



## **Giving Children a Voice:**

**An Interplay between Practice and Legal Provisions**

**International Social Service**

**General Secretariat**

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Brno, Czech Republic



# INTERNATIONAL SOCIAL SERVICE

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**What does the organisation do?**

**Where do we work?**

**Which are our fields of work?**

[www.iss-ssi.org](http://www.iss-ssi.org)

⇒ UMPOD – the Office for International Legal Child Protection is our partner in the Czech Republic



# INTERNATIONAL SOCIAL SERVICE (2)

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## ISS Working partners:

- States: central authorities, policy makers
- Professionals: experts of the psychosocial field, academics, NGOs
- Families (direct support, through the network 100+ countries)

## ISS Fields of Action:

- Advocacy (work with UN Committee for the Rights of the Child and UN Committee for the Rights of Migrant workers)
- Expertise (cooperation agreement with The Hague Conference for Private International Law, administrative authorities)
- Training for professionals



## THE UN CONVENTION ON THE RIGHTS OF THE CHILD

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### Article 12:

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.



# PARTICIPATION RIGHTS OF CHILDREN

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## Principles for Implementation

- Child participation needs to be organised in different stages (hearing, assessment of the views of the views of the child, feedback to the child, etc.)
- Methods have been developed to be used in different stages, and in particular for the hearing of the child



## **PARTICIPATION RIGHTS OF CHILDREN (2)**

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Legal Basis is the UN Convention on the Rights of the Child (UNCRC)

⇒UNCRC (1989) impacted national legislations all over the world

The impact can be observed at different levels in each country:

- at the institutional level (international conventions, national legislation, policies, construction of institutional frameworks...)
- in the implementation process itself (action, implementation guidelines...)
- at the practical level (field projects, local projects, public services...)



# PARTICIPATION RIGHTS OF CHILDREN (3)

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## Implementation Process

- not necessarily in chronological order (structural/institutional implementation => process => outcome in the field)
- a huge variety of actors
- a huge variety of experiences
- information, sensitisation and experiences have a multiplying impact in each country
- assessment of experiences and practices helps find appropriate practices for a particular country/context



# COMMITTEE ON THE RIGHTS OF THE CHILD / GENERAL COMMENT No. 12 (2009)

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## Point No. 21 under: Core Obligations for state parties : Training

[...] 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.

## Point No. 12 under: The right to be heard: an individual right an a right of groups of children

[...] The views expressed by the child may add relevant perspectives and experience and should be considered in decision-making, policy making and preparation of laws and/or measures as well as their evaluation.

## Point No. 97 under: Implementation in different settings

[...] 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.





## COMMITTEE ON THE RIGHTS OF THE CHILD / GENERAL COMMENT No. 12 (2009) (2)

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Point No. 74 under: The right to be heard and links with other provisions of UNCRC

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.





## QUESTIONS & ISSUES IN PRACTICE

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- **The voice of the Child / Consideration of the best interests of the Child**
- **What if there is a tension between the views of the child and her/his best interests?**





## COMMITTEE ON THE RIGHTS OF THE CHILD / GENERAL COMMENT NO. 14 (2013) ON THE RIGHT OF THE CHILD TO HAVE HIS OR HER BEST INTERESTS TAKEN INTO ACCOUNT (ARTICLE 3)

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Point No. 47 under: Implementation: assessing and determining the child's best interests

Assessment and determination of the child's best interests are two steps to be followed when required to make a decision. The "best-interests assessment" consists in evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children. It is carried out by the decision-maker and his or her staff – if possible a multidisciplinary team –, and requires the participation of the child. The "best-interests determination" describes the formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment.



## COMMITTEE ON THE RIGHTS OF THE CHILD / GENERAL COMMENT No. 12 (2009)

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### Points No. 93 and 94 under: Implementation of the right to be heard under different settings

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.



## COMMITTEE ON THE RIGHTS OF THE CHILD / GENERAL COMMENT No. 12 (2009) (2)

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Points No. 40 to 46 under: Steps for the implementation of the right of the child to be heard:

1. Preparation
2. The hearing
3. Assessment of the capacity of the Child
4. Information about the weight given to the views of the child (feedback)
5. Complaints, remedies and redress (which applies to public law)





## COMMITTEE ON THE RIGHTS OF THE CHILD / GENERAL COMMENT No. 12 (2009) (3)

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Point No. 34 under: **Appropriate conditions to conduct the hearing of a child**

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.





## IMPLEMENTATION OF THE RIGHT TO BE HEARD & MEDIATION

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- Mediation settings meet requirements of appropriate child interviewing
- Mediators are well trained to communicate
- Child inclusive mediation is advancing



A blue-tinted landscape of misty mountains. The foreground shows a dark, forested hillside. In the middle ground, a thick layer of white mist or fog fills the valleys between the mountains. The background consists of several layers of mountain ranges, each appearing progressively lighter and more hazy as they recede into the distance. The sky is a pale, uniform blue. The overall mood is serene and atmospheric.

***Whatever you do for me without me, you do against me.***

**Mahatma Gandhi**





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For more information and tools of reference consult the ISS/ IRC Documentation Centre with the “Child opinion”: <http://www.iss-ssi.org/library/>

Also consult various UNICEF documents regarding Child Participation:

[http://www.unicef.org/adolescence/index\\_documents.html](http://www.unicef.org/adolescence/index_documents.html) and

[http://www.unicef.org/adolescence/cypguide/files/Child\\_and\\_Youth\\_Participation\\_Guide\(1\).pdf](http://www.unicef.org/adolescence/cypguide/files/Child_and_Youth_Participation_Guide(1).pdf)