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An den
Innen- und Rechtsausschuss

per E-Mail

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Sehr geehrte Frau Schönfelder,

Das Deutsche Komitee für UNICEF dankt für die Gelegenheit zur mündlichen Stellungnahme zum Gesetzentwurf der Volksinitiative "Kinderrechte stärken - Armut bekämpfen". Eine Teilnahme an der Anhörung ist uns leider nicht möglich.

UNICEF unterstützt gesetzgeberische Initiativen, die zur vollständigen Umsetzung der UN-Kinderrechtskonvention beitragen. Gemeinsam mit Partnern der Zivilgesellschaft plädiert UNICEF seit vielen Jahren für die flächendeckende Verankerung der Rechte des Kindes sowohl in den Verfassungen der Bundesländer als auch im deutschen Grundgesetz.

Mit Ratifizierung der UN-Kinderrechtskonvention hat sich Deutschland verpflichtet, alle geeigneten gesetzgeberischen Maßnahmen zu ergreifen, um die Rechte des Kindes zu gewährleisten. Diese Verpflichtung gilt auch für die Bundesländer. Eine präzisierte Normierung der Kinderrechte in der schleswig-holsteinischen Landesverfassung erfährt insofern die Unterstützung von UNICEF.

UNICEF empfiehlt, in der Formulierung zu beachten, dass neben dem Schutz und der Förderung von Kindern auch deren Beteiligung an allen sie betreffenden Entscheidungen ein wesentliches Prinzip der Kinderrechtskonvention ist, das in Artikel 12 zum Ausdruck kommt. Im Anhang finden Sie den betreffenden "General Comment" des UN-Ausschusses für die Rechte des Kindes, der die Interpretationsgrundlage für den Artikel 12 liefert.

Mit freundlichen Grüßen
gez. Dr. Sebastian Sedlmayr
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Leiter Kinderrechte und Bildung
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**Convention on the
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GENERAL COMMENT NO. 12 (2009)

The right of the child to be heard

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The right of the child to be heard

Article 12 of the Convention on the Rights of the Child provides:

“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 an appropriate body, in a manner consistent with the procedural rules of national law.”

I. INTRODUCTION

1. Article 12 of the Convention on the Rights of the Child (the Convention) is a unique provision in a human rights treaty; it addresses the legal and social status of children, who, on the one hand lack the full autonomy of adults but, on the other, are subjects of rights. Paragraph 1 assures, to every child 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 age and maturity. Paragraph 2 states, in particular, that the child shall be afforded the right to be heard in any judicial or administrative proceedings affecting him or her.

2. The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 12 as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child’s best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights.

3. Since the adoption of the Convention in 1989, considerable progress has been achieved at the local, national, regional and global levels in the development of legislation, policies and methodologies to promote the implementation of article 12. A widespread practice has emerged in recent years, which has been broadly conceptualized as “participation”, although this term itself does not appear in the text of article 12. This term has evolved and is now widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes.

4. States parties reaffirmed their commitment to the realization of article 12 at the twenty-seventh special session of the General Assembly on children in 2002.¹ However, the Committee notes that, in most societies around the world, implementation of the child’s right to

¹ Resolution S-27/2 “A world fit for children”, adopted by the General Assembly in 2002.

express her or his view on the wide range of issues that affect her or him, and to have those views duly taken into account, continues to be impeded by many long-standing practices and attitudes, as well as political and economic barriers. While difficulties are experienced by many children, the Committee particularly recognizes that certain groups of children, including younger boys and girls, as well as children belonging to marginalized and disadvantaged groups, face particular barriers in the realization of this right. The Committee also remains concerned about the quality of many of the practices that do exist. There is a need for a better understanding of what article 12 entails and how to fully implement it for every child.

5. In 2006, the Committee held a day of general discussion on the right of the child to be heard in order to explore the meaning and significance of article 12, its linkages to other articles, and the gaps, good practices and priority issues that need to be addressed in order to further the enjoyment of this right.² The present general comment arises from the exchange of information which took place on that day, including with children, the accumulated experience of the Committee in reviewing States parties' reports, and the very significant expertise and experience of translating the right embodied in article 12 into practice by governments, non-governmental organizations (NGOs), community organizations, development agencies, and children themselves.

6. The present general comment will first present a legal analysis of the two paragraphs of article 12 and will then explain the requirements to fully realize this right, including in judicial and administrative proceedings in particular (sect. A). In section B, the connection of article 12 with the three other general principles of the Convention, as well as its relation to other articles, will be discussed. The requirements and the impact of the child's right to be heard in different situations and settings are outlined in section C. Section D sets out the basic requirements for the implementation of this right, and the conclusions are presented in section E.

7. The Committee recommends that States parties widely disseminate the present general comment within government and administrative structures as well as to children and civil society. This will necessitate translating it into the relevant languages, making child-friendly versions available, holding workshops and seminars to discuss its implications and how best to implement it, and incorporating it into the training of all professionals working for and with children.

II. OBJECTIVES

8. The overall objective of the general comment is to support States parties in the effective implementation of article 12. In so doing it seeks to:

- Strengthen understanding of the meaning of article 12 and its implications for governments, stakeholders, NGOs and society at large

² See the recommendations of the day of general discussion in 2006 on the right of the child to be heard, available at: http://www2.ohchr.org/english/bodies/crc/docs/discussion/Final_Recommendations_after_DGD.doc.

- Elaborate the scope of legislation, policy and practice necessary to achieve full implementation of article 12
- Highlight the positive approaches in implementing article 12, benefitting from the monitoring experience of the Committee
- Propose basic requirements for appropriate ways to give due weight to children's views in all matters that affect them

III. THE RIGHT TO BE HEARD: A RIGHT OF THE INDIVIDUAL CHILD AND A RIGHT OF GROUPS OF CHILDREN

9. The general comment is structured according to the distinction made by the Committee between the right to be heard of an individual child and the right to be heard as applied to a group of children (e.g. a class of schoolchildren, the children in a neighbourhood, the children of a country, children with disabilities, or girls). This is a relevant distinction because the Convention stipulates that States parties must assure the right of the child to be heard according to the age and maturity of the child (see the following legal analysis of paragraphs 1 and 2 of article 12).

10. The conditions of age and maturity can be assessed when an individual child is heard and also when a group of children chooses to express its views. The task of assessing a child's age and maturity is facilitated when the group in question is a component of an enduring structure, such as a family, a class of schoolchildren or the residents of a particular neighbourhood, but is made more difficult when children express themselves collectively. Even when confronting difficulties in assessing age and maturity, States parties should consider children as a group to be heard, and the Committee strongly recommends that States parties exert all efforts to listen to or seek the views of those children speaking collectively.

11. States parties should encourage the child to form a free view and should provide an environment that enables the child to exercise her or his right to be heard.

12. The views expressed by children may add relevant perspectives and experience and should be considered in decision-making, policymaking and preparation of laws and/or measures as well as their evaluation.

13. These processes are usually called participation. The exercise of the child's or children's right to be heard is a crucial element of such processes. The concept of participation emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives.

14. In section A (Legal analysis) of the general comment, the Committee deals with the right to be heard of the individual child. In section C (The implementation of the right to be heard in different settings and situations), the Committee considers the right to be heard of both the individual child and children as a group.

A. Legal analysis

15. Article 12 of the Convention establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity. This right imposes a clear legal obligation on States parties to recognize this right and ensure its implementation by listening to the views of the child and according them due weight. This obligation requires that States parties, with respect to their particular judicial system, either directly guarantee this right, or adopt or revise laws so that this right can be fully enjoyed by the child.

16. The child, however, has the right not to exercise this right. Expressing views is a choice for the child, not an obligation. States parties have to ensure that the child receives all necessary information and advice to make a decision in favour of her or his best interests.

17. Article 12 as a general principle provides that States parties should strive to ensure that the interpretation and implementation of all other rights incorporated in the Convention are guided by it.³

18. Article 12 manifests that the child holds rights which have an influence on her or his life, and not only rights derived from her or his vulnerability (protection) or dependency on adults (provision).⁴ The Convention recognizes the child as a subject of rights, and the nearly universal ratification of this international instrument by States parties emphasizes this status of the child, which is clearly expressed in article 12.

1. Literal analysis of article 12

(a) Paragraph 1 of article 12

(i) "Shall assure"

19. Article 12, paragraph 1, provides that States parties "shall assure" the right of the child to freely express her or his views. "Shall assure" is a legal term of special strength, which leaves no leeway for State parties' discretion. Accordingly, States parties are under strict obligation to undertake appropriate measures to fully implement this right for all children. This obligation contains two elements in order to ensure that mechanisms are in place to solicit the views of the child in all matters affecting her or him and to give due weight to those views.

³ See the Committee's general comment No. 5 (2003) on general measures of implementation for the Convention on the Rights of the Child (CRC/GC/2003/5).

⁴ The Convention is commonly referred to by the three "ps": provision, protection and participation.

(ii) “Capable of forming his or her own views”

20. States parties shall assure the right to be heard to every child “capable of forming his or her own views”. This phrase should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. This means that States parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.

21. The Committee emphasizes that article 12 imposes no age limit on the right of the child to express her or his views, and discourages States parties from introducing age limits either in law or in practice which would restrict the child’s right to be heard in all matters affecting her or him. In this respect, the Committee underlines the following:

- First, in its recommendations following the day of general discussion on implementing child rights in early childhood in 2004, the Committee underlined that the concept of the child as rights holder is “... anchored in the child’s daily life from the earliest stage”.⁵ Research shows that the child is able to form views from the youngest age, even when she or he may be unable to express them verbally.⁶ Consequently, full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences.
- Second, it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter.
- Third, States parties are also under the obligation to ensure the implementation of this right for children experiencing difficulties in making their views heard. For instance, children with disabilities should be equipped with, and enabled to use, any mode of communication necessary to facilitate the expression of their views. Efforts must also be made to recognize the right to expression of views for minority, indigenous and migrant children and other children who do not speak the majority language.
- Lastly, States parties must be aware of the potential negative consequences of an inconsiderate practice of this right, particularly in cases involving very young children, or in instances where the child has been a victim of a criminal offence, sexual abuse,

⁵ CRC/C/GC/7/Rev.1, para. 14.

⁶ Cf. Lansdown G., “The evolving capacities of the child”, Innocenti Research Centre, UNICEF/Save the Children, Florence (2005).

violence, or other forms of mistreatment. States parties must undertake all necessary measures to ensure that the right to be heard is exercised ensuring full protection of the child.

(iii) “The right to express those views freely”

22. The child has the right “to express those views freely”. “Freely” means that the child can express her or his views without pressure and can choose whether or not she or he wants to exercise her or his right to be heard. “Freely” also means that the child must not be manipulated or subjected to undue influence or pressure. “Freely” is further intrinsically related to the child’s “own” perspective: the child has the right to express her or his own views and not the views of others.

23. States parties must ensure conditions for expressing views that account for the child’s individual and social situation and an environment in which the child feels respected and secure when freely expressing her or his opinions.

24. The Committee emphasizes that a child should not be interviewed more often than necessary, in particular when harmful events are explored. The “hearing” of a child is a difficult process that can have a traumatic impact on the child.

25. The realization of the right of the child to express her or his views requires that the child be informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child, and by the child’s parents or guardian. The child must also be informed about the conditions under which she or he will be asked to express her or his views. This right to information is essential, because it is the precondition of the child’s clarified decisions.

(iv) “In all matters affecting the child”

26. States parties must assure that the child is able to express her or his views “in all matters affecting” her or him. This represents a second qualification of this right: the child must be heard if the matter under discussion affects the child. This basic condition has to be respected and understood broadly.

27. The Open-ended Working Group established by the Commission on Human Rights, which drafted the text of the Convention, rejected a proposal to define these matters by a list limiting the consideration of a child’s or children’s views. Instead, it was decided that the right of the child to be heard should refer to “all matters affecting the child”. The Committee is concerned that children are often denied the right to be heard, even though it is obvious that the matter under consideration is affecting them and they are capable of expressing their own views with regard to this matter. While the Committee supports a broad definition of “matters”, which also covers issues not explicitly mentioned in the Convention, it recognizes the clause “affecting the child”, which was added in order to clarify that no general political mandate was intended. The practice, however, including the World Summit for Children, demonstrates that a wide interpretation of matters affecting the child and children helps to include children in the social processes of their community and society. Thus, States parties should carefully listen to children’s views wherever their perspective can enhance the quality of solutions.

(v) **“Being given due weight in accordance with the age and maturity of the child”**

28. The views of the child must be “given due weight in accordance with the age and maturity of the child”. This clause refers to the capacity of the child, which has to be assessed in order to give due weight to her or his views, or to communicate to the child the way in which those views have influenced the outcome of the process. Article 12 stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views.

29. By requiring that due weight be given in accordance with age and maturity, article 12 makes it clear that age alone cannot determine the significance of a child’s views. Children’s levels of understanding are not uniformly linked to their biological age. Research has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child’s capacities to form a view. For this reason, the views of the child have to be assessed on a case-by-case examination.

30. Maturity refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child. Maturity is difficult to define; in the context of article 12, it is the capacity of a child to express her or his views on issues in a reasonable and independent manner. The impact of the matter on the child must also be taken into consideration. The greater the impact of the outcome on the life of the child, the more relevant the appropriate assessment of the maturity of that child.

31. Consideration needs to be given to the notion of the evolving capacities of the child, and direction and guidance from parents (see para. 84 and sect. C below).

(b) **Paragraph 2 of article 12**

(i) **The right “to be heard in any judicial and administrative proceedings affecting the child”**

32. Article 12, paragraph 2, specifies that opportunities to be heard have to be provided in particular “in any judicial and administrative proceedings affecting the child”. The Committee emphasizes that this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies. Typical administrative proceedings include, for example, decisions about children’s education, health, environment, living conditions, or protection. Both kinds of proceedings may involve alternative dispute mechanisms such as mediation and arbitration.

33. The right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment and appeals against school exclusion, as well as to those initiated by others which affect the child, such as parental separation or adoption. States parties are encouraged to introduce legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and the consequences for the child.

34. A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.

(ii) “Either directly, or through a representative or an appropriate body”

35. After the child has decided to be heard, he or she will have to decide how to be heard: “either directly, or through a representative or appropriate body”. The Committee recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings.

36. The representative can be the parent(s), a lawyer, or another person (inter alia, a social worker). However, it must be stressed that in many cases (civil, penal or administrative), there are risks of a conflict of interest between the child and their most obvious representative (parent(s)). If the hearing of the child is undertaken through a representative, it is of utmost importance that the child’s views are transmitted correctly to the decision maker by the representative. The method chosen should be determined by the child (or by the appropriate authority as necessary) according to her or his particular situation. Representatives must have sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.

37. The representative must be aware that she or he represents exclusively the interests of the child and not the interests of other persons (parent(s)), institutions or bodies (e.g. residential home, administration or society). Codes of conduct should be developed for representatives who are appointed to represent the child’s views.

(iii) “In a manner consistent with the procedural rules of national law”

38. The opportunity for representation must be “in a manner consistent with the procedural rules of national law”. This clause should not be interpreted as permitting the use of procedural legislation which restricts or prevents enjoyment of this fundamental right. On the contrary, States parties 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.

39. When rules of procedure are not adhered to, the decision of the court or the administrative authority can be challenged and may be overturned, substituted, or referred back for further juridical consideration.

2. Steps for the implementation of the child’s right to be heard

40. Implementation of the two paragraphs of article 12 requires five steps to be taken in order to effectively realize the right of the child to be heard whenever a matter affects a child or when the child is invited to give her or his views in a formal proceeding as well as in other settings. These requirements have to be applied in a way which is appropriate for the given context.

(a) Preparation

41. Those responsible for hearing the child have to ensure that the child is informed about her or his right to express her or his opinion in all matters affecting the child and, in particular, in any judicial and administrative decision-making processes, and about the impact that his or her expressed views will have on the outcome. The child must, furthermore, receive information about the option of either communicating directly or through a representative. She or he must be aware of the possible consequences of this choice. The decision maker must adequately prepare the child before the hearing, providing explanations as to how, when and where the hearing will take place and who the participants will be, and has to take account of the views of the child in this regard.

(b) The hearing

42. The context in which a child exercises her or his right to be heard has to be enabling and encouraging, so that the child can be sure that the adult who is responsible for the hearing is willing to listen and seriously consider what the child has decided to communicate. The person who will hear the views of the child can be an adult involved in the matters affecting the child (e.g. a teacher, social worker or caregiver), a decision maker in an institution (e.g. a director, administrator or judge), or a specialist (e.g. a psychologist or physician).

43. Experience indicates that the situation should have the format of a talk rather than a one-sided examination. Preferably, a child should not be heard in open court, but under conditions of confidentiality.

(c) Assessment of the capacity of the child

44. The child's views must be given due weight, when a case-by-case analysis indicates that the child is capable of forming her or his own views. If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue. Good practice for assessing the capacity of the child has to be developed.

(d) Information about the weight given to the views of the child (feedback)

45. Since the child enjoys the right that her or his views are given due weight, the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously. The information may prompt the child to insist, agree or make another proposal or, in the case of a judicial or administrative procedure, file an appeal or a complaint.

(e) Complaints, remedies and redress

46. Legislation is needed to provide children with complaint procedures and remedies when their right to be heard and for their views to be given due weight is disregarded and violated.⁷

⁷ See the Committee's general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 24.

Children should have the possibility of addressing an ombudsman or a person of a comparable role in all children's institutions, inter alia, in schools and day-care centres, in order to voice their complaints. Children should know who these persons are and how to access them. In the case of family conflicts about consideration of children's views, a child should be able to turn to a person in the youth services of the community.

47. If the right of the child to be heard is breached with regard to judicial and administrative proceedings (art. 12, para. 2), the child must have access to appeals and complaints procedures which provide remedies for rights violations. Complaints procedures must provide reliable mechanisms to ensure that children are confident that using them will not expose them to risk of violence or punishment.

3. Obligations of States parties

(a) Core obligations of States parties

48. The child's right to be heard imposes the obligation on States parties to review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary, feedback on the weight given to their views, and procedures for complaints, remedies or redress.

49. In order to fulfil these obligations, States parties should adopt the following strategies:

- Review and withdraw restrictive declarations and reservations to article 12
- Establish independent human rights institutions, such as children's ombudsmen or commissioners with a broad children's rights mandate⁸
- Provide training on article 12, and its application in practice, for all professionals working with, and for, children, including 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
- Ensure appropriate conditions for supporting and encouraging children to express their views, and make sure that these views are given due weight, by regulations and arrangements which are firmly anchored in laws and institutional codes and are regularly evaluated with regard to their effectiveness
- Combat negative attitudes, which impede the full realization of the child's right to be heard, through public campaigns, including opinion leaders and the media, to change widespread customary conceptions of the child

⁸ See the Committee's general comment No. 2 (2002) on the role of independent human rights institutions.

(b) Specific obligations with regard to judicial and administrative proceedings

(i) The child's right to be heard in civil judicial proceedings

50. The main issues which require that the child be heard are detailed below:

Divorce and separation

51. In cases of separation and divorce, the children of the relationship are unequivocally affected by decisions of the courts. Issues of maintenance for the child as well as custody and access are determined by the judge either at trial or through court-directed mediation. Many jurisdictions have included in their laws, with respect to the dissolution of a relationship, a provision that the judge must give paramount consideration to the "best interests of the child".

52. For this reason, all legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes. Some jurisdictions, either as a matter of policy or legislation, prefer to state an age at which the child is regarded as capable of expressing her or his own views. The Convention, however, anticipates that this matter be determined on a case-by-case basis, since it refers to age and maturity, and for this reason requires an individual assessment of the capacity of the child.

Separation from parents and alternative care

53. Whenever a decision is made to remove a child from her or his family because the child is a victim of abuse or neglect within his or her home, the view of the child must be taken into account in order to determine the best interests of the child. The intervention may be initiated by a complaint from a child, another family member or a member of the community alleging abuse or neglect in the family.

54. The Committee's experience is that the child's right to be heard is not always taken into account by States parties. The Committee recommends that States parties ensure, through legislation, regulation and policy directives, that the child's views are solicited and considered, including decisions regarding placement in foster care or homes, development of care plans and their review, and visits with parents and family.

Adoption and kafalah of Islamic law

55. When a child is to be placed for adoption or *kafalah* of Islamic law and finally will be adopted or placed in *kafalah*, it is vitally important that the child is heard. Such a process is also necessary when step-parents or foster families adopt a child, although the child and the adopting parents may have already been living together for some time.

56. Article 21 of the Convention states that the best interests of the child shall be the paramount consideration. In decisions on adoption, *kafalah* or other placement, the "best interests" of the child cannot be defined without consideration of the child's views. The Committee urges all States parties to inform the child, if possible, about the effects of adoption, *kafalah* or other placement, and to ensure by legislation that the views of the child are heard.

(ii) The child's right to be heard in penal judicial proceedings

57. In penal proceedings, the right of child to express her or his views freely in all matters affecting the child has to be fully respected and implemented throughout every stage of the process of juvenile justice.⁹

The child offender

58. Article 12, paragraph 2, of the Convention requires that a child alleged to have, accused of, or recognized as having, infringed the penal law, has the right to be heard. This right has to be fully observed during all stages of the judicial process, from the pre-trial stage when the child has the right to remain silent, to the right to be heard by the police, the prosecutor and the investigating judge. It also applies through the stages of adjudication and disposition, as well as implementation of the imposed measures.

59. In case of diversion, including mediation, a child must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance in determining the appropriateness and desirability of the diversion proposed.

60. In order to effectively participate in the proceedings, every child must be informed promptly and directly about the charges against her or him in a language she or he understands, and also about the juvenile justice process and possible measures taken by the court. The proceedings should be conducted in an atmosphere enabling the child to participate and to express her/himself freely.

61. The court and other hearings of a child in conflict with the law should be conducted behind closed doors. Exceptions to this rule should be very limited, clearly outlined in national legislation and guided by the best interests of the child.

The child victim and child witness

62. The child victim and child witness of a crime must be given an opportunity to fully exercise her or his right to freely express her or his view in accordance with United Nations Economic and Social Council resolution 2005/20, "Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime".¹⁰

63. In particular, this means that every effort has to be made to ensure that a child victim or/and witness is consulted on the relevant matters with regard to involvement in the case under scrutiny, and enabled to express freely, and in her or his own manner, views and concerns regarding her or his involvement in the judicial process.

⁹ See the Committee's general comment No. 10 (2007) on children's rights in juvenile justice (CRC/C/GC/10).

¹⁰ 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.

64. The right of the child victim and witness is also linked to the right to be informed about issues such as availability of health, psychological and social services, the role of a child victim and/or witness, the ways in which “questioning” is conducted, existing support mechanisms in place for the child when submitting a complaint and participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibilities of receiving reparation, and the provisions for appeal.

(iii) The child’s right to be heard in administrative proceedings

65. All States parties should develop administrative procedures in legislation which reflect the requirements of article 12 and ensure the child’s right to be heard along with other procedural rights, including the rights to disclosure of pertinent records, notice of hearing, and representation by parents or others.

66. Children are more likely to be involved with administrative proceedings than court proceedings, because administrative proceedings are less formal, more flexible and relatively easy to establish through law and regulation. The proceedings have to be child-friendly and accessible.

67. Specific examples of administrative proceedings relevant for children include mechanisms to address discipline issues in schools (e.g. suspensions and expulsions), refusals to grant school certificates and performance-related issues, disciplinary measures and refusals to grant privileges in juvenile detention centres, asylum requests from unaccompanied children, and applications for driver’s licences. In these matters a child should have the right to be heard and enjoy the other rights “consistent with the procedural rules of national law”.

B. The right to be heard and the links with other provisions of the Convention

68. Article 12, as a general principle, is linked to the other general principles of the Convention, such as article 2 (the right to non-discrimination), article 6 (the right to life, survival and development) and, in particular, is interdependent with article 3 (primary consideration of the best interests of the child). The article is also closely linked with the articles related to civil rights and freedoms, particularly article 13 (the right to freedom of expression) and article 17 (the right to information). Furthermore, article 12 is connected to all other articles of the Convention, which cannot be fully implemented 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.

69. The connection of article 12 to article 5 (evolving capacities of the child and appropriate direction and guidance from parents, see para. 84 of the present general comment) is of special relevance, since it is crucial that the guidance given by parents takes account of the evolving capacities of the child.

1. Articles 12 and 3

70. The purpose of article 3 is to ensure that in all actions undertaken concerning children, by a public or private welfare institution, courts, administrative authorities or legislative bodies, the best interests of the child are a primary consideration. It means that every action taken on behalf of the child has to respect the best interests of the child. The best interests of the child is similar

to a procedural right that obliges States parties to introduce steps into the action process to ensure that the best interests of the child are taken into consideration. The Convention obliges States parties to assure that those responsible for these actions hear the child as stipulated in article 12. This step is mandatory.

71. The best interests of the child, established in consultation with the child, is not the only factor to be considered in the actions of institutions, authorities and administration. It is, however, of crucial importance, as are the views of the child.

72. Article 3 is devoted to individual cases, but, explicitly, also requires that the best interests of children as a group are considered in all actions concerning children. States parties are consequently under an obligation to consider not only the individual situation of each child when identifying their best interests, but also the interests of children as a group. Moreover, States parties must examine the actions of private and public institutions, 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.

73. There is no doubt that the best interests of children as a defined group have to be established in the same way as when weighing individual interests. If the best interests of large numbers of children are at stake, heads of institutions, authorities, or governmental bodies should also provide opportunities to hear the concerned children from such undefined groups and to give their views due weight when they plan actions, including legislative decisions, which directly or indirectly affect children.

74. There is no tension between articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.

2. Articles 12, 2 and 6

75. The right to non-discrimination is an inherent right guaranteed by all human rights instruments including the Convention on the Rights of the Child. According to article 2 of the Convention, every child has the right not to be discriminated against in the exercise of his or her rights including those provided under article 12. The Committee stresses that States parties shall take adequate measures to assure to every child the right to freely express his or her views and to have those views duly taken into account without discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States parties shall address discrimination, including against vulnerable or marginalized groups of children, to ensure that children are assured their right to be heard and are enabled to participate in all matters affecting them on an equal basis with all other children.

76. In particular, the Committee notes with concern that, in some societies, customary attitudes and practices undermine and place severe limitations on the enjoyment of this right. States

parties shall take adequate measures to raise awareness and educate the 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 Convention.

77. The Committee urges States parties to pay special attention to the right of the girl child to be heard, to receive support, if needed, to voice her view and her view be given due weight, as gender stereotypes and patriarchal values undermine and place severe limitations on girls in the enjoyment of the right set forth in article 12.

78. The Committee welcomes the obligation of States parties in article 7 of the 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 for those views to be given due weight.

79. Article 6 of the Convention on the Rights of the Child acknowledges that every child has an inherent right to life and that States parties shall ensure, to the maximum extent possible, the survival and development of the child. The Committee notes the importance of promoting opportunities for the child's right to be heard, as child participation is a tool to stimulate the full development of the personality and the evolving capacities of the child consistent with article 6 and with the aims of education embodied in article 29.

3. Articles 12, 13 and 17

80. Article 13, on the right to freedom of expression, and article 17, on access to information, are crucial prerequisites for the effective exercise of the right to be heard. These articles establish that children are subjects of rights and, together with article 12, they assert that the child is entitled to exercise those rights on his or her own behalf, in accordance with her or his evolving capacities.

81. The right to freedom of expression embodied in article 13 is often confused with article 12. However, while both 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 party in the opinions she or he holds or expresses. As such, the obligation it imposes on States parties is to refrain from interference in the expression of those views, or in access to information, while protecting the right of access to means of communication and public dialogue. Article 12, however, relates to the right of expression of views specifically about matters which affect the child, and the right to be involved in actions and decisions that impact on her or his life. Article 12 imposes an obligation on States parties to introduce the legal framework and mechanisms necessary to facilitate active involvement of the child in all actions affecting the child and in decision-making, and to fulfil the obligation to give due weight to those views once expressed. Freedom of expression in article 13 requires no such engagement or response from States parties. 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.

82. Fulfilment of the child's right to information, consistent with article 17 is, to a large degree, a prerequisite for the effective realization of the right to express views. Children need

access to information in formats appropriate to their age and capacities 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. Consistent with articles 17 and 42, States parties should include children's rights in the school curricula.

83. The Committee also reminds States parties that the media are an important means both of promoting awareness of the right of children to express their views, and of providing opportunities for the public expression of such views. It urges various forms of the media to dedicate further resources to the inclusion of children in the development of programmes and the creation of opportunities for children to develop and lead media initiatives on their rights.¹¹

4. Articles 12 and 5

84. Article 5 of the Convention states that States parties shall 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 direction and guidance to the child in her or his exercise of the rights recognized in the Convention. Consequently, the child has a right to direction and guidance, which have to compensate for the lack of knowledge, experience and understanding of the child and are restricted by his or her evolving capacities, as stated in this article. 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 have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. This transformation will not take place at a fixed point in a child's development, but will steadily increase as the child is encouraged to contribute her or his views.

85. This requirement is stimulated by article 12 of the Convention, which stipulates that the child's views must be given due weight, whenever the child is capable of forming her or his own views. In other words, as children acquire capacities, so they are entitled to an increasing level of responsibility for the regulation of matters affecting them.¹²

5. Article 12 and the implementation of child rights in general

86. In addition to the articles discussed in the preceding paragraphs, most other articles of the Convention require and promote children's involvement in matters affecting them. For these manifold involvements, the concept of participation is ubiquitously used. Unquestionably, the lynchpin of these involvements is article 12, but the requirement of planning, working and developing in consultation with children is present throughout the Convention.

¹¹ Day of general discussion on the child and the media (1996): www.unhcr.ch/html/menu2/6/crc/doc/days/media.pdf.

¹² General comment No. 5 (2003) on general measures of implementation for the Convention on the Rights of the Child.

87. The practice of implementation deals with a broad range problems, such as health, the economy, education or the environment, which are of interest not only to the child as an individual, but to groups of children and children in general. Consequently, the Committee has always interpreted participation broadly in order to establish procedures not only for individual children and clearly defined groups of children, but also for groups of children, such as indigenous children, children with disabilities, or children in general, who are affected directly or indirectly by social, economic or cultural conditions of living in their society.

88. This broad understanding of children's participation is reflected in the outcome document adopted by the twenty-seventh special session of the General Assembly entitled "A world fit for children". States parties have promised "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" (para. 32, subpara. 1). The Committee has stated in its general comment No. 5 on general measures of implementation for the Convention on the Rights of the Child: "It is important that Governments develop a direct relationship with children, not simply one mediated through non-governmental organizations (NGOs) or human rights institutions."¹³

C. The implementation of the right to be heard in different settings and situations

89. The right of the child to be heard has to be implemented in the diverse settings and situations in which children grow up, develop and learn. In these settings and situations, different concepts of the child and her or his role exist, which may invite or restrict children's involvement in everyday matters and crucial decisions. Various ways of influencing the implementation of the child's right to be heard are available, which States parties may use to foster children's participation.

1. In the family

90. A family where children can freely express views and be taken seriously from the earliest ages provides an important model, and is a preparation for the child to exercise the right to be heard in the wider society.¹⁴ Such an approach to parenting serves to promote individual development, enhance family relations and support children's socialization and plays a preventive role against all forms of violence in the home and family.

91. The Convention recognizes the rights and responsibilities of parents, or other legal guardians, to provide appropriate direction and guidance to their children (see para. 84 above), but underlines that this is to enable the child to exercise his or her rights and requires that direction and guidance are undertaken in a manner consistent with the evolving capacities of the child.

92. States parties should encourage, through legislation and policy, parents, guardians and childminders to listen to children and give due weight to their views in matters that concern them. Parents should also be advised to support children in realizing the right to express their views freely and to have children's views duly taken into account at all levels of society.

¹³ Ibid., para. 12.

93. In order to support the development of parenting styles respecting the child's right to be heard, the Committee recommends that States parties promote parent education programmes, which build on existing positive behaviours and attitudes and disseminate information on the rights of children and parents enshrined in the Convention.

94. Such programmes need to address:

- The relationship of mutual respect between parents and children
- The involvement of children in decision-making
- The implication of giving due weight to the views of every family member
- The understanding, promotion and respect for children's evolving capacities
- Ways of dealing with conflicting views within the family

95. These programmes have to reinforce the principle that girls and boys have equal rights to express their views.

96. The media should play a strong role in communicating to parents that their children's participation is of high value for the children themselves, their families and society.

2. In alternative care

97. Mechanisms must be introduced to ensure that children in all forms of alternative care, including in institutions, are able to express their views and that those views be given due weight in matters of their placement, the regulations of care in foster families or homes and their daily lives. These should include:

- Legislation providing the child with the right to information about any placement, care and/or treatment plan and meaningful opportunities to express her or his views and for those views to be given due weight throughout the decision-making process.
- Legislation ensuring the right of the child to be heard, and that her or his views be given due weight in the development and establishment of child-friendly care services.
- Establishment of a competent monitoring institution, such as a children's ombudsperson, commissioner or inspectorate, 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 monitoring body should be mandated to have unimpeded access to residential facilities (including those for children in conflict with the law), to hear the views and concerns of the child directly, and to monitor the extent to which his or her views are listened to and given due weight by the institution itself.

- Establishment of effective mechanisms, 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.

3. In health care

98. The realization of the provisions of the Convention requires respect for the child's right to express his or her views and to participate in promoting the healthy development and well-being of children. This applies to individual health-care decisions, as well as to children's involvement in the development of health policy and services.

99. The Committee identifies several distinct but linked issues that need consideration in respect of the child's involvement in practices and decisions relating to her or his own health care.

100. Children, including young children, should be included in decision-making processes, in a manner consistent with their evolving capacities. They should be provided with information about proposed treatments and their effects and outcomes, including in formats appropriate and accessible to children with disabilities.

101. States parties need to introduce legislation or regulations to ensure that children have access to confidential medical counselling and advice without parental consent, irrespective of the child's age, where this is needed for the child's safety or well-being. Children may need such access, for example, where they are experiencing violence or abuse at home, or in need of reproductive health education or services, or in case of conflicts between parents and the child over access to health services. The right to counselling and advice is distinct from the right to give medical consent and should not be subject to any age limit.

102. The Committee welcomes the introduction in some countries of a fixed age at which the right to consent transfers to the child, and encourages States parties to give consideration to the introduction of such legislation. Thus, children above that age have an entitlement to give consent without the requirement for any individual professional assessment of capacity after consultation with an independent and competent expert. However, the Committee strongly recommends that States parties ensure that, where a younger child can demonstrate capacity to express an informed view on her or his treatment, this view is given due weight.

103. Physicians and health-care facilities should provide clear and accessible information to children on their rights concerning their participation in paediatric research and clinical trials. They have to be informed about the research, so that their informed consent can be obtained in addition to other procedural safeguards.

104. States parties should also introduce measures enabling children 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. This information can be

obtained through, inter alia, feedback systems for children using services or involved in research and consultative processes, and can be transmitted to local or national children's councils or parliaments to develop standards and indicators of health services that respect the rights of the child.¹⁴

4. In education and school

105. Respect for right of the child to be heard within education is fundamental to the realization of the right to education. The Committee notes with concern continuing authoritarianism, discrimination, disrespect and violence which characterize the reality of many schools and classrooms. Such environments are not conducive to the expression of children's views and the due weight to be given these views.

106. The Committee recommends that States parties take action to build opportunities for children to express their views and for those views to be given due weight with regard to the following issues.

107. In all educational environments, including educational programmes in the early years, the active role of children in a participatory learning environment should be promoted.¹⁵ Teaching and learning must take into account life conditions and prospects of the children. For this reason, education authorities have to include children's and their parents' views in the planning of curricula and school programmes.

108. Human rights education can shape the motivations and behaviours of children only when human rights are practised in the institutions in which the child learns, plays and lives together with other children and adults.¹⁶ In particular, the child's right to be heard is under critical scrutiny by children in these institutions, where children can observe, whether in fact due weight is given to their views as declared in the Convention.

109. Children's participation is indispensable for the creation of a social climate in the classroom, which stimulates cooperation and mutual support needed for child-centred interactive learning. Giving children's views weight is particularly important in the elimination of discrimination, prevention of bullying and disciplinary measures. The Committee welcomes the expansion of peer education and peer counselling.

¹⁴ The Committee also draws attention to its general comment No. 3 (2003) on HIV/Aids and the rights of the child, paras. 11 and 12, and its general comment No. 4 (2003) on adolescent health, para. 6.

¹⁵ "A human rights-based approach to Education for All: A framework for the realization of children's right to education and rights within education", UNICEF/UNESCO (2007).

¹⁶ Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education (art. 29, para. 1 of the Convention), (CRC/GC/2001/1).

110. Steady participation of children in decision-making processes should be achieved through, inter alia, class councils, student councils and student representation on school boards and committees, where they can freely express their views on the development and implementation of school policies and codes of behaviour. These rights need to be enshrined in legislation, rather than relying on the goodwill of authorities, schools and head teachers to implement them.

111. Beyond the school, States parties should consult children at the local and national levels on all aspects of education policy, including, inter alia, the strengthening of the child-friendly character of the educational system, informal and non-formal facilities of learning, which give children a “second chance”, school curricula, teaching methods, school structures, standards, budgeting and child-protection systems.

112. The Committee encourages States parties to support the development of independent student organizations, which can assist children in competently performing their participatory roles in the education system.

113. In decisions about the transition to the next level of schools or choice of tracks or streams, the right of the child to be heard has to be assured as these decisions deeply affect the child’s best interests. Such decisions must be subject to administrative or judicial review. Additionally, in disciplinary matters, the right of the child to be heard has to be fully respected.¹⁷ In particular, in the case of exclusion of a child from instruction or school, this decision must be subject to judicial review as it contradicts the child’s right to education.

114. The Committee welcomes the introduction of child-friendly school programmes in many countries, which seek to provide interactive, caring, protective and participatory environments that prepare children and adolescents for active roles in society and responsible citizenship within their communities.

5. In play, recreation, sports and cultural activities

115. Children require play, recreation, physical and cultural activities for their development and socialization. These should be designed taking into account children’s preferences and capacities. Children who are able to express their views should be consulted regarding the accessibility and appropriateness of play and recreation facilities. 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.

¹⁷ States parties should refer to the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, which explains participatory strategies to eliminate corporal punishment (CRC/C/GC/8).

6. In the workplace

116. Children working at younger ages than permitted by laws and International Labour Organization Conventions Nos. 138 (1973) and 182 (1999) have to be heard in child-sensitive settings in order to understand their views of the situation and their best interests. They should be included in the search for a solution, which respects the economic and socio-structural constraints as well as the cultural context under which these children work. Children should also be heard when policies are developed to eliminate the root causes of child labour, in particular regarding education.

117. Working children have a right to be protected by law against exploitation and should be heard when worksites and conditions of work are examined by inspectors investigating the implementation of labour laws. Children and, if existing, representatives of working children's associations should also be heard when labour laws are drafted or when the enforcement of laws is considered and evaluated.

7. In situations of violence

118. The Convention establishes the right of the child to be protected from all forms of violence and the responsibility of States parties to ensure this right for every child without any discrimination. The Committee encourages States parties to consult with children in the development and implementation of legislative, policy, educational and other measures to address all forms of violence. Particular attention needs to be paid to ensuring that marginalized 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.

119. In this regard, the Committee welcomes the findings of the Secretary-General's Study on Violence against Children, and urges States Parties to 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 monitoring violence against them.¹⁸

120. Much of the violence perpetrated against children goes unchallenged both because certain forms of abusive behaviour are understood by children as accepted practices, and due to the lack of child-friendly reporting mechanisms. For example, they have no one to whom they can report in confidence and safety about experienced maltreatment, such as corporal punishment, genital mutilation or early marriage, and no channel to communicate their general observations to those accountable for implementation of their rights. Thus, effective inclusion of children in protective measures requires that children be informed about their right to be heard and to grow up free from all forms of physical and psychological violence. States parties should oblige all children's institutions to establish easy access to individuals or organizations to which they can report in

¹⁸ Report of the independent expert for the United Nations Study on Violence against Children (A/61/299).

confidence and safety, including through telephone helplines, and to provide places where children can contribute their experience and views on combating violence against children.

121. The Committee also draws the attention of States parties to the recommendation in the Secretary-General's Study on Violence against Children to support and encourage children's organizations and child-led initiatives to address violence and to include these organizations in the elaboration, establishment and evaluation of anti-violence programmes and measures, so that children can play a key role in their own protection.

8. In the development of prevention strategies

122. The Committee notes that the voices of children have increasingly become a powerful force in the prevention of child rights violations. Good practice examples are available, inter alia, 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 involved in the drafting, development and implementation of related plans and programmes.

9. In immigration and asylum proceedings

123. Children who come to a country following their parents in search of work or as refugees are in a particularly vulnerable situation. For this reason it is urgent to fully implement their right to express their views on all aspects of the immigration and asylum proceedings. In the case of migration, the child has to be heard on his or her educational expectations and health conditions in order to integrate him or her into school and health services. In the case of an asylum claim, the child must additionally have the opportunity to present her or his reasons leading to the asylum claim.

124. The Committee emphasizes that these children have to be provided with all relevant information, in their own language, on their entitlements, the services available, including means of communication, and the immigration and asylum process, in order to make their voice heard and to be given due weight in the proceedings. A guardian or adviser should be appointed, free of charge. Asylum-seeking children may also need effective family tracing and relevant information about the situation in their country of origin to determine their best interests. Particular assistance may be needed for children formerly involved in armed conflict to allow them to pronounce their needs. Furthermore, attention is needed to ensure that stateless children are included in decision-making processes within the territories where they reside.¹⁹

¹⁹ Cf. the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6).

10. In emergency situations

125. The Committee underlines that the right embodied in article 12 does not cease in situations of crisis or in their aftermath. 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.²⁰ Thus, the Committee emphasized in its recommendation after 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. Children's participation helps them to regain control over their lives, contributes to rehabilitation, develops organizational skills and strengthens a sense of identity. However, care needs to be taken to protect children from exposure to situations that are likely to be traumatic or harmful.

126. Accordingly, the Committee encourages States parties to support mechanisms which enable children, in particular adolescents, to play an active role in both post-emergency reconstruction and post-conflict resolution processes. Their views should be elicited in the assessment, design, implementation, monitoring and evaluation of programmes. For example, children in refugee camps can be encouraged to contribute to their own safety and well-being 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.

11. In national and international settings

127. Much of the opportunity for children's participation takes place at the community level. The Committee welcomes 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. Consulting hours of politicians and officials, open house and visits in schools and kindergartens create additional opportunities for communication.

128. Children should be supported and encouraged to form their own child-led organizations and initiatives, which will create space for meaningful participation and representation. In addition, children can contribute their perspectives, for example, on the design of schools, playgrounds, parks, leisure and cultural facilities, public libraries, health facilities and local transport systems in order to ensure more appropriate services. In community development plans that call for public consultation, children's views should be explicitly included.

²⁰ "The participation of children and young people in emergencies: a guide for relief agencies", UNICEF, Bangkok (2007).

129. Such participation opportunities are, meanwhile, established in many countries also on the district, regional, federal state and national levels, where youth parliaments, councils and conferences provide forums for children to present their views and make them known to relevant audiences. NGOs and civil society organizations have developed practices to support children, which safeguard the transparency of representation and counter the risks of manipulation or tokenism.

130. The Committee welcomes the significant contributions by UNICEF and NGOs in promoting awareness-raising on children's right to be heard and their participation in all domains of their lives, and encourages them to further promote child participation in all matters affecting them, including at the grass-roots, community, and national or international levels, and to facilitate exchanges of best practices. Networking among child-led organizations should be actively encouraged to increase opportunities for shared learning and platforms for collective advocacy.

131. At the international level, children's participation at the World Summits for Children convened by the General Assembly in 1990 and 2002, and the involvement of children in the reporting process to the Committee on the Rights of the Child have particular relevance. The Committee welcomes written reports and additional oral information submitted by child organizations and children's representatives in the monitoring process of child rights implementation by States parties, and encourages States parties and NGOs to support children to present their views to the Committee.

D. Basic requirements for the implementation of the right of the child to be heard

132. The Committee urges States parties to avoid tokenistic approaches, which limit children's expression of views, or which allow children to be heard, but fail to give their views due weight. It emphasizes that adult manipulation of children, placing children in situations where they are told what they can say, or exposing children to risk of harm through participation are not ethical practices and cannot be understood as implementing article 12.

133. If participation is to be effective and meaningful, it needs to be understood as a process, not as an individual one-off event. Experience since the Convention on the Rights of the Child 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. The Committee recommends that States parties integrate these requirements into all legislative and other measures for the implementation of article 12.

134. All processes in which a child or children are heard and participate, must be:

- (a) 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 their views to be given due weight, and how this participation will take place, its scope, purpose and potential impact;
- (b) 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;

- (c) Respectful - children's views have to be treated with respect and they 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 organizations working for and with children should also respect children's views with regard to participation in public events;
- (d) Relevant - the issues on which children have the right to express their views must be of real relevance to their lives and enable them to draw on their knowledge, skills and abilities. In addition, space needs to be created to enable children to highlight and address the issues they themselves identify as relevant and important;
- (e) Child-friendly - environments and working methods should be adapted to children's 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;
- (f) Inclusive - participation must be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalized children, including both girls and boys, to be involved (see also para. 88 above). Children are not a homogenous 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;
- (g) 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 participation awareness of their rights, and training in organizing meetings, raising funds, dealing with the media, public speaking and advocacy;
- (h) 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 minimize 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 recognizes 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 minimize the risks to which children may otherwise be exposed;
- (i) 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, 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.

E. Conclusions

135. Investment in the realization of the child's right to be heard in all matters of concern to her or him and for her or his views to be given due consideration, is a clear and immediate legal obligation of States parties under the Convention. It is the right of every child without any discrimination. Achieving meaningful opportunities for the implementation of article 12 will necessitate dismantling the legal, political, economic, social and cultural barriers that currently impede children's opportunity to be heard and their access to participation in all matters affecting them. It requires a preparedness to challenge assumptions about children's capacities, and to encourage the development of environments in which children can build and demonstrate capacities. It also requires a commitment to resources and training.

134. Fulfilling these obligations will present a challenge for States parties. But it is an attainable goal if the strategies outlined in this general comment are systematically implemented and a culture of respect for children and their views is built.
