

Implementing Art 12 in Public decision-making

Reflecting on child participation in public decision-making

Seminar 2nd July, 2019 Lisbon

Bragi Guðbrandsson, Member of the UN Committee on the Rights of the Child

Abstract

- Convention on the Rights of the Child
 - Perception of children as holders of rights
 - Art 12: the “new social contract”
 - Evolution of participatory rights: Children as Human rights defenders
- The Lundy model of participation and it’s application in public decision making
- Child participation in different context
 - Operationalizing Art 12 in Coe guidelines
- Art 12 in Multiagency interventions

The impact of the UN CRC:

New preception of the child

- The **paradigm shift** generated by the UN CRC revolutionized our perception of the child as holders of rights
 - From the child being perceived merely as a vulnerable and dependent human being in need of special care and assistance,
 - To accept that a child is, in the first place, a rights holder like any other human being
- The dual nature of the Convention as an international agreement: **the descriptive rights** and it's **dynamic nature**
- This paradigm has proven to be a catalyst for law and policy reform and revolutionized child rights advocacy at the domestic, regional and international level for the past thirty years

Art 12 of the UN CRC

- Article 12.1 has two key elements:
 - (i) the right to express a view in all matter affecting the child
 - (ii) the right to have the view given due weight in accordance with the age and maturity of the child
- The Article 12.2
 - the child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child either
 - (i) directly or
 - (ii) through an representative or an appropriate body

“A new social contract”

- In **2006 Recommendation** of the Day of General Discussion, the Committee on the Rights of the Child choose to identify the rights of the child **to speak, to participate, to have their views taken into account** as “the new social contract”
- The **General Comment 12 of the Committee (2009)** contains a rich, comprehensive and detailed interpretation and guidelines on the implementation on Art 12
- In this General Comments 12 of the Committee (2009) it is pointed out that States parties are under strict obligation to undertake appropriate measures to fully implement Art 12 for all children as this **right constitutes the fundamental values of the Convention**

General Comments no. 12 and 20

- The introduction to the General Comment no. 12 (2009) highlights that Art 12 is a unique provision in a human rights treaty as it addresses the legal and social status of children, who,
 - on the one hand **lack the full autonomy of adults** but,
 - on the other, are **subjects of rights**
- Any examination of implementing Art 12 of the CRC in the context of **public decision-making requires a broad perspective of the participatory rights of children**
- This broad conceptualization of Art 12 is emphasized in the **General Comment no 20 (2016) on implementation of the child during adolescence, including on**
 - the importance of participation as a means of political and civil engagement through which adolescents can negotiate and advocate for the realization of their rights, and hold States accountable

Evolution of the rights of the child

Children as Human Rights Defenders

- The Committee decided that the **DGD 2018** would address the theme: protecting and empowering children as human rights holders
 - To foster a deeper understanding of content and implication of child participatory right and improve its implementation
- **The UN Declaration of Human Rights Defenders** (1998)
 - **“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights”**
 - **Anyone who acts at any moment for any human right is a defender. Defenders are identified above all by what they do and not by who they are**

Protecting and Empowering Children as human rights defenders

- Children who take action to promote their human rights, the rights of their peers or the rights of others (including adults) are human rights defenders
 - Promoting human rights
 - Reacting to violations of human rights
 - Raising awareness e.g. of the UN CRC
- Children must be recognised as human rights defenders, when they act as such and are entitled to the same rights and protection as adult human rights defenders
- We are now witnessing a wave of interest among children all over the world in **raising awareness of children as rights holder**

Child Defenders of Human Rights



#FridaysForFuture

NEWS RELEASE



UN human rights experts applaud children fighting climate change

GENEVA (22 March 2019) — UN experts on children's rights, human rights defenders and human rights and the environment today lauded the Human Rights Council's adoption of a [resolution](#) calling upon States "to provide a safe and empowering context for initiatives organized by young people and children to defend human rights relating to the environment."



Impact of enhanced awareness of children rights to participation (Iceland)

- **Children's Parliament**
 - Earlier this year new provision in the law on the children commissioner stipulates that Children's parliament should be held every other year, the first on the 20th of November 2019
 - The Children's Commissioner submits report inter alia on the implementation of the UN CRC which will be debated
 - The resolutions of the children's parliament will be introduced to the Government and the National Parliament
- **Government** that no major decision would be taken in matters concerning children
 - Without a “**best interest**” determination
 - Without **hearing children** and **give a due weight** to their views

Implementation of Art 12 in Public Decision-Making

- Over a decade ago Professor Laura Lundy of Queens University Belfast put forward a conceptualization on Art 12 which has been referred to as the **Lundy model**
- Firmly based in research evidence of children's experience in educational setting this new conceptualisation was developed with the aim of overcoming identified obstacles in implementing Art 12
- ✓ Adult concerns/scepticism:
 - ✓ lack of children's capacity to have meaningful input in decisions
 - ✓ undermining authority
 - ✓ too much effort

Prerequisite for participation

- ✓ The greatest challenge is need for a greater awareness of the fact that respecting children's views is not just a model of good practice or policy making but a **legally binding obligation**
- ✓ **A limited awareness of** successful implementation of Article 12 is indicative of a breach of Article 42 of the UNCRC, which requires States Parties to: “make the principles and provisions of the Convention widely known....to adults and children alike”
- ✓ Why is this paramount: **Article 12 cannot be viewed in isolation from other provisions of human rights in the Convention**

Understanding the context of Art 12

- Laura Lundy:

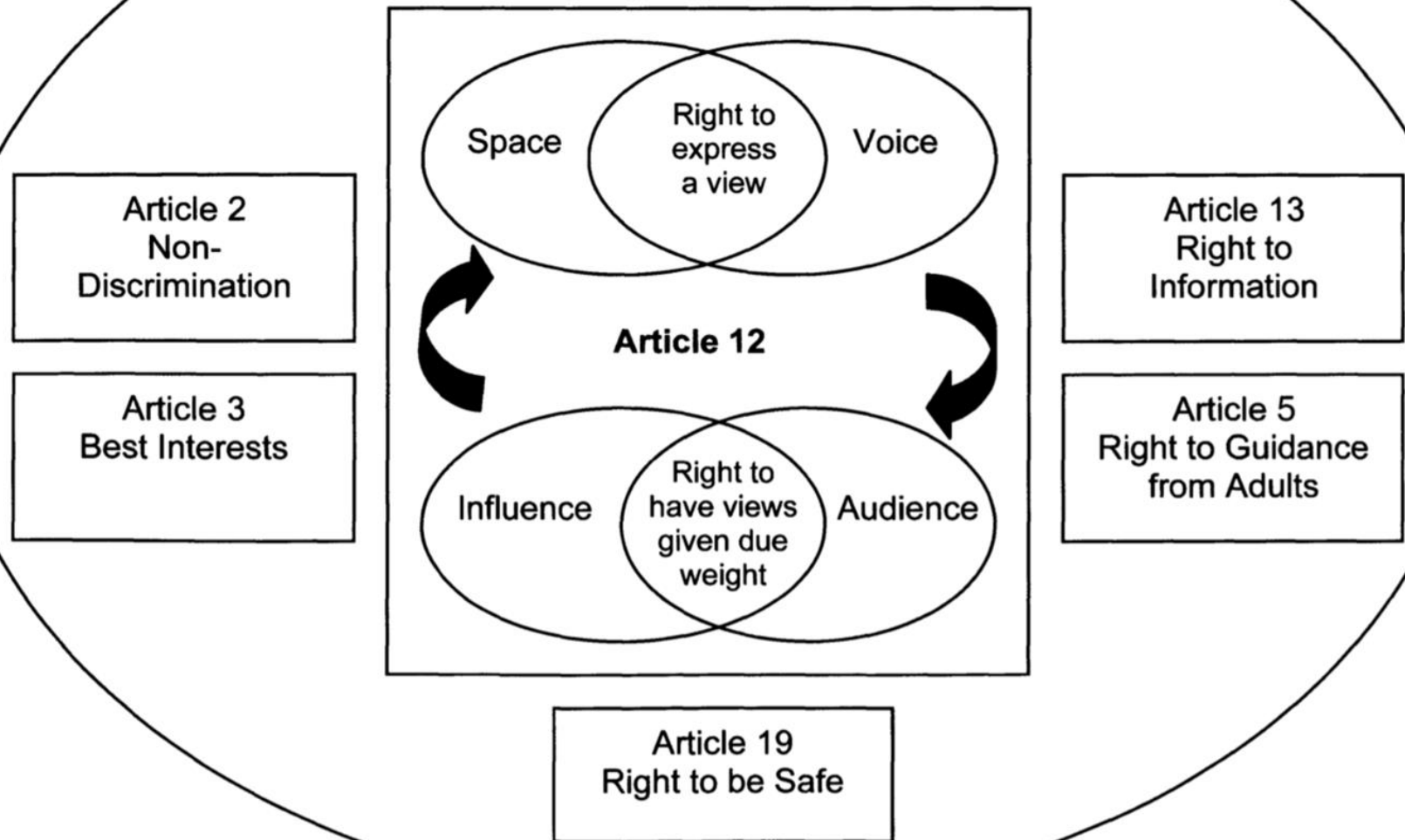
“A practical consequence of the indivisibility, interdependence and interconnectedness of all human rights is that the meaning of individual provisions of the UNCRC can only be understood when they are read and interpreted in conjunction with the other rights protected in the Convention”

- The Committee elaborated the same position in details in the General Comment no 12

Provisions of particular importance

- This indivisibility, interdependence and interconnectedness of the rights in UN CRC with regard to Art 12 are in particular:
- Article 2 (non-discrimination);
- Article 3 (best interests);
- Article 5 (right to guidance);
- Article 13 (right to seek, receive and impart information)
- Article 19 (protection from abuse)

UNCRC



Space

HOW: Provide a safe and inclusive space for children to express their views

- Have children's views been actively sought?
- Was there a safe space in which children can express themselves freely?
- Have steps been taken to ensure that all children can take part?

Voice

HOW: Provide appropriate information and facilitate the expression of children's views

- Have children been given the information they need to form a view?
- Do children know that they do not have to take part?
- Have children been given a range of options as to how they might choose to express themselves?

Audience

HOW: Ensure that children's views are communicated to someone with the responsibility to listen

- Is there a process for communicating children's views?
- Do children know who their views are being communicated to?
- Does that person/body have the power to make decisions?

Influence

HOW: Ensure that children's views are taken seriously and acted upon, where appropriate

- Were the children's views considered by those with the power to effect change?
- Are there procedures in place that ensure that the children's views have been taken seriously?
- Have the children and young people been provided with feedback explaining the reasons for decisions taken?

Public Decision-making in different context

The **General Comment on the right of the child to be heard (2009)** addresses implementation of Art 12 in different settings and context including the following:

- The family
- Alternative care settings
- Health care
- Education and schools
- In play recreation, sports and cultural activities
- In situations of violence
- Development of prevention strategies
- In immigration and asylum proceedings

Operationalizing child participation in the CoE International tools

- [Rec\(2012\)2](#) on the **participation** of children and young people under the age of 18
- Guidelines on **Child-friendly Justice** (2010);
- Rec (2011)12 on **Child-friendly social services**
- Guidelines on **Child-friendly health care** (2011)
- [Rec\(2005\)5](#) on the rights of children living in **residential institutions**;
- [Rec\(2006\)19](#) on policy to support **positive parenting**;
- Rec(2018)7 on the rights of the child in the digital environment
- ETS 210 The Lanzarote Convention (2010)
- [Rec\(2009\)10](#) on integrated national strategies for the protection of children from violence;
- ETS 160 European Convention on the exercise of children's rights (1996)

Child participation in CoE strategy

- Council of Europe **Strategy for the Rights of the Child** (2016-2021), the participation of all children is **one of the five priority areas**
- **The legal framework** (Conventions, Recommendations, Guidelines) sets the framework of involvement of children in any decision-making procedure having an effect on them
- **Child Participation Assessment Tool : Designed to support states in assessing progress:**
 - undertake a baseline assessment of current implementation of the recommendation [Rec\(2012\)2](#) on the **participation** of children and young people ;
 - help identify measures needed to achieve further compliance by states;
 - measure progress over time.

Examples of participatory rights

- Coe Rec(2005)5 on rights of children in residential institutions:
 - the procedure, organisation and individual **care plan** of the placement, including a **periodic review of the placement**, shall guarantee the rights of the child, notably the child's right to be heard;
 - the right to participate in decision-making processes concerning the child and **the living conditions in the institution**
- Coe Rec(2006)19 on policy to support positive parenting
 - The categorization of positive parenting: **nurture, structure, recognition and empowerment**
- The Lanzarote Convention (2010)
 - Encourage children in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children

Child participation on different levels

- Participation in social services delivery for children and families can be on different levels, both individually and as a group:
 - **consultative participation**, recognising that children have expertise and perspectives which need to inform and affect adult decision making;
 - **collaborative participation**, offering children the opportunity to be actively involved at any stage of decision making, initiatives, projects or services;
 - **child-led participation**, facilitating the initiative of children and their own advocacy in relation to the various activities and services established to meet their needs

CoE Rec. Child-friendly Social Services

Art 12 implementation in social service delivery

- In all processes where social services are provided to children, these should have the right to:
 - be informed in a child-friendly way about their rights to access social services, about services available as well as about the possible consequences of alternative course of action;
 - receive all relevant information about their situation;
 - be supported to express their views;
 - be listened to;
 - have their views taken into account in the decision-making process according to their age and level of maturity;
 - be informed about decisions taken and to what extent their views have been taken into account
- Participation should not only be perceived in terms of the evolving capacities of the child, the positive outcome in the future, but also in terms of the quality of the child's life in the present. Thus **children should be seen as they are today, not only as beings “in the making”**

Coe Guidelines Child-friendly health care, Art 12 implementation in health care

- **Two dimensional participation:** when a child, according to law
 - is **able to consent** to an intervention, the intervention may only be carried out after the child has given his or her free and informed consent
 - the child **does not have the legal capacity** to consent to an intervention, the opinion of the child shall be taken into account as an increasingly determining factor in proportion to his or her age and degree of maturity

Implementing Art 12 in Multi-agency interventions

- One of the greatest impacts of the CRC and its “operationalization” into diverse contexts of children’s live experiences is the convergence of child protection systems and services for child victims and children in vulnerable situations
- An important aspect of this development is enhanced awareness of the importance of child-friendly and multiagency response to child abuse with the aim of preventing re-victimisation of child victims of abuse, esp. sexual abuse

The importance of the child's narrative

- Children who are **victims of crime** often have difficulties in disclosing abuse
- The child's disclosure is however the **key for unlocking the case**, investigate, prosecute as well as ensure the child's protection and provide the appropriate services for the child
- This entails **the intervention of many agencies** such as: the child protection services, the police, health services, prosecution and courts
- How can Art 12 be implemented in this context?

Avoiding repetitive interviews

- The child victim should be ensured that his/her story is heard by all agencies
- Repeated interviews with the child, conducted in many location, by different people invariably are:
 - Re-victimization for the child
 - Harmful for the social and criminal investigation
- Art 3.1
 - 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**

Barnahus

Medical
Exams and
Evaluation

Joint Invest.
Interviews:
court statements/
CPS interviews

Victim
Therapy

Family
Counselling/
Support

Consultation
and advice to
local CPS

Education,
training and
research

Joint (investigative) interviews

- How do we ensure the child the necessary **space, voice, audience and influence** in multiagency, administrative and judicial context stipulated by Art 12.2?
 - Child-friendly environment, including interviewing room
 - Evidence based interview protocol to enhance reliability and evidential value of the child's narrative
 - Rapport building, ground rules, open ended questions etc
 - Trained (forensic) interviewers
 - Facility for representatives of all appropriate agencies to observe (IT- technology)
 - Recording of the interview
 - Rules of the “due process”

Space, voice, audience and influence

Testimonies for court hearings

- ✓ The Court Judge (prosecutor or police) is in charge of the procedure – the “due process”
- ✓ The Defence
- ✓ The Prosecution
- ✓ The Police
- ✓ The CPS representative
- ✓ The Child’s Legal Advocate
- ✓ The child’s disclosure is elicited by trained forensic interviewer according to evidence based interview protocol and videotaped



Child Abuse and Adult Justice

- **Adversities** that child victims of abuse experience:
 - **Multiple interviews** in different locations and the corresponding re-victimization of the child-victim
 - The months, even years of **waiting for the trials**, with one or even more appeals, puts the life of the child victim at halt and constant distress
 - **Hostile cross-examination**, intimidating and hammering of the child-witness in an un-friendly environment
- The novelty of Barnahus: integrating the two human rights principles: the “**best interest of the child**” and the “**due process**”