

THE RIGHT OF THE CHILD TO SPEAK, PARTICIPATE AND DECIDE

Thomas Hammarberg and Alfhild Petrán*

The writings of Janusz Korczak had an impact on of the UN Convention on the Rights of the Child. Some of those who took part in the drafting of this treaty were inspired by the vision of the Polish doctor, writer and educator who spent his last years at the orphanage in the Warsaw ghetto.

It had been said about Korczak – when antisemitism had forced his dismissal as “Radio Doctor” some years before World War II – that he had a rare ability to talk to children as if they were adults and with adults as if they were children. His message was primarily about respect for children, respect for their value as human beings but also for their capacity and competence. This trust also characterised the daily life in the orphanage.

In the midst of the horrible brutality outside, the inmates in this institution developed a small democracy. All of them were members of an assembly for important decisions. They agreed upon rules of behaviour and a court was established to deal with offenders (in most

cases the “sentence” was to apologize). There was a billboard for messages and a newspaper for news and discussion.

This experiment of child democracy depended much on the spirit of Korczak and the other adult staff. It all came to a terrible end in August 1942 when the German Nazis killed them all, including the 190 children, in Treblinka. However, Korczak’s example and writings have not been forgotten and are still influencing many.

Still, many of his ideas are seen as something for the future. However, we have seen in recent years an increasing awareness of the individual rights of children, based on the understanding that each child is unique and has an inherent value as a human being.

This awareness is articulated in the 1989 Convention of the Rights of the Child, the first international treaty to recognize the civil and political rights of children. It entitles children to be heard and their views to be taken seriously. Article 12.1 legitimizes children’s participation in decision-making:

“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.”

The child’s right to express an opinion is therefore contingent on his or her capability of forming views and of articulating them. Of course, all human beings have views and can express them from birth. Even infants and toddlers are “experts” on their own feelings, likes and dislikes, and can make these known – in such cases, the problem is whether parents, teachers, nurses and other adults are capable of listening, understanding and transmitting these views.

Article 12 places an obligation on governments to ensure that children’s views are sought and considered on all matters that affect their lives. The child’s right to “be heard in any judicial and administrative proceedings affecting the child” is specifically mentioned in Article 12.2. However, this provision applies not only to individual cases but also to children collectively. In fact, most government decisions, whether taken at the national or local levels, affect children to some extent, directly or indirectly.

Decisions at the local level may have the most immediate effect on children’s lives, but national-level decisions on family legislation, social welfare policies and all matters relating to education and children’s health obviously also have a strong impact. Less frequently acknowledged are the effects on children of government decisions on economic, environmental, infrastructural, defence and labour issues.

All these matters touch children’s lives in some way. It is well documented – for instance,

via the UNICEF’s internet site “Voices of Youth” – many children do indeed have strong views on, for instance, pollution, housing, transport, drugs and personal security, and can make a useful contribution to discussions on these issues. It is appropriate, therefore, not only to encourage children to voice opinions on such issues – and indeed provide opportunities for them to influence which issues are put on the “political agenda” as a whole. Their views should also be given consideration and “due weight.”

The child’s ability to form and express an opinion is also dependent on the fulfilment of several other rights, such as the right to education and the right to participate freely in cultural life. Also highly relevant are Article 13 on freedom of expression; Article 14 on freedom of thought, conscience and religion; Article 15 on freedom of association, and Article 16 on the right to privacy.

Article 17 focuses on mass media and states that the child has the right to obtain information from a diversity of sources. At the same time, it obligates States to “encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being.”

The child’s right to protection from all forms of abuse and violence is also clearly relevant to Article 12. Children need safe environments where they can feel free to speak without the risk of being shamed or punished for their views. It is important to note that in the exercise of these rights, children have the same obligations as adults to obey the law, to respect the rights or reputations of others, and not to jeopardize national security, public order, public health and morals (Arts. 13–15).

The UN committee and child participation

The Committee on the Rights of the Child, the body that monitors the implementation of the Convention, has designated Article 12 one of the “general principles” of the Convention, which means that it should guide the interpretation of the other articles and be of relevance to all aspects of the implementation of the Convention.

In its “General Guidelines for periodic reports,” the Committee asks for information on how children’s views are obtained through public opinion surveys, consultations and assessments of children’s complaints, and how their views are taken into consideration in legal provisions and in policy or judicial decisions.

Also, the Committee has consistently encouraged children’s participation in decision-making within the family. “The family becomes the ideal framework for the first stage of the democratic experience for each and all of its individual members, including the children,” it has stated.

The active participation of children in all aspects of school life, including the content and methods of education itself, is another aspect the Committee has stressed often. It has stressed, in particular, the need for policies and procedures that provide for consultations with students as a group and assure respect for students’ individual educational choices.

In addition, it has pointed out the need for greater recognition of children’s rights to participate in decisions about their health and related health care, and also to take part in the planning of health services relevant to children. The Committee has also identified the need for complaint mechanisms – especially for children deprived of family care, such as children in orphanages or police custody.

In September 2006 the Committee organised a “Day of General Discussion” with the intention of exploring the meaning of Article 12 for child participation – both as individuals and a collective constituency – in all aspects of society.¹ The discussion related not only to the family and school but also to community and wider society. Thereby the Committee entered more decisively into the more complicated area of children and political decision-making. It recognised in its report that progress in this field implied long-term changes in political, social, institutional and cultural structures.

The Committee did not recommend a particular model for child participation in political decision-making, but welcomed the steps taken in numerous countries by the creation of child parliaments at the national, regional and local levels. It stressed that such initiatives offered valuable insight into the democratic process and established links between children and decision-makers. However, it also pointed to the need for governments to establish clear guidelines on how the views presented by children in such forums should be taken into account by the formal political process and for a serious feedback on the proposals.

The Committee urged governments to move from an “events based approach” of child participation to a systematic inclusion. Mechanisms to facilitate such participation should be institutionalised. For instance, government structures with key responsibility for the implementation of the rights of the child should establish direct contact with child and youth-led organisations. Generally, the work of non-governmental organisations to promote child participation ought to be supported.

Other proposals were that public officials dealing with child matters be provided special

training. Children's ombudsmen or commissioners should be resourced to involve children in their monitoring work.

In sum, the Committee made clear that the State has a positive obligation to provide or facilitate meaningful forums where children could express their views, and to create consultative structures through which these views might be recorded and considered. This requirement is especially relevant for public authorities and services with a direct impact on children. It was left to governments to work out actual ways to apply the right of participation in the national and local contexts. Alas, the discussion has to continue.

Child participation in the formal political process

Children are not directly represented in official decision-making bodies. They are not allowed to vote and in many countries they are not allowed to become members of political parties or even join associations with political orientations until the age of majority.² Often they cannot organize meetings and have limited rights of assembly.

The pressure for genuine child participation in politics has not been strong. When children have been invited to take part in political manifestations they have all too frequently been manipulated, their participation clearly designed in a tokenistic way. The assumption has been that parents and guardians represent their children in the political arena and in society in general.

However, this "representation" is not always or even generally adequate. For one, there may be conflicting interests between parents and children and among individual children in a family. Furthermore, family disintegration is

a growing trend throughout several parts of the world; and partly as a consequence of this, parents are less familiar than in the past with the daily lives of their children. These developments increase the dilemma that a large portion of the population is excluded from any political influence.

In line with the emerging understanding of the rights of the child the political institutions ought to seek ways of consulting the views of children themselves. How can their voices be heard within the formal institutions of democracy?

National parliaments

In modern democracies, the elected parliament has fundamental legislative, supervisory and policy review functions. Since parliaments legislate on tax policies and take key decisions on budgetary allocations, they have a powerful impact on children's lives. They should, in the spirit of the Convention, consider the best interests of children in all of their decisions and ensure that children's views on any relevant legislation and budgetary decisions are taken into account.

The parliament has a monitoring role and may require children's views to be considered when bills and other proposals are being prepared. They could also ensure that when proposals are referred to relevant organizations for comments, children's organizations are included. Individual parliamentarians could, of course, channel suggestions from children or children's groups through resolutions or during parliamentary debate. To do so, they need to be willing to solicit ideas from young persons.

Parliamentary cross-party lobby groups on children's rights are active in some countries, for instance in Brazil, Ethiopia and Sweden.

They interact with voluntary children's rights groups but have not as yet been able to develop proper mechanisms for consulting children. In some countries like Norway and South Africa, initiatives have been taken to introduce a discussion on the child dimension of the national budget.

This is clearly uncharted territory, not least in younger democracies whose parliaments are still evolving and frequently paralysed by a "majority-takes-all" complex. Long-standing democracies may have to take the lead in developing examples of meaningful mechanisms for consulting young people. Needless to say, every country has a very different political scenario and there can be no general blueprint.

Central governments

Central governments have the immediate obligation to ensure that children are given proper opportunities to be heard on matters affecting them. Thus, they have an overall function of initiating actions, setting standards and monitoring in relation not just to the public sector but also to society at large. In addition, they may have to adjust the work of their own cabinet and ministerial bodies to conform to Article 12.

Since central governments play a crucial role in the preparation of laws and policies and, later, in setting the rules and regulations for implementing these measures, including the mobilization and distribution of resources, it is essential to create mechanisms that effectively take into account children's voices. Their views should be reflected in data collection and relevant research. Analyses should be undertaken on the possible impact of major policy and budget proposals on children's lives and could usefully include discussions with children themselves.

In many countries, inter-ministerial coordinating and monitoring bodies have been set up to consider children's issues. Many of them have reporting to the Committee on the Rights of the Child as a major task. Such bodies might be expected to play a greater role in encouraging national – but also provincial and local – authorities to consult with children and might also monitor these efforts. In most cases, these bodies need to be given more political clout and be active participants in the development and budget planning processes.

Although accountable in varying degrees to the parliament and the electorate, ministries and executive bodies are often more sensitive to influential pressure groups and the mass media than to the broader public. This is obvious in relation to children's issues. A popular way for children to enter into dialogue with representatives of the government is to take part in public hearings. Such events may trigger further action, but do not obviate the need for systematic consultative processes at the local level and should not be confused with these.

Local assemblies and executives

Most decisions with a direct and tangible impact on children's lives are taken at the local level. Examples include the planning and governing of local neighbourhoods, schools, sports and cultural facilities, water and sanitation and health services. In the last decade, moreover, there has been a strong trend in most countries towards decentralization of central government responsibilities to district and community levels.

This trend, though raising many difficult issues, including the problem of equity, has opened up new opportunities for children to take part in and influence decision-making in

the public sector. Options are varied and may include dialoguing directly with children or indirectly through their representatives; obtaining the opinions of various children's groups or listening to individual voices; collecting children's views systematically or doing so on an ad hoc basis.

Several countries have undertaken experiments to enhance children's participation in local government affairs. One example is the local child-run village councils, Panchyats, in India. In Sweden, the Children's Ombudsman has encouraged and closely monitored local government efforts to involve children. Many local governments in Sweden have shown interest in increasing children's participation and established youth councils or similar mechanisms, although still on a pilot basis.

Projects promoting children's participation in local politics are still unusual and ad hoc in character. Most of them are driven by NGOs or dependent on individual politicians. It will probably take considerable time before sufficient political will is generated and experience gained to take such pilot efforts to scale.

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- 1** The other major aspect discussed during the meeting was the child's right to be heard in judicial and administrative proceedings.
- 2** A limited few countries have set the age for voting right at 16 instead of the more common 18 years.

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