

## SHARED LEGAL FRAMEWORKS AND BASIC CONCEPTS REGARDING CHILDREN'S PARTICIPATION

Brief for practitioners



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# Introduction

The aim of the PANDA project is to promote the participation of young children (aged 12 years and under) in decision making in a transnational context through strengthening professionals' collaboration with young children known to social services, especially in child welfare and child protection.

Led by 8 partner organisations comprising social workers, managers, policy officers, academics and trainers from four countries - Belgium, Spain, Norway and Northern Ireland - the project has three objectives:

- to increase the skills and knowledge of professionals by creating a media library;
- to support organisations to create the conditions necessary for participatory social work with young children by providing a framework for policy officers and managers to support the implementation of a participatory approach;
- to provide trainers with new tools and methods in this area.



Figure 1 Panda concept (2022)

Underpinning children’s participation are shared international frameworks, namely the United Nations Convention on the Rights of the Child) as well as specific national legal frameworks, statutory guidelines, policy documents and more general guidance. This brief for practitioners focuses on the international framework.

# 1. Legal framework

The right of all children (defined as those between the ages of 0-18 years old) to express their views and have these taken into account is expressly regulated in article 12 of the United Nations Convention on the Rights of the Child (UNCRC) (1989), which establishes the following:

- "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 or 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."

The emphasis, in article 12, on such terms as 'capable of' and 'views being given due weight in accordance with the age and maturity of the child' indicates that children's participation rights are not absolute but conditional, contextual and contingent.

It is therefore important for professionals to be aware that the rights in article 12 are inextricably linked to and find effect through other related articles of the UNCRC<sup>1</sup>. For example, in considering children's article 12 rights, professionals must also take account of other articles in the UNCRC, namely:

- Article 2 (children's rights to non-discrimination),
- Article 3 (best interests),
- Article 5 (the evolving capacities of the child),
- Article 6 (children's right to life, survival and development),
- Article 13 (freedom of expression to receive and impart information either orally, in writing or any medium of the child's choice),
- Article 14 (freedom of thought, conscience and religion),
- Article 15 (freedom of association),
- Article 16 (right to privacy in correspondence), and
- Article 17 (access to information).
- Article 23 (children with disabilities).

It is also important for professionals to be aware of the UN General Comments which must be read in conjunction with the UNCRC because they provide detailed advice and guidance on the implementation of its articles. In relation to children's participation, the following are particularly relevant:

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<sup>1</sup> See Winter, K (2011) The UNCRC and social workers' relationship with young children, *Child Abuse Review*, Vol 20(6), pp.395-406 for an applied example.

- General Comment No. 5 (UN, 2003) General Measures of Implementation for the Convention on the Rights of the Child
- General Comment No. 7 (UN, 2005) Implementing Child Rights in Early Childhood
- General Comment No. 9 (UN, 2006) The Rights of Children with Disabilities
- General Comment No. 12 (UN, 2009) The Right of the Child to be Heard
- General Comment No. 14 (UN, 2013) The Best Interests of the Child
- General Comment No. 25 (UN, 2021) Children’s Rights in relation to the Digital Environment.

The UN also issues Guidelines to assist in the implementation of children’s rights. Therefore, of importance for professionals in their work with children, are the United Nations Guidelines for the Alternative Care of Children (UN, 2010).

Furthermore, in working with children with disabilities, professionals should be aware that the UN Convention on the Rights of Persons with Disabilities (UN, 2006) is also relevant. Article 1, for example, sets out the general principles of the Convention including “non-discrimination,” “equality of opportunity,” “respect for difference and acceptance of persons with disabilities as part of human diversity and humanity” and “full and effective participation of persons”.

Lastly, the United Nations General Assembly set up Global Goals or Sustainable Development Goals in 2015 to be achieved by 2030. Known as the 2030 Agenda, professionals should be aware of Sustainable Development Goals (SDGs), specifically, those relating to children’s participation include:

- Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.
- Goal 5: Achieve gender equality and empower all women and girls.
- Goal 10: Reduce inequality within and among countries.
- Goal 16: Promote just, peaceful and inclusive societies.

## **2. Essential concepts**

### **2.1 Participation**

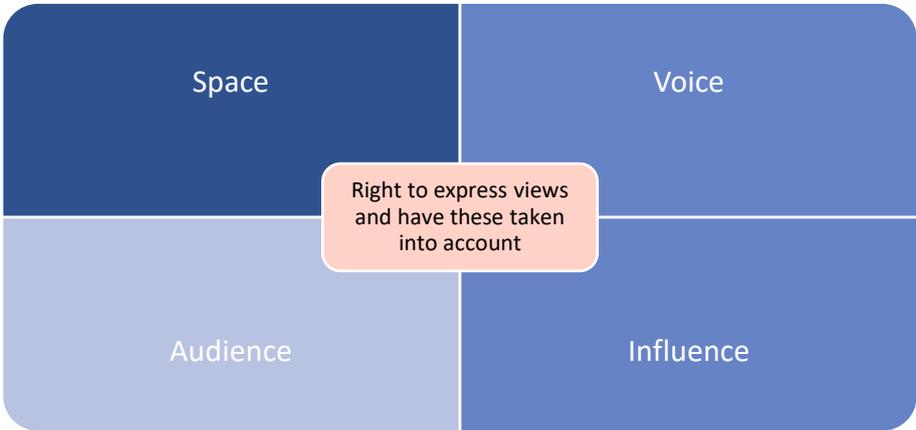
The UNCRC does not define what is meant by “participation”. This term is explained further in General Comment No. 12 The Right of the Child to be Heard (UN, 2009, paragraph 3) as follows:

"This term has evolved and is now widely used to describe ‘ongoing processes, such as exchanges of information and dialogue between children and adults on the basis of mutual respect, in which children can learn how their views and those of adults are taken into account and determine the outcome of these processes" (paragraph 3 GC).

The act of participating is not a momentary act, but a process, which must be extended over time, to all areas, and involves several actions that facilitate real spaces for participation. The act of participating takes shape in the context of the following conditions:

- the provision of child friendly, accessible information
- the provision of the appropriate means, time and space through which a child can express an opinion verbally, non-verbally or through any medium chosen by them;
- the child’s expression of the view, perspective or opinion;
- the taking into account of and/or the application of the opinion by the relevant adults who have the appropriate attitudes.

This is helpfully laid out in the Lundy model (Lundy, 2007), which underpins the Child and Youth Participation Strategy in the Republic of Ireland.



### 2.2 Special attention to younger children

In relation to younger children significant obstacles to the exercise of this right may be encountered depending on factors connected with the child (their age, maturity and/or capacity), the issues being explored and factors connected with the views, attitudes, beliefs and practices of the adults on whom they rely. Professionals should be attuned to their assumptions, attitudes and beliefs as these may pose barriers to younger children and their right to be heard and have their views taken into account.

General Comment No. 7 (UN, 2005) Implementing Child Rights in Early Childhood reminds us that young children are rights holders (paragraph 3), that young children should not be discriminated against (paragraph 11), and that young children are active participants in their rights. It also states (paragraph 14) that:

*Respect for the young child’s agency - as a participant in family, community and society - is frequently overlooked, or rejected as inappropriate on the grounds of age and immaturity. In many countries and regions, traditional beliefs have emphasized young children’s need for*

*training and socialization. They have been regarded as undeveloped, lacking even basic capacities for understanding, communicating and making choices. They have been powerless within their families, and often voiceless and invisible within society.*

*The Committee wishes to emphasize that article 12 applies both to younger and to older children. As holders of rights, even the youngest children are entitled to express their views, which should be “given due weight in accordance with the age and maturity of the child” (art. 12.1). Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language.*

To enable young children to access their article 12 rights requires adults to adopt a child-centred attitude, listening to young children and respecting their dignity and their individual points of view (General Comment, No. 7 (UN, 2005), para 14). A child's level of understanding depends on a set of factors that change according to the child and his or her circumstances. Therefore, each situation must be assessed on a case-by-case basis. The Lundy model assists in conceptualising this contextual approach.

### **2.3 Special characteristics of the right to child participation**

Regarding a child's age, the Convention does not impose any age limit on the child's right to express his or her views and discourages States parties from introducing by law or in practice age limits that restrict the child's right. General Comment No. 12 The Right of the Child to be Heard (UN, 2009, para 29) states, ‘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’.

Regarding a child's level of maturity, General Comment No. 12 The Right of the Child to be Heard (UN, 2009, para 30) notes that this refers to the capacity to understand and assess the implications of a given issue and the ability of a child to express his or her views on the issues in a reasonable and independent manner. The General Comment indicates that it would be advisable for professionals to develop a code of conduct to facilitate the task of assessing the capacity of children to exercise this right.

To assist in responding to individual children, on a case-by-case basis, the concept of evolving capacities is emphasised (General Comment, No. 7 (UN, 2005), para 17). This refers to ‘processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding, including acquiring understanding about their rights and about how they can best be realized. Respecting young children's evolving capacities is crucial for the realization of their rights, and especially significant during early childhood, because of the rapid transformations in

children's physical, cognitive, social, and emotional functioning, from earliest infancy to the beginnings of schooling'.

Regarding the role of parents, carers and professionals, this is critical. General Comment No. 7 (UN, 2005, para 17) points out that adults have 'the responsibility to continually adjust the levels of support and guidance they offer to a child. These adjustments take account of a child's interests and wishes as well as the child's capacities for autonomous decision-making and comprehension of his or her best interests.

Regarding the unique characteristics of every child, account must be taken of each child's choices and preferences, their development, their competence and capacities, their age, gender, disability, sexuality, religion, ethnicity, language, culture and heritage and their context.

## **2.4 On what matters must the child be heard?**

The obligation to listen to children and involve them is mandatory "in all matters affecting them". No definition of "matter" or list of matters that may be considered to affect minors has been included. However, the Committee indicates that a broad interpretation of matters affecting the child should be made to include not only individual processes but also social processes in their community and society.

Specifically, Article 12 states this obligation "in any judicial or administrative proceedings affecting the child". In these cases, special attention must be paid to making these processes accessible and appropriate for minors, with specially trained personnel and resources that favour the protection and care of the child.

## **2.5 How is the child heard?**

A child may be heard directly or through an appropriate representative or body.

It is recommended that the child be given the opportunity to express his or her views on his or her own whenever possible.

Attention needs to be paid to situations where there may be a conflict of interest between the child and his or her representative, especially when they are the child's parents. The need for the representative to correctly convey the child's views to the decision-maker is emphasized and the development of codes of conduct to ensure the proper exercise of this role by representatives is recommended.

## **2.6 Best interests of the child as a guiding principle**

The UNCRC, under article 3.1, is the first to endorse this general principle by stating that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, "the best interests of the child shall be a primary consideration".

Professionals tend to assume that there is a conflict between determining what is in the best interests of a child (article 3) and a child's right to be heard and have their views taken into account (article 12). However, both articles complement each other, since, as the GC states, a correct implementation of Article 3 is not possible without respecting the components of Article 12. Similarly, Article 3 reinforces the functionality of Article 12 by facilitating the essential role of children in all decisions affecting their lives.

## **2.7 Measures to ensure compliance with children's right to be heard**

The GC lists measures that should be taken into account when guaranteeing the exercise of children's right to participate, as illustrated in Figure 3 below.



### **3. Conclusion**

Despite the existence of an extensive and comprehensive normative framework that aims to guarantee children's rights, these rights are often not exercised or adequately protected.

The principle of children's participation in all decision-making processes that affect them is particularly difficult to put into practice. These difficulties are particularly acute in the case of very young children.

We must go beyond the mere conceptualisation and recognition of our children's rights. It is essential to reflect on how we see children and childhood and to promote new activities, values, behaviours, cultures, and beliefs that allow for a major cultural change in the way we approach children. Only in this way can all the existing regulations become a reality.