<sup>117</sup> However, often parents themselves feel disempowered, and this has an impact on how they understand and respond to children's right to be heard. Programmes to support parents in creating spaces to listen to their children need to take account of parents' own experiences and

the imbalances of power between men and women in the family.

Such programmes need to involve both fathers and mothers, and address:

- promoting respectful relationships between parents and children – often a challenge as there are longstanding assumptions in most cultures that children should respect their parents, but it is far less common to see recognition of the importance of respecting children
- involving children in decision-making
- the implications of giving due weight to the views of every family member, including children
- understanding, promoting and respecting children's evolving capacities
- dealing with conflicting views within the family
- the principle that girls and boys have equal right to express views.



### THE BETTER PARENTING PROJECT, JORDAN<sup>118</sup>

The project was developed in Jordan to address the need of parents of very young children for basic information and support in their tasks of child-rearing, specifically in the areas of health, nutrition and social-emotional development. A national survey conducted by UNICEF on the knowledge, attitudes and practices of Jordanian parents in relation to early childhood care indicated that *“the majority of young parents lack the necessary information and skills for providing a stimulating environment at the home, especially in areas related to social and emotional development”*.

The impact of the programme was to be measured by the following indicators:

- existence of a qualified core team of trainers within all participating partners
- number of outreach facilities implementing the better parenting strategies and methods
- number of parents and other caregivers aware of and practising better parenting skills.

The evaluation found that the programme resulted in:

- growing demand – not only from parents who had not had access to the programme wanting to be involved, but those who had been involved wanting further and more advanced access
- strong interest for additional parenting education for fathers
- wide acceptance in most communities, where it was seen as being of benefit
- minimal resistance to either approach or content, particularly when facilitators showed sensitivity to cultural/religious traditions related to gender roles and male–female participation, or to other traditional child-rearing practices, in structuring the formats of delivery and discussion.

<sup>117</sup> D Keating and C Hertzman, *Developmental Health and the Wealth of Nations*, Guilford Press, New York, 1999, Chapter 2; M E Young, *Early Child Development: Investing in the Future*, World Bank, 1999, pp. 3–13

<sup>118</sup> Dr S Al Hasan, *2009 Jordan: Evaluation Report of the Better Parenting Project, Executive summary*, 2009. Available online at: [http://www.unicef.org/evaldatabase/index\\_54190.html](http://www.unicef.org/evaldatabase/index_54190.html) and J Brown, *Evaluation Report of the National Multi-Sectoral Collaboration on Behalf of Young Children*, UNICEF, Jordan, 2009



## ADDRESSING PARENTAL CONCERNS ABOUT INVOLVING CHILDREN IN DECISIONS

- *Children should not be burdened by unnecessary responsibility or information*  
 No child should be burdened with more information than they can cope with or understand. But children do like to know what is happening and why. If events that affect them (such as parental conflict or the death of someone close) are not talked about, children may fill in the gaps in their knowledge with imaginings more worrying or frightening than the reality. Or they may blame themselves for events which they are not responsible for. Parents need to work out how much children need to know and how to explain it in ways they can understand. Young children often need to be shown things as well as being told about them.
- *It takes more time*  
 It is much easier, in the short term, to decide things for children. But without their involvement, parents might get things wrong. And they will deny children the chance to think things through for themselves, weigh up pros and cons, and begin to take responsibility for their actions.
- *Children might make a mistake*  
 They might choose an option that makes them unhappy or puts them in danger. Parents need to remember that they still have parental responsibility to protect their child from harm and to promote their wellbeing, so if they can see that something will definitely be bad for their child, they can say “no”. But they can protect the child from their own mistakes in a way that involves the child. Parents can help children out if they find they are unhappy with a decision they have made, or change their mind. Part of learning is about making mistakes and finding out how to recover from them, and discovering what they have taught us.
- *Children may make decisions/express opinions that challenge existing norms and practice*  
 Children will often challenge their parents’ views, values and beliefs as well as those of the wider society, as a part of growing up and testing out their own ideas and thoughts. Creating a space where children can explore their opinions with parents provides the opportunity to help children think through those opinions safely and with parental support and guidance. Denying that space can be counter-productive: it can serve to strengthen children’s desire to hold challenging views, and means that children are more likely to test them out secretly and without the knowledge and guidance of parents.
- *Children might make a ‘wasteful’ decision*  
 Children often make choices that their parents feel are unwise or foolish – such as choosing a toy that falls apart or that they hardly ever play with. But parents can help children learn from their mistakes in order to avoid repeating them, and guide children towards wise choices.
- *They might want something they cannot have*  
 Children might want their parents to stay together rather than separate, or to stay put when their parents have to move because of work. Even if children cannot have what they want, they do like to be consulted and to be told what decision has been made and why. There is a great deal of research evidence which shows that children feel “We still felt better for being listened to.”
- *If they have their say, they’ll expect to have their way*  
 Parents will need to be clear about which decisions they are prepared to negotiate, and which they are not. They will continue to make some decisions for children – in their best interests. They will let children make some decisions for themselves. And there will be some decisions that parents will negotiate with their children, reaching a compromise that takes into account all of their concerns. At any rate, it is important that parents let the child know the reasons why they came to a particular decision.

**Parental responsibilities and the law**

It is important to consider reinforcing any educational support by the introduction, in relevant legislation, of a parental or other caregivers' responsibility to listen to children and give due weight to their views, in accordance with age and maturity, when making decisions that affect them. By introducing such provisions in law, the aim is not to prosecute parents who fail to involve children in decisions: rather it would be a means of establishing and endorsing a basic principle to promote a cultural change towards greater respect for children's right to be heard. Any legal provisions on parental responsibilities should be backed up with information, support and guidance for parents. In those countries where such legislation has been introduced, the outcome has not been increased litigation,

but a greater understanding of the need for more participatory relationships between parents and children.

**IN ALTERNATIVE CARE**

"Sometimes social services put you in a school that you may not want to go to, or wherever you're living at the moment you may not like it, and you want to move to somewhere else. And then you're not going to get a say in where you move to, so it would be best if you could actually do that." Interview with a group of children in public care<sup>119</sup>

Children who are placed away from home in alternative care need specific measures in place to ensure that their voices are heard and taken seriously. The informal day-to-day processes which take place in families, and through which views can be expressed

**EXAMPLES OF LEGISLATION ON PARENTS' RESPONSIBILITY TO LISTEN TO CHILDREN****South African Children's Act 2005, Section 31**

Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph (b) involving the child, that person must give due consideration to any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development.

**Swedish Code of Parenthood and Guardianship concerning the exercise of custody, Chap. 6, sect. 11**

It is the right and duty of the custodian to decide questions relating to the child's personal affairs. In doing so, the custodian shall take progressively greater account of the child's viewpoints and wishes, parallel to the child's increasing age and development.

**Children Act (Scotland) 1995, Section 6: Views of children**

- (1) A person shall, in reaching any major decision which involves –
- (a) his fulfilling a parental responsibility or the responsibility mentioned in section 5(1) of this Act; or
  - (b) his exercising a parental right or giving consent by virtue of that section, have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity, and to those of any other person who has parental responsibilities or parental rights in relation to the child (and wishes to express those views); and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.

<sup>119</sup> C Davey, T Burke and C Shaw, *Children's Participation in Decision-Making: A children's views report*, National Participation Forum, 2010



and discussed, are not so easily available for children living in institutions or foster care. As one of a large number of children in an institution, it is all too common for a child's concerns to be disregarded and for decisions to be made without any regard for their wishes. Furthermore, children in care are particularly vulnerable when their views are not listened to or taken seriously. Although alternative care environments are established to provide care, guidance, support and protection to children, the boys and girls who live in them may be at heightened risk of violence compared with children living at home with their parents.<sup>120</sup> This is especially true for children with disabilities.

Governments, with responsibilities for providing substitute care for children unable to be looked after by their families, are required to ensure that all actions they take are in the best interests of those children. It is not possible to represent the

best interests of children without taking account of their experiences, concerns and preferences. Mechanisms must to be introduced to ensure that children in all forms of alternative care, including in institutions, are able to express their views and have them given due weight in matters affecting their daily lives.<sup>121</sup>

Measures to ensure the right of the child to be heard in alternative care include the following:

**Legal right to be involved in individual decisions relating to all aspects of the care system**

Children must be provided with guarantees that their voices will be heard. This should have a basis in law, rather than just in guidance or institutional procedure manuals. The right to be heard and taken seriously needs to include children in foster care, children's homes, care and penal institutions, and health facilities. It should also apply to

**EXTRACT FROM THE UN GUIDELINES FOR THE ALTERNATIVE CARE OF CHILDREN<sup>122</sup>**

**6** All decisions, initiatives and approaches falling within the scope of the present Guidelines should be made on a case-by-case basis, with a view notably to ensuring the child's safety and security, and must be grounded in the interests and rights of the child concerned, in conformity with the principle of non-discrimination and taking due account of the gender perspective. They should respect fully the child's right to be consulted and to have his/her views duly taken into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information. Every effort should be made to enable such consultation and information provision to be carried out in the child's preferred language.

**6bis** In applying the present Guidelines, determination of the best interests of the child shall be designed to identify courses of action for children deprived of parental care, or at risk of being so, that are best suited to satisfying their needs and rights, taking into account the full and personal development of their rights in their family, social and cultural environment and their status as subjects of rights, both at the time of the determination and in the longer term. The determination process should take account of, inter alia, the right of the child to be heard and to have his/her views taken into account in accordance with his/her age and maturity.

<sup>120</sup> S Pinheiro, *UN Study on Violence against Children*, United Nations, New York, 2006

<sup>121</sup> Committee on the Rights of the Child, Report on the 40th Session, September 2005, CRC/C/153, paras 663 and 664

<sup>122</sup> *Guidelines for the Alternative Care of Children: A UN Framework*, SOS Children's Villages International/ISS, Geneva, 2009

children who are in temporary care as well as those more permanently away from home. The scope of the right to be heard should extend to all aspects of their care including:

- when and where they are placed
- who they have contact with, and the frequency and nature of that contact
- plans being made concerning their future
- review processes
- issues arising on a day-to-day basis concerning their care.

The Committee recommends that mechanisms such as family group conferences are an effective model for ensuring that children are heard in decision-making processes.<sup>123</sup>

### **Legal right to be consulted in the development of care services**

Consultative processes need to be developed for children's involvement in development of legislation and policy, as well as feedback mechanisms on implementation of laws, policy and practice relating to care services. Children who have experience of being looked after within care services have a unique body of expertise to contribute to the development of improved provision for other children. In some countries, children and young people who have experienced being in care have established their own organisations to provide information, support and advocacy to other children and young people. In other countries, children have taken on an inspection role

### **LISTENING TO THE VIEWS OF CHILDREN IN CARE: AN EXAMPLE FROM THE UK<sup>124</sup>**

#### **Extract from Children's Homes, National Minimum Standards**

##### **Outcome:**

- Children know that their views, wishes and feelings are taken into account in all aspects of their care; are helped to understand why it may not be possible to act upon their wishes in all circumstances; and know how to obtain support and make a complaint.
- The views of others with an important relationship to the child are gathered and taken into account.

1.1. Children's views, wishes and feelings are acted upon, in the day to day running of the home and important decisions or changes in the child's life, unless this is contrary to their interests.

1.2. Children understand how their views have been taken into account, and where significant wishes or concerns are not acted upon, they are helped to understand why.

1.3. All children communicate their views on all aspects of their care and support.

1.4. The views of the child, the child's family, social worker and Independent Reviewing Officer (IRO) are sought regularly on the child's care, (unless in individual cases this is not appropriate).

1.5. Children have access to independent advice and support from adults who they can contact directly and in private about problems or concerns, which is appropriate to their age and understanding. Children know their rights to advocacy and how to access an advocate, and how to contact the Children's Rights Director.

1.6. Children can take up issues in the most appropriate way with support and without fear that this will result in any adverse consequences. Children receive prompt feedback on any concerns or complaints raised and are kept informed of progress.

1.7. The views, wishes and feelings of children and those significant to them are taken into account in monitoring staff and in developing the home.

<sup>123</sup> Committee on the Rights of the Child, Report on the 40th Session, September 2005, CRC/C/153, paras 663 and 664

<sup>124</sup> *Children's Homes, National Minimum Standards*, Department for Education, London, 2011

in institutions and provided feedback on the quality of services and changes needed to improve them. Governments should consider supporting the development of such initiatives and engaging with children as a source of expertise when formulating and evaluating legislation, policies and programmes.

#### **Access to information**

In order to be able to express informed views, children must be provided with information about any proposed placement, care and/or treatment plan, the options available and the implications of any proposed action. Information must be provided in a form that is consistent with the child's evolving capacities, and she or he must be given time to consider the information and ask questions, before being expected to respond to any proposed decisions.

#### **Independent and safe complaints mechanisms**

It is imperative that children can access independent and safe complaints mechanisms without fear of punishment or retribution. Information about the procedures and how to use them should be readily accessible to all children in care. They need to know who they can make a complaint to. There needs to be a range of options, as there may be occasions when a nominated person is the subject of the complaint. They should also be entitled to have access to an advocate or representative to help them make complaints, and to advise and support them through this process. Children and their representatives should have access to an appeals process if they are not satisfied with the response to their complaint. (See pages 59–61 for an example of a complaints procedure.)

#### **Independent inspectorate**

The establishment of a well-trained and independent inspectorate is necessary, to monitor compliance with the rules and regulations governing the provision of care, protection or treatment of children in accordance with the obligations under Article 3. The inspectorate should be mandated to have unimpeded access to residential facilities, including those for children in conflict with the law, in order to hear the views and concerns of children directly, and to monitor the extent to which their views are listened to and given due weight by the institution itself. Children should be entitled to be heard in private with assurances of confidentiality, consistent with their best interests.

#### **Independent monitoring body**

An independent monitoring body, such as a children's ombudsperson or commissioner, is needed, with powers to undertake investigations, and make unannounced visits to residential facilities and institutions (including those for children in conflict with the law) to listen to children in private, and recommend specific actions to respond to these views.

#### **Consultative mechanisms**

Effective consultative mechanisms need to be introduced, for example, a representative council of the children, both girls and boys, in the residential care facility, with the mandate to participate in the development and implementation of the policy and any rules of the institution. The Committee also recommends that regular reviews of children's views be taken into consideration as well as reviews of their impact on policy-making and court decisions and on programme implementation.<sup>125</sup>

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<sup>125</sup> Committee on the Rights of the Child, Report on the 40th Session, September 2005, CRC/C/153, paras 663 and 664



## GUIDELINES ON LISTENING TO CHILDREN IN INSPECTION AND MONITORING<sup>126</sup>

The following guidelines are taken from the *Guidelines on Alternative Care of Children: A UN Framework*, which were adopted by the UN General Assembly in November 2009 and supported by the Committee on the Rights of the Child (the text is in bold where it specifically addresses children's right to be heard):

### Inspection and monitoring

- Agencies, facilities and professionals involved in care provision should be accountable to a specific public authority, which should ensure, inter alia, frequent inspections comprising both scheduled and **unannounced visits, involving discussion with and observation of the staff and the children.**
- To the extent possible and appropriate, inspection functions should include a component of training and capacity-building for care providers.
- States should be encouraged to ensure that an independent monitoring mechanism is in place, with due consideration for the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles). The **monitoring mechanism should be easily accessible to children**, parents and those responsible for children without parental care. The functions of the monitoring mechanism should include:
  - Consulting in conditions of privacy with children in all forms of alternative care, visiting the care settings in which they live and undertaking investigations into any alleged situation of violation of children's rights in those settings, on complaint or on its own initiative.



## CHILDREN'S ACT 2005, SOUTH AFRICA

### Section 28: Management of child and youth care centres

- (1) Each child and youth care centre must have a management board consisting of no fewer than six and no more than nine members.
- (6) The management board must create a children's forum as part of the management board to ensure the participation of resident children in the operation of the centre, taking into consideration the age, maturity and stage of development of the children.

<sup>126</sup> UN General Assembly, Guidelines for the Alternative Care of Children: resolution/adopted by the General Assembly, 24 February 2010, A/RES/64/142.



## PROTECTING CHILDREN LIVING IN INSTITUTIONS<sup>127</sup>

It is particularly important for all institutions where children are living to implement the principle of Article 12 of the UNCRC. The natural way in which family members talk and listen to each other, and particularly parents listen to their children, cannot easily be replicated in more formal living institutions. Deliberate steps must be taken to ensure that the staff hear and take proper account of the children's views and respect their civil rights.

### Working to guarantee the participation of every child

It is important that people who work with children:

1. Listen to the child and the messages that they send about the way in which they assimilate what reaches them, particularly, because they no longer live with their parents.
2. Ask the child to comment, which helps them to evaluate if they have understood what they have said.
3. Give the child the chance to ask questions.
4. Leave them the possibility of expressing their feelings, or create occasions for this purpose.
5. Show the child positive reinforcement.
6. Communicate with the child in simple language that is clear and comprehensible for them, depending upon their age and level of maturity.
7. Use for this purpose tools such as drawings, photographs, the child's personal objects, toys including little dolls (or simple pieces of wood that stand for the key people in the child's life: mother, father, brother, sister, grandparents, him or herself, etc).

The layout and the decoration of the rooms should also be done with the children's participation, if that's possible, based on a family model, in a warm way that encourages living together. Every child needs to have a certain number of objects around them and space, however small it may be (a shelf, cupboard or part of a cupboard) for their personal use.

<sup>127</sup> Taken from *A Global Policy for Children and the Family*, Fact Sheet No. 16, International Social Service, June 2006



### TRANSFORMING CARE IN ORPHANAGES: AN EXAMPLE FROM ZIMBABWE<sup>128</sup>

In the House for Boys, an orphanage in Zimbabwe, the children were asked for their views on their experiences for the first time. The issues they raised included:

- People are not united, we should be united so that we can live as a happy family.
- I want to speak for myself. We must listen to each other's ideas.
- Could we please have medical attention?
- The food is not enough. After school we are hungry, but we get four slices of bread. Can you change this and give us something better? During break [at school] our friends run away from us scared that we will beg for their food.
- Staff do not care about us and are not thinking about our future.
- Not enough love is shown. We need to be given love because some of us have never experienced life with a mother and father.
- We need books to study because the schools we go to do not provide us with books.
- We need a staff member in the dining room at meal times.
- We also need to talk about how we got here, our background.
- We must encourage each other not to do wrong
- We have little exposure to the outside world. We need to socialise with people outside the home.
- There is nothing we can do about our problems because the staff do not listen to us and we are also scared to talk about things.

This led to the following recommendations for the orphanage:

- policies and regulations, which are guided by the principle: 'in the best interest of the boys'
- a code of ethical practices regarding the care they provided for the boys
- a clear recording and reporting system for creating accountability
- the basic needs (food, shelter, healthcare and fair pay for work) of the staff to be addressed
- respect for staff needs for time off to avoid burnout, and for sick and holiday pay
- help for the boys to maintain and find positive kinship ties
- workshops for staff on ways to prepare the boys for life beyond the orphanage
- encouragement of youth participation in the decision-making of the orphanage by allowing the boys to have representation in Board meetings
- encouragement of more community partnership through youth-led community projects
- a contract between Child and Family Social Services and the House for Boys, under which the orphanage would accept boys from social services only on condition that the admitting social workers or probation officers agreed to visit the boy at least once every three months; this would establish responsibility for the maintenance and protection of the rights of these boys
- creation of external links with other orphanages in Zimbabwe to improve the standard of care for children in care
- major repairs to reduce risk from broken windows, exposed electrical wires and rusty nails
- a strategy to address the orphanage's annual budget, which is insufficient to provide adequate food.

<sup>128</sup> Adapted from: D Devi, *Transforming Orphanage Care: A Case Example in Zimbabwe*, Human Sciences Press, Inc., 2004

## IN HEALTHCARE

Article 12 has significant implications for the way in which healthcare treatment and health services are provided. In respect of children's access to healthcare and individual treatment, there are three distinct, but linked issues, which need consideration: the child's involvement in decision-making, access to confidential medical counselling, and consent to treatment.

### Involvement in decision-making

Children, including young children, should always be included in discussions and decisions concerning their own healthcare, and the way children are involved must be consistent with their level of understanding. Too often, medical staff talk with the parent about the child's condition, what treatment is needed and why, how it will be provided and when, and what will be the impact or consequences, while excluding the child from that conversation. Most legislative frameworks give parents the right to make decisions relating to healthcare on behalf of their children, and accordingly, it is not deemed necessary to include the child in the dialogue. Furthermore, many cultures regard children as lacking in sufficient competence or status to recognise the importance of including them in such processes. However, not only does the State

have an obligation to ensure that children have the opportunity to participate actively in planning and programming for their own health and development, but doing so will lead to much better health outcomes.<sup>129</sup>

Promoting active participation in their own healthcare produces many positive outcomes for children. For example:

- It makes children feel more respected. The vulnerability associated with being ill, in pain and dependent on others is lessened if children feel that they are respected and listened to, and that their views will be valued and taken seriously.
- It relieves anxieties and helps them cope better with treatment. If they have information about their condition, they are better able to understand and cope with what is happening to their bodies and why things are happening the way they are.
- It gives them confidence. If they are involved in the process of treatment, they will not have fears that actions will be taken without their knowledge or understanding.
- It encourages cooperation. If children lack information, they are likely to be more frightened and therefore less willing or able to cooperate in treatment. In turn, interventions will be more painful and distressing.

### VERY YOUNG CHILDREN TAKING DECISIONS THAT AFFECT THEIR HEALTH<sup>130</sup>

Many child patients have long-term conditions which require repeated healthcare treatments, so they make countless chains of informal decisions, based on their former experiences and growing understanding. Children with serious conditions, such as diabetes, learn to take responsibility very early. For example, three-year-old Maisie was able to warn her mother when she was feeling shaky from low blood sugar. Ruby at four years of age could be trusted not to eat chocolates when her friend did and no adults were present, and by the age of five she was able to test her own blood sugar and decide how much cake she could eat.

<sup>129</sup> CRC/GC/2003/4, para. 39(d)

<sup>130</sup> P Alderson, K Sutcliffe and K Curtis, *Children's Consent to Medical Treatment*, Hastings Centre report, 36(6): 25–34, 2006

- It avoids unnecessary anxiety. When information is withheld, children may worry unnecessarily about what is going to happen to them. Often they will imagine something far worse than the actual reality. If they have information, they can prepare appropriately for what is happening and receive necessary support, counselling and/or comfort.
- It leads to better understanding of their own healthcare needs.
- It encourages them to take more responsibility for their own health.

### PRACTICAL STRATEGIES FOR LISTENING TO CHILDREN IN HEALTHCARE<sup>131</sup>

- Make available general information targeted at different age groups and abilities – for example, what happens when a child goes into hospital; information about certain conditions; what rights children have as patients; how to make a complaint if something goes wrong; information about getting advice on sexual and reproductive health; drug addiction; and where to go if children are being sexually abused.
- Make sure that time is given to explain fully to children about their condition. This includes discussions as to what is happening to them, what treatments are proposed, what options are available, implications of all the options, side effects of treatments, and the likelihood of pain and discomfort.
- Make sure that information and explanations are given in ways that are consistent with the child's understanding. It should preferably be provided by someone whom the child knows and trusts. Parents should be as fully involved as possible.
- Avoid talking over the child's head: children get distressed when doctors talk directly to their parents without involving them.
- Give children the opportunity to ask questions and explore their concerns and deal with them honestly and fully.
- Make clear to the child that his or her concerns will be taken seriously when decisions are being made; for example, allowing a parent to go with them as far as the operating theatre, letting them keep a favourite comfort toy with them, arranging for parents to stay with the child overnight.
- Give children time to consider what they want. For example, if a child is frightened of injections, work with them to explore what might be done to alleviate his or her fear.
- Consider deferring a medical intervention if the child is deeply concerned about it, and there is a potential for delay.
- Always explain fully to the child, if it is decided to make a decision against the child's wishes, why that decision has been made and how all efforts will be made to take account of their fears or concerns.
- Develop policies on confidentiality. Make sure that all relevant staff, as well as children and young people, are aware of them.
- Develop policies on consent to treatment. Make sure that all relevant staff and children and young people are aware of them.
- Provide training for all staff on the UN Convention on the Rights of the Child and its implications for practice.
- Develop a Charter of Rights for Children which is prominently displayed in all in- and out-patient facilities.

<sup>131</sup> CRED-PRO (Child Rights Education for Professionals) health curriculum, developed in collaboration with the Royal College of Paediatrics and Child Health and the American Academy of

Pediatrics, <http://www.aap.org/compeds/international/equity.html>





### INVOLVING CHILDREN IN THEIR OWN HEALTHCARE<sup>132</sup>

Research done in the Republic of Ireland, for the Office of the Minister for Children, came to the conclusion that best practice regarding communication with children can be summarised as follows:

- The child must be involved in treatment decisions as far as possible, bearing in mind her or his capacity to understand and willingness to be involved.
- The patient's parents or carers must be involved in treatment decisions.
- The views of children must be sought and taken into account.
- The relationship between health professional and child should be based on truthfulness, clarity and awareness of the child's age and maturity.
- Children must be listened to and their questions responded to, clearly and truthfully.
- Communication with children must be an ongoing process.
- Training in communication skills with children is an essential component of appropriate professional education.

The research looked at positive initiatives shown by health professionals, and summarised them as follows:

- addressing children directly during the consultation process (eg, by asking them personally about their ailment or condition). This is important regardless of the child's age, although the level of complexity, amount of information imparted and the involvement of children in any decision-making process should be appropriate to the child's age and maturity. Although it will depend on the setting, efforts to communicate directly with children should not exclude parents and vice versa
- adopting an age-appropriate approach to treating children, which takes into account their development and capacity to understand
- chatting with the child to make him or her feel relaxed, while also respecting personal boundaries
- preparing children adequately for what is about to happen in a treatment or procedure, and giving them the opportunity to ask questions and to prepare themselves
- empathising with children, being light-hearted and good-humoured where appropriate
- using age-appropriate language and props to explain things to children, including their condition, the prescribed treatment or the procedure about to be undertaken
- giving children choices as to how they want to proceed
- being honest with children in order to build a relationship of trust
- creating an environment in which children are encouraged to ask questions.

### Access to confidential medical counselling

Children need access to confidential medical counselling and advice. Such services should be made available to children of all ages and without them having to get parental consent. It is important to stress that the right to counselling and advice is distinct from the right to give medical consent and should not be subject to any age limit. The right to seek help without involving parents is essential in order for children's

safety or wellbeing to be protected and promoted. Children may need such access, for example, where they are experiencing violence or abuse at home. Evidence indicates that children facing abuse are far less likely to seek help if they do not believe that any advice or counselling services are confidential. Similarly, they may need confidential access in order to seek advice and information concerning reproductive health education or services, or where there are conflicts between parents and

<sup>132</sup> [http://www.omc.gov.ie/documents/research/The\\_Childs\\_Right\\_to\\_be\\_Heard\\_in\\_the\\_Healthcare\\_Setting.pdf](http://www.omc.gov.ie/documents/research/The_Childs_Right_to_be_Heard_in_the_Healthcare_Setting.pdf)

the child over access to health services. The Committee recommends that legislation or regulations be introduced to ensure that the entitlement to help is properly recognised and that medical professionals are clear about the right of children to such services and their obligations to provide them.<sup>133</sup> Governments should consider reviewing any legislation that places an obligation on professionals to report to parents if children seek independent advice or help.

In some circumstances, children will disclose information that indicates that they are at serious risk of harm – for example, they are being sexually abused – but they do not wish this information to be passed on to anyone else, or acted on. In these circumstances, it will be necessary to consider how to balance their right to confidentiality with their right to protection. The box below offers some guidelines on how to address such situations.

### **GUIDELINES FOR BALANCING THE RIGHT TO CONFIDENTIALITY WITH PROTECTION<sup>134</sup>**

1. The doctor's primary duty is to act in the child's best interest. If there is conflict between doctor and parents or parents and child, then the child's needs are paramount.
2. Where there are reasonable grounds to believe a child is at risk of significant harm, the facts should be reported to the relevant authorities.
3. Consent to disclosure should normally be sought from a competent child and carer, unless doing so would place the child or a sibling at greater risk or hinder enquiries by provoking interference with verbal evidence.
4. You should disclose information about a non-competent child if you can justify doing so as essential to their medical interest.
5. You should always disclose information without consent where failure to do so may place a child at risk of death or serious harm or where the information would help prevent, detect or prosecute a serious crime.
6. Where you are uncertain whether the above applies but an apparently competent child or a parent refuses permission for disclosure, and where a child is in danger, you are obliged to act. This is also the case where the child's refusal results from duress or fear.
7. When deciding how much information to disclose, the key is to ask yourself how providing the information would assist further inquiries and failing to provide it would hinder investigations.
8. You should document thoroughly all decisions and the reasoning behind them, explicitly separating facts from speculation.
9. Doctors providing sexual health services must balance child protection issues against the young person's right of confidentiality and need for a sexual health service. Young people may decide not use a service they perceive as not confidential and they may refrain from disclosing abuse or exploitation.
10. Children's need for protection does not diminish the importance of gaining their agreement to sharing information when practicable, and time should be allowed for this where the risk is not immediate.

<sup>133</sup> General Comment No. 4, 'Adolescent Health and Development in the Context of the CRC on the Rights of the Child'

<sup>134</sup> Royal College of Paediatrics and Child Health, 'Responsibilities of Doctors in Child Protection Cases with regard to Confidentiality', London, February 2004

### Consent to treatment

The provisions of Article 12 need to be understood in conjunction with Article 5, which states that parents or guardians must provide appropriate direction and guidance to children in the exercise of their rights, in line with their evolving capacities. Encouragement should be given to promoting an approach whereby, as soon as the child can demonstrate the capacity to take responsibility for a decision her or himself, she or he should be entitled to do so. As children mature they want, and should be allowed increasingly, to make decisions for themselves about their treatment, while continuing to get support from health professionals and their parents. Factors such as age, level of maturity, and previous experience of treatment play an important role in enhancing the ability of children to consent to their own treatment.<sup>135</sup> Governments need to introduce mechanisms that ensure that children who have sufficient maturity are able to give or withhold consent to treatment. There are a number of approaches that can be taken to implement this right:

- Some countries have introduced a **fixed age at which the right to consent automatically transfers to the child**. This approach ensures that, at a minimum, children of that age and above have an automatic entitlement to give consent without the requirement for any individual professional assessment of capacity.
- Another model is to introduce an **age threshold at which a child is entitled to give consent if he or she can demonstrate capacity**. For example, in South Africa, where many children are orphaned and caring for young siblings on their own, the Children's Act 2007 provides an age threshold of 12 when children can give consent to medical

treatment, surgical operations, access to contraception, HIV testing and disclosure of results. However, the child's maturity and ability to understand the risks and benefits of any treatment or testing must also be assessed before the child can consent on their own.

- Some countries combine a system where there is a **fixed age limit but if the child can demonstrate capacity below that age**, she or he can give consent. For example, in the UK and New Zealand, 16 is the age when all children can give consent, but a child of any age who can demonstrate competence can give consent.
- Some countries adopt an approach that gives **the parents a gradually decreasing role as the child's capacity evolves**. In the Netherlands, for example, parents make the decision on behalf of all children under 12 years. Between the ages of 12 and 16 years, the consent of both parents and the child is needed, but if the parent refuses consent, the doctor can carry out the treatment if the child insists. Once the child reaches the age of 16, only his or her consent is needed.
- A final alternative is to have **no fixed threshold**. For example, in British Columbia, Canada, there is no presumption as to the age at which children can demonstrate capacity. Any child who is competent can give consent to treatment.

Overall, the ability of children to consent to treatment is related to the provision of adequate and comprehensible information. There is a clear responsibility on the part of health professionals to ensure that appropriate information, and the time to absorb and assess it, is provided.

<sup>135</sup> See, for example, P Alderson, 'Consent to surgery for deaf children: making informed decisions' in L Komesaroff (ed.)

*Surgical consent: bioethics and cochlear implantation*, Gallaudet University Press, Washington, DC, 2007



## LEGISLATION ON CONSENT TO TREATMENT

### Relevant sections in the Children's Act 2005, South Africa

#### Section 129

- (2) A child may consent to his or her own medical treatment or to the medical treatment of his or her child if –
- (a) the child is over the age of 12 years; and
  - (b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment.
- (3) A child may consent to the performance of a surgical operation on him or her or his or her child if –
- (a) the child is over the age of 12 years; and
  - (b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the surgical operation; and
  - (c) the child is duly assisted by his or her parent or guardian.

#### Section 130

- (2) Consent for an HIV test on a child may be given by –
- (a) the child, if the child is –
    - (i) 12 years of age or older; or
    - (ii) under the age of 12 years and is of sufficient maturity to understand the benefits, risks and social implications of such a test.

#### Section 133

- (2) Consent to disclose the fact that a child is HIV-positive may be given by –
- (a) the child, if the child is –
    - (i) 12 years of age or older; or
    - (ii) under the age of 12 years and is of sufficient maturity to understand the benefits, risks and social implications of such a disclosure.

#### Section 134

- (1) No person may refuse –
- (a) to sell condoms to a child over the age of 12 years; or
  - (b) to provide a child over the age of 12 years with condoms on request where such condoms are provided or distributed free of charge.
- (2) Contraceptives other than condoms may be provided to a child on request by the child and without the consent of the parent or caregiver of the child if –
- (a) the child is at least 12 years of age;
  - (b) proper medical advice is given to the child; and
  - (c) a medical examination is carried out on the child to determine whether there are any medical reasons why a specific contraceptive should not be provided to the child.
- (3) A child who obtains condoms, contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect, subject to section 105.



## A GUIDE TO ASSESSING CAPACITY TO GIVE CONSENT

Assessing capacity to give informed consent to treatment can be done with reference to the following criteria.<sup>136</sup>

A child could be said to have capacity when he or she understands:

- the type and purpose of the proposed treatment
- the nature and effects of the treatment in broad terms
- the principal benefits and risks
- the consequences of not receiving treatment.

### Participation in the development of health services

Children also need to be invited to contribute their views and experiences to the planning and programming of services for their health and development. Their views should be sought on all aspects of health provision, including what services are needed, how and where they are best provided, discriminatory barriers to accessing services, quality and attitudes of health professionals, and how to promote children's capacities to take increasing levels of responsibility for their own health and development. For example, in its General Comment on HIV and AIDS and the rights of the child, the Committee states that:

*"States, international agencies and non-governmental organizations must provide children with a supportive and enabling environment to carry out their own initiatives, and to fully participate at both community and*

*national levels in HIV policy and programme conceptualization, design, implementation, coordination, monitoring and review. A variety of approaches are likely to be necessary to ensure the participation of children from all sectors of society, including mechanisms which encourage children, consistent with their evolving capacities, to express their views, have them heard and given due weight in accordance with their age and maturity."*<sup>137</sup>

Children's contribution to service development can be obtained through:

- feedback systems for all users of services
- research and consultative processes with children as respondents and/or researchers
- working with local or national children's councils or parliaments to develop standards and indicators of rights-respecting health services
- involving children in inspection and monitoring of services.

<sup>136</sup> P Alderson and J Montgomery, *Health care choices: making decisions with children*, Institute for Public Policy Research, London, 1996

<sup>137</sup> Committee on the Rights of the Child, Report on the 43rd Session, September 2006, Day of General Discussion, Recommendations, para. 36



### YOUNG PEOPLE INVOLVED IN HEALTH PROMOTION IN COSTA RICA<sup>138</sup>

A programme that has embraced participation by children and adolescents is the Comprehensive Adolescent Care Programme (PAIA), which has played a major role in breaking through stereotypes, myths and cultural resistance in the promotion of comprehensive health for adolescents. The programme has fostered participatory involvement by young people through the establishment of a national youth network, the members of which develop training activities in the field of comprehensive and reproductive health. The network covers the entire country and includes over 50 organised groups. This is an example of a direct health promotion initiative that has attracted input from young people by means of a strategy of encouraging social participation by adolescents. Furthermore, their participation has been made effective through the formation of various types of groups of adolescents (it makes no difference whether a particular group is concerned with health care, education, the arts, Red Cross first aid, Boy Scout work, youth pastoral outreach, other denominational religious activity and so forth). Not only do these groups receive extensive health education, their members are also trained as youth leaders and health outreach persons who project their actions with their various peer groups. This strategy has also sought to develop its effectiveness through the formation of groups of young leaders who serve as coordinators in various regions of the country. These, in turn, appoint a representative to sit on a national coordinating group. The local youth groups, the regional groups and the national coordinating group together constitute what is known as the National Proactive Youth Network.



### YOUNG PATIENTS EVALUATE HOSPITALS IN THE UK<sup>139</sup>

Sandwell and West Birmingham Hospitals National Health Service Trust in the UK currently enables patients only limited involvement in planning services. The Trust says it is difficult to change this because people only use its services for a short time and usually do not want to return, as they associate hospital with difficult times. However, the Trust has instigated a number of evaluation activities to involve parents and young people (although not yet children) in giving feedback on the service they received:

- **Monthly satisfaction surveys** with young people, parents and those attending the Children's Outpatient Department
- **'Speak Out' suggestion slips** available on the ward for patients and parents to complete whenever they want
- **Collecting patient 'stories'** about their whole experience of being in hospital, through taped interviews
- **Collated informal comments (monthly)** – staff receive informal feedback from children and their families throughout their stay and on discharge, and there is a designated time during team meetings to discuss and record this information
- **Monthly parents' focus group**
- **User group assessment** in which a youth group (consisting of older teenagers, some of whom were over the age of 18) visited the unit, undertaking research and commenting on the broader aspects of the service provision.

Commissioners of services influence how children and young people are involved in project development by requiring that health service organisations involve children both in developing services and in project evaluations. In one case children are to be involved in selecting which external agency will evaluate an organisation.

<sup>138</sup> Third periodic report of Costa Rica to the Committee on the Rights of the Child, CRC/C/125/Add.4/October 2004

<sup>139</sup> P Kirby, C Lanyon, K Cronin and R Sinclair, *Involving children and young people in policy, service planning, delivery and evaluation*, Department for Children, Schools and Families, London, 2003

## IN EDUCATION

Authoritarianism, discrimination and violence continue to characterise schooling in many countries. Such environments are not conducive to the expression of children's views nor to those views being taken seriously. Indeed, many children fail or drop out of school because of a pedagogy and environment which ignores their views and denies them opportunities for participation. Respecting children's participation rights in school will contribute significantly to the attainment of the Millennium Development Goals (MDGs) on education because:

- it will contribute to the building of skills, confidence and capacity
- it reduces alienation, disaffection and dropping out
- it promotes the opportunity to enlist children as active contributors to the creation of effective learning environments.

Indeed, respect for participation rights *within* education is fundamental to the realisation of the right to education. The General Comment on the aims of education makes clear the importance that the Committee attaches to the process by which the right to education is provided:

*"...efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to*

*participate in school life. ... Compliance with the values recognized in article 29 (1) clearly requires that schools be child-friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights."*<sup>140</sup>

The realisation of Article 12 within education requires action in a number of areas:

- involvement of children in individual decisions affecting their education
- the introduction of child-centred learning
- the establishment of democratic structures within school
- opportunities for children to inform the development and implementation of education legislation and policies
- support for national student organisations.

### **Involvement of children in individual decisions affecting their education**

When decisions are made about a child's education – for example, to hold the child back for a year, or to place her or him in a particular stream or setting – the child should have the right to be heard before the final decision is made. The right of a child to be heard must also be respected when a decision is made to exclude her or him from school or to impose any other form of disciplinary measure. In all these circumstances, the decision must be subject to judicial or administrative review if the child wishes to challenge it. The child will need to have information about how to challenge the decision, where to go for help and who can support her or him through that process.

<sup>140</sup> General Comment No. 1, 'Aims of Education', CRC/GC/2001/1, April 2001



## A RIGHTS-BASED, CHILD-FRIENDLY SCHOOL<sup>141</sup>

The child-friendly schools approach, now being adopted in many countries, provides a positive example of caring, protective and participatory environments that prepare children for active citizenship within their communities. Such a school:

**1. Reflects and realises the rights of every child** – cooperates with other partners to promote and monitor the wellbeing and rights of all children; defends and protects all children from abuse and harm (as a sanctuary), both inside and outside the school.

**2. Sees and understands the whole child, in a broad context** – is concerned with what happens to children before they enter the system (eg, their readiness for school in terms of health and nutritional status, social and linguistic skills), and once they have left the classroom – back in their homes, in the community, and in the workplace.

**3. Is child-centred** – encourages participation, creativity, self-esteem and psychosocial wellbeing; promotes a structured, child-centred curriculum and teaching-learning methods appropriate to the child's developmental level, abilities and learning style; and considers the needs of children over the needs of the other actors in the system.

**4. Is gender-sensitive and girl-friendly** – promotes parity in the enrolment and achievement of girls and boys; reduces constraints to gender equity and eliminates gender stereotypes; provides facilities, curricula and learning processes welcoming to girls.

**5. Promotes quality learning outcomes** – encourages children to think critically, ask questions, express their opinions, and 'learn how to learn'; helps children master the essential enabling skills of writing, reading, speaking, listening and mathematics, and the general knowledge and skills required for living in the new century, including useful traditional knowledge and the values of peace, democracy, and the acceptance of diversity.

**6. Provides education based on the reality of children's lives** – ensures that curricular content responds to the learning needs of individual children as well as to the general objectives of the education system and the local context and traditional knowledge of families and the community.

**7. Is flexible and responds to diversity** – meets differing circumstances and needs of children (eg, as determined by gender, culture, social class, ability level).

**8. Acts to ensure inclusion, respect, and equality of opportunity for all children** – does not stereotype, exclude or discriminate on the basis of difference.

**9. Promotes mental and physical health** – provides emotional support, encourages healthy behaviours and practices, and guarantees a hygienic, safe, secure, and joyful environment

**10. Provides education that is affordable and accessible** – especially to children and families most at risk.

**11. Enhances teacher capacity, morale, commitment and status** – ensures that its teachers have sufficient pre-service training, in-service support and professional development, status and income.

**12. Is family-focused** – attempts to work with and strengthen families and helps children, parents and teachers establish harmonious, collaborative partnerships.

**13. Is community-based** – strengthens school governance through a decentralised, community-based approach; encourages parents, local government, community organisations and other institutions of civil society to participate in the management as well as the financing of education; promotes community partnerships and networks focused on the rights and wellbeing of children.

<sup>141</sup> See <http://www.unicef.org/lifeskills/files/CFSchecklist.doc>





### THREE EXAMPLES OF RESPECT FOR SCHOOLCHILDREN'S RIGHT TO BE HEARD

#### Germany: Saarland

The 1996 school legislation provides that: "Every pupil must be given a hearing, before any disciplinary decision is taken, and the pupil can take with them another pupil or a teacher whom he or she trusts as a supporter."

#### Denmark

Since 1998, schools have been required by law to draw up a complaints procedure. In secondary schools, this applies to staff, parents and pupils. The school board must appoint a complaints committee to which complaints can be submitted.

#### Norway

Children have full autonomy on all education issues from the age of 15 years.

### Participatory child-centred learning

Children and young people should be recognised as active contributors to their own learning, rather than passive recipients.<sup>142</sup> It is also important to respect the evolving and differing capacities of children, together with recognition that children do not acquire skills and knowledge at fixed or pre-determined ages.<sup>143</sup> Educational environments, including early years provision, should enable and encourage children to take an active role in the process of their own learning.<sup>144</sup> Teaching and learning must involve a variety of interactive learning methodologies to create stimulating and participatory learning environments. The role of teachers, and others involved in creating or strengthening learning opportunities, is to facilitate participatory learning rather than simply to transmit knowledge. Through active participation, children can be helped to acquire skills in thinking,

analysing, investigating, creating and applying knowledge, so that they can achieve their optimum potential. Classroom environments and teaching and learning resources need to reflect a participatory approach to learning with appropriate tools and resources to reflect these differences. Curricula need to be adaptable to children's own local communities, in order that they can both learn about and contribute through their education to strengthening the environment they live in.

### Democratic school environments

Beyond the actual pedagogy of the classroom, it is important that children are acknowledged as democratic participants throughout the school environment. Governments need to introduce a legal framework placing an obligation on every school to facilitate the establishment of democratic procedures through which children can express their views.

<sup>142</sup> Ibid.

<sup>143</sup> Committee on the Rights of the Child, Report on the 26th Session, January 2001, CRC/C/103 Annex IX, para 12, United Nations, Geneva

<sup>144</sup> *A human rights-based approach to EFA: A framework for the realisation of children's right to and rights in education*, UNICEF/UNESCO, 2007



### GIRL-FRIENDLY SCHOOLS IN EGYPT<sup>145</sup>

Promoting a participatory learning environment is an important means of building opportunities for girls. In the girl-friendly schools that have been developed in Egypt, girls are encouraged to express their thoughts and needs openly, and without any fear of censorship or rejection. Teaching is driven by a conviction that children are natural learners, and that it is the role of facilitators to present problem-based activities which children are invited to address, drawing holistically, critically and creatively on a broad range of knowledge areas. The emphasis is on situated learning, on problem-solving, on seeking solutions both individually and in teams, through dialogue and cooperative peer learning. Critical and creative thinking are taken to be the norm. Much of the time in the classroom is spent in 'work segments', which are largely managed by the students themselves rather than tightly orchestrated by the teacher. Teacher-centred education tends to emphasise patterns that can be characterised as 'listen-listen-listen-work', with the teacher mostly addressing the whole class. In these girl-friendly schools, instead of the teacher merely asking questions and expecting students to respond in what has aptly been called the 'ping-pong' approach, pupils ask each other questions, and also address questions to the teacher. More importantly, these questions do not focus on mere recall, but require classmates to show understanding, to analyse, to evaluate, criticise and create. Teachers use a range of pedagogic tools including brainstorming, role play, mime, puppet theatre, plastic arts and hands-on activities, show-and-tell, music, singing and poetry-reciting. Classroom behaviour allows pupils to depart from routines, and to be creative and spontaneous, and to seamlessly merge work tasks with social and recreational needs.

The impact of these schools is profound. Teachers rarely need to impose discipline. The girls express positive views about their teachers. And teachers are positive about the students, with one quoted as saying, "There's an indicator of success for you: the girls are becoming free spirits, expressing themselves in such a self-confident manner!" And parents who initially expressed concern about the focus on playing and drawing, have now begun to value the extent to which these methods are effective in teaching reading and writing. One girl, when asked what schooling meant to her, replied: "The school has opened up the world for me."

Schools need to promote environments in which children are engaged as active participants at all levels. Opportunities must be created for children to be involved in decision-making processes in the school, for example, through class councils, school councils, and student representation on school boards and committees, where they will have the opportunity to express their views on the development and implementation of school policies. The right to such involvement needs to be enshrined in legislation rather than relying on the goodwill of authorities, schools and

headteachers to implement them. Efforts also must be made to make teachers aware of the risks of manipulating children to pursue adult agendas.

In addition, children can be involved:

- as peer educators, and mentors for younger children
- in advising on issues such as design of schools, playgrounds and latrines
- in helping develop, and providing feedback and evaluation on, teaching methods and the curriculum
- as mediators helping resolve conflicts

<sup>145</sup> Adapted from: R Sultana, *The Girls' Education Initiative in Egypt*, UNICEF, 2008



## EVIDENCE OF THE BENEFITS ASSOCIATED WITH PARTICIPATORY LEARNING<sup>146</sup>

A small pilot study for the UK Government found a “positive association” between participation and exam attainment at 16 years, when comparing secondary schools in England which prioritise participatory activities for a large percentage of students with other similar, but non-participatory, schools. Additionally, research in Norway, although still in the early stages of development, has shown that there are clear positive relationships between the general wellbeing of students, their involvement in learning, academic self-esteem and achievement in some subjects.<sup>147</sup> Early years research has found that more participatory settings – nurseries in which teachers respond to children’s self-initiated play in a loosely structured but supportive environment, and those which adopt the ‘High/Scope’ approach in which children ‘plan, do and review’ their own activities – are associated with more positive long-term outcomes than nursery settings in which teachers directly teach children academic skills.<sup>148</sup>

These positive outcomes found in participatory settings included a lower percentage (8%) of pupils needing treatment for emotional impairment or disturbance during schooling (compared with 47% in directive settings), a higher percentage planning to go to university, increased numbers doing voluntary work, and a reduced risk of offending. Teachers explained that they felt listening to children improved their teaching practice.

Recent research into students themselves carrying out research in schools demonstrates that this type of participatory activity can give less-experienced teachers confidence, and can renew the enthusiasm of those who are more experienced.<sup>149</sup> This research cited other benefits: improved relationships within a learning environment, greater respect for teachers, increased commitment from pupils and enhanced attitudes to learning, resulting in improved attendance and greater commitment to doing homework.

- in recruitment and appraisal of teachers
- in providing guidance on strategies to eliminate discrimination, bullying or corporal punishment in schools<sup>150</sup>
- in making the curriculum more relevant to children’s reality.

One approach to creating a participatory environment is to employ the use of ‘circle time’, a process whereby at the end of each day children come together in a circle to discuss issues of concern to them, identify problems and explore solutions. Children

can also be involved in establishing the indicators against which they monitor the extent to which a school is respecting the rights of all its members and taking part in a process of regular evaluation of compliance with those indicators. They can then share in the responsibility of developing strategies for improving practice. And in all these strategies, efforts need to be made to ensure the equal opportunities for participation by all children, including the most marginalised.

<sup>146</sup> D Hannam, *A pilot study to evaluate the impact of student participation aspects of the citizenship order on standards of education in secondary schools*, paper for ESRC seminar, ‘Consulting Pupils on Teaching and Learning’, Cambridge University, 2001; [www.csv.org.uk/csv/hannamreport.pdf](http://www.csv.org.uk/csv/hannamreport.pdf)

<sup>147</sup> Cited in D Hannam, ‘Participation and Achievement. Examples of research that demonstrate associations or connections between student participation and learning, or other outcomes that support it’, Unpublished report/review conducted for the ministerial adviser at the Citizenship Unit, Department for Education and Science, London, 2003

<sup>148</sup> L J Schweinhart and D P Weikart, *Lasting Differences: The High/Scope Preschool Curriculum Comparison Study Through Age 23*, High/Scope Educational Research Foundation, Michigan, 1997

<sup>149</sup> S Bragg and M Fielding, *Students as Researchers: Making a Difference*, Pearson, Cambridge, 2003

<sup>150</sup> General Comment No. 8, ‘The Right of the Child to Protection from Corporal Punishment and Other Forms of Cruel and Degrading Treatment’, CRC/C/GC/8, 2006



## TWO EXAMPLES OF LEGISLATION TO ESTABLISH DEMOCRATIC RIGHTS IN SCHOOLS<sup>151</sup>

Under the **1994 Act on the Folkeskole Section 42 (1)** (covering the entire period of compulsory education), a School Board shall be set up at each school, and it shall have the following composition:

- 5–7 parent representatives
- 2 teacher representatives
- 2 pupil representatives elected by and from among the pupils of the school.

Section 46 on 'Advisory Bodies' stipulates that there should be a pedagogic council, consisting of all teaching staff, and at all schools with five or more form levels, pupils shall set up a pupils' council. There is an annual election of two representatives from each class for the pupils' council. Each class also has *Klassentiems*, the 'hour of the class' – a weekly lesson devoted to internal, social problems and practicalities.

In a **Danish Act of 1997** dealing with upper secondary schools, Section 14 states: "Each upper secondary school will set up a pupils' council, appointed by and among the school's pupils. The pupils' council will submit reports to the headmaster, inter alia, on general matters concerning pupils' affairs."

Under Section 5, subsection 9 of the **Danish Executive Order** on upper secondary schools, teachers and students must discuss the teaching regularly and undertake internal assessments, the purpose of which is to enable the students and the teachers to continuously improve the teaching in the school.

### The Netherlands

Under the **Education Participation Act, 1992**, every primary, secondary and special school is legally required to set up a **Participation Council**. In primary schools this comprises an equal number of elected staff and parent representatives; in secondary schools it comprises an equal number of elected staff and pupil/parent representatives. The participation council has a number of general powers and has the right to give its advice or consent and to put forward proposals. Secondary school pupils can set up a student council and parents can participate through the parents' council, which advises the parent representatives in the participation council and coordinates parent activities.

According to the **School Act**, schools must strive to ensure that all pupils:

- take personal responsibility for their studies and working environments
- gradually exercise greater influence over their education and the internal work of the school
- have an understanding of democratic principles and develop their ability to work in democratic ways.

The guidelines in the **1994 Curriculum for the Compulsory School System** state that all who work in the school shall support the pupils' ability and willingness to both influence and take responsibility for the social, cultural and physical school environment; and that the teacher shall (inter alia):

- start with the recognition that the pupils are able and willing to take personal responsibility for the learning and work in school
- ensure that all pupils irrespective of sex, social or cultural background have real influence over the working methods and structures, and the content of their education, and that this influence increases as they grow in age and maturity
- together with pupils plan and evaluate the teaching
- prepare the pupils for participating in and sharing the joint responsibilities, rights and obligations that characterise a democratic society.

<sup>151</sup> L Davies and G Kirkpatrick, *Euridem Project*, Children's Rights Alliance for England, London, 2000



### ISSUES RAISED BY CHILDREN'S CONSULTATIVE BODIES IN SWEDEN<sup>152</sup>

Research looking at school councils and working groups in Swedish schools showed that these covered a huge range of ideas, activities and issues, including:

- the opportunity for pupils to discuss problems they were having with teachers
- producing a student yearbook
- fundraising projects
- support for anti-bullying
- support for anti-racism, cultural days
- ideas for 'special interest' days
- lengthening the morning break
- lunchtime queues
- how students interact with each other
- photocopying facilities
- canteen prices and quality
- student behaviour in relation to some teachers.



### UNICEF-UK'S RIGHTS RESPECTING SCHOOLS PROGRAMME<sup>153</sup>

UNICEF-UK's Rights Respecting Schools (RRS) programme teaches about children's and human rights but, most importantly, supports schools to model rights and respect in all its relationships: teacher/adults–pupils; pupils–teacher/adults; pupils–pupils.

An independent study was carried out to compare schools in which the RRS approach was fully incorporated with those in which it was less fully incorporated. The study found that in the former, among pupils of all age groups, there were improvements in social relationships, behaviour and achievement. Pupils:

- were more respectful and helpful to others, and less aggressive and disruptive
- showed greater respect for the school environment
- were more careful with books, desks and school equipment
- participated more in the classroom and in extra-curricular activities such as clubs and school councils
- showed enhanced academic engagement and achievement. This was reflected in improved critical thinking skills, confidence in tackling new tasks, and increased test scores
- demonstrated increased self-regulatory capacity, accepting that the responsibilities they had learned were the concomitants of their rights.

In addition, teachers:

- reported an overall positive effect of RRS on their teaching and relationships within the school
- reported fewer feelings of exhaustion as a direct result of their work, felt more energised when dealing with students, experienced less frustration with teaching, and reported an increase in a sense of personal achievement.

Implementation of RRS was the most sustained and progressive in those schools where headteachers were fully supportive of the approach and adopted an effective strategy for using RRS as an overarching framework into which all other initiatives were integrated. Some headteachers reported a number of challenges to the introduction of RRS, including pressures to improve pupil achievement, reluctance on the part of some teachers to adopt the approach, and initiative overload. However, the data from those schools in which RRS has become fully embedded indicate that, over time, it becomes self-perpetuating, by virtue of its positive outcomes for both pupils and teachers.

<sup>152</sup> L Davies and G Kirkpatrick, *The Euridem Project*, Children's Rights Alliance for England, London, 2000

<sup>153</sup> For more information about the Rights Respecting Schools programme, go to: <http://www.unicef.org.uk/Education/Impact-Evidence/External-evaluation/>



### **“WHEN CHILDREN GOVERN, THE SCHOOL DOES BETTER”: A PARTICIPATORY APPROACH IN FOUR AFRICAN COUNTRIES<sup>154</sup>**

While children are often asked in school to sit down, quieten down, and settle down, the children’s government encourages children to stand up, speak up, and take action.

#### **What is a children’s government?**

Children’s government is a tool to promote schools in which education is improved and which are safe, clean, enriching, fair, gender-sensitive and inclusive. It involves the active participation of the students themselves, and this has led to schools being successfully transformed in the four countries of West and Central Africa where it is currently used: Mali, Cameroon, Guinea and Guinea Bissau.

#### **How does a children’s government work?**

With discreet guidance from adults, and through role play, the children organise themselves into ministries, elect ministers, make decisions, take actions and hold themselves (and the adults) accountable for fulfilling their responsibilities. Through their participation in children’s governments, children learn about citizenship rights and responsibilities, problem-solving and communication skills, and have the chance to experience an environment of team spirit and one in which boys and girls are treated equally. Children’s governments allow children not only to learn about democracy and peace, social justice and gender equality, but to exercise their freedom of expression (and self-discipline) and to become true decision-makers.

While adults provide guidance on how to form a government and how to engage in activities and achieve certain goals, it is the children themselves who elect ministers and delegates, diagnose the needs of the school, draw up action plans, take action, and then reflect on their experience. Ministers and delegates of a children’s government are elected not because of their prior experience but rather according to their human qualities, such as kindness and good communication and organisation skills. An equal number of boys and girls must be elected as ministers. Each student elected holds her or his term for one year. The number of ministers depends on the problems and needs identified by the students themselves at the beginning of each school year.

The work of children’s governments brings improvements to many different aspects of school and community life such as education, health, protection, water and HIV and AIDS. Activities include tutoring, initiating dialogue with teachers, holding awareness-raising campaigns, improving the school physical environment, and practising good hygiene. These and other activities are initiated by children, but can involve various members of the community such as parents and religious leaders. Children’s talents are allowed to flourish through taking part in planning and action.

<sup>154</sup> Adapted from: FTraoe, ‘Quand les élèves gouvernent, l’école va mieux’, *Le Républicain*, 16 March 2004

### Participation in education policy

Beyond the school, children need to be involved at the local and national levels on all aspects of education policy, including the development of school curricula, teaching methods, school structures, standards, budgeting and resources, and child protection systems. In addition, the Committee encourages governments to support and encourage the development of independent children's organisations which can play a role in monitoring and evaluating the quality of education provided in schools and respect for children's rights in the education system.

### National student organisations

Some countries have supported the establishment of national student organisations or unions which can provide a forum for children. Not only do such organisations provide an invaluable opportunity for students to gain experience

of democratic engagement, they also offer a space where they can:

- share and develop ideas about how to strengthen the education system
- provide feedback to government on the impact of education legislation and policies
- advocate and promote the right to education for all children
- share ideas for including marginalised children in school
- organise social and cultural activities both nationally and within local communities to promote awareness of the role of schools and of the education they are providing.

In these ways, student organisations can serve as a positive force within society and provide governments with an invaluable source of information and expertise to inform policy-making. However, these organisations must be autonomous and independent of government, and free of political control or manipulation.

### EVALUATING SCHOOL LIFE IN SWEDEN<sup>155</sup>

In Sweden, the National Agency for Education is responsible for a programme of national evaluation.

Aims of the National Agency approach are:

- to collect and identify problems and changes with as great a coverage as possible nationally
- to create frameworks of reference that place the school as a social system in a national context in which the concepts of understanding and explanation are given central importance
- to perform evaluation within a broad social perspective, recognising the relationship between education, production and social life.

The key focus is on research rather than the setting of standards. Not only is there an equal interest in social development as in academic achievement, but the agency uses a range of national survey techniques to gain information. In particular, it asks pupils what they think about school. The pupils are asked for information on what the work of the school means for the individual pupil in the following areas: rights and obligations, social development and the development of knowledge and competence. The pupil perspective concentrates on the role of the school for the individual student, above all with regard to the development of self-identity. It concerns the individual's experience of the school, as an environment in which the individual interacts with other individuals and the group, and as a social learning and working environment.

<sup>155</sup> L Davies and G Kirkpatrick, *The Euridem Project*, Children's Rights Alliance for England, London, 2000



### THE DANISH PUPIL UNION<sup>156</sup>

The Danish Pupil Union is supported by the government, with financing from two foundations and from the national lottery. It is routinely consulted by the Ministry of Education at all stages of any change in the education system, and therefore pupils are not only kept in the picture but feel that their voices are heard. It publishes a magazine, funded through advertising, which is distributed to every school in Denmark and provides information to pupils on what is happening in the Ministry. Representatives of the union visit as many schools as possible, to tell them about the organisation and encourage individual or school membership. The union is involved in training, and promotes students' participation in democracy, emphasising the importance of getting all students to participate. Many schools have 'away weekends' to enable school council members to learn cooperation, negotiation skills, etc, and the union will help with the running of these events.

The union feels that the pupils' voice is definitely heard in the Ministry, and that it effectively 'represents' them in government. Even though it would like to have an ever greater say, especially when new laws are made that affect schools and schoolchildren, there is nonetheless a recognition that it does have a direct channel of communication with government. Any consultative procedure will automatically include Pupil Union representatives, along with parents, teachers and higher education student organisations.

## IN PLAY, RECREATION, SPORT AND CULTURAL ACTIVITIES

Children have a right to play. Play and recreation is vital to children's development, providing the opportunity for enjoyment, exploration, refuge, and participation in cultural and social events. There is a widespread view among child development experts that play is the very centre of children's spontaneous urge for development and should be understood as a core dimension of the quality of people's engagement with the world.<sup>157</sup> Indeed, children will create opportunities for play in the most inauspicious circumstances: in the course of a working day, in hospital, in refugee camps, during lessons. And through it, children acquire social skills, and develop creativity and innovation, capacity to negotiate and to care for others, and the ability to establish, understand and abide by rules. However, central to the right to play is the principle that children must be free to create their own activities and games without adult control. In other words, the

right to play is exercised through the right of children to express their own views.

However, despite children's considerable facility for creating play opportunities, the environment in which many children live militates against its adequate realisation. In some cases, parents' own lack of experience of play limits their ability to create, or recognise the importance of, play environments for their children. Too often play is viewed as wasted time and of no constructive value. Many children with disabilities are denied any real chance for play as a result of discrimination, social exclusion and the physical barriers imposed by the environment. The disproportionate burden of work that falls on girls in many parts of the world prohibits opportunities for play. Children in prisons, in childcare institutions, in long-term hospital care or refugee camps often lack any facilities or space for play. Excessive formal demands on children's time, whether through paid employment or education, can intrude on the time available in children's lives for

<sup>156</sup> Ibid.

<sup>157</sup> A Petren and R Hart, 'The Right to Play' in *Children's Rights*:

*Turning Principles into Practice*, UNICEF/Save the Children, Kathmandu, 2000



play. And increasingly, in many developed countries, the time children have outside school is organised by their parents through clubs, additional classes and formal, adult-led activities. All these barriers deny children the right to express themselves through unsupervised play.<sup>158</sup>

In order to protect and promote the right of children to exercise choice in the opportunity to play, government action is needed to ensure:

- within the school timetable, an adequate allocation of time each day for children to play without adult control or organisation of their activities
- creation of safe spaces in the local environment where children can play independently. Particular attention needs

to be given to enabling children with disabilities to be able to access such spaces. Article 30 of the Convention on the Rights of Persons with Disabilities emphasises the equal right of children with disabilities to play. Governments therefore need to ensure that play opportunities are accessible and inclusive

- appropriate training of relevant professionals on the right to free play and its importance for the healthy development of children
- awareness-raising for parents on the role of free play in children's development
- the opportunity for children in institutions – whether these be childcare, health or penal institutions – to engage in free play on a daily basis.



### CENTRE FOR PERFORMING ARTS, SRI LANKA<sup>159</sup>

The Centre for Performing Arts (CPA) aims to increase reconciliation among different communities in Sri Lanka through art and cultural programmes, focusing particularly on children and youth. Through drama, poetry and other cultural activities, children learn to express themselves and share their experiences, particularly relating to war and trauma, with other children and young people. Inter-cultural exchanges, joint performances and campfires are organised, as supportive environments for children from different communities to express their feelings about war and act as agents for peace. Seminars on children's rights and women's rights have also been organised.

CPA works through 20 units around the country. Eleven of the units are run by CPA and another nine are run as 'Children's Zones of Peace' (part of an initiative undertaken together with UNICEF). These units reach 2,500 children and young people and through their cultural programmes are building the foundations of peace among Sri Lanka's youth.

When Darshana (a wordless play) was being performed in different locations around the country, a child from Jaffna said that before he watched the drama the only Sinhalese people he had ever known were the soldiers at the checkpoint. All his impressions were based on them, but now that he had met Sinhalese children he realised that they were just like he was. Likewise, during one of the camps a Sinhalese child said: "I thought every Tamil person was a tiger. Now, having lived together, I realise they are like me ... And we wonder what have these adults been fighting for?"

CPA has a special programme with Save the Children in Jaffna to promote sharing of capabilities and to prepare children in creative arts, particularly drama. Through their own Child Clubs the children have also been involved in landmine awareness programmes.

<sup>158</sup> *Children's Right to Play: An examination of the importance of play in the lives of children worldwide*, International Play Association, 2009

<sup>159</sup> Adapted from: C O'Kane, *Children and Young People as Citizens: Partners for Social Change*, Save the Children UK, 2003

In addition, children should be consulted and involved in the creation of play environments. Very young children and some children with disabilities who are unable to participate in formal consultative processes should be provided with particular opportunities to express their wishes.

Article 12 also has implications for children's access to cultural activities. While the right to participate in cultural life is expressed in Article 31 of the UNCRC, the right to

be heard in cultural activities must also be respected. For example, children have the right not only to learn about and practise aspects of their traditional culture, such as folk-dance and music, but also to question, challenge and change them. Some traditional cultural activities may reinforce the subjugation of women, or exclude children with disabilities. The right of children to question these practices, and offer positive alternatives, needs to be protected.



### INVOLVING CHILDREN IN DESIGNING A SCHOOL PLAYGROUND IN ENGLAND<sup>160</sup>

In a primary school in England, children voiced their concerns through the school council that the playground was not a safe or enjoyable place for most children to play in. The space was dominated by older boys playing football, and the girls and younger children felt intimidated and were restricted to using the edges of the playground.

The headteacher responded by setting up a consultative process with the whole school to design a new way of organising the playground. He also agreed to provide the children with a limited budget to pay for the equipment and changes that were needed. As a result:

- The children designed a quiet area, surrounded by a very low hedge where children could sit and talk without being disrupted by boisterous physical games.
- They agreed that part of the playground would be allocated to football and other physical games, but that its usage would be organised so that different age groups could use it each day. There were four year groups in the school. Each year group would be allowed to play football (or other games) on the space on a given day of the week. The fifth day was allocated to girls only.
- The children chose to purchase a climbing frame, the use of which was also allocated to year groups on a daily basis.

The outcome of the process was a significantly improved playground, a fairer allocation of the space, and a real sense of empowerment among the children, who had been listened to, taken seriously, and achieved a very concrete improvement in their school lives.

<sup>160</sup> Direct experience of the author

## IN THE MEDIA

The Committee on the Rights of the Child has recognised the essential role of the media in promoting awareness of the right of children to express their views, and has urged the various forms of media, particularly radio and television, to dedicate resources to the inclusion of children in the development of programmes and to enabling children to develop and lead media initiatives concerning their rights.<sup>161</sup> In many countries throughout the world there are examples of children producing their own newspapers, submitting articles for mainstream media, and participating in radio and television programmes. These forms of engagement not only build skills and confidence, but they also open up opportunities for children's own perspectives to be disseminated to a wide audience, as well as challenging negative assumptions about children's capacities and competence.

## IN THE WORKPLACE

Many millions of children continue to be engaged in employment. Too often they have no say in the fact that they are working at all, the nature of the work they are doing, or the conditions under which they are required to work. In order to comply with the rights of these children to be heard and taken seriously in relation to their employment, governments need to take the action to consult with and involve children:

- in the development of policies to ensure greater compliance with their right to education and to protection them from economic exploitation consistent with International Labour Organization Conventions Nos. 138 (1973) and 182 (1999)
- in the development of social protection policies which will support families to send their children to school and avoid reliance on children's wages



### CHILD REPORTERS AS AGENTS OF CHANGE IN INDIA<sup>162</sup>

A Child Reporters' project in Koraput, in the Indian state of Orissa (now known as Odisha), started with the selection of 100 children aged between 8 and 14 years – ten from each of ten schools – in collaboration with the local authority and civil society partners. The children were selected by children, parents and the schools. They attended orientation workshops on issues of development, journalism and reporting. Each team of ten then noted down their thoughts and daily observations in diaries, which were collected together, and the best writings were included in a monthly newsletter. The selections were made by an adult local facilitating group, but the quality, content and selection of reports were constantly discussed with the children. A group of the children were then also trained in using audio-visual equipment, and made a film recording a local planning process. A number of them went on to speak at national and international conferences. It is important to note that the children involved came from a remote part of India where they had never before even seen a television. From starting out shy and unable to speak fluently, they became confident and successful in influencing their local communities.

“The best was when we had written on the bad condition of our village road and the road connecting our village with the block headquarters. It had come to our mind when one of our friends fell and injured himself on the muddy road. We all wrote the same report and wished it could be repaired. The chief administrative officer read the news and we also spoke to him when he visited our village. He was nice and repaired the road. We felt happy, as everyone in the village has said ‘Hail the Child Reporters!’” Eleven-year-old boy

<sup>161</sup> Committee on the Rights of the Child, Report on the 43rd Session, September 2006, Day of General Discussion, Recommendations

<sup>162</sup> Adapted from: L Acharya, ‘Child Reporters as Agents of Change’ in B Percy-Smith and N Thomas (eds) *A Handbook of Children and Young People's Participation*, Routledge, London, 2010

- in the development of enhanced enforcement mechanisms to protect children from harmful child labour:

Within the actual working environment, action needs to be taken to ensure that children are afforded the right to be heard:

- by being able to join trade unions established to protect the rights of working people
- by forming their own organisations of working children to negotiate better working conditions
- when work sites and conditions of work are examined by inspectors investigating the implementation of labour laws
- in development and implementation of programmes for the reduction and eradication of child labour:

## IN SITUATIONS OF VIOLENCE

The UNCRC establishes the right of the child to be protected from all forms of violence and the responsibility of governments to ensure this right for every child without any discrimination. It is only if children both understand their right to protection from violence and have access to effective mechanisms to be heard that it is possible to protect them effectively. However, much of the violence perpetrated

against children goes unchallenged: certain forms of abusive behaviour are understood by children as accepted practices, such as female genital mutilation, sexual abuse, early marriage and physical punishment. In particular, girls in many societies are taught to accept a marginalised and powerless role in society, in which they are not entitled to be heard. They do not know that they are entitled to protection from such treatment. Even when they do know they have a right to protection, there are often no child-friendly reporting mechanisms available to them. There are no avenues through which they can report in confidence and safety about maltreatment they experience, and no channel to communicate their concerns to those responsible for their protection.

It is particularly difficult for a child to report an incidence of abuse in countries where there is no tradition of children speaking up on their own behalf. The problems are intensified in the context of sexual abuse. Where such things are not talked about, the child may have no language through which to describe or articulate what has happened and there may be profound stigma attached to sexual activity. Children will often be reluctant to talk to an adult because of fear that their parents, or officials, such as the



### CHILDREN NEGOTIATING THEIR OWN PROTECTION FROM HARMFUL CHILD LABOUR IN INDIA<sup>163</sup>

Concerned for Working Children, an NGO in India, consulted a group of children in each of eight *panchayats* (local village administrations) in India who felt that existing definitions of work in their day-to-day lives were irrelevant and unhelpful. Each group undertook a detailed analysis of all forms of work in which children were likely to participate, with an assessment of the ages at which, and the contexts in which, they felt it was either beneficial or harmful. All work viewed as harmful was defined as 'child labour'. Their analysis was then used as the basis for negotiating within their local community for it to become 'child-labour free'. The children put forward their recommendations in their local *panchayats* and, once their recommendations were accepted, a task force comprising local people, including children, was established to oversee their implementation. This approach means that policy-making takes account of local conditions and of occupational hazards, and engages children directly in defining acceptable and unacceptable work, as well as in advocating, negotiating and monitoring with regard to the standards that they themselves have developed.

<sup>163</sup> Concerned for Working Children, *Work we can and cannot do*, by children of Balkur, India, 1999



### **BREAKING THE SILENCE AROUND CHILD SEXUAL ABUSE IN LEBANON**<sup>164</sup>

Kafa (which means 'enough') is a local NGO working on violence and exploitation in Lebanon. It has undertaken research to assess the prevalence of child sexual abuse. The project explores knowledge and attitudes and identifies the barriers to seeking help. It has been undertaken in the context of the 'July 2006 Conflict', which displaced much of the population in the south and the Beirut suburbs. Many families had to stay in overcrowded places with strangers, increasing the risk of child sexual abuse.

In 2007, over 1,000 children aged 9 to 12 years from camps for displaced persons and summer camps participated in the study, mainly by responding to a questionnaire. In addition, around 250 schoolchildren were involved in five awareness-raising sessions on sexual abuse. The study led to follow-up work with 15 children identified as directly affected by sexual abuse. Some of the field researchers are also organising sessions on children's rights with both children and parents. Broader follow-up is being planned, including development of a pilot toolkit and training manual for educators and social workers, capacity-building and awareness sessions for children in schools using the toolkit, and work with government authorities to develop appropriate policies. Through the Ministry of Social Affairs, the government has indicated its willingness to adopt a national strategy on child sexual abuse – a clear and positive outcome of the project. It will be important to ensure support for children's meaningful and effective involvement in developing, implementing and monitoring such a strategy.

police, will be told. They may feel that such exposure would be more damaging than the abuse itself: they may be punished for reporting it, blamed for the fact that it took place and stigmatised as a consequence. Reporting can lead to conflict within the family or community, risk of reprisals, re-victimisation by the authorities, and further violence. It is extremely important therefore to develop opportunities for children to talk in safety and to understand

the boundaries of confidentiality they are being provided with.

Governments should take note of the findings of the UN Secretary-General's Study on Violence against Children, and implement fully its recommendations, including the recommendation to provide the space for children to freely express their views and give these views due weight in all aspects of prevention, reporting and



### **EGYPT'S STRATEGIES FOR TACKLING FEMALE GENITAL MUTILATION**<sup>165</sup>

In seeking to tackle female genital mutilation (FGM), Egypt has criminalised the practice in the Penal Code. However, it recognised that legislation alone would not achieve change. It was also necessary to create mechanisms through which girls could seek help to prevent its occurrence. Accordingly, a child helpline was established, through which counselling was provided to families with girls at risk and through which violations could be reported. Child protection committees established at governmental level also ensured follow-up. It is acknowledged that the creation of these avenues for girls to be heard have been a key factor in combating FGM.

<sup>164</sup> <http://www.kafa.org.lb/FOA.aspx?code=2&Dcode=2+title=Walking%20Towards%20Safety>

<sup>165</sup> Egypt's report to the Human Rights Council, Universal Periodic Review, 2010, available at <http://www.crin.org/resources/infoDetail.asp?ID=21865>

monitoring violence against them.<sup>166</sup> In particular, action to ensure that children can express their views when they experience violence, exploitation or abuse, will need to include:

- the introduction of programmes to ensure that children understand that they have a right to protection. This can be achieved by including information on rights within the school curriculum, promoting campaigns in the media informing children about their rights and where to go for help, distributing posters and leaflets in schools, doctors' surgeries, hospital and clinics, youth clubs, local shops and religious institutions
- the establishment of hotlines or websites where children can access professional help and support in confidence
- access to information through media that are accessible to children with disabilities, for example in Braille, through appropriate electronic formats, and by provision of signing in any television programming
- awareness-raising and education for parents to challenge patterns of discrimination against girls, and the denial of their right to be heard
- training for all professionals working with children to make them aware of signs of abuse, and to listen to children
- measures to encourage the development of professional codes of practice providing clear guidance on children's right to confidentiality, and to ensure that children are provided with information on these codes
- ensuring that every institution for children, whether it be a day centre, school, hospital, orphanage, care home or penal institution, establishes a procedure where children can report any instance of abuse (see also page 57 for more information on complaints mechanisms)
- exploring mechanisms through which children with disabilities can report violence or abuse. Article 16 of the UN Convention on the Rights of Persons with Disabilities places a clear obligation on governments to provide support for children with disabilities to recognise, avoid and report instances of exploitation, violence and abuse<sup>167</sup>
- supporting and facilitating children to research, share information and put forward proposals on prevention of violence
- recognition that many of the routes described above are not accessible to children with disabilities; for example, they may not be in school, they cannot access hotlines, they are less mobile, and need alternative forms of communication. Efforts need to be made with disabled people's organisations, as well as with children with disabilities themselves, to explore strategies that will work for them.

In addition, it is necessary to create opportunities for children to inform the laws, policies, services and programmes designed to protect them from violence. Particular attention needs to be paid to ensuring that marginalised and disadvantaged children, such as exploited children, street children or refugee children, are not excluded from consultative processes designed to elicit views on relevant legislation and policy processes. Governments should take action to implement the recommendation in the Secretary-General's Study on Violence against Children to support and encourage children's organisations and child-led initiatives to address violence and to include these organisations in the elaboration, establishment and evaluation of anti-violence programmes and measures, so that children can play a key role in their own protection.

<sup>166</sup> Report of the independent expert for the UN Study on Violence against Children, General Assembly, 61st Session, October 2006 (A/61/299)

<sup>167</sup> For more information on the rights of children with disabilities, see G Lansdown, *See Me Hear Me, A guide to using the CRPD to promote the rights of children with disabilities*, Save the Children, London, 2009.



## CHILDREN'S PARTICIPATION IN THE UN STUDY ON VIOLENCE AGAINST CHILDREN<sup>168</sup>

The preparation for the UN Study on Violence against Children involved governments, international organisations, civil society groups, research institutions and children across the world. Children's participation in the study showed the value of children's views and their contributions on matters of relevance and importance to them. Children and young people took on many roles during the study. They were advisers, documenters, advocates, respondents, researchers and facilitators as well as active participants during national, regional and global consultations. They participated in the many interlinked national and regional initiatives, activities and events, including the nine regional consultations held in 2005. Children were also active participants in case studies, development of innovative child-friendly publications and documentation of children's voices. At each level (from local to global) they made clear recommendations about how to stop the violence. They also had the opportunity to demonstrate the actions they have taken to stop violence against children.

The Secretary-General's report reflects recommendations made by children during the process. There was explicit recognition of children's necessary role in efforts to address violence against them and to better protect themselves, and calls for governments and others to make sure they are involved. Ensuring the participation of children is one of the study's 12 overarching recommendations. Recommendation 7 calls for States to "actively engage with children and respect their views in all aspects of prevention, response and monitoring of violence against them, taking into account Article 12 of the UN Convention on the Rights of the Child". Governments are asked specifically to report on this, as well as on the other 11 overarching recommendations. In the coming years, this will provide an opportunity to develop and monitor structures to ensure children's participation in follow-up to the study. It will also highlight good examples of government practice in taking children seriously, and will reveal the sustainability of these efforts and the possibilities for scaling them up.

<sup>168</sup> Report of the independent expert for the UN Study on Violence against Children, General Assembly, 61st Session, October 2006 (A/61/299)



**ACTION IS NEEDED AT EVERY LEVEL OF SOCIETY IN ORDER TO IMPLEMENT THE OBLIGATIONS UNDER ARTICLE 12 TO ENSURE CHILDREN'S RIGHTS ARE RESPECTED:**

- in the family – to take decisions for themselves in accordance with their evolving capacities; this requires supporting and encouraging parents to listen to their children when making decisions that affect them and to respect their right to be involved in these decisions
- in alternative care – to be involved in all aspects of their care, to be given information about all actions proposed, and to have access to complaints mechanisms, to an independent inspectorate and to an independent monitoring body
- in healthcare – to involvement in decisions concerning care and treatment, to access confidential health counselling, and to be able to consent to treatment consistent with evolving capacity
- in education – to be involved in decisions concerning their education, to be able to participate in democratic schools councils, to a participatory pedagogy where children can actively engage in their education and to contribute to the development of education policy and legislation
- in play and recreation – to be able to exercise choice in their own play at home, in school, in hospitals, institutions and public spaces
- in the media – to enable children to disseminate and share their perspectives and issues of concern to a wider audience
- in the workplace – to be able to join trade unions and form their own organisations to negotiate conditions of work
- in situations of violence – to information about the right to protection and where to report safely, to access complaints procedures to use when they experience violence.



# CHAPTER SEVEN

IMPLEMENTING ARTICLE 12 IN THE PUBLIC ARENA



# CHAPTER SEVEN

**IMPLEMENTING ARTICLE 12 IN THE PUBLIC ARENA**

**WITHIN LOCAL COMMUNITIES**

**AT THE NATIONAL LEVEL**

**IN CONFLICT AND HUMANITARIAN RECONSTRUCTION**

## CHAPTER SEVEN

# IMPLEMENTING ARTICLE 12 IN THE PUBLIC ARENA

In the wider community, at local and national level, as well as in situations of emergency and reconstruction, governments and other authorities need to explore a range of structures and mechanisms to ensure children's right to be heard in civil and political spaces. In most countries, children are absent from these spaces, and lack the organisational support or legal rights to create and occupy them on their own. Ad hoc, one-off initiatives are not sufficient to give effect to a sustained and effective opportunity for children and young people to inform or influence the decisions that affect their lives. They will not serve to redress the imbalance of power which leads to children's voices being unheard or disregarded. Rather, children need support to organise themselves, to create opportunities to participate through representation, and to engage with policy- and decision-makers through formally constituted routes. Very often, the right to be heard is largely understood as a consultative process in which children are invited into adult spaces and given the opportunity to respond to adult agendas. This is obviously necessary. However, it is also important to ensure that children are able to create spaces where they can develop their own agendas and priorities, unmediated by the concerns of adults. The following chapter elaborates a range of possible approaches to building mechanisms that facilitate both these opportunities.

### WITHIN LOCAL COMMUNITIES

Article 12 includes the right of children to play an active role within their local communities. The Committee on the Rights of the Child encourages the support and development of initiatives, including the growing number of local youth parliaments, municipal children's councils and ad hoc consultations, where children can voice their views in decision-making

processes. However, these structures for formal representative participation in local government should be just one of many approaches to the implementation of Article 12 at the local level, as they only allow for a relatively small number of children to engage in their local communities.

A commitment to children's participation involves recognition of children as a source of strength and opportunity for local communities, rather than a 'problem' to be resolved. All too often, public policy favours such a deficit approach. For example, punitive action will be targeted at young people who commit crimes, without any recognition of the social and economic drivers of their behaviour. A participatory approach would, instead, focus on working with young people to identify the challenges they face within their communities; for example, the lack of opportunities for employment and recreation, the lack of safe places to meet, the negative attitudes of older people towards them or the lack of recognition of the contribution they can make to their community. Respecting their right to participate is not only an important entitlement but will also benefit the communities in which they live.

There are many models and opportunities for children's engagement. The approach taken will depend on the nature of the local community, the issues concerned, the cultural environment and any existing structure or mechanisms available. Local authorities need to introduce and support such initiatives, provide funding where necessary, and take account of the views that are expressed through these mechanisms. Some approaches that might be developed include:<sup>169</sup>

- **Child-led initiatives and organisations** to enable children to organise among themselves to identify

<sup>169</sup> It is not possible in this handbook to capture the full range of potential activities in which children might be engaged. For more information see *UNICEF's Children and Young People's Participation*

*Resource Guide*, which documents a comprehensive overview of the available publications on children's participation. <http://www.unicef.org/adolescence/cypguide/resourceguide.html>

those issues of concern to them and to determine how to take action to address them. In Nepal, for example, child clubs have organised themselves to tackle issues as wide-ranging as discrimination against girls in respect of education, early marriage, and drunkenness in the home and its impact on levels of violence and harm to children. Networking among child-led organisations should be actively encouraged to increase opportunities for shared learning and platforms for collective advocacy.<sup>170</sup>

■ **Representation on local bodies with responsibility for management of local issues.**

Local committees with responsibility, for example, for education, forest management, housing, child protection and water conservation and utilisation should include representatives of child-governed organisations. In addition, children can play a key role in the management and updating of data and information related to their local community. Their active engagement will enable improved planning and monitoring of the situation of children and young people by local governments.

■ **Targeted consultations on local policy issues** through which children in general or specific groups of children can contribute their perspectives. For example, children can be invited to comment on the design of parks, school playgrounds, health facilities or local transport systems in order to ensure more appropriate services. Children with disabilities might be engaged to undertake an audit of the accessibility of local transport and buildings. Children across a wide age range in a given area might be involved in determining how safe that area is for children and what might be done to reduce the dangers to which they are exposed. Within a refugee camp, a children's forum might be established to monitor children's access to food, to shelter and to protection from violence and exploitation.

■ **Politicians' 'surgeries' or consultations**, which can create additional opportunities for communication. Local councillors or members of parliament can set up sessions specifically for children, and publicise where and when those sessions will take place. They can also undertake visits to schools and kindergartens in order to hear directly from children.

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<sup>170</sup> J Rajbhandary, R Hart and C Khatiwada, *The Children's Clubs of Nepal: A Democratic Experiment, Save the Children, Kathmandu, 1997*



### CREATING 'CHILDREN'S GOVERNMENTS' IN INDIA<sup>171</sup>

In 1999, UNICEF initiated children's *panchayats* (local councils) in association with the government of Rajasthan to see if children could become agents of change in their own development. Local NGOs conducted a two-day workshop for the adult *sarpanches* (elected heads of the *panchayat*) and *panchayat* members, who then returned to their villages to set up the children's *panchayats*. Children were asked to attend meetings where the *sarpanches* explained children's rights and the responsibilities that came with the rights, asking the children if they would like to form the children's government.

The children's *panchayat* follows the government model of one-third of seats reserved for women, with special representation for Scheduled Castes and people with disabilities. The children come from different villages and meet once a month. "Right now there is one-third representation for girls in our *panchayat*, just like the government. In our village, boys are considered to be future breadwinners and girls are homemakers. When I think about it, I know this is not fair. I know the seats should be equally distributed between boys and girls – perhaps that is something we can begin to change", explains Mahindra Singh, aged 15, the elected head of the children's *panchayat* in Telora village. The children's *panchayats* in Ajmer district have been changing the children's lives and the life of their community. In one village, children decided that tobacco addiction was a problem. They asked the shopkeepers not to sell tobacco to children who came to buy it for their fathers, because after a while children became curious and tried it themselves. The adult *panchayat* supported this decision by levying a fine of Rs 500 on every shopkeeper who sold tobacco to children. The money went to the children's *panchayat*. Children's *panchayats* have been inspiring villages to plant trees, open libraries and ban the use of plastic bags. *Udaan* ('Flight'), a newspaper about children's *panchayats*, is also written, edited, designed and produced by children. To date, 200 children's *panchayats* have been created in Rajasthan. UNICEF hoped to create a model that could be implemented by the government of Rajasthan throughout the state. After seeing the success of the project, the Director of Adult and Continuing Education gave 35,000 adult education centres, which are present in every village, the task of helping to create children's *panchayats*.



### RECOGNISING CHILDREN AS CITIZENS IN INDIA

In 2006, the government of Karnataka in south-west India made it mandatory for all elected members of the 5,653 *gram panchayats* (village councils) in the state to conduct special *makkala grama sabhas* (children's village assemblies) to 'listen' to their young citizens once a year and be accountable to them. This was a cause for celebration among those who had been advocating for children's right for decades. In the past, children had been denied access to the *grama sabhas*, as with most other public spaces. The first *grama sabha* had been organised by Concerned for Working Children (CWC)<sup>172</sup> in Keradi, in the Udupi District of Karnataka in 2002.

The *makkala grama sabha* is essentially a meeting between members of the local government and the young citizens who are its constituency.<sup>173</sup> During the meeting, children speak directly with the local government members. In addition to responding to children and reporting on actions taken, the local government also reports on the status of children's rights in the village.

<sup>171</sup> Adapted from: Indian State Party Report to the Committee on the Rights of the Child, CRC/C/93/Add.5, 16 July 2003

<sup>173</sup> Kavita Ratna, 'Children's Impact on Governance', Colloquium on Children and Governance: Holding States Accountable, 2009

<sup>172</sup> CWC is a pioneering organisation in child labour, children's rights and civil society participation with an emphasis on children's participation: [www.workingchild.org](http://www.workingchild.org)

■ **Local youth parliaments and municipal children's councils** to create opportunities for participation in decision-making. These bodies must be managed by children and young people themselves, with the active support of, and facilitation by, adults. They need to

have formal and regular access to local elected decision-making bodies and to be respected and taken seriously at that level. Many such bodies have been set up, and in some cases they are allocated budgets to spend on issues of local concern.



## EXAMPLES OF LOCAL YOUNG PEOPLE'S INITIATIVES

### Child municipal councils in the occupied Palestinian territory<sup>174</sup>

As part of a child-friendly cities initiative, hundreds of young people aged 12 to 17 have been elected to child municipal councils in the West Bank and Gaza and are working with mayors and other city officials as well as parents, teachers, school officials and neighbourhood committees to take positive action in their communities. The councils are all the more remarkable, given the military occupation, which restricts personal freedom, and the prevalence of violence. Despite the daily challenges they face, the young people are working to improve their communities and have energised their peers through projects that increase children's protection and give them access to safe play, sports and psychosocial support.

### Youth-run centres in Albania<sup>175</sup>

As a result of a consultation with children and adolescents across Albania, Save the Children helped establish youth-run centres in two economically depressed towns (Kuçova and Cërrik) with high vulnerability to trafficking and some of the highest unemployment rates in the country. The centres, which aim to provide life skills and other support, are run by a board of young people aged 14 to 18, with the help of paid coordinators and community advisory boards. The young people determine the rules of operation and plan their activities. These are aimed at involving young people in addressing important community issues and implementing service projects that engage community partners, public officials, the media and other young people. Members of the community, teachers, parents and local government representatives strongly support the centres, which have built the capacities of organisations, community leaders and parents. The two municipalities have signed a formal agreement to take over full responsibility for centre operations, including staff salaries and other costs. Thus the youth centres will be locally owned and sustainable without the support of Save the Children.

An evaluation in June 2008 revealed that young people from Kuçova had benefited from the centre's recreation opportunities, training, computers and other activities. The evaluation concluded that these activities had helped with skills development, leading to these accomplishments:

- Following a presentation on youth issues to the municipal authority by seven young people, two young people were appointed to the mayor's advisory committee.
- A group of nine young women developed community projects through a programme aimed at empowering them to lead change. They lobbied the municipal authority to provide a budget to the youth centre for such projects.
- The same group of young women went to the education director with complaints about teachers selling exam passes and hiring themselves out as private tutors.
- Girls organised a big concert for the Day for the Elimination of All Forms of Violence against Women. They also ran a campaign ('This Hand Will Never Hurt You') asking men and boys to commit themselves to not hurting women.

<sup>174</sup> *Children's Municipal Councils in the Occupied Palestinian Territory*, UNICEF MENA, 2005

<sup>175</sup> *Save the Children, Children Speak Out: Trafficking risk and resilience in Southeast Europe, Albania Report*, 2007

■ **Research to inform policy and service provision**, to be undertaken by and with children. Children can participate in identifying the gaps in knowledge about a particular dimension

of their lives, developing the research questions and methodology, undertaking the surveys or interviews, analysing data and formulating recommendations.

### CHILDREN'S RESEARCH TO IMPROVE ACCESS AND LOCAL TRANSPORT<sup>176</sup>

Children in a village in India, with the support of the NGO Concerned for Working Children (CWC), undertook a study into children's concerns over access and transport in order to:

- enable children to access, obtain and manage information appropriately, so that they are empowered to become researchers in their own right
- enable children to identify problems, access and analyse data, and use the resulting information to take control of the issues they face and develop solutions to overcome them
- demonstrate that children are capable of participating effectively in all democratic processes and that their participation can bring about structural changes in the community.

The study aimed to understand the transport, mobility and access issues of children from diverse backgrounds and situations. The researchers were boys and girls aged 9 to 18 years, from socially and economically marginalised groups. The study was conducted by 149 children, and 300 children, aged 6–18 years, were involved as respondents. The children designed their own methodology, and the tools for the research, which included participatory rapid appraisal, observation mapping, interviews, flash card exercises, traffic counts, and focus group discussions.

The children encountered multiple problems in undertaking the study: managing the time commitment alongside domestic chores and schooling, hostile attitudes on the part of many community members, and the reluctance of parents to give permission to participate. The children also lost their playtime, missed marriage parties, holidays, and opportunities to visit friends and relatives. However, they said they had gained more than they had lost.

#### Outcomes

The project gave children control over the research process as well as enabling them to have ownership of the information they collected. The researchers formed their own organisations with other children and worked with various stakeholders in the community to address the problems identified, such as getting footbridges installed, starting crèches, filling potholes, and blacktopping roads. They are also negotiating with key stakeholders, including the *gram panchayats* (village councils) and school authorities, to institutionalise children's participation. They are in the process of setting up *makkala panchayats* (children's village councils) in each of the *panchayats*. They want to ensure that children's participation in decision-making and governance is permanent and official.

One of the key lessons arising from the process is that children's participation in research and social planning is not an end in itself, but rather it is a process that needs to be continuously re-evaluated and to evolve according to their needs. Research and advocacy by children has successfully enabled the active participation of children in democratic processes. They are leading the way in making governments accountable.

<sup>176</sup> K Reddy, *Children rejuvenate governance*, Concerned for Working Children, 2002



### CHILDREN'S RESEARCH IN LOCAL COMMUNITIES<sup>177</sup>

In Kundapura Taluk, Udupi district of Karnataka in south-west India, children have been involved in research processes for many years. However, since 1998, they have been very actively involved in conducting their own research, both qualitative and quantitative, on issues of concern to them. The children of each *panchayat* produce a five-year plan based on the data arising from the research. Consequently, they are able to participate in meetings from village to state level, and to provide reliable and relevant information substantiating and justifying their demands. As a result they have been able to make effective interventions in their *panchayats*.

In 2002 a workshop was organised for members of *Bhima Sangha* (a union by, for and of working children) and all the *makkala panchayats*,<sup>178</sup> where they identified the key indicators they needed for regular updating of quantitative data. For this purpose, children were supported in developing a data collection/updating tool. Now these updates are carried out once a month and the information covered includes data about children out of school, disabled children, migrant children, children attending Extension School and children who regularly attend the *Bhima Sangha/makkala panchayat* meetings.

As a result, children have acquired the skill to update information on a regular basis and monitor child labour. Thanks to the availability of accurate data regarding individual children, it has also been possible to monitor the impact of the programme on each child and address their individual needs.

#### Some lessons learned

- Children have shown that once they acquire the skills and tools of data collection and research they are able to apply these to a variety of contexts and situations and use it to negotiate solutions with adult organisations. For example, they successfully used collected data for negotiating the closure of unlicensed liquor shops in Keradi.
- Children can update information on certain indicators efficiently because they have good mechanisms/systems for accessing such information. For example, they closely interact with school-going children and teachers and therefore they immediately come to know if any child is leaving school or are likely to drop out.
- Children can collect detailed and meticulous information on disabled children, as they interact with them very closely. With the disability survey, children demonstrated that the quality of information collected by them was not only accurate but also rich with the nuances of each individual case.
- Time and time again children showed that they act on information immediately. They do not wait for compilation, analysis or complicated procedures of decision-making, but feel an urgency to deal with issues at once. As soon as they have the information they ensure that the problems are dealt with speedily. Their reason for information-gathering is the need for action, lending a new meaning to the term 'Participatory Action Research'.

■ **Local media initiatives** to provide opportunities for children to develop their own local newspapers, run their own radio programmes and contribute to the mainstream media. These spaces for children can be a means of enabling them to share information on rights with other children, raise awareness of issues of importance for children and campaign for changes they see as necessary.

■ **Peer education** to support children to provide information, support and awareness to other children. Examples include initiatives where children take literacy programmes out to children working and living on the streets, and health education programmes to share information on HIV and AIDs or hygiene and sanitation.

<sup>177</sup> Adapted from a submission by Ms Nandana Reddy to the National Council of Educational Research and Training, *Participation of all Children, Concerned for Working Children*, undated

<sup>178</sup> Children's *panchayats* or councils





### CHILDREN'S MEDIA CAN STRENGTHEN THEIR PARTICIPATION AND COMMUNICATION<sup>179</sup>

A powerful example of how strengthening children's life skills can change adult attitudes' towards children is Plan West Africa's 'Kids' Waves' programme, which involves thousands of children in ten countries in the region participating in making radio programmes, increasing their capacity to communicate and to organise in groups. Project evaluations in participant countries have demonstrated that the project has contributed to a significant increase in awareness-raising on children's rights among adults and young populations in the target areas. Since its inception in 2004, the project has produced over 1,500 radio shows on children's rights since its inception, thanks to an established partnership with about 110 media partners in the region. These figures represent a substantial growth in reporting on children's rights in the West African media. While greater awareness and an increase in the number of broadcasts on children's issues are two important achievements, the most impressive results of the project were described by the young participants themselves who, as part of the evaluation, reported an increase in their ability to communicate, greater confidence, and the ability to stand up in public. Adults confirmed these impressions and reported they had increased respect for and a different view of children's abilities after having witnessed their children taking part in the recording and broadcast activities.



### 'MY FUTURE IS MY CHOICE' – NAMIBIA'S LIFE SKILLS PROGRAMME THROUGH PEER EDUCATION<sup>180</sup>

HIV is a very serious threat to young people in Namibia, with prevalence rates among adults aged 15 to 49 years of just below 20%. To counter this situation, My Future is My Choice (MFMC) was designed to reach young people, through young people. It began in 1997 as a joint project between the government of Namibia and UNICEF, called the Youth Health and Development Programme (YHDP). Project partners included the Ministries of Youth and Sports, Health and Social Services, and Basic Education and Culture, the National Youth Council, a number of NGOs, and religious organisations, including the Catholic Church.

The objectives of the programme are to

- provide young people who are not having sexual intercourse with the skills to delay sexual intercourse
- prevent young people from becoming infected with HIV
- provide young people with facts about sexual health, pregnancy, sexually transmitted infections (STIs) and HIV and AIDS
- improve the decision-making skills of young people
- improve communication between boys and girls, between friends, and between young people and their parents and their community
- provide young people with the information and skills required to face peer pressure around the use of non-prescription drugs and alcohol
- provide young people with the skills they require to make well-informed choices about their sexual behaviour.

Young people between the ages of 14 and 21 years receive a 20-hour training course providing the information and life skills they need to make choices about their future. Using a highly interactive approach, the programme focuses on life-skills training specifically for the reduction of pregnancy among teenagers, HIV and AIDS prevention, and the eradication of substance abuse and of rape. Each MFMC graduate prepares a peer education 'action plan' to reach at least ten friends and/or to become a member of an AIDS drama, role play, or debating club. Trained young people around the country have, so far, reached over 100,000 of their peers (of whom 25% were not in school).

<sup>179</sup> *Children as active citizens: Addressing discrimination against children's engagement in political and civil society processes*, Plan International, 2009

<sup>180</sup> [http://www.unicef.org/lifeskills/index\\_8798.html](http://www.unicef.org/lifeskills/index_8798.html)

■ **Children as monitors or auditors of local services.** Children can be involved in investigating local hospitals and health services, the police and schools, to monitor whether they are complying with the principles and standards of the UNCRC. For example, in a local borough in London, a locally elected children's parliament has consulted with other children to develop

indicators against which to measure whether hospitals and schools are providing services that are accessible and acceptable to children. They undertake investigations to assess whether those indicators have been met, and then engage in a dialogue with the relevant service providers to share their findings and explore what action might be taken to improve outcomes.



### CHILDREN LEARNING ABOUT DEMOCRATIC PROCESSES IN INDIA<sup>181</sup>

Nausar is a Class V student at a night school in Kuchil village, Rajasthan, India. He grazes cattle during the day and studies in the evenings. Nausar's school was set up in 1975 by the Barefoot College, an NGO working as a centre of learning, and providing basic services to 100 villages and more than 100,000 people spread over 500 square miles. Nausar is also a member of the *Bal Sansad*, an actively functioning children's parliament, which was conceived as a tool to make children aware of the powers of a parliamentary democracy. It is also an early lesson in being a responsible citizen and stresses the need for involvement in community affairs. Via the *Bal Sansad*, children at the Barefoot College's night schools learn about democratic processes, the right to vote, the rule of law, the power of a fair ballot and the need to choose candidates on merit rather than according to caste, religion, creed or sex.

Periodic elections are held where all the children who form the electorate vote for members of the parliament. They also elect a prime minister. Campaigning for this post has to be 'clean': one child who tried to become prime minister by distributing sweets was severely criticised by his voter peers. Only children registered as voters are allowed to vote or run for office. Candidates are required to know how to read and write. Nomination forms have to be accompanied by identity cards and sanction letters from parents and village committees, who are enlisted to monitor elections. The minimum age for candidacy is 11 years, and 38% of the seats are reserved for girls. Elected representatives meet every two months in a nearby ruined fort. They select ministers for transport, education, health, women and the environment. Adults function as civil servants and are answerable to ministers of the *Sansad*. Apart from the founder of the Barefoot College, who holds a permanent position as president, adults do not interfere in the functioning of the parliament except when help is directly sought.

The MPs perform a whole host of duties. They see that teachers and students come to school on time; they check that all schools have adequate supplies of teaching material; that there is enough drinking water in the schools; that the premises are kept clean; that complaints about corporal punishment, teacher tyranny, etc are attended to, and so on. They also report on their visits to other night schools, attend meetings of their local village education committee, take matters up with ministers and secretaries, budget expenses for the running of the government and ensure that elections are conducted in all schools. They are entrusted with the task of enrolling children who are out of school. Members of parliament are vested with the power to fire teachers who fail in their duties, following an investigation based on the formal lodging of a complaint. Cabinet meetings also deliberate on wider policy issues that have a bearing on everyday life. These may include health and water issues. Children can lobby for solar power and water pumps in villages that do not have them.

<sup>181</sup> <http://infochangeindia.org/20040508228/Children/Features/Bal-Sansads-Members-of-Parliament-at-11.html>

It is important to exchange experiences and good practice at the community and grassroots levels and to encourage networking among child-led organisations in order to increase opportunity for shared learning and platforms for collective advocacy.

- **Community dialogue.** Involving children in dialogue with other members of the community can be an effective approach to conflict resolution, building resilience and reinforcing cultural and community assets. One model for such dialogue is the 'Circles of Care' project in

South Africa, in which local government in partnership with local communities build a circle of care around children (or other vulnerable groups). It uses a participatory approach to promote resilience within each of those circles – for example, the family, the school, the community. It builds on the development of strategies that are culturally relevant and sensitive, and rooted in the perspectives of children and young people themselves as well as in those of the adults who have responsibility for them.



### A 'CIRCLE OF CARE' PROJECT IN SOUTH AFRICA<sup>182</sup>

An initiative in South Africa employing the 'circle of care' model was undertaken to explore with children and elders within their community, the impact of change wrought by the HIV and AIDS pandemic, and approaches to addressing the problems they faced. While adults and children shared a surprisingly similar perception of the extent to which the pandemic has served to weaken traditional supports for children, they identified different risks in cultural practices and strengths to draw on to counteract the challenges. The children saw the risks as lying in the intolerance of elders to discussing safe sex and HIV and AIDS, the overall negative community attitudes towards young people, dangerous initiation practices, lack of opportunity for dialogue across generations and the politicisation of culture. However, they felt that potential strengths lay in cultural practices which could offer young people a sense of pride and identity, and spiritual connections with ancestors to reinforce families and communities under stress, and in a culture that teaches safe sex.

The elders, on the other hand, felt that their role had been marginalised by government and modern notions of human rights and democracy: they stressed that schools reduced children's responsibilities and downgraded elders' authority, that mothers, who are more likely to be heads of households, no longer sought advice from them, that young people no longer sought guidance before marriage, and that the strategies for dealing with HIV and AIDS had failed to acknowledge the role of the leaders and undermined and marginalised them.

The opportunity for both groups to hear each other's perspectives created a space where joint consideration could be given to the construction of initiatives to address the community challenges. It led to the creation of, for example, feeding centres run by the community leaders, cultural monitoring mechanisms to ensure safe initiation practices, and youth-led cultural groups to strengthen cultural identity and social connections between elders and young people.

<sup>182</sup> P Cook and W White, 'Risk, Recovery and Resilience: Helping young and old move together to support South African

communities affected by HIV/AIDS', *Journal of Intergenerational Relationships*, Vol. 4, No. 1, 2006

## AT THE NATIONAL LEVEL

Governments need to establish mechanisms for engaging with children at the national level, in order that legislation, policy, planning and service development and implementation can reflect children's own concerns, experiences and suggestions. The UN General Assembly affirmed its recognition of the importance of such mechanisms in its Omnibus Resolution in November 2009, calling on all governments to:

*“Designate, establish or strengthen relevant governmental structures for children, including, where appropriate, ministers in charge of child issues and independent ombudspersons for children, have mechanisms in place for allowing and promoting the involvement and participation of children in the formulation and implementation of public policies, in particular those designed to meet national children and adolescent goals and targets, and ensure adequate and systematic training in the rights of the child for professional groups working with and for children.”*<sup>183</sup>

It is important to move beyond a view of children's participation in terms of one-off public meetings, conferences and other events, and towards systematic inclusion of children's participation in policy-making. They are core stakeholders and their experience and concerns will contribute to ensuring that government policies are relevant and effective, and will promote the best interests of children. The voices of children have increasingly become a powerful force in the

prevention of children's rights violations. Good practice examples are available, for example, in the fields of violence prevention in schools, combating child exploitation through hazardous and extensive labour, providing health services and education to street children, and in the juvenile justice system. Children should be consulted in the formulation of legislation and policy related to these and other problem areas and be involved in the drafting, development and implementation of related plans and programmes.

The following section proposes some key strategies which would help governments create the infrastructure and environment necessary to achieve ongoing communication with children at the national level.

■ **Designate a lead authority to coordinate implementation of Article 12 in all other departments.** Governments can designate a central authority to have the key responsibility for the implementation of children's rights across government, together with focal points in all relevant departments, with whom this authority would liaise. The authority could take the form of a 'desk' or division located in the ministry which has primary responsibility for children, with the role of coordinating work in this area, as well as providing training, guidance and support to all government departments on how to undertake effective participation with

<sup>183</sup> UN General Assembly Agenda Item 65(a), 'Promotion and protection of the rights of children', A/C.3/64/L.21/Rev.1, November 2009

children. However, it is important that it should not be seen as removing responsibility from other departments to take action to promote the right of children to be heard within their own sphere of activity. The authority would need to establish direct contact with child- and youth-led organisations, with a view to developing and implementing meaningful and effective participation of children in all actions that affect them. It could also evaluate and monitor progress in achieving effective systems for children's participation. However, each relevant government department should also retain a responsibility for ensuring children's participation within its own area of policy.

■ **Institutionalise child participation at all levels of government decision-making.**

Mechanisms must be introduced to institutionalise child participation at all levels of relevant government decision-making, including legislative reform, policy-making, planning, data collection and resource allocation. Children can, for example, inform the planning, design, implementation and evaluation of processes such as National Plans of Action and Poverty Reduction Strategy Papers. In order to strengthen the mechanisms to protect children from online sexual abuse and exploitation, it is essential to engage in a dialogue with children as to how they use the Internet, the degrees and nature of risks they face, the strategies they adopt to

protect themselves and the policies they would like to see put in place by governments. Children are likely to be far greater experts than adults in understanding what happens in those environments and their expertise needs to be acknowledged when developing laws and policies to reduce exposure to risk. Children with disabilities will be the greatest source of knowledge with regard to the discrimination and social exclusion they face, and can contribute significantly towards understanding the attitudinal, communication, physical and mobility barriers that need to be removed before they can realise their rights.<sup>184</sup> It is also worth noting Article 4 of the UN Convention on the Rights of Persons with Disabilities, which introduces a requirement to consult with representative organisations of children with disabilities in these processes. It is invaluable to translate relevant government documents, such as the National Plan of Action, into child-friendly language, to make it easier for children to participate.

Such mechanisms might include:

- children's parliaments
- youth advisory committees
- national or regional consultations
- dialogue with children through electronic media
- focus groups on specific issues
- collaboration with existing children's organisations.

<sup>184</sup> General Comment No. 9, 'The Rights of Children with Disabilities', CRC/C/GC/9, February 2007



### **INVOLVING CHILDREN IN POVERTY REDUCTION STRATEGY PAPERS (PRSPs)<sup>185</sup>**

Save the Children organised three large-scale consultations in Ho Chi Minh City, Vietnam, involving more than 400 children and young people in national poverty planning or monitoring. The consultations spanned the full PRSP cycle: from pre-PRSP development planning, to getting feedback on the interim and draft PRSP, to a review of progress in implementing the country's first PRSP. Children and young people highlighted the plight of the growing number of migrant families in the capital who are not registered by the authorities and who have major problems accessing healthcare, education and social welfare services. Their information helped change procedures to allow unregistered migrants access to services more quickly. This was a major step forward in a city where up to one-third of the population of some wards are 'hidden' unregistered migrants. The consultations also resulted in two local government initiatives to involve children and young people in official processes.

In Honduras, Save the Children and local partner organisations facilitated five consultations with children and young people to shape their advocacy on the country's PRSP. In the largest of the consultations, involving 3,000 children across the country, children and young people's experiences and viewpoints on child labour were sought. The results persuaded government officials to prioritise child poverty in the PRSP and include targets within it on reducing child labour. A commitment was also secured to use funds released by fulfilment of the PRSP to fund education initiatives for child workers. Children and young people's views contributed to more joined-up policy-making, with child labour policies linked to poverty reduction strategies.

In both these countries, children and young people have highlighted the social impact of poverty – on family conflict, break-up, violence, drug abuse and the growth of gang culture. They have sounded important warning bells about the long-term impact of poverty, and the negative way it will shape communities around the world if it is not addressed urgently. Children and young people's participation has also highlighted the price children pay for poverty in terms of the damage to their psychological health and outlook for the future. Signalling these problems and building an understanding of them is an important step in achieving social change.



### **INVOLVING CHILDREN IN ADVISING THE GOVERNMENT OF NEW ZEALAND<sup>186</sup>**

The Prime Minister's Youth Advisory Forum was established in 1998. Modelled on other advisory forums, such as the Business Advisory Council, the Prime Minister's Youth Advisory Forum aims to provide 15 young New Zealanders, aged between 12 and 25, with the opportunity to meet three times a year with Cabinet Ministers, including the Prime Minister. The Forum was initiated by the Minister of Youth Affairs and received an enthusiastic response, with more than 230 young people applying to be members. The selection criteria aimed to establish a Forum with a cross-section of young people from different ethnic groups, a variety of geographical, rural and urban backgrounds, and with different educational, employment and life experiences. The Forum's aim is to provide a system where a group of children and young people can speak directly and frankly to the Prime Minister of the day about issues that concern them. Members' views can be sought on all matters concerning the government, not just issues considered to be relevant to children and young people. During the Forum, members identify the issues for discussion and the Ministers they will meet for the next meeting. Ministers can also set topics for discussion.

<sup>185</sup> K O'Malley, *Children and Young People Participating in PRSP Processes: Lessons from Save the Children's experiences*, Save the Children, London, 2004

<sup>186</sup> New Zealand periodic report to the Committee on the Rights of the Child, CRC/C/93/Add.4, March 2003



### CHILDREN'S PARTICIPATION IN LEGAL REFORM PROCESSES

In **Peru** in 2006, the National Congress approved the Law No. 28914 to create a Special Commission for the review/revision of the National Code of Children and Adolescents (CERCNA) in order to update the legislation with the reality, needs and rights of childhood. Children were active participants in this process. Children from different child-led organisations participated in the Commission, together with the parliamentarians, and authorities connected with the issues of childhood, such as Ministries of Women and Social Development, Education, Health, the Attorney-General, the Ombudsman for Children, and the police. In addition to participating in the meetings of the Commission, children also presented their own proposals that were based on meetings and consultations that they carried out with other children at local, regional and national levels, and they are advocating for these proposals to be included in the CERCNA.

In **Venezuela**, children's organisations participated in the process of reform of the Constitution. Children presented their proposals to the relevant commissions. This experience permitted children to interact with parliamentarians in the various commissions, and to present and defend their proposals.



### THE NATIONAL ADOLESCENTS AND YOUTH FORUM IN KAZAKHSTAN<sup>187</sup>

UNICEF collaborated with the government of Kazakhstan to engage with children and young people in policy dialogue. Over 150 young people, democratically elected from all of the country's 16 regions and representing a diversity of backgrounds, gender and social status, gathered for a forum to draw up recommendations for a youth policy. It was preceded by a six-month 'bottom-up' consultative process surveying over 2,000 children, adolescents and young people aged 10 to 24 years across Kazakhstan – from cities and villages, from urban and rural areas, girls and boys, children with disabilities, children living in orphanages – to identify their issues of concern, dreams and possible ways to solve their problems. This process was facilitated by 26 talented and committed youth facilitators who conducted 70 consultations with hundreds of their peers. The facilitators were trained by UNICEF. In addition, UNICEF trained young video journalists who have creatively documented the entire process and produced documentaries reflecting the issues that are of major importance to the country's youth. The consultations led to the production of an outcome document representing the views, opinions and recommendations of the adolescents and young people. The recommendations made by the representatives of the young people prioritised issues they had identified during the regional consultations. These were: education, health services, healthy lifestyles, employment, psychosocial issues, stigma and discrimination, and leisure.

<sup>187</sup> UNICEF Adolescent Development and Participation Unit, New York, 2010

■ **Create a supportive environment for the creation of child-led organisations.** In many countries throughout the world, children are now actively involved in developing their own forums, such as working children's unions, student unions, parliaments, clubs and other bodies. Governments need to support these developments and can play an active role in ensuring that there

is a legal framework conducive to the establishment of child-led organisations. They can provide financial support, and also give recognition to such bodies by establishing clear guidelines on how the views presented by children through such bodies will be taken into account in the formal political process and ensuring that children are provided with adequate responses in relation to their proposals.



### CHILDREN INFLUENCE GOVERNMENT POLICY ON CHILD LABOUR IN YEMEN

The Children's Parliament in Yemen has been meeting over a number of years to focus the attention of the Government of Yemen on children's concerns and priorities and to help them improve the reality of children's day-to-day lives. In 2007, its focus was child labour.<sup>188</sup>

Following two days of training on communication skills and report-writing, provided by a supporting NGO, the members of the Children's Parliament met with a series of senior government ministers and officials, including from the ministries of interior, justice, health, social affairs and labour, and finance, and the International Labour Organization, who discussed with members of the Children's Parliament matters concerning child labour, the legal framework, and the programmes being developed to address the issue of child labour. The children had the opportunity to question and challenge the government representatives on the information provided, and also to visit some of the facilities provided by the government for rehabilitation of working children. After consideration of all the information provided, the members of the Children's Parliament proposed detailed recommendations, including:

- legislative reform, implementation, monitoring and enforcement on child labour
- rights-respecting facilities for street children
- awareness-raising on the right of children to protection from harmful child labour
- greater level of support for parents to enhance their standard of living
- equality of access to education for all children
- training on children's rights for all staff working with children
- free access to healthcare for all children, including improved access to healthcare for children in detention and on the streets, assigned paediatricians to every school, and awareness-raising and training on sanitation, hygiene, first aid and the dangers of smoking and chewing qat.

<sup>188</sup> Yemen: Report of Children's Parliament on 'Child Labour', 2007, <http://www.crin.org/resources/infoDetail.asp?ID=14774&flag=news>



■ **Involve children in monitoring implementation of their rights.**

Children can play an important role in monitoring the realisation of their rights. It is not sufficient to rely on data or evidence produced by adults alone, nor to make recommendations for action to strengthen the implementation of rights without regard to children's own perspectives. Children can be involved

in agreeing indicators and monitoring the implementation of all the rights enshrined in the UNCRC, including within the family and alternative family environments, and the impact of their participation on policy, court decisions and programme implementation. They can be directly involved in research both as respondents and researchers.<sup>189</sup>

### CHILDREN'S VOICES IN MONITORING THE JUVENILE JUSTICE SYSTEM IN THE PHILIPPINES<sup>190</sup>

Efforts to make the Philippines juvenile justice system child sensitive have been extensive. They have involved legislative reform to ensure that children are legally represented and entitled to be heard in judicial proceedings, and that they are afforded the right to information to understand what is happening around them, what they are accused of, and the options available to them. They have the right to tell their side of the story. Adults are required to facilitate the expression of children's thoughts, opinions and feelings. Children are also entitled to participate in rehabilitation and reintegration, particularly in planning their future and actively implementing the plans that are drawn up. These commitments are supported by provision of training for the National Police, National Bureau of Investigation, lawyers and judges on child-sensitive means of investigation and judicial processes.

#### Are these laws enforced?

In 2002, the Programme on Psychosocial Trauma and Human Rights Center for Integrative Studies and Development – University of the Philippines and the Consortium for Street Children (UK) conducted regional and national workshops and consultations with street children, those in detention and rehabilitation, NGOs, government bodies, judges, lawyers, and law enforcers who were involved in the country's juvenile justice system, to find out whether the intended outcomes were being achieved.

The children stated that most of the time the law was usually ignored by the apprehending officers, lawyers and judges. Children were often verbally and physically abused during apprehension and were placed in cells together with adults. There were cases of sexual abuse, torture and violence against children while in detention. It was found that "there is a complete absence of any attempt to enforce the law".<sup>191</sup> A nationwide research was then conducted on the situation of children in conflict with the law, which found that 50.9% of the respondents were in cells together with adults, 44% had to sleep on the floor, 39.7% had no sleeping paraphernalia, and 30% had only blankets.<sup>192</sup> There were gaps in the implementation of the laws during apprehension, detention and rehabilitation of the children. The children also pointed out that the juvenile justice system is punitive instead of promoting rehabilitation. The workshops revealed the significance of children's participation in ensuring the implementation of the laws. Their experiences are crucial in identifying the gaps and making recommendations on implementing laws that uphold and protect the rights of children.

<sup>189</sup> See for example, [http://www.unicef.org/adolescence/cypguide/resourceguide\\_res\\_assess.html](http://www.unicef.org/adolescence/cypguide/resourceguide_res_assess.html)

<sup>190</sup> Cited in the Philippines National Framework for Child Participation, 2000–2025, Council for the Welfare of Children, National Early Childhood Care and Development Coordinating Council

<sup>191</sup> People's Recovery Empowerment Development Assistance (PREDA) *Minors in Jail: Case Studies*, The Philippines (September 2002), 2003

<sup>192</sup> Pilipino American Youth Organization (PAYO), *Youth in Detention: Issues and Challenges, A Nationwide Survey*, 1996, p. 30



### MONITORING WITHIN SCHOOLS<sup>193</sup>

In **Denmark**, pupils evaluate teachers on a systematic basis. In a study of one school, it was found that everyone was aware of the legislation that said that pupils must evaluate the teaching and education planning. All teachers were evaluated by their pupils twice a year; the teacher read the evaluations, summarised them and discussed them with the class, stating how things would change. These would also be summarised by departments, together with what teachers and pupils had agreed as a result of the evaluations. The process was carried out on the Internet, which was seen to make the process more fun. Planning questionnaires were also put out to pupils on the Internet, asking about the environment, work places, classrooms, timetable and options. In addition, the Danish Ministry of Education has published a document called *How is it today?* to help schools monitor democracy. It provides a set of standards against which to measure whether schools are implementing their obligations to respect the child's right to be heard effectively. It expects schools to address the questions: Democracy for whom? For the school? For the municipality? For schools? For teachers? Are schools enacting democracy in their teaching methods? Do procedures allow democracy?

The document sets out 11 'rules', regarding the following matters:

- the overall framework and philosophy
- the councils and their advisory function
- that pupils should be represented on the school councils
- that representatives are chosen by pupils themselves
- that pupils should participate in leadership of the institution
- that pupils do not have voting rights on financial matters
- that pupils are represented on formal councils but not pedagogic councils
- that pupils' councils should have resources, a room or office if possible
- that pupils' overall influence and competence should be stipulated in the legislation
- that there should be time for discussion of subjects of interest to *all* pupils
- that all institutions should have a contact person for school councils in the school.

In **Sweden**, evaluation in schools has two main strands: evaluation of the school and teachers *by the pupils*; and evaluation *by the school* of the extent and effect of pupil participation. These often come together in the use of questionnaires with pupils, generated by the pupils themselves, or generated by various working groups of the management of the school. In one school, for example, the impact of the establishment of teacher–pupil work teams was evaluated by questionnaire each year, with the pupils being generally positive about the integrated approach to learning. Each separate course was also formally evaluated.

■ **Involve children in the reporting process to the Committee on the Rights of the Child.** In many countries, NGOs, including national alliances on children's rights, have involved children in the process of parallel reporting under the UNCRC, including their presence during pre-session country briefings

with the Committee.<sup>194</sup> Children's engagement in this process strengthens their capacity to play an active role in identifying human rights aspects in need of further attention and monitoring the implementation of concluding observations of the Committee on the Rights of the Child at the national

<sup>193</sup> Adapted from: L Davies and G Kirkpatrick, *The Euridem Project*, Children's Rights Alliance for England, London, 2000

<sup>194</sup> For detailed guidance on how to involve children in the

reporting process, see J Miller, *Children as Change Agents: A Review of Child Participation in Periodic Reporting on the Convention on the Rights of the Child*, World Vision, Ontario, 2007

level. However, the Committee also encourages governments to facilitate the involvement of children more directly in the periodic review process of the UNCRC. It proposes that they “... actively involve children in the periodic review process of the [UN]CRC. It also urges children to play an active role in identifying human rights aspects in need

*of further attention and monitoring the implementation of concluding observations at the national level.”*<sup>195</sup> It encourages NGOs to continue to engage children directly in the process of shadow reporting, and encourages the presence of children during pre-sessional country briefings.<sup>196</sup>

### A MODEL FOR EFFECTIVE MONITORING<sup>197</sup>

“As soon as the Committee receives a report by a State Party, it should invite a representative group of children and young persons from that country to meet with the country Rapporteur – the member of the Committee who leads the discussion with the Government delegation and directs the drafting of the Concluding Observations. The purpose of this meeting would be to obtain direct information from the children about their concerns and problems, and to hear their suggestions for possible solutions. This initial meeting should be followed by an in-country visit; in particular, the Rapporteur should observe schools and institutions in both rural and urban areas. These visits would not serve as official fact-finding missions; rather, they would give children first-hand information about the process of reporting and monitoring and would also clarify their role in that process, in addition to exposing them more directly to the UNCRC and its implementation. The information the Rapporteur gathers from the visit can subsequently be used by the Committee in its recommendations to the government.

“Experience has shown that a follow-up meeting with the government delegation to review the Committee’s recommendations after 6 to 12 months can help to raise awareness of the recommendations and to support actions undertaken to put them into practice. Ensuring that the Rapporteur meets with the same group of children that participated in the initial meeting would make these follow-up meetings more effective. By involving these children in the follow-up process, both governments and the Committee would be meeting their responsibilities to increase children’s exposure to the UNCRC. This, in turn, might increase the likelihood that governments will honour their commitments.

“While a number of practical considerations – including time, money and political will – certainly hamper the UNCRC’s implementation and the establishment of new monitoring mechanisms, the world community cannot shirk its responsibility to protect children. Governments have repeatedly agreed to safeguard children’s rights, first by signing and ratifying the UNCRC and, more recently, in a series of complementary meetings and agreements. Key meetings have included the 2002 United Nations General Assembly Special Session on Children and the 2008 Third World Congress on Sexual Exploitation of Children; most recently, the countries on the Human Rights Council have established a working group to determine the feasibility of a third optional protocol that would create a formal mechanism for individuals and groups to submit complaints directly to the Committee. These proposals may sound like optimistic dreams, but sometimes dreams are needed to inspire the achievement of miracles. And children love miracles.”

<sup>195</sup> Committee on the Rights of the Child, Report on the 43rd Session, September 2006, Day of General Discussion, Recommendations, para. 31

<sup>196</sup> *Ibid.*, para. 34

<sup>197</sup> J Doek, former Chair, Committee on the Rights of the Child, [http://www.unicef.org/rightsite/364\\_613.htm](http://www.unicef.org/rightsite/364_613.htm)



### UK GOVERNMENT DIALOGUE WITH CHILDREN: 'GET READY FOR GENEVA'<sup>198</sup>

The preparation process for the UK's 3rd and 4th consolidated reports to the Committee on the Rights of the Child was begun with a conference to which young people, NGOs and government officials were invited. The government then commissioned a consortium of NGOs to gather the views of children and young people on the implementation of the UNCRC, as well as a consultation with NGOs on their own views.<sup>199</sup>

In England, the project was called 'Get Ready for Geneva' and involved nearly 1,400 children in an online survey and focus groups with nearly 350 children.<sup>200</sup> It also undertook an analysis of over 50 consultations with children that had been carried out over the previous five years. The project was run by four groups of children; each person had a specific role within their group. The groups were:

- **Steering group** – helped to make all the important decisions about Get Ready for Geneva
- **Website and communications team** – made sure they had a good website and everything they wrote was easy to understand
- **Children's rights investigators** – visited groups of children across the country to investigate the state of children's rights
- **Children's rights champions** – pushed for children's human rights to be respected in the areas where they live. There was also a dedicated team of adult staff working on the project, including an experienced social researcher. Their role at that stage of the project was to support children to gather and present the evidence about how well children's rights are being respected in England.

The project designed seven surveys on the themes of education, respect, freedom, family and friends, crime, health and safety, and play. They ran a different survey every month on the Get Ready for Geneva website so that children across England could take part. For the focus groups, they made sure that they included children, for example, of different ages and ethnicity, children with disabilities, traveller children, young refugees and asylum-seekers, children in trouble with the law, both boys and girls, and children living in poverty, or facing violence or exploitation. The results were put together in a report which was submitted to the Committee on the Rights of the Child.

<sup>198</sup> <http://www.getreadyforchange.org.uk/campaigns/reports>

<sup>199</sup> UK State Party Report to the Committee on the Rights of the Child, CRC/C/GBR/4, February 2008

<sup>200</sup> 'Get ready for Geneva', submission to the Committee on the Rights of the Child, Children's Rights Alliance for England, London, 2008



## CHILD PARTICIPATION IN THE UNCRC REPORTING PROCESS IN AFGHANISTAN<sup>201</sup>

*“We want police to protect us and not to beat us. We want teachers to guide us and not make us work for them. We want leaders to add value to our resources and not to consume them for personal benefit.”* This was the demand of a child while participating in the consultations to incorporate Afghan children’s voices in the UNCRC reporting process.<sup>202</sup>

A group of 326 Afghan children from various regional, ethnic and religious backgrounds participated in consultations organised by Save the Children and UNICEF on UNCRC reporting in 2008. They were drawn from all eight provinces of Afghanistan. The process involved 19 sub-national consultations. The children were given reading material beforehand to ensure that they were fully informed about the processes, and efforts were made to make it an inclusive and participatory exercise. Specific consultations were organised with girls, children with disabilities, children from minority communities, orphans, and children in conflict with law. The consultation process was followed by formulation of policy recommendations.

The primary concerns of the children were rooted in the country’s social and political state. They included child kidnapping, drug abuse and sexual abuse, and the general issue of insecurity was commonly raised. It was clear that these concerns had a direct impact on children’s psychological and intellectual growth. It was argued that there was a major need for adequate protection for child prisoners in the legal system: there were, for example, reports of child prisoners being chained. The children talked about the need for freedom from abuse from teachers, supervisors, police, army and employers, they demanded schools, education material, shelter, food and also, in some cases, work to be able to survive. The children living in special homes felt that peace is a priority, but education and health services were also seen as essential. *“We can neither wait nor compromise with quality of their delivery”*, was the comment of one child. The children from the minority Hindu groups of Jalalabad wanted to emphasise their political identity as Afghans and sought constitutional protection against any kind of discrimination in their daily lives. It was concluded that some of the issues such as early marriage, and child-beating by parents, could be dealt with only by engaging with society and bringing a change in social traditions. At the same time, it was essential to ensure that adequate stringent provisions against the violators were incorporated in the constitution.

Following the consultation, a list of thematic issues was prepared and the agencies needed to support the process of bringing about change were identified.

### ■ Support children’s participation in national and international forums.

Children can play a key role in national regional and international conferences. Recent examples include the 2002 UN Special Session on Children, the regional consultations for the 2005 UN Study on Violence against Children, the 2009 World Congress on Sexual Exploitation of Children, and the involvement of children in the J8 sessions, which have

been organised by UNICEF alongside the G8 meetings of heads of state. Participation at this level enables children to bring their concerns to the world’s leaders and seek to ensure that they are not marginalised in the face of other powerful and competing lobbies. Governments should take active measures to facilitate children’s involvement in relevant events.<sup>203</sup>

<sup>201</sup> See the link for a concept paper on ‘CRC initial report process, establishment of CRC reporting mechanism and capacity building of government employees’, [http://www.mfa.gov.af/Documents/Treaty-reporting/Documents/Afghanistan\\_CRC\\_Reporting\\_Process.pdf](http://www.mfa.gov.af/Documents/Treaty-reporting/Documents/Afghanistan_CRC_Reporting_Process.pdf)

<sup>202</sup> Remark by a child in a two-day consultation process organised by Save the Children and UNICEF on UNCRC reporting in the year 2008

<sup>203</sup> See G Lansdown, *Promoting children’s participation in democratic decision-making*, UNICEF, 2002, for guidance on involving children in conferences and high-level events



## INTERNATIONAL YOUTH ADVISORY CONGRESS ON ONLINE SAFETY AND SECURITY<sup>204</sup>

"I have always been told not to talk to strangers that I meet on the street, but nobody told me not to talk to strangers on the Internet." (boy)

"Restrictions alone do not work. Freedom to use the Internet in combination with information on the risk and other protection measures is the best combination." (boy)

"Young people listen to other young people; therefore youth should be involved in developing safety messages on the Internet."

–Views of girls and boys expressed during the Congress

The first International Youth Advisory Congress on Online Safety and Security took place in the UK on 16–21 July 2008. It brought together 148 girls and boys aged 14 to 17 years from 19 countries to share their experiences and recommendations. The congress was organised by the UK Child Exploitation and Online Protection Centre, supported by the Virtual Task Force, an international alliance of law enforcement agencies addressing child sexual exploitation.

In preparation for the congress, 764 children and adolescents aged 11 to 17 years from different parts of the world participated in an online poll. Some of the findings were:

- Almost 40% of the respondents said they rarely speak about what they do online with their parents/guardians, because they don't seem to take an interest.
- Seventy-three per cent said they have access to the Internet whenever they want, with no restrictions on what they view.
- Forty-four per cent had come across images or content they thought were inappropriate for their age.

Participants in the congress met with representatives from governments, industry, law enforcement, education and the media. A creative discussion on online security took place, and the adolescents gave concrete suggestions for improving it. The young people presented a number of recommendations at the conclusion of the meeting, including:

- showing of films on online safety on television, on the sides of buses, on billboards and in online pop-ups
- a mandatory and universal browser-based 'report abuse' button on the toolbar of every browser and on all social networking sites. It would require only two clicks to report a problem, without even leaving the web page
- an international industry advisory panel on online safety, made up of youth and industry leaders, to report current issues in their countries to government authorities
- pressure from governments for the media and the online industry to promote safety
- proactive education of teachers, elected officials, parents and other adults to enhance their understanding of online safety issues so they can pass on their wisdom to other adults and to young people
- replacement of the term 'child pornography' in the UNCRC with 'child abuse images'
- expansion of the interpretation of Article 6 of the UNCRC (relating to survival and development) to cover both the online and the offline 'worlds'
- global youth advisory congress online forum accessible to registered users, where individuals can post their views, opinions and experiences.

The congress was the beginning of a process that resulted in a Children's and Young Persons' Online Charter. It was used as the basis for a submission to the UN in preparation for the Omnibus Resolution on the Rights of the Child, adopted by the General Assembly in 2009.<sup>205</sup>

<sup>204</sup> A complete summary of the youth delegates' recommendations can be found at [www.iyac.net/corporate/press.htm](http://www.iyac.net/corporate/press.htm)

<sup>205</sup> The Rights of the Child, A/RES/64/146

## IN CONFLICT AND HUMANITARIAN RECONSTRUCTION

“There can be no global security without respect for children. We have to be more than just observers of children’s suffering, we have to be partners with them in their struggles.” Landon Pearson, former Canadian Senator

“I stayed alone, with no parents. I used to think about the past. It was difficult to forget what had happened to me in the bush. I felt alone. No one wanted to stay with me, to share with me. I then joined an association and began to find peace within myself. My family came back to me. I have friends and I have learned from others. These days I am fine. I know what to do at the right time and right place.” Former abducted child, northern Uganda<sup>206</sup>

The Committee emphasises that Article 12 does not cease to apply in situations of crisis or in their aftermath. It recommended, following the Day of General Discussion in 2008, that children affected by emergencies should be encouraged and enabled to participate in analysing their situation and future prospects.<sup>207</sup> In order to ensure that this happens, governments are encouraged to introduce and support mechanisms which enable children, in particular adolescents, to play an active role in both post-emergency reconstruction and post-conflict resolution processes.

## In emergencies and reconstruction

Humanitarian agencies have established principles and standards to guide emergency work which define their obligations and commitments in relation to the people affected by disasters.<sup>208</sup> Some of these standards call for greater accountability of relief agencies in protecting and fulfilling the civil rights of people in emergencies. Although the standards do not explicitly address children, the provisions of the UNCRC, and in particular, Article 12, do place clear obligations to ensure that they are applied equally to children.<sup>209</sup> They include recognition of the need to respect disaster victims as dignified human beings, not just as objects of charity, recognise the importance of information to affected populations, consult with affected people about relief and reconstruction programmes, introduce feedback and complaint mechanisms, and support and enable people to form their own associations.

Work with children in emergencies has demonstrated the importance of these principles, and suggests that the application of the following guidelines is necessary not only to ensure respect for the right of children to be active participants in such circumstances, but also to ensure the most positive outcomes for their recovery.<sup>210</sup>

<sup>206</sup> Cited in C Feinstein, A Giertsen and C O’Kane, ‘Children’s participation in armed conflict and post-conflict peace building’, in B Percy-Smith and N Thomas (eds) *A Handbook of Children and Young People’s Participation*, Routledge, London, 2010

<sup>207</sup> Committee on the Rights of the Child, Day of General Discussion on ‘The Right of the Child to Education in Emergency Situations’, Recommendations, 49th Session, 19 September 2008

<sup>208</sup> For example, The Sphere Project’s ‘Humanitarian Charter’, the International Committee of the Red Cross’s (ICRC’s) Code of Conduct, ‘Do No Harm’, the UN Inter-Agency Standing Committee’s (IASC’s) *Operational Guidelines on Human Rights in Natural Disasters* and the Emergency Capacity Building Project’s *The Good Enough Guide*

<sup>209</sup> C O’Kane and C Feinstein, *The Participation of Children and Young Children in Emergencies: A guide for relief agencies*, UNICEF, Bangkok, 2007

<sup>210</sup> See, for example, Jo Boyden and Gillian Mann, *Children’s Risk, Resilience and Coping in Extreme Situations*, background paper to the Consultation on Children in Adversity, Oxford, 9–12 September 2000, and Christopher Lowry (2000) *Mental Health Interventions For War-Affected Children, taking into account children’s resilience and coping in armed conflict*, paper presented by C Lowry (Director, More Than Bandages Programme/Au Delà des Pansements, Médecins Sans Frontières-Canada) at ‘Children in Adversity’ consultation



### WHY SHOULD RELIEF AGENCIES PROMOTE THE PARTICIPATION OF CHILDREN IN EMERGENCIES?

- **Children have a right to participate** – the same rights apply in emergencies as in other times.
- **Children have valuable capacities** and are already making important contributions in all stages of emergency situations. Their participation improves the quality and reach of emergency work.
- **Children know their communities** and have access to some information and knowledge that adults do not have. They can provide valuable feedback on relief efforts utilising the strong connections and networks that exist between themselves.
- **Children can protect, provide emotional support and care for other children**, with whom they are often best placed to build rapport and trusting relationships. Children can find it easier than adults to understand other children.
- **Children are willing to help and to participate** and their enthusiasm and commitment provides an invaluable resource in the reconstruction process.
- **Children have their own needs and concerns.** Boys and girls of different ages have to be included in consultations to ensure that humanitarian agencies address their priorities.
- **Participation brings benefits to children, families and communities.** It contributes to children's education and development, and helps with the healing process. It helps children to protect themselves from abuse and exploitation. Not involving children undermines them by sending the message to the adult community and decision-makers that it is all right to exclude children from decision-making, information, consultations and contributing – that children have no role in the public sphere. Children who are informed about relief efforts are better able to survive and to protect themselves
- **Children will be peace-builders**, and makers and shapers of the new communities emerging post-conflict.

■ **Involve children as social agents in their own right**, with the capacity to influence their situation positively. They should be acknowledged and accepted as strategic partners, with recognition of their role as essential resources for community development rather than as problems. Their views should be elicited in the assessment, design, implementation, monitoring and evaluation of programmes. Supporting children's wellbeing requires recognition that children need not only special protection, but that they have valid insights into their wellbeing, solutions to their problems and a role in implementing those solutions. There is a growing body of evidence of the significant contribution that children are

able to make in conflict situations, post-conflict resolution and reconstruction processes following emergencies.<sup>211</sup>

■ **Recognise children's competences and strengths**, and focus on regenerating resilience as understood by those children and their elders. Through participatory approaches educators and development workers can be encouraged to learn about children's own perspectives and understandings of adversity and their ideas about coping and resilience. Children need opportunities to talk about issues of concern to them and to be involved in wider issues of immediate local concern. This will help them to learn problem-solving skills and to gain a sense of

<sup>211</sup> C O'Kane and C Feinstein, *The Participation of Children and Young Children in Emergencies: A guide for relief agencies*, UNICEF, Bangkok, 2007



control over their lives. And sharing grief with others may help children to overcome their sense of loss. It can also serve to enhance their innate resilience, and provide them with strength.

- **Focus on rebuilding a sense of community** through the restoration of normal everyday routines and activities, for example, rebuilding family and community networks, re-establishing productive capacity, providing opportunities for recreation and play, and developing mechanisms for justice and retribution. Children need access to cultural activities, games, sports and recreational activities which enable them to relax, have fun and cooperate with one another.
- **Provide safe space for interaction with peers** and promote positive opportunities for girls, boys and youth to come together and to organise themselves and their own programmes. There is considerable evidence that social support from peers can enhance children's resilience. Furthermore, through collective organisation children can learn self-protection, self-representation and self-advocacy. Programmes should encourage children's active participation in decision-making, problem-solving, team-building and peer-mentoring to reinforce individual attributes in children that contribute to self-esteem, self-efficacy and coping. For example, children in refugee camps can be encouraged to contribute to their own safety and wellbeing through the establishment of children's forums. Support needs to be given to enable children to establish such forums, while ensuring that their operation is consistent with children's best interests and their right to protection from harmful experiences.
- **Understand that relief and reconstruction efforts have a psychosocial as well as a physical dimension.** Local people, including children, need to define their own needs, and reconstruction efforts should focus on meeting those needs and recreating the necessary social spaces for social healing to take place. Children must be understood as agents in their own recovery, if relief efforts are not to increase their feelings of powerlessness and dependence. Children's participation helps them to regain control over their lives, contributes to rehabilitation, develops organisational skills and strengthens a sense of identity – although care needs to be taken to protect children from exposure to situations that are likely to be traumatic or harmful. Opportunities for creative forms of expression such as art, drama, story-telling, play, poetry, music, puppetry and other cultural activities can play a vital role in healing processes.
- **Recognise that children are not a homogenous group,** and responses to their situation in emergencies, as in any other context, must be considered with due regard to their age, gender, location, culture, social class, economic status and ethnicity. Adolescents should not be grouped with young children as they have different emotional, physical, psychological and social needs which have to be identified and respected. Adolescent girls and boys have distinct experiences during emergency situations; gender norms will influence both the vulnerabilities and the capacities of adolescents during different types and phases of emergencies.
- **Recognise that psychosocial needs in war-affected communities are long term,** and efforts to involve children must provide for their ongoing participation.

- **Base relief, emergency and development processes on an accurate assessment of capacities and vulnerabilities**, undertaken with the full participation of girls, boys, women and men of the affected communities. All information should be disaggregated according to gender and age, as well as other social variables.
- **Ensure efforts are non-discriminatory**. No child should be discriminated against because of their gender, ethnicity, religion, disability or nationality. Monitoring efforts should include a focus on which children are being included or excluded in relief and emergency efforts.
- **Psychosocial programmes for war-affected and displaced children should focus on schools/informal learning places**, on the grounds that education is less likely than a mental health intervention to be viewed negatively and that a structured, routine learning environment provides a sense of stability and continuity, which is vital for children's psychosocial adjustment.
- **Develop child protection approaches that build on local resources and local understandings of girls, boys, women and men**. Children need security and safety to enable them to achieve healthy development even in emergencies. This can be achieved through the creation of a 'protective environment', which should include the provision of services, the establishment of supportive systems and networks, the guarantee of security and laws, and the existence of policies to enable their implementation. It is important to recognise that as well as benefits



### WHAT CHILDREN AND YOUNG PEOPLE HAVE DONE AT DIFFERENT AGES IN RECONSTRUCTION EFFORTS<sup>212</sup>

**Children aged 5–10 years:** making toys for younger children

**Children aged 9–12 years:** providing first aid; playing with and supporting children who lost family members; talking with and supporting friends who were sad; collecting food and rations for old people; helping prepare food; helping to clean camps for internally displaced persons (IDPs); making representation to adults

**Children aged 12:** teaching younger children; caring for younger children; working as part of emergency task group

**Children aged 12–17:** rescuing and saving younger children; caring for younger children; teaching younger children and peers; treating wounds and caring for injured people; clearing up after an emergency; collecting bodies; helping to trace families; helping old people to collect food and rations; helping families with small children to collect food and rations; packing food for distribution; providing information about milk powder needs; cleaning camps; cleaning and painting buildings; developing businesses

**Young people aged 18 and older:** rescuing and saving younger children; organising entertainment; developing businesses; providing community communications; negotiating with outsiders on behalf of a community

<sup>212</sup> C O'Kane and C Feinstein, *The Participation of Children and Young Children in Emergencies: A guide for relief agencies*, UNICEF, Bangkok, 2007

there are also risks tied to adolescent participation. In post-conflict situations, the right of adolescents to participation may be at odds with their right to protection. Conflicts are over control of resources and people. They are about power and politics. In such highly politicised situations it can be dangerous for children and adolescents to take on public roles. This is particularly the case in the situation of child soldiers and in the demobilisation, reintegration and rehabilitation of child soldiers.

### **In post-conflict truth and reconciliation processes**

Children have a significant contribution to make, as well as a right to be involved, in truth and reconciliation processes in the aftermath of conflict. Experiences from children's engagement in military demobilisation, judicial processes, truth-telling and social reintegration has provided a body of experience from which to draw in developing good practice in this field. The UNICEF Innocenti Research Centre and the International Centre for Transitional Justice have drawn up a series of principles to inform children's involvement in truth and reconciliation processes. The following are some of the key principles of particular relevance to the right of the child to be heard in these processes:<sup>213</sup>

- Children should become witnesses in legal prosecution for international crimes only when necessary. If evidence can be provided by an adult then child witnesses should not be exposed to courtroom procedures.
- Legal procedures should be adapted to the child and not the other way around.
- When child victims and witnesses give testimony in judicial processes special measures should be put in place to protect their rights, including the provision of psychosocial support, the use of trained investigators and the protection of the child's identity.
- Children's participation in transitional justice processes should strengthen their protection, and protection should enable their participation. Effective participation and protection of children can help to break the cycle of violence and prevent future conflict and instability. The mutual link between protection and participation needs careful consideration so that participation is informed, guided and sustainable, and in the best interests of the child.
- Child and adolescent participation in a truth commission should not be viewed as an isolated event to provide information to the commission, but instead should be understood as part of a process of engagement with young people as family and community members. By bringing their unique views and experiences forward children can contribute to reconciliation and build their capacity for active citizenship.
- If children participate in statement-taking or in thematic or closed hearings then protection policies and procedures must be in place. Strict confidentiality must be maintained with regard to the identity of child victims and witnesses. Participation of children and young people should promote psychosocial healing and the strengthening of self-esteem. Local and traditional activities that dignify victims and build a culture of respect for human rights should also be encouraged.
- Psychosocial and other appropriate support services should be provided before, during and in follow-up to children's involvement in truth and reconciliation processes. The provision of a network of supportive adults and peers is crucial in the aftermath of civil unrest or armed conflict to encourage children's

<sup>213</sup> See Annex on key principles by UNICEF Innocenti Research Centre and International Centre for Transitional Justice, in S Parmar, M J Roseman, S Siegrist and T Sowa, *Children and*

*Transitional Justice: Truth-Telling, Accountability and Reconciliation*, Human Rights Program at Harvard Law School and UNICEF, 2010

recovery and rehabilitation. Special attention should be given to girls and boys who have been victims of sexual violence. In settings where formal networks for

psychosocial support are not functional or are difficult to access, alternatives should be offered.



### **CHILDREN'S ADVOCACY FOR SPACE IN POLITICAL PROCESSES TO FURTHER PEACE-BUILDING AND REALISATION OF CHILDREN'S RIGHTS<sup>214</sup>**

Children and young people are advocating for increased space in political processes affecting them, including formal peace talk, reconciliation and reconstruction processes so that they may more meaningfully contribute to efforts to identify, address and monitor the structural factors which inhibit peace and the fulfilment of children's rights. For example:

- In **Nepal**, children have highlighted the importance of the peace agreement and the constitutional assembly process as a means to establish more inclusive forms of governance, to address poverty and discrimination and to ensure fair distribution of resources.
- In **Uganda**, children have advocated for space to be included in the formal peace talks taking place in Juba (South Sudan) and have contributed to consultations on agenda 3 of the peace talks on accountability and reconciliation. In particular, they have emphasised the importance of forgiveness and reconciliation and making use of traditional forms of justice.
- In **Bosnia-Herzegovina**, delegates of children have met with the prime minister to advocate for their recommendations on the provision of quality education, and the importance of addressing existing discrimination, based on religious difference, within the school system.
- In **Guatemala**, children have reflected on the presidential elections and efforts to ensure greater attention is paid to monitoring of the peace accords and implementation of children's rights, as well as advocating for the historical memory of the internal armed conflict to be maintained. Children and young people have also explained their interest in addressing gang culture and youth delinquency. Recognising some of the root causes that contribute to delinquency, they are advocating for improved education and employment opportunities for marginalised children and youth, and for increased support to families to reduce family violence and to prevent children from running away to the streets or joining gangs.

<sup>214</sup> Clare Feinstein and Claire O'Kane, *Adult's War and Young Generation's Peace: Children's participation in armed conflict, post conflict and peace-building*, Save the Children, Oslo, 2008



**RECOGNITION OF CHILDREN'S RIGHT TO BE HEARD IN THE PUBLIC ARENA MEANS THAT GOVERNMENTS MUST:**

- recognise the importance of introducing systemic structures and mechanisms to enable children to participate in civil and political spaces
- move beyond one-off or ad hoc initiatives
- provide support to enable children to establish their own organisations, through which they can represent themselves and other children
- create legitimate and formal spaces for children to access decision-makers and policy-makers
- at local community level, create opportunities for children's engagement through children's parliaments, representation on local bodies, consultation on specific issues, support for child-led initiatives and organisations, access to the media, and involvement of children as auditors or monitors of local services
- at national level, establish a coordinating authority for promoting implementation of Article 12 across government, institutionalise child participation at all levels of government decision-making, create a supportive environment for children to establish their own organisations, enable children to monitor implementation of their rights both within the country and in reporting to the Committee on the Rights of the Child, and support children in participation in national and international forums
- in conflict and humanitarian reconstruction, involve children at all stages of reconstruction as active agents in assessment, design, implementation, and monitoring and evaluation of programmes.

# CHAPTER EIGHT

## FORMS OF CHILD PARTICIPATION



# CHAPTER EIGHT

## **FORMS OF CHILD PARTICIPATION**

### **POTENTIAL APPROACHES TO PARTICIPATION**

Consultative participation  
Collaborative participation  
Child-led participation

### **BASIC REQUIREMENTS FOR EFFECTIVE AND ETHICAL PARTICIPATION**

1. Transparent and informative
2. Voluntary
3. Respectful
4. Relevant
5. Facilitated with child-friendly environments and working methods
6. Inclusive
7. Supported by training
8. Safe and sensitive to risk
9. Accountable

## CHAPTER EIGHT

# FORMS OF CHILD PARTICIPATION

“Please tell all the children in the world that we have learned a lot about our rights and that taking part in a participation project can be very enjoyable and effective.” Girl, 10 years old, Albania<sup>215</sup>

### POTENTIAL APPROACHES TO PARTICIPATION

Participation can take many forms and engage children in different ways and at different levels. Each of the following three broad forms of participation represents a valid and meaningful approach to implementing Article 12, but offers a different degree of opportunity for children to influence matters affecting them, and, accordingly, differing degrees of empowerment. However, they are each appropriate to different circumstances.

#### Consultative participation

This is a process in which adults seek children's views in order to build knowledge and understanding of their lives and experience. It is characterised by being:

- adult initiated
- adult led and managed
- lacking any possibility for children to control outcomes.

It therefore does not allow for sharing or transferring decision-making processes to children themselves. However, it does recognise that children have expertise and perspectives which need to inform adult decision-making. Consultation is an appropriate means of enabling children to express views, for example, when

undertaking research, in planning processes, in developing legislation, policy or services, or in decisions affecting individual children within the family, in healthcare or in education, or as witnesses in judicial or administrative proceedings. Consultative processes can be used to ascertain the views of children of all ages, including very young children, and should not be limited to those able to engage in 'adult' forms of communication. Methodologies must be adapted in accordance with the evolving capacities of children.

There are many different mechanisms that can be used to consult with children, including:

- online surveys
- peer research
- consultative processes through the school system
- focus groups with particular groups of children on areas of particular interest to them, for example, access to transport for children in rural communities, discrimination against girls in school, adequacy of protective employment legislation for working children
- nationally organised events, meetings or conferences
- multi-level consultation involving groups of local children, feeding into national forums.

Children should be directly involved in determining the methods of participation to ensure that they are accessible and child friendly.

<sup>215</sup> K Kranzl-Nagl and U Zartler, 'Participation in school and community' in B Percy-Smith and N Thomas (eds) *A Handbook*

*of Children and Young People's Participation*, Routledge, London, 2010





### CHILDREN CONSULTED ON HEALTHCARE IN SOUTH AFRICA<sup>216</sup>

In a consultation with children in South Africa about their experiences of healthcare, the children repeatedly commented that nurses and doctors did not always seem to care about them or their health. Even when they were in pain, many felt that there was no one to tell or who was interested in them. Because they were children, they found it difficult to ask for help or attention when they needed it. They often felt lonely and frightened, particularly at night. Many also expressed fear because doctors and nurses sometimes shouted at them, or treated them roughly when, for example, changing bandages. Lack of privacy and respect for their dignity was another major concern they raised. They also highlighted the lack of information provided by doctors, which left them feeling unnecessarily anxious and lacking control, commenting that *"It makes us sad when we ask the doctor or nurse what is wrong and he won't tell you."* Some criticism was also focused on their caregivers, who often failed or refused to take them to a doctor even when they were sick or in pain. They felt that health professionals had a role to play in educating caregivers about early identification and referral. They also felt that health workers should be made aware of the power relationship between adults as authority figures and children, and of children's vulnerability when sick, and to be encouraged to be more proactive in offering care in ways that acknowledge the child's feelings.



### CONSULTING CHILDREN IN DENMARK

The Danish National Council for Children has developed an elaborate form of consultation with children, establishing contacts with a total of 150 children, in seven schools and a daycare institution (for children aged 4 to 6 years). The children agreed to consider and respond to questions and papers which the Council sends them. They discuss them with their teachers, and can then respond either individually or collectively. There have been consultations on children's employment and pay, children's use of videos and TV, children's participation in decision-making – both within the family and in local planning – and on corporal punishment in the family. The Council has also brought all the children together for residential conferences.

#### Collaborative participation

This provides a greater degree of partnership between adults and children, with the opportunity for active engagement at any stage of a decision, initiative, project or service. It can be characterised as:

- adult initiated
- involving partnership with children
- empowering children to influence or challenge both process and outcomes;
- allowing for increasing levels of self-directed action by children over a period of time.

Collaborative participation might include the involvement of children in designing and undertaking research, policy development, peer education and counselling, participation in conferences, or in representation on boards or committees. Individual decisions within the family, in education and in healthcare can also be collaborative rather than consultative, and involve children more fully in decision-making processes. Collaborative participation provides opportunity for shared decision-making with adults, and for children to influence

<sup>216</sup> S Moses and G Urgoiti, *Child Rights Education for Professionals (CRED-PRO)*, Pilot of the Children's Participatory Workshops, Children's Institute, Cape Town, March 2008

both the process and the outcomes in any given activity.

Consultative processes can be made collaborative, for example, in a research project, by:

- enabling children to identify what the relevant questions are
- giving children the opportunity to help develop the methodology for the research
- enabling, encouraging and supporting children to take on the role of researchers
- involving children in discussions about the findings, their interpretation and their implications for future developments.



### CHILDREN'S AND ADULTS' PARTICIPATION IN 'REFLECT-ACTION' GROUPS IN A REFUGEE CAMP, PAKISTAN<sup>217</sup>

In response to the new influx of refugees from Afghanistan into Pakistan following the US attack on Afghanistan after 11 September 2001, Save the Children began an initiative to further children's protection and wellbeing. A Child Protection Monitoring Tool was developed and piloted in refugee camps in Balochistan, and in Kotkai in the North West Frontier Province.

In Kotkai camp, the child protection work evolved over time. Save the Children developed visual participatory tools for exploring issues identified within the child protection monitoring tool. Then, through the use of 'Reflect-Action' groups the local community, including women, men, young people, girls and boys, was able to address their important concerns. 'Reflect-Action' is defined as "a structured participatory learning process, which facilitates people's critical analysis of their environment, placing empowerment at the heart of sustainable and equitable development. Through the creation of democratic spaces and the construction and interpretation of locally generated texts, people build their own analysis of local and global reality and re-define power relationships (in both public and private spheres)."<sup>218</sup>

Save the Children provided capacity-building for a local team to facilitate Reflect-Action circles to ensure community-based child protection monitoring and response. This work has given children in Kotkai confidence, voice and influence to address their issues. Girls and boys have demonstrated in practical ways that they are capable of analysing their own situation, identifying concerns and developing strategies to address them. Within months, the children won the confidence of the refugee camp management and relief agencies, and established themselves as valuable partners in camp administration. Children raised their concerns with relief agencies and camp administrators at fortnightly meetings. They shared their visual presentations and sometimes used drama. They also kept the wider community members informed about adult responses.

The specific issues children explored and presented to officials have included: the education system, children under stress, disease, water shortages, drugs, and early marriages. Responses by the camp and relief agency administrators have led to improved school facilities, changes in teacher behaviour, checks on corporal punishment, awareness of early child marriage and gender-related violence, increased access to hygienic sanitation, and a more adequate supply of water.

An analysis of Save the Children's work in Kotkai by community members clustered the impact into three categories: 1) empowerment, 2) changes in social behaviour and 3) capacity-building.

**1) Empowerment:** Community members felt the Reflect-Action gave them **confidence** to communicate with any individual regardless of their status or position, and to take the initiative on their own. Girls and women felt their **mobility** had increased, and girl's registration in schools

*continued overleaf*

<sup>217</sup> Adapted from: *Child Protection: The Kotkai Experience*, Save the Children, Pakistan and *Child Participation in Camp Management: Kotkai Refugee Camp*, Save the Children, 2002

<sup>218</sup> *Child Participation in Camp Management: Kotkai Refugee Camp*, Save the Children, 2002



### CHILDREN'S AND ADULTS' PARTICIPATION IN 'REFLECT-ACTION' GROUPS IN A REFUGEE CAMP, PAKISTAN *continued*

had also increased. As community members gained more understanding of the camp governance structures and the roles and responsibilities of different agencies, they were able to develop **links to agencies** to address issues affecting them.

**2) Changes in social behaviour:** Community members felt the greatest impact had been in terms of better social behaviour in the camp. Generally there was **less fighting** over petty issues. Children and young people said that they had recognised the negative impacts of fighting at Reflect-Action circles and had resolved to consciously try to live in peace. Community members were more able to recognise and **avoid bad company**, particularly individuals involved in drug use, theft or other anti-social activity. They demonstrated **increased social responsibility** by trying to help each other. The community began providing human resource support to agencies to maintain the camp's physical infrastructure, to run youth groups, children's and women's groups, and reconciliatory *jirgas*, and to maintain libraries and recreational parks. **School attendance** of both girls and boys had increased.

**3) Capacity-building:** Community members had gained skills in **situational analysis** and in developing solutions. They knew which officials to present their problems to in order for them to be addressed. **Communication** has increased as officials listen more and try to respond effectively. Through the process some women have learned to write, increasing their **literacy**. Overall, community members felt they had increased their **general knowledge**.

Save the Children felt that child protection through children's participation should be initiated as a long-term development strategy.

#### Child-led participation

This is where children are afforded or claim the space and opportunity to initiate activities and advocate for themselves. It is characterised by:

- the issues of concern being identified by children themselves
- adults serving as facilitators rather than leaders
- children controlling the process.

Children can initiate action as individuals, for example, in choosing a school, seeking medical advice, pressing for the realisation

of their rights through the courts, or utilising complaints mechanisms. They can also initiate action as a constituency by establishing and managing their own organisations for the purposes of policy analysis, advocacy, awareness-raising; through peer representation and education; and through the use of and access to the media. The role of adults in child-led participation is to act as facilitators, resource-providers, technical assistants and child protection workers to enable children to pursue their own objectives.



### THE AFRICAN MOVEMENT OF WORKING CHILDREN AND YOUTH<sup>219</sup>

The African Movement of Working Children and Youth (AMWCY), a child-led movement founded in 1994, currently has associations in 126 cities and villages in 21 countries of sub-Saharan Africa. It has almost 150,000 members, including housemaids, apprentices and independent working girls and boys, some of whom are extremely marginalised.

A project to strengthen action against migration of children and young people and child trafficking was established in 2004 by AMWCY associations in Benin, Burkina Faso, Côte d'Ivoire, Mali and Niger, supported by AMWCY's main partners (Enda Third World, Plan, Save the Children and UNICEF). The project has since been extended to Guinea, Senegal and Togo. AMWCY has undertaken activities in 150 villages, establishing regular contact with traditional authorities and information forums on the risks of early exodus. Children and young people have been supported to develop solutions, including improving school conditions and attendance, developing income-generating activities, improving leisure opportunities and introducing or improving birth registration. Efforts have also been made to engage parents, as inter-generational conflict is considered to be one of the root causes of children leaving. Young people who decide to move within their country or migrate abroad are helped with information and contacts, and they are also helped to stay in touch with their home villages. These actions are intended to reduce children's isolation and vulnerability to abuse and exploitation. Talks and informal listening points are established in transport stations, markets and other areas where migrants gather. These activities have been initiated in 64 locations.

Assistance is provided to children who wish to return home, using AMWCY's network and formal networks linked to NGOs and other actors. Governments have offered support to AMWCY initiatives. For example, in Côte d'Ivoire, the ministries of justice and of social affairs support communication initiatives and AMWCY conferences in towns and villages to discuss early exodus and child trafficking. A bilateral agreement on child trafficking between Mali and Senegal has been improved by inclusion of amendments aimed at increasing respect for children's rights. An assessment was conducted in 2007. Reflection on lessons learned led to a refined vision and action plan, contained in the Bamako Declaration (19 October 2007).<sup>220</sup>

Regional lobbying and partnerships have brought children's perspectives to regional forums such as the Regional Working Group against Trafficking in Persons, of which AMWCY is a full member. AMWCY has contributed to the working group's concept plan for reducing children's mobility risk, which highlights the difference between voluntary migration for work and exploitive/forced migration for trafficking. AMWCY also contributed to the strategic plan against trafficking drawn up by the Economic Community of West African States, which has led to the participation of children and civil society in its new action plan.

Of key importance to AMWCY's sustainability is its structure as a child-led movement based on a large and well-organised network of associations in villages and towns across sub-Saharan Africa. Crucial to its success is its ability to stay in contact with children and young people in exodus. AMWCY's familiarity with its target population eases access to information and strengthens relationships with concerned communities.

<sup>219</sup> Adapted from information provided by the African Movement of Working Children and Youth, ENDA Jeunesse Action, and Save the Children Sweden regional office in West Africa

<sup>220</sup> [www.enda.sn/eja](http://www.enda.sn/eja)

## BASIC REQUIREMENTS FOR EFFECTIVE AND ETHICAL PARTICIPATION

In order for children's participation to be effective, ethical, systematic and sustainable, it is essential that certain principles and standards are complied with. Without adherence to these standards, there is a danger that children will be manipulated, placed at risk, or denied any real opportunity to articulate their own views. The considerable body of experience that has been built up since the UNCRC was adopted in 1989, has led to a broad consensus on the basic requirements which have to be reached for effective, ethical and meaningful implementation of Article 12. These requirements need to be incorporated into policy and practice at all levels and, wherever possible, to be reflected in any legislative framework.

The basic standards for the implementation of Article 12 must be interpreted within the context of the following general principles derived from the UNCRC:

- Measures should be put in place to encourage and facilitate children's participation in accordance with their age and maturity.
- Participation should promote the best interest of the child and enhance the personal development of each child.
- All children have equal rights to participation without discrimination.
- All children have the right to be protected from manipulation, violence, abuse and exploitation.

In practice this means that child participation must meet the following nine basic requirements:<sup>221</sup>

### I Transparent and informative

Children must be provided with full, accessible, diversity-sensitive and

age-appropriate information about their right to express their views freely and for their views to be given due weight, and about how this participation will take place, its scope, purpose and potential impact.

Meeting this requirement will necessitate that:

- There is clarity of purpose about children's participation and honesty about its parameters. Children understand how much impact they can have on decision-making and who will make the final decision.
- The roles and responsibilities of all involved (children, adults and other stakeholders) are clearly outlined, understood and agreed upon.
- Clear goals and targets are agreed with the children.
- Children are provided with and have access to relevant information regarding their involvement.
- 'Outside' adults involved in any participatory processes are made aware of the needs of children, clear about their role and willing to listen and learn.
- Organisations and workers are accountable to children for the commitments they make.
- The barriers and challenges that participating children may have faced in other spheres of their lives are considered and discussed with the children involved to reduce any potential negative impacts.

### 2 Voluntary

Children should never be coerced into expressing views against their wishes and they should be informed that they can cease involvement at any stage.

Meeting this requirement will necessitate that:

- Children have time to consider their involvement and processes are established to ensure that they are able to give their personal, informed consent to their participation.

<sup>221</sup> These standards or requirements are largely drawn from *Save the Children's Practice Standards in Children's Participation*, 2005 [http://www.savethechildren.org.uk/en/54\\_3169.htm](http://www.savethechildren.org.uk/en/54_3169.htm)

- Children are given sufficient information and support to enable them to make an informed decision on their participation.
- Children's participation is voluntary and they can withdraw at any time they wish.
- Children's other time commitments are respected and accommodated (eg, to home, work, school).

### 3 Respectful

Children's views have to be treated with respect and children should be provided with opportunities to initiate ideas and activities. Adults working with children should acknowledge, respect and build on good examples of children's participation, for instance, in their contributions to the family, school, culture and the work environment. They also need an understanding of the socio-economic, environmental and cultural context of children's lives. Persons and organisations working for and with children should also respect children's views with regard to participation in public events.

Meeting this requirement will necessitate that:

- Girls and boys are able to freely express their views and opinions and have them treated with respect.
- Where the process of involvement requires representation from a wider group of children, the selection of representatives will be based on principles of democracy and non-discrimination.
- Ways of working build the self-esteem and self-confidence of boys and girls of different ages and abilities so that they feel they are able to contribute and that they have valid experience and views to contribute.

### 4 Relevant

Opportunities must be available for children to express their views on issues of real relevance to their lives and enable them to draw on their knowledge, skills and abilities. Children's participation should build on their

personal knowledge – the information and insights that children have about their own lives, their communities and the issues that affect them.

Meeting this requirement will necessitate that:

- The issues are of real relevance to the children being involved and draw upon their knowledge, skills and abilities.
- Children are involved in setting the criteria for selection and representation for participation.
- Children are involved in ways, at levels and at a pace appropriate to their capacities and interests.
- Ways of working and methods of involvement incorporate and build on supportive local structures, knowledge and practice and take into consideration social, economic, cultural and traditional practices.
- Preparation with and support from key adults in children's lives (eg, parents/guardians, teachers) is gained to ensure wider support for the participation of girls and boys.

### 5 Facilitated with child-friendly environments and working methods

The approaches to working with children should be adapted to their capacities. Adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views. Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities.

Meeting this requirement will necessitate that:

- Ways of working build the self-esteem and self-confidence of boys and girls of different ages and abilities so that they feel they are able to contribute and that they have valid experience and views to contribute.

- Methods of involvement are developed in partnership with children so that they reflect their preferred mediums of expression.
- Sufficient time and resources are made available for quality participation and children are properly supported to prepare for their participation.
- Adults (including children's own parents/guardians) are enabled to understand the value of children's participation and are enabled to play a positive role in supporting it (eg, through awareness-raising, reflection and capacity-building).
- Child-friendly meeting places are used where girls and boys feel relaxed and comfortable and have access to the facilities they need. The meeting places must be accessible to children with disabilities.
- Organisational or official procedures are designed/modified to facilitate (rather than intimidate) children and welcome less experienced boys and girls.
- Support is provided where necessary to share information and/or build skills and capacity to enable children, individually and collectively, to participate effectively.
- Children are asked what information they need and accessible information is shared with children in good time, in child-friendly formats and in languages that the children understand, including children with visual or hearing impairments.
- In situations where children encounter different native/first languages, access to written information and professional interpretation is provided that allows for children's full participation in discussions.
- Non-technical language is used in all discussions involving children and/or all jargon or technical terms are clearly explained.

## 6 Inclusive

Participation must be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalised children, including both girls and boys, to be involved. Children are not a homogeneous group and participation needs to provide for equality of opportunity for all, without discrimination on any grounds. Programmes also need to ensure that they are culturally sensitive to children from all communities.

Meeting this requirement will necessitate that:

- All children have an equal chance to participate and systems are developed to ensure that children are not discriminated against because of age, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- Children's involvement is aimed at including, if possible, all rather than a few; this could mean reaching out to children in their local settings rather than inviting representatives to a central point.
- Participatory practice with children is flexible enough to respond to the needs, expectations and situations of different groups of children – and to regularly re-visit these concerns.
- The age range, gender and abilities of children are taken into account in the way participation is organised, eg, in the way information is presented.
- Those working with children are able to facilitate an environment that is non-discriminatory and inclusive.
- No assumptions are taken for granted about what specific groups of children can and cannot do.
- Children are given an equal opportunity to voice their opinions and have their contributions reflected in any outcomes of a participatory process, including in processes that involve both children and adults.

- If there is a limit to how many children can participate, children themselves select from among their peers those who will represent them in participatory initiatives, on the basis of the principles of democracy and inclusion.
- Influential adults are engaged to gain family and community support for the participation of discriminated-against groups.
- relations between staff and between staff and management model appropriate behaviour, and that staff and management treat each other with respect and honesty
- support is provided for any managers and staff for whom children's participation entails a significant personal or cultural change, without this being regarded as a problem
- staff are able to express any views or anxieties about involving children, in the expectation that these will be addressed in a constructive way.

### 7 Supported by training

Adults need preparation, skills and support to facilitate children's participation effectively, to provide them, for example, with skills in listening, working jointly with children and engaging children effectively in accordance with their evolving capacities. Children themselves can be involved as trainers and facilitators on how to promote effective participation; they require capacity-building to strengthen their skills in, for example, effective awareness of their rights, and training in organising meetings, raising funds, dealing with the media, public speaking and advocacy.

Meeting this requirement will necessitate that:

- all staff and managers are enabled to understand the importance of children's participation and understand the commitment to it
- staff are provided with appropriate training, tools and other development opportunities in participatory practice to enable them to work effectively and confidently with children of different ages and abilities
- staff are properly supported and supervised, and their participation practice is evaluated
- specific technical skills or expertise (eg, in communication, facilitation, conflict resolution or multicultural working) are built up through a combination of recruitment, selection, staff development and practice exchange

### 8 Safe and sensitive to risk

In certain situations, expression of views may involve risks. Adults have a responsibility towards the children with whom they work and must take every precaution to minimise the risk to children of violence, exploitation or any other negative consequence of their participation. Action necessary to provide appropriate protection will include the development of a clear child-protection strategy which recognises the particular risks faced by some groups of children, and the extra barriers they face in obtaining help. Children must be aware of their right to be protected from harm and know where to go for help if needed. Investment in working with families and communities is important in order to build understanding of the value and implications of participation, and to minimise the risks to which children may otherwise be exposed.

Meeting this requirement will necessitate that:

- The protection rights of children are paramount in the way children's participation is planned and organised.
- Children involved in participation work are aware of their right to be safe from abuse and know where to go for help if needed.
- Skilled, knowledgeable staff are delegated to address and coordinate child-protection issues during participatory processes.



- Staff organising a participatory process have a child protection strategy that is specific to each process. The strategy must be well communicated and understood by all staff involved in the process.
- Safeguards are in place to minimise risks and prevent abuse (eg, children are adequately supervised and protected at all times; risk assessments are in place for residential activities away from home; children are protected from abuse by other children).
- Staff recognise their legal and ethical obligations and responsibilities (eg, in respect of their own behaviour or what to do if they are told about the inappropriate behaviour of others). A system for reporting critical incidents is in place and understood by all staff.
- Child protection procedures recognise the particular risks faced by some groups of children and the extra barriers they face to obtaining help.
- Careful assessment is made of the risks associated with children's participation in speaking out, campaigning or advocacy. Depending on the risks identified, steps may be needed to protect children's identity or to provide follow-up measures to give protection (eg, to ensure their safe reintegration into their communities).
- Consent is obtained for the use of all information provided by children and information identified as confidential is safeguarded at all times.
- A formal complaints procedure is set up to allow children involved in participatory activities to make a complaint in confidence about any issue concerning their involvement. Information about the complaints procedure is accessible to children in relevant languages and formats.
- No photographs, videos or digital images of a child can be taken or published without that child's explicit consent for a specific use.

- Unless otherwise agreed, it must not be possible to trace information back to individual/groups of children.
- Responsibilities relating to liability, safety, travel and medical insurance are clearly delegated and effectively planned for.

## 9 Accountable

A commitment to follow-up and evaluation is essential. For example, in any research or consultative process, children must be informed as to how their views have been interpreted and used and, where necessary, they must be provided with the opportunity to challenge and influence the analysis of the findings. Children are also entitled to be provided with clear feedback on how their participation has influenced any outcomes. Wherever appropriate, children should be given the opportunity to participate in follow-up processes or activities. Monitoring and evaluation of children's participation needs to be undertaken, where possible, with children themselves.

Meeting this requirement will necessitate that:

- Children are involved from the earliest possible stage and are able to influence the design and content of participatory processes.
- Children are supported to participate in follow-up and evaluation processes.
- Follow-up and evaluation is addressed during the planning stages, as an integral part of any participation initiative.
- Children are supported and encouraged to share their participatory experiences with peer groups, local communities, organisations and any projects that they may be involved with.
- Children are given rapid and clear feedback on the impact of their involvement, the outcome of any decisions/next steps and the value of their involvement.
- Feedback reaches all children involved.

- Children are asked about their satisfaction with the participation process and for their views on ways in which it could be improved.
- The results of monitoring and evaluation are communicated back to the children involved in an accessible and child-friendly way, and their feedback is taken into account in future participation work.
- Mistakes identified through evaluation are acknowledged and commitments given about how lessons learned will be used to improve participatory processes in the future.
- Adults will evaluate how they have translated and implemented children's priorities and recommendations into their policies, strategies and programmes.
- Sustainability of support is discussed with children. Adults will provide clear feedback to children regarding the extent/limit of their commitment to support children's ongoing initiatives and organisations. If ongoing support is not possible, adults will provide children with resources and support to make contact with other agencies who can support them.

**<http://www.unicef.org/adolescence/cypguide/resourceguide.html>**

UNICEF's web-based child and youth participation resource guide provides an overview and links to existing resources on child and youth participation from Asia, Europe, North America, Latin America, Africa, Australia and the Pacific. Most of the materials are in English and are available electronically.

The guide is aimed mainly at practitioners and managers involved in promoting child and youth participation in government, community-based organisations, child-led organisations, NGOs and UN and donor agencies.

Documents are organised into four broad categories:

- basics of child and youth participation
- involvement in research, analysis, planning implementation, evaluation
- participation in programme areas
- involvement in political decision-making.

Thematic areas include:

- education
- HIV prevention
- health, hygiene and sanitation promotion
- environmental protection
- urban planning
- emergency response and preparedness
- protection from exploitation, violence and abuse.

# EVERY CHILD'S RIGHT TO BE HEARD

## **A resource guide on the UN Committee on the Rights of the Child General Comment No. 12**

Gerison Lansdown

Every child's right to express their views and have them taken seriously is enshrined in Article 12 of the UN Convention on the Rights of the Child. However; despite many positive examples – some of which are referred to in this guide – most children are not included in discussions about issues that affect them.

This resource guide is a companion document to the UN Committee on the Rights of the Child General Comment No. 12 on the 'Right of the Child to be Heard'. As well as outlining their obligations to listen to children, it provides governments, NGOs, policy-makers and international agencies with practical guidance on how to include children's views and opinions in different settings. It also explains how Article 12 links with other Articles of the UNCRC.

*Every Child's Right to be Heard* provides:

- illustrative examples of laws and regulations, guidance and policy that have been adopted by some governments to give effect to the right embodied in Article 12
- practical guidance on how to create the opportunities for children to be heard
- evidence from research, for example, regarding the impact of children's participation, or their concerns in particular settings
- illustrative examples from around the world of initiatives undertaken to enable children to participate in decisions and actions that affect them
- basic requirements for ensuring child participation that is ethical, safe and effective
- arguments to be made to demonstrate the positive outcomes associated with realising the right of children to be heard and taken seriously.

"The Committee recommends this resource guide as a major contribution to achieving change... The evidence it produces demonstrates that not only is it possible to create environments in which children can make a significant contribution to their own and others' lives, but that doing so brings real benefits."

Yanghee Lee and Jean Zermatten, former and current Chair,  
UN Committee on the Rights of the Child