

## H for Right to be Heard

In a Nutshell: General Comment No. 12 of the Committee on the Rights of the Child

This summary for development practitioners provides:

- information on the →topic of General Comment No. 12 and its legal foundation;
- an overview of the →Committee's key recommendations addressed to States parties;
- →key contents of General Comment No. 12;
- →recommendations for development practitioners on how to use this General Comment;
- an excerpt of the →relevant article of the CRC and an overview of →State party obligations.

### What is this General Comment about?

In its →General Comment No. 12 of 20 July 2009, the →Committee on the Rights of the Child (short: Committee) offers guidance and recommendations to States parties on how to implement the child's right to be heard in different settings and situations. The child's right to be heard, mainly set out in article 12 of the →Convention on the Rights of the Child (short: CRC or Convention), is a right of each individual child as well as of groups of children, such as a class of schoolchildren, the children in a neighbourhood, the children of a country or children with disabilities. It is also one of the four general principles of the Convention, along with the child's best interests, the child's right to life, survival and the development of the child, and the right to non-discrimination. The child's right to be heard takes into account the fact that children are not objects of decisions, but constantly maturing persons with their own views and interests. They have a right to participate in decision-making processes, in particular when they are affected by them.

General Comment No. 12 mainly relates to article 12 of the Convention, which guarantees children of all ages, who are capable of forming their own views, the right to freely express them and thereby also shape their own lives and the society they live in. States parties have to ensure that the persons responsible for making decisions affecting a child enable the child to express his or her views freely, and take them seriously into account.

### How can States parties implement the Convention?

The Committee's **key recommendations** in this General Comment:

- **Anchor appropriate conditions in law and institutional codes** for supporting and encouraging children to express their views and taking them into account. This includes access to adequate information, appropriate support, feedback on the weight given to the child's view and procedures for complaints, remedies or redress. Review and withdraw restrictive declarations or reservations to article 12.
- **Establish independent human rights institutions for children's rights** such as children's ombudspersons or National Human Rights Institutions (NHRI) to monitor the implementation of the rights enshrined in the CRC, including article 12.
- **Provide training on article 12 and its application in practice** to all professionals working with and for children, such as judges, police, social workers, teachers and medical doctors.
- Through public campaigns **combat negative attitudes regarding the capacities of children** to form and express autonomous views and shape their own lives.

### Key contents of General Comment No. 12

#### 1. What do the terms used in article 12 mean?

In matters affecting the child, decision-makers must solicit the views of the child. The only condition is that the child is "capable of forming his or her own views." States parties – and the respective decision-makers – must start from the presumption that every child is able to form autonomous views, and assess this capacity individually for every case. Children are capable of forming their own views from a very early age, and can use many ways to express them, such as body language or drawing. Children with disabilities



or language issues must receive the necessary assistance. It is enough that the child has a basic understanding of the matter, even if he or she might not understand all the details yet.

Children should express their views "freely", that is without pressure or manipulation, and under friendly and secure conditions. This requires information on the matter concerned, on options, and on possible decisions and their consequences, as well as on the conditions under which the child will be heard. Decision-makers must minimise possible traumatising effects, e.g. from repeated interviews on vulnerable children such as victims of violence or abuse.

Children have to be heard "in all matters affecting" them. This must be understood in the widest sense: States parties should listen carefully to children's views wherever their perspective can enhance the quality of solutions. The drafters of the Convention deliberately rejected a limited list of matters. Therefore, the term "all matters affecting the child" also comprises programmes that affect children as part of a general strategy, such as programmes against labour exploitation. Among the matters that affect children, art. 12 (2) mentions judicial and administrative proceedings. This also has to be understood very broadly; it includes matters such as the separation of parents, children in conflict with the law or seeking asylum, and it extends to dispute resolution mechanisms such as mediation.

To enable children to exercise their right to be heard, they require information and a welcoming environment. 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. The Committee recommends that, wherever possible, the child must be given the opportunity to be heard directly. If represented, the person must solely represent the interests of the child, and not have a conflict of interests. States should develop codes of conduct for representation.

If the child has expressed his or her views, the respective decision-maker must give those views "due weight in accordance with the age and maturity of the child". The condition "age and maturity of the child" needs to be assessed on a case-by-case basis when the individual child is heard and also when a group of children decides to express its views.

## 2. Five steps for the implementation of the right to be heard in formal proceedings and other settings

- **Preparation:** The child has to be informed about his or her right to be heard and the impact his or her views may have on the outcome, as well as the options and conditions of the exercise of this right.
- **The hearing:** The context must be enabling and encouraging, it should be confidential and have the format of a conversation rather than a one-sided examination.
- **Assessment of the capacity of the child:** The child's views must be given due weight when a case-by-case analysis indicates that the child has the capacity to form autonomous views. If this is the case, the decision-maker must consider these views as a significant factor in the settlement of the issue.
- **Feedback:** The decision-maker must inform the child of the outcome of the process and explain how his or her views were considered, allowing for a reaction of the child, including a complaint.
- **Complaints, remedies, redress:** The right to be heard must be secured against violations by complaint procedures and remedies; this should include an ombudsman or a person of a comparable role in all institutions that deal with children; he or she should be known and accessible to all children. Complaint procedures must ensure that children using them will not be exposed to the risk of violence or punishment.

## 3. The right to be heard in judicial and administrative proceedings

The right to be heard in **judicial proceedings** applies to all kinds of civil judicial proceedings that affect the child, among them divorce and separation, removal from the family and placement into care, as well as adoption or its Islamic law equivalent "kafalah". In such proceedings, the best interests of the child cannot be determined without considering his or her views. States parties must therefore ensure that the child's views are solicited and considered, in particular through legislation, regulations, policy directives, and the actual proceedings. In **penal proceedings** the child has to be heard in a protected and empowering setting in all stages of the process. A child victim or child witness has to be informed of his or her rights to freely and voluntarily express his or her own views, about the context of the hearing, about available support and protection mechanisms, and about reparations and appeals.

Relevant **administrative proceedings** include mechanisms concerning discipline in schools or detention, issuing school certificates or requests for asylum filed by unaccompanied children. States parties should develop administrative procedures that ensure the right to be heard along with other procedural rights, including access to relevant records, notice of hearing, and representation.

#### 4. The right to be heard and other Convention rights and principles

Most other Convention rights also require and promote the participation of children, individually, as a group, or of particular groups of children, such as indigenous children. For example, when determining the **best interests of the child (art. 3)** in all actions concerning children, including legislation, States parties must ensure that individual children or children as a group are heard, as required by article 12. The Committee urges States parties to exert all efforts to listen to and to seek the views of children speaking collectively.

The right to be heard must be granted **without discrimination (art. 2)**. States parties shall address discrimination, also against vulnerable or marginalised groups of children, such as indigenous children, girls or children in street situations, 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. They should pay special attention to girls, and provide assistance and equipment to children with disabilities. If customary attitudes and practices are an obstacle to the exercise of this right, States parties shall raise awareness, educate society, and encourage changes in attitude.

The rights to **freedom of expression (art. 13)** and on **access to information (art. 17)** are closely linked to the right to be heard. Article 12 goes further: it obliges States to actively encourage the expression of views and to also take them into account in all matters affecting the child. Access to information requires age-appropriate formats. The media can both promote awareness of children's rights and provide opportunities for them to express their views.

Article 12 also takes into account the changing **relationship between the child and his or her parents, guardians, or community members (art. 5)**. The more the child knows, has experienced and understands, the more the parent or legal guardian

has to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. Overall, child participation is a tool to stimulate the full **development of the personality** and the evolving capacities of the child (**art. 6 and 29**).

#### 5. The implementation of the right to be heard in specific settings and situations

**In the family and in alternative care:** States parties should encourage families, guardians and childminders to listen to children and give due weight to their views in matters concerning them. States should promote programmes that educate parents on relationships of mutual respect, listening and taking into account the child's views as his or her capacities evolve, and dealing with conflict. Placing a child in alternative care requires informing the child, providing the child with meaningful opportunities to express his or her views, and duly considering the child's view. A monitoring institution that ensures respect for the best interests of children in alternative care should have unimpeded access to facilities and be able to hear the views and concerns of children directly. Participatory mechanisms in residential care facilities, such as children's councils, ensure that children's views are considered when developing and implementing the policies and rules of the institution.

**In health care:** Children should be provided with information about proposed treatments and their effects and outcomes, and about participation in research and clinical trials. States parties must ensure that children have access to confidential medical counselling and advice without parental consent. This is crucial in situations of domestic violence or in relation to reproductive health. A fixed age to give medical consent is helpful, but if younger children are capable to express an informed view, it must be considered. States parties should also introduce measures enabling children to contribute their views and experiences to the planning and programming of health services.

**In education and school:** Human rights are also learned in school – but only if they are put into practice there. Authoritarianism, discrimination, disrespect, and violence are incompatible with children's rights. States parties should encourage children to take an active role in school, for example in class or student councils, or through representation



on school boards and committees, and independent student organizations. Decisions on the choice of schools, educational tracks or on disciplining deeply affect the child's best interests and must give due weight to his or her views. Beyond the school, States parties should consult children at the local and national levels on all aspects of education policy.

**In the workplace:** Children often work at younger ages than permitted by international law, and in exploitative conditions. They should be heard when seeking solutions that respect their socio-economic constraints as well as the cultural context, and when workplaces are examined by inspectors, or when labour laws are drafted.

**In situations of violence:** Protecting children requires teaching them that they have a right to be free from violence, and that child-friendly mechanisms are accessible to report confidentially about corporal punishment, genital mutilation, sexual abuse, or early marriage. States are encouraged to consult with children on measures to address violence; consultative processes must include marginalized and disadvantaged children, such as refugee children or children in street situations.

**In immigration and asylum proceedings:** Migrant and refugee children must be informed and heard on educational and health matters and available services in their own language. A guardian or adviser should be appointed, free of charge. They must have the opportunity to present their own reasons for asylum –based on adequate information, including on the situation in their country of origin. Children in post-emergency situations or former child soldiers require specific support.

**In emergency situations:** The right of children to participation also applies during and after situations of crisis. It promotes the positive effect children can have in such crises and in post-conflict reconstruction and resolution. It also strengthens children affected by emergencies. States parties should therefore solicit and take into account children's views when designing and implementing post-emergency programmes, while respecting their best interests and protecting them from harmful experiences.

**In national and international settings:** Public consultation on the community or national level should include children's views, for example for community development plans. Children should be supported and encouraged to form their own child-led organisations and initiatives as well as networks amongst themselves. Such organisations should also be supported by States and NGOs to participate in the international monitoring of the CRC, undertaken by the Committee.

## 6. Basic requirements for effective and meaningful participation

There is broad consensus that an effective, ethical and meaningful implementation of article 12 implies a number of quality requirements for processes in which children participate. Such processes must be:

- **transparent and informative**, so that the child understands them;
- **voluntary**, as there is no obligation to speak;
- **respectful** of the child's views;
- **relevant** to the child's needs and experiences;
- **child-friendly**, that is, designed in a way that is accessible and encouraging to children;
- **inclusive**, so that all children can exercise their right to participation without discrimination;
- **supported by training** of the adults involved on how to safeguard the rights of the child;
- **safe and sensitive** to the risk that can be associated with expressing one's views; and
- **accountable** by way of feedback and monitoring.

In general, the Committee urges States parties to avoid tokenistic approaches and adult manipulation of children. Participation needs to be understood as a process, not as a one-off event. Furthermore, effective and meaningful participation requires dismantling all barriers to the exercise of every child's right to be heard. To this effect, society as a whole needs to work on challenging negative assumptions about children's capacities.

## Approaches for bilateral development cooperation based on this General Comment

- Human rights-based development cooperation aims at promoting the respect, the protection and the fulfilment of human rights, including children's rights. Development measures may serve as an entry point for advising partner countries on **how the child's right to participation can be respected and further strengthened in each sector**. Emphasis should be given to the role of children as social actors in the promotion, protection and monitoring of their rights.
- **Good Governance:** In development measures on **law and justice sector reforms with legislative reviews**, development cooperation should support legislative reviews in safeguarding that the child's right to be heard is anchored in laws and regulations on judicial as well as administrative proceedings.
- Since almost every political decision affects children, development cooperation should advise partner countries in **establishing methods for inclusive, child-friendly and child representative public consultations**. Particularly at the **local government level**, development cooperation should support the establishment of bodies and other entities for joint decision-making and political participation for children and youth, such as youth councils.
- Making the voices of children heard on the national level can be strengthened by supporting **youth parliaments and public consultation with children on policies and laws** that affect children's lives. Development cooperation should particularly **strengthen independent human rights institutions for children**, such as children's ombudspersons or National Human Rights Institutions (NHRI) with a broad human rights mandate, and advise them on how to establish **participation structures for children and youth**. This is more effective and meaningful than supporting one-off events.
- To empower children and youth in consultation processes, **children and youth-led media** has to be supported, so that their positions can be heard in a wider public.
- Development measures on the promotion of children and youth should aim at empowering children and promote their participation in decision-making processes, **safeguarding that marginalised and disadvantaged children are not excluded**.
- **Child-rights budgeting and child-oriented taxation**, in which the opinions of children are considered, shall be integrated in development measures that advise public finance reforms.
- With regard to the State reporting process before the Committee on the Rights of the Child, development cooperation can advise partner countries on how to **involve children in the monitoring process of the CRC**, so that children themselves have the opportunity to present their views to the Committee.
- **Education sector:** In the education sector, advice on the **revision of curricula**, with a focus on **child-centred learning**, is vital. Development measures for the support of education and school managers should also include the promotion of class or student councils, representation on school board and committees, and independent student organisations. All these measures support and encourage children to take an active role in school.
- Development cooperation can support awareness-raising on the child's right to participation through **training on human rights education** focusing on article 12 and its application for professional groups such as teachers, lawyers and judges, and also through **information campaigns** via publications and the media.
- **Health sector:** An effective way to foster children's participation rights in the health sector are development measures, which include **peer-to-peer education**, where children themselves are active promoters of issues like sexual and reproductive health. All health measures should respect and promote the **child's right to consent to decisions** with regard to his or her health.
- Development cooperation should strengthen children's participation rights by **involving children in the project cycle itself**. Children should be systematically involved in the planning, implementation as well as in the monitoring and evaluation of development measures.



## Article 12 of the CRC

- (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.

### Which State party obligations are emphasised by the Committee in this General Comment?

- **Review or amend legislation so it contains mechanisms** that make sure the right to be heard is put into practice for all children, including those that have difficulty in making their views heard. The right to be heard must be secured against violations by **complaint procedures and remedies**.
- **Processes in which children are heard must be:** transparent and informative; voluntary; respectful; relevant; child-friendly; inclusive; supported by training; safe and sensitive to risk; and accountable.

- Ensure that in all **matters affecting children, their views are solicited** on an informed and voluntary basis. Such views must be **seriously considered**.
- Ensure that decision-makers **inform the child of the right to be heard**, the impact he or she will have on the decision, and on the outcome of the process.
- Ensure that decision-makers **assess the child's capabilities** to form autonomous views, as well as his or her age and maturity, on a case-by-case basis.
- Provide children access to **confidential medical counselling and advice** without parental consent.

### Where can you find this General Comment?

→ General Comment No.12 is available in Arabic, Chinese, English, French, Russian, and Spanish on the Committee's website.

You can also find it by its UN document number CRC/C/GC/12.

## Imprint

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