

VII. DAY OF GENERAL DISCUSSION

980. On 15 September 2006 the Committee held its annual day of general discussion entitled “To speak, participate and decide - the child’s right to be heard” based on article 12 of the Convention.

A. Introduction

981. The annual days of general discussion of the Committee on the Rights of the Child seek to foster a deeper understanding of the contents and implications of the Convention as they relate to specific articles or topics. On 15 September 2006 during its forty-third session, the Committee devoted its day of general discussion to the theme “To speak, participate and decide - the child’s right to be heard”.

982. In its consideration of the reports of States parties on implementation of the Convention on the Rights of the Child, the Committee has systematically stressed the importance of children’s right to express their views in all matters affecting them, with those views being given due weight in accordance with the age and maturity of the child. The Committee has identified this right as one of the four general principles of the Convention. This means that the implementation of article 12 is an integral part of the implementation of the other articles of the Convention, as well as a free-standing right of the child.

983. The day of general discussion sought to explore the meaning of article 12 and its linkages to several other articles. Particular attention was given to the implications of the article for child participation, both as individuals and as a collective constituency, in all aspects of society and for the right to be heard in legal and administrative proceedings. Discussion further focused on identifying the gaps, certain good practices, and priority issues that need to be addressed in order to further the enjoyment of the right of the child to be heard and to have those views taken into account, in a manner consistent with the Convention. It also focused on promoting child participation and opportunities at all levels in the home, school, community and wider society, as well as in emergencies, conflict and post-conflict situations.

984. During the day of general discussion, which is a public meeting, representatives of Governments, United Nations bodies and specialised agencies, non-governmental organizations (NGOs) and national human rights institutions (NHRIs), as well as individual experts took part. Over 200 participants from 45 different countries participated during the day, including some 30 children from different parts of the world. The children actively took part in the discussions and throughout the day voiced their priority concerns and provided important contributions with examples of actions and projects relating to the implementation of article 12.

985. In order to facilitate an in-depth discussion of these issues, the Committee convened two working groups on the following sub-themes in relation to article 12:

- Children as active participants in society;
- The child's right to be heard in judicial and administrative proceedings.

986. The recommendations contained herein stem from the concerns and proposals raised during the day of general discussion and the over 60 written submissions received prior to the event.¹ The balance among the recommendations reflects the focus during the discussions of the day and also that of the written contributions, the majority of which highlighted the role of child participation at the community level. The Committee however wishes to underline the importance of encouraging child participation in the home and at school.

B. Recommendations²

987. The Committee considers that recognising the right of the child to express views and to participate in various activities, according to her/his evolving capacities, is beneficial for the child, for the family, the community, the school, the State and for democracy.

988. "To speak, to participate, to have their views taken into account." These three phases describe the sequence of the enjoyment of the right to participate from a functional point of view. The new and deeper meaning of this right is that it should establish a new social contract, one by which children are fully recognised as rights holders who are not only entitled to receive protection but also have the right to participate in all matters affecting them, a right which can be considered as the symbol for their recognition as rights holders. This implies, in the long term, changes in political, social, institutional and cultural structures.

1. General

989. The Committee reaffirms the obligation of States parties to implement article 12 which is one of the four general principles of the Convention on the Rights of the Child and should therefore be an integral part of the implementation of the other provisions in the Convention.

990. The Committee recalls the commitment to the right of the child to participate, as expressed by States parties at the United Nations Special Session on Children in 2002 and in General Assembly resolution S-27/2 entitled "A world fit for children".

¹ All written submissions can be consulted at <http://www.crin.org/resources/treaties/discussion2006.asp>.

² These recommendations are the outcome of the day of general discussion on the right of the child to be heard in 2006, however they by no means purport to form an exhaustive list of recommendations regarding the interpretation of article 12 of the Convention on the Rights of the Child.

991. In order for all children to enjoy the right enshrined in article 12, the Committee stresses that appropriate measures need to be undertaken to address discrimination against vulnerable or marginalized groups of children such as those affected by poverty or armed conflict; children without parental care, including children in institutions; children with disabilities; refugee and displaced children; street children; and children belonging to indigenous and minority groups.

992. In particular, the Committee notes the need to combat certain traditional and cultural attitudes which fail to recognise the right of the child to participate in society. The Committee calls for promotion of a social climate conducive to child participation, in order for this right to be realised.

993. The Committee urges States parties to pay special attention to the right of the girl child, as sexist stereotypes and patriarchal values undermine and place severe limitations on the girl child's enjoyment of the right set forth in article 12.

994. The Committee notes the importance of encouraging opportunities for child participation as a tool to stimulate the evolving capacities of the child.

995. The Committee reaffirms the links between article 12 and article 13, as the right to receive and impart information is an important prerequisite for the participation of children in society. The Committee urges States parties to consider developing child-friendly information in relation to all matters affecting children.

996. Recalling its general comment No. 5 on General measures of implementation of the Convention on the Rights of the Child, the Committee reaffirms that: "listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights. ... article 12 requires consistent and ongoing arrangements. Involvement of and consultation with children must avoid being tokenistic ...".³

997. The Committee urges States parties that have made reservations on the application of articles 12, 13, 14, 15 and 17 of the Convention to consider withdrawing them.

998. The Committee recommends that donors, international financial institutions and international organizations ensure that child participation is taken into account in development cooperation.

³ CRC/GC/2003/5, para. 12.

2. Article 12, paragraph 1: Children as active participants in society

Home

999. The Committee encourages States parties to formulate policies and programmes with a view to supporting the family and especially those of vulnerable groups.

1000. The Committee recommends that States parties further promote education on parenting and disseminate information to parents on the rights enshrined in the Convention, and in particular on the right of the child to express his or her views, as they are of benefit to the whole family.

1001. The Committee encourages parents to support children in order to promote their participation at different levels in society.

1002. The Committee recognises that a participatory family structure where the child can freely express views provides an important model for encouraging child participation in the wider society. Furthermore, it plays a role in the prevention of domestic violence and abuse.

School

1003. The Committee recognises the key role played by the school environment in enhancing and promoting child participation. The Committee reiterates, as previously stated in its general comment No. 1 on The aims of education 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”.⁴

1004. The Committee urges States parties to ensure that primary education is compulsory and free and of high quality and relevance to the child. Furthermore, States parties should make sure that every child has a place in school, is able to enrol and does not drop out of school.

1005. The Committee encourages the active consultation of children in the development and evaluation of school curricula, including in the development of methodology, as greater participation is conducive to increasing the involvement of children in the learning process. Child-centred education should be provided, taking into account the needs of vulnerable children.

1006. The Committee reminds States parties of their obligation to ensure that human rights education in general, and the Convention in particular, is included in the curricula in order to equip children with the fundamental knowledge tools they need for enhancing

⁴ CRC/GC/2001/1, para. 8.

the exercise of their rights. Students informed of their rights can also more effectively combat discrimination, violence and corporal punishment in schools. The Committee encourages States parties to refer to general comment No. 8 on The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, for further guidance on participatory strategies to eliminate corporal punishment.⁵

1007. The Committee calls on States parties to provide teacher training on participatory teaching methodologies and its benefits, and on paying special attention to the needs of vulnerable children, whose difficult situation may lead to them dropping out of school. These children must enjoy special attention and be given the opportunity to express their views without intimidation.

Community level

1008. The Committee urges States parties to move from an events based approach to the right to participation to the systematic inclusion of children in policy matters, to ensure that they can express their views and effectively participate in all matters affecting them. The Committee calls on States parties to comply with their obligation to ensure that child participation is taken into account in resource allocation and that mechanisms to facilitate the participation of children in society be institutionalized as a tool for implementation.

1009. The Committee calls for States parties to clearly designate which authority has the key responsibility in the implementation of children's rights and to ensure that this entity establishes direct contact with child and youth led organizations in order to engage with them.

1010. The Committee recommends that independent national human rights institutions and or children's ombudsmen or commissioners ensure that children are given easy access to them to raise their concerns and that adequate resources are dedicated to involving children in their monitoring of the implementation of children's rights.

1011. The Committee recommends that children and youth be directly included in the planning, design, implementation and evaluation of national plans of action which relate to children's rights, in recognition of their role as core stakeholders in the process. Such open consultation should ensure that national plans of action for the implementation of children's rights are fully relevant for children.

1012. The Committee reminds States parties of the need to provide training on the rights of the child to all public officials who influence government policy and implement programmes which involve children's issues, in order to promote awareness of the rights of the child and the obligation of taking the views of children into account.

1013. The Committee recognises as positive the step taken in numerous countries by the creation of child parliaments at national, regional and local levels, as such initiatives offer

⁵ CRC/C/GC/8.

a valuable insight into the democratic process and establish links between children and decision makers. The Committee however urges States parties to establish clear guidelines on how the views presented by children in such forums are taken into account by the formal political process and policymaking, and to ensure that children are provided with adequate responses to their proposals.

1014. The Committee encourages the direct involvement of children in monitoring the implementation of all rights enshrined in the Convention. The Committee recommends that States parties actively involve children in the periodic review process of the Convention. It also urges children to play an active role in identifying aspects of human rights in need of further attention and in monitoring the implementation of concluding observations at the national level. In particular, the Committee calls on children to actively engage in local policy issues which relate to budget allocations, for example in the areas of education, health, working conditions for youth and violence prevention.

1015. The Committee notes the role that can be played by children in reviewing domestic legislation and advocating legal reform in order to ensure that the principle of participation is adequately reflected in legislation, for example in the Family Code and the Criminal Code. In countries that have yet to adopt a Children's Code, the active promotion of legislative change by children themselves can play a catalysing role. Furthermore, organized youth participation can make an important contribution to promotion of the ratification of international human rights instruments.

1016. The Committee recognises and appreciates the important role played by non-governmental organizations (NGOs) in facilitating the active participation and organization of children and youth both at the national and international level. Furthermore, the Committee welcomes the increasing number of youth led organizations in various parts of the world. In this context, the Committee reminds States parties of the right to exercise freedom of association as stipulated in article 15 of the Convention.

1017. The Committee welcomes the significant contributions by NGOs in promoting awareness-raising in society regarding the right of the child to participate fully, in accordance with article 12. The Committee encourages NGOs to further promote child participation and facilitate international exchanges of experience and best practice. In particular, the Committee encourages NGOs, including national alliances on children's rights, to engage directly with children in the process of parallel reporting under the Convention and also encourages the presence of children during pre-session country briefings with the Committee.

1018. The Committee suggests that further attention be given to finding new means of participation in accordance with preferences indicated by children themselves, in order to ensure that they feel comfortable in expressing their views. In this context, the Committee recalls article 31 of the Convention which establishes the right of the child to participate freely in cultural life and the arts. The Committee welcomes efforts to enhance child participation through creative expression, including in drama, music and dance.

1019. The Committee recognises the essential role played by the media in promoting awareness of the right of the child to express views and urges various forms of media, such as radio and television, to dedicate further resources to including children in the development of programmes and allowing children to develop and lead media initiatives on their rights.

1020. The Committee encourages institutions that conduct research on children's issues for academic or policy purposes to ensure, when appropriate, that children are actively consulted and are given an opportunity to participate directly in the process.

1021. The Committee recommends that States parties take into account children's participation in the community at different levels and notes that in certain contexts apparent inconsistencies arise, such as when children below the age of 18 are subject to military service yet are not eligible to vote.

3. Article 12, paragraph 2: The child's right to be heard in judicial and administrative proceedings

1022. The Committee reminds States parties that the right of the child to be heard in judicial and administrative proceedings applies to all relevant settings without limitation. These include: children separated from their parents; custody and adoption cases; children in conflict with the law; child victims of physical violence, sexual abuse or other violent crimes; asylum-seeking and refugee children; and children who have been the victims of armed conflict and emergencies.

1023. The Committee affirms that all children involved in judicial and administrative proceedings must be informed in a child-friendly manner about their right to be heard, the modalities of doing so and other aspects of the proceedings.

1024. The Committee advises States parties to provide all relevant professional categories involved in judicial and administrative proceedings with mandatory training on the implications of article 12 of the Convention. Judges and other decision makers should, as a rule, explicitly state and explain the outcome of proceedings, especially if the views of the child could not be accommodated.

1025. The Committee urges States parties to examine all existing laws and regulations with a view to ensuring that article 12 is adequately integrated in all relevant domestic laws, regulations and administrative instructions.

1026. The Committee requests that States parties establish specialized legal aid support systems in order to provide children involved in administrative and judicial proceedings with qualified support and assistance.

1027. The Committee notes that with regard to adoption, article 21, paragraph (a) of the Convention stipulates that "the persons concerned have given their informed consent" which should be considered in the context of the right of the child to express his or her views and have them considered in accordance with the age and maturity of the child.

1028. The Committee recalls that in decisions on the separation of children from their parents, “all interested parties shall be given an opportunity to participate in the proceedings and make their views known” in accordance with article 9, paragraph 2 of the Convention.

1029. The Committee recalls the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)⁶ which state in paragraphs 3, 37 and 50 that “young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control... youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs ... young persons themselves should be involved in [the] formulation, development and implementation [of plans and programmes]”.

1030. The Committee reaffirms the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)⁷ which provide in paragraph 14.2 that “proceedings shall be conducted in an atmosphere of understanding which shall allow the juvenile to participate therein and to express herself or himself freely”.

1031. The Committee reminds States parties that in order to ensure that the views of children in conflict with the law are duly taken into account, the following must be provided as a minimum in order to ensure their participation in accordance with articles 12 and 40 of the Convention:

- (a) Adequate legal or other appropriate assistance;
- (b) Free access to an interpreter if the child cannot speak or understand the language used;
- (c) Respect for his or her privacy during all stages of the proceedings;
- (d) Recognition that the child has a right to participate freely and cannot be compelled to give testimony.

1032. The Committee welcomes the important contribution to the protection of children who have been the victims of sexual abuse or other violent crimes established in the provisions of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by the United Nations Economic and Social Council in 2005⁸ and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in particular article 8.

⁶ General Assembly resolution 45/112 of 14 December 1990.

⁷ General Assembly resolution 40/33 of 29 November 1985.

⁸ Economic and Social Council resolution 2005/20.

The Committee urges States parties to pay particular attention to these standards and ensure their practical implementation.

1033. The Committee thus urges States parties to ensure that the views, needs and concerns of child victims who have suffered sexual abuse or other violent crimes be presented and considered in proceedings where their personal interests are affected. In addition to the rights outlined above for children in conflict with the law, States parties should adopt and implement rules and proceedings for child victims of physical violence, sexual abuse or other violent crimes, ensuring that repetition of testimonies be avoided by the use of videotaped interviews to reduce re-traumatisation, that protective measures and health and psychosocial services be made available and that unnecessary contact with the perpetrator be avoided. The identity of the victim should be kept confidential and when required, the public and media should be excluded from the courtroom during the proceedings.

1034. The Committee affirms that age should not be a barrier to the child's right to participate fully in the justice process. In cases where States parties have established a minimum age for the right of the child to be heard, measures should be taken to ensure that the views of children below the minimum age be considered, in accordance with their levels of maturity, by specially trained social workers or other professionals.

1035. The Committee further notes that age should not be an impediment for children in accessing complaints mechanisms within the justice system and administrative proceedings.

1036. The Committee recommends that, when applicable, independent national human rights institutions ensure that children can easily access complaints mechanisms and advisory services.

1037. The Committee requests that special attention be given to the right of the child to be heard in immigration, asylum and refugee procedures by taking measures to ensure that the rules and practices, including the provision of interpreters, are in full compliance with the requirements elaborated by the Committee on the Rights of the Child in its general comment No. 6 on the Treatment of unaccompanied and separated children outside their country of origin, in particular paragraph 25.⁹

1038. The Committee urges States parties to ensure that the view of the child and the best interests of the child be given due consideration in all circumstances, including in traditional justice procedures and in post-conflict resolution processes and that all efforts seek to avoid victimization of the child.

⁹ CRC/GC/2005/6.

4. Recommendations to be followed up on by the Committee

1039. In order to provide further guidance on the implementation of the Convention, the Committee reaffirms its intention to develop a general comment on article 12, its importance as a general principle as well as a substantive right, and its linkages with other articles of the Convention on the Rights of the Child. The general comment will explore in detail how the right should be implemented consistently in all settings. The day of general discussion and its outcome, including the written submissions, form part of this process.

1040. The Committee recognises the importance of child participation in the work of the Committee and encourages children and youth representatives to submit information in the context of periodic reviews. It also stresses in particular their important role in advocating and monitoring the implementation of the concluding observations at the national level.

1041. The Committee remains committed to exploring means of furthering the participation of children in the work of the Committee, and in particular encourages more participation of children during pre-session country briefings with civil society representatives.