

THE COMMITTEE ON THE RIGHTS OF THE CHILD & FREEDOM OF EXPRESSION

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Introduction¹

The right to freedom of expression is protected in many international and regional treaties.² These treaties are applicable to children in their capacity as being part of ‘everyone’. The Convention on the Rights of the Child (hereafter: ‘the Convention’) protects the child’s right to free expression which is firmly-rooted throughout the whole of the Convention. The protection of the right to freedom of expression of children in particular can be seen as reaffirming that the general right to freedom of expression also applies to children. The main difference between provisions in many international treaties and the provisions in the Convention, is that the latter is tailored to children. This differentiation evoked a profound discussion on the formulation of the child’s right to freedom of expression. For instance, discussions on Article 17 of the Convention regarding the role of the mass media were characterized by a clash between two competing approaches. One that supported the free flow of information and one that supported a somewhat more paternalistic approach by preferring the protection of children from harmful information.³ However, this does not mean that the Convention provides absolutely no protection of children from harmful information. The purpose of this paper is to explore the work done by the monitoring body of the Convention, the Committee on the Rights of the Child (hereafter: ‘the Committee’), with regard to the right to freedom of expression.

The right to freedom of expression is firmly-rooted throughout the whole of the Convention. Although a contextual approach would be well suited for a discussion of the child’s right to freedom of expression, this paper discusses the child’s right to freedom of expression on an article-by-article basis to gain a structured overview of the Committee’s work in this field. First a short introduction of the Convention and the Committee and its activities will be given. This introduction will be followed by a discussion of Article 13 of the Convention which lays down a general right to freedom of expression for children. Then, Article 12 of the Convention will be subject to close scrutiny. Article 12 of the Convention provides children with

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² *Inter alia* Article 19 of the Universal Declaration of Human Rights, Article 19 of the Convention on Political and Civil Rights, Article 9 of the African Charter on Human and Peoples’ Rights, Article 10 of the European Convention on Human Rights and Article 13 of the American Convention on Human Rights.

³ Adam Lopatka (Chairman-Rapporteur) in: Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the rights of the child. Volume 1*, New York and Geneva: United Nations 2007, p. xli.

the right to express their views freely in all matters affecting them. This article can be seen as both an elaboration of the right of freedom of expression as provided for by Article 13 of the Convention and a general instruction to States Parties to ensure that children are active participants in society. Although Article 12 of the Convention appears before Article 13 in the Convention, this section of the paper starts with a discussion of the latter as the subject of this study is freedom of expression and Article 13 provides a general right to freedom of expression. Article 17 of the Convention will be the final article to be discussed. This article provides instructions to States Parties with regard to the media.

1. Convention on the Rights of the Child and the Committee on the Rights of the Child

1.1 Convention on the Rights of the Child

The Convention was adopted on 20 November 1989 and entered into force on 2 September 1990. It sets out the civil, political, economic, social and cultural rights of the child.⁴ Except for the United States and Somalia, all United Nations members have ratified the Convention which makes it the most widely ratified human rights convention.⁵ It is also the first binding instrument in international law that deals with the rights of children. The convention comes with two optional protocols: the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography⁶ and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.⁷

⁴ Article 1 of the Convention defines a child as a human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

⁵ The United States Supreme Court, however, has mentioned the Convention *inter alia* in a case concerning capital punishment for crimes committed by juveniles in *Donald P. Roper, Superintendent, Potosi Correctional Center, Petitioner v. Christopher Simmons*, 543 U.S. 551 (2005).

⁶ Adopted on 25 May 2000 and entered into force on 18 January 2002.

⁷ Adopted on 25 May 2000 and entered into force on 12 February 2002.

1.2 Committee on the Rights of the Child

Article 43 of the Convention establishes the Committee on the Rights of the Child as the monitoring body of the Convention. The Committee currently has eighteen members.⁸ Article 43(2) of the Convention provides that members of the Committee ought to be “experts of high moral standing and recognized competence in the field covered by this Convention”. Article 43(2) of the Convention thus demands specific expertise, whereas several other treaties stipulate only general expertise in the fields of human rights.⁹ The Committee examines the progress made by the States Parties in achieving the realization of the obligations undertaken in the Convention on the basis of reports submitted by the States Parties.¹⁰ The focus of the reports should be on the progress made by the State Parties. Besides providing information on legislative developments and the situation *de jure*, States Parties should give due attention to analysing the situation *de facto* in the State Party.¹¹

The Committee draws up concluding observations on the basis of the country reports. These concluding observations reflect the main points of discussion and indicate the issues that require follow-up by the States Parties. The concluding observations in some cases include concrete suggestions and proposals to catalyse the realizations of the obligations that are laid down in the Convention.

2. Theoretical underpinnings of freedom of expression

2.1 The argument from democracy and participation

Several arguments are often put forward to justify the principle of freedom of expression.¹² The argument from democracy and participation holds a prominent place in the Convention which is best reflected by

⁸ Article 43(2) of the Convention. The committee initially had 10 members, but this number was raised by means of resolution 50/155 of 21 December 1995 which approved the amendment to Article 43, paragraph 2, of the Convention replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002.

⁹ For instance, members of the Committee on Economic, Social and Cultural Rights and members of the Committee Against Torture are required to be experts in the general field of human rights.

¹⁰ Article 44 (1) of the Convention provides that “States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights: (a) Within two years of the entry into force of the Convention for the State Party concerned; (b) Thereafter every five years”. General guidelines for initial reports can be found in UN Doc. CRC/C/5, general guidelines for periodic reporting can be found in UN Doc. CRC/C/58.

¹¹ UN Doc. CRC/C/188, p. 4-5. More information on the procedure before the Committee can be found in Wouter Vandenhoele, *The procedures before the UN human rights treaty bodies: divergence or convergence?*, Antwerp: Intersentia 2004. For a case study of the monitoring of children’s rights see: Tara M. Collins, ‘The Significance of Different Approaches to Human Rights Monitoring: A Case Study of Child Rights’, *The International Journal of Human Rights* 2008-April, p. 159-187.

¹² E.g. Eric Barendt, *Freedom of Speech*, New York: Oxford University Press 2005, p. 6.

Article 12 of the Convention providing children with the right to express their views freely in all matter affecting the child. For instance, the Committee recommended Georgia to “support forums for children’s participation, such as the Youth Parliament”.¹³ Besides the argument from participation, the Committee has emphasized that the child’s right to freedom of expression and participatory rights are beneficial for the child to reach maturity.¹⁴

In 2006 the Committee published recommendations on the implementation of Article 12 of the Convention that were the outcome of the Day of General Discussion on the Right of the Child to be Heard which sought to explore the meaning of Article 12 of the Convention. The Day of General Discussion is a public meeting of representatives of Governments, United Nations bodies and specialised agencies, non-governmental organizations, national human rights institutions as well as individual experts. Over 200 participants from 45 different countries participated during the day, including some 30 children from different parts of the world. The recommendations on the implementation of Article 12 of the Convention were prefaced by general remarks on the participation of children:

To speak, to participate, to have their views taken into account.’ These three phases describe the sequence of the enjoyment of the right to participate from a functional point of view. The new and deeper meaning of this right is that it should establish a new social contract, one by which children are fully recognised as rights holders who are not only entitled to receive protection but also have the right to participate in all matters affecting them, a right which can be considered as the symbol for their recognition as rights holders. This implies, in the long term, changes in political, social, institutional and cultural structures.¹⁵

Article 12 of the Convention is thus part of a more general agenda to put children on the map as fully recognised right holders. The Committee notes that the exercise of the child’s right to be heard is a crucial element of participation in society.¹⁶ Children ought to be full subjects of right. Article 12 of the Convention which provides children with the right to express their views freely in all matters affecting them, and Article 13 of the Convention which provides children with the right to freedom of expression, both envisage full participation of children according to the Committee.¹⁷ In this respect the Committee frequently points out in its concluding observations that children ought to be active participants in society

¹³ UN Doc. CRC/C/48/3, para. 26 (Concluding observations: Georgia 2009).

¹⁴ UN Doc. CRC/C/43/3, para. 987 (Day of General Discussion on the Right of the Child to be Heard 2006).

¹⁵ UN Doc. CRC/C/43/3, para. 988 (Day of General Discussion on the Right of the Child to be Heard 2006).

¹⁶ UN Doc. CRC/C/GC/12, para 13 (General Comment No. 12 The Right of the Child to be Heard 2009).

¹⁷ UN Doc. CRC/C/57, para. 67 (Concluding observations: Nigeria 1996).

and that traditional attitudes concerning the roles of children are obstacles to full participation.¹⁸ In the case of Grenada the Committee was concerned that “the full implementation of article 12 of the Convention continues to be limited by traditional practices, culture and attitudes which promote the philosophy that ‘children should be seen and not heard’ and that ‘children are the property of their parents’”.¹⁹ This may especially be true for girls.²⁰ The Committee has urged States Parties to pay special attention to the right of the girl child as sexist stereotypes and patriarchal values undermine and place severe limitations on the enjoyment of the right set forth in Article 12 of the Convention.²¹ No child is to be excluded from participation. Children with disabilities should be enabled to participate in society just as other children would participate.²² The same applies to indigenous children.²³

Although the Convention does not contain an explicit right to participate, it does contain a cluster of articles that are considered ‘participation articles’.²⁴ Articles 13 to 17 of the Convention are regarded as the participatory rights of children by the Committee. This follows from several concluding observations by the Committee, for instance concluding observations on Costa Rica: “In the light of articles 12 to 17 and other related articles of the Convention, the Committee recommends that further efforts be made to ensure the implementation of the participatory rights of children, especially their rights to participate in the family, at school, within other institutions and in society in general”.²⁵ The rights enshrined in these articles are interrelated. For instance, the Committee has stated in its concluding observations on Turkey that “in the light of articles 13 and 15 of the Convention, the Committee recommends that the State Party ensure that children can form, join and leave associations freely and, in particular, that young persons who have reached the legal age for being employed can form, join and leave trade unions freely”.²⁶

¹⁸ In its concluding observations the Committee frequently refers to traditional practices and children’s participation rights. For example: UN Doc. CRC/C/38, para. 114 (Concluding observations: Poland 1995); UN Doc. CRC/C/90, para. 178 (Concluding observations: Mexico 1999); UN Doc. CRC/C/90, para. 211 (Concluding observations: Mali 1999); UN Doc. CRC/C/94, para. 225 (Concluding observations: Costa Rica 2000); UN Doc. CRC/C/94, para. 320 (Concluding observations: The former Yugoslav Republic of Macedonia 2000); UN Doc. CRC/C/94, para. 432 (Concluding observations: South Africa 2000); UN Doc. CRC/C/111, para. 556 (Concluding observations: Uzbekistan 2001); UN Doc. CRC/C/133, para. 283 (Concluding observations: Madagascar 2004); UN Doc. CRC/C/146, para. 322 (Concluding observations: Belize 2005); UN Doc. CRC/C/42/3, para. 317 (Concluding observations: United Republic of Tanzania 2006); UN Doc. CRC/C/48/3, para. 25 (Concluding observations: Georgia 2009) and UN Doc. CRC/C/48/3, para. 26 (Concluding observations: Bulgaria 2009).

¹⁹ UN Doc. CRC/C/94, para. 398 (Concluding observations: Grenada 2000).

²⁰ UN Doc. CRC/C/94, para. 103 (Concluding observations: Lesotho 2001); UN Doc. CRC/C/137, para. 414 (Concluding observations: India 2004) and UN Doc. CRC/C/143, para. 339 (Concluding observations: Equatorial Guinea 2005).

²¹ UN Doc. CRC/C/43/3, para. 993 (Day of General Discussion on the Right of the Child to be Heard 2006).

²² UN Doc. CRC/C/GC/9, para. 32-33 (General Comment No. 9 The Rights of Children with disabilities).

²³ UN Doc. CRC/C/GC/11, para. 20 (General Comment No. 11 Indigenous children and their rights under the Convention).

²⁴ Yanghee Lee, ‘Child Participation and Access to the United Nations Convention on the Rights of the Child’ in Éric Puybaret, *International Justice for Children*, Strasbourg: Council of Europe Publishing 2008.

²⁵ UN Doc. CRC/C/94, para. 225 (Concluding observations: Costa Rica 2000). See also: UN Doc. CRC/C/46, para. 107 (Concluding observations: Germany 1995); UN Doc. CRC/C/57, para. 67 (Concluding observations: Nigeria 1996). UN Doc. CRC/C/73, para. 97 (Concluding observations: Ireland 1998); UN Doc. CRC/C/90, para. 181 (Concluding observations: Mexico 1999) and UN Doc. CRC/C/94, para. 373 (Concluding observations: Peru 2000).

²⁶ UN Doc. CRC/C/108 para. 118 (Concluding observations: Turkey 2001).

Another example is the Committee's interpretation of the relationship of Articles 12 and 13 of the Convention in a report on the Day of General Discussion on the Right of the Child to be Heard:

The Committee reaffirms the links between article 12 and article 13, as the right to receive and impart information is an important pre-requisite to realize participation of children. The Committee urges States Parties to consider developing child friendly information in relation to all matters affecting children.²⁷

The Committee notes in its General Comment on Article 12 of the Convention that Article 12 and 13 of the Convention are strongly linked. However, they should not be confused as they elaborate different rights. Article 13 of the Convention obligates States Parties to refrain from interference in the expression of views, or in access to information, while protecting the right of access to means of communication and public dialogue. On the other hand, Article 12 is related to the right of expression of views specifically about matters that affect the child, and the right to be involved in actions and decision that impact on his or her life. Article 12 thus imposes an obligation on States Parties to provide a legal framework and mechanisms to facilitate this right. However, the Committee notes that "creating an environment of respect for children to express their views, consistent with article 12, also attributes towards building children's capacities to exercise their right to freedom of expression".²⁸

2.2 The argument from self fulfilment

Besides the argument from participation, the Committee has emphasized that there is also a personal component to freedom of expression: "the Committee notes the importance of encouraging opportunities for child participation as a tool to stimulate the evolving capacities of the child".²⁹ In this particular context, child participation is seen as a means to stimulate the evolving capacities of the child. The Committee takes a utilitarian approach. Readers that are familiar with freedom of expression theory might also recognize the argument from self fulfilment as an argument for the principle of freedom of expression. Although it is hard to make a clear distinction, freedom of expression is thus in the Committee's view both part of a cluster of participatory rights and a means to stimulate the evolving capacities of the child.

²⁷ UN Doc. CRC/C/43/3, para. 995 (Day of General Discussion on the Right of the Child to be Heard 2006).

²⁸ UN Doc. CRC/C/GC/12, para 10 (General Comment No. 12 The Right of the Child to be Heard 2009).

²⁹ UN Doc. CRC/C/43/3, para. 987 (Day of General Discussion on the Right of the Child to be Heard 2006).

The Committee has noted another useful aspect of child participation apart from it being a way to stimulate the evolving capacities of the child. In its report of the Day of General Discussion on the Right of the Child to be Heard, the Committee indicated that a participatory family structure where the child can freely express views plays a role in the prevention of domestic violence and abuse.³⁰

3. Article 13 – The child’s right to freedom of expression

Article 13 of the Convention recognizes the child’s general right to freedom of expression. Article 13 of the Convention reads:

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

As to children, the Committee emphasizes that it is not enough that important principles like freedom of expression are reflected in constitutions as applying to ‘everyone’. In its guidelines for periodic reporting, the Committee notes that “States Parties are requested to provide information on the measures adopted to ensure that the civil rights and freedoms of children set forth in the Convention, in particular those covered by articles 7, 8, 13 to 17 and 37 (a), *are recognized by law specifically in relation to children*”.³¹ Article 13 of the Convention is not a general right to freedom of expression that applies to children, but a specific right to freedom of expression for children. This is reflected by several concluding observations by the Committee, for instance on Sri Lanka: “With respect to the implementation of articles 12, 13 and 15 of the Convention, the Committee recommends that consideration be given by the State Party to facilitate children’s participation and the respect of their views in decisions affecting them, especially in the family,

³⁰ UN Doc. CRC/C/43/3, para. 1002 (Day of General Discussion on the Right of the Child to be Heard 2006).

³¹ UN Doc. CRC/C/58, para. 48.

at school and in courts”.³² The Committee emphasised the foregoing and extended the relationships in which Article 13 of the Convention should be respected in its concluding observations on Hungary: “Regarding the implementation of article 13 of the Convention, the Committee is concerned about the insufficient measures undertaken by the State Party to promote children’s right to participation within the family, at school, *and in society in general*”.³³ In its concluding observations on Myanmar the Committee indicated that legal means should not be avoided in order to fully implement Article 13 of the Convention.³⁴ The Committee has recommended Uzbekistan to “take all effective measures, including enacting or rescinding legislation where necessary, to ensure that the child’s freedom of expression and the right of access to information are guaranteed and implemented”.³⁵ This again indicates that the Committee regards the child’s right to freedom of expression as a right that should be tailored to children and that legislation may be required to realize this tailored right in practice.

Although most international treaties protect against state interference, children require a positive obligation to be placed on the state to fully enjoy their right to freedom of expression.³⁶ Moreover, Article 13 of the Convention does not even mention interference by public authority, unlike for instance Article 10 of the European Convention on Human Rights. As Article 13 of the Convention does not contain such a differentiation, horizontal effect or *Drittwirkung* of Article 13 of the Convention cannot be precluded beforehand. The Committee is not clear about whether or not Article 13 of the Convention has horizontal effect. The Committee often points at non governmental entities like parents or teachers that need to be educated or made aware of the child’s participatory rights, but the Committee’s recommendations are always directed to States Parties.

3.1 A derivative of Article 19 of the International Covenant on Civil and Political Rights

Article 13 of the Convention closely resembles Article 19 of the International Covenant on Civil and Political Rights (ICCPR) which itself draws on Article 19 of the Universal Declaration of Human Rights.³⁷

³² UN Doc. CRC/C/43, para. 165 (Concluding observations: Sri Lanka 1995). See also: UN Doc. CRC/C/50, para. 256 (Concluding observations: Germany 1996) and UN Doc. CRC/C/94, para. 225 (Concluding observations: Costa Rica 2000).

³³ UN Doc. CRC/C/79, para. 40 (Concluding observations: Hungary 1998)

³⁴ UN Doc. CRC/C/57, para. 171 (Concluding observations: Myanmar 1996). See also: UN Doc. CRC/C/146, para. 112 (Concluding observations: Albania 2005).

³⁵ UN Doc. CRC/C/111, para. 561 (Concluding observations: Uzbekistan 2001). See also: UN Doc. CRC/C/132, para. 616 (Concluding observations: Kazakhstan 2003).

³⁶ Geraldine van Bueren, *Child rights in Europe*, Strasbourg: Council of Europe Publishing 2007, p. 82.

³⁷ Article 19 ICCPR provides: “(1) Everyone shall have the right to hold opinions without interference.

This is not a coincidence: Article 19 ICCPR was used as a point of departure in the process of drafting Article 13 of the Convention.³⁸ From the legislative history it is clear that the United Nations Children's Fund (UNICEF) has argued to change 'rights and reputations of others' into 'rights or reputations of others' in Article 13(2)(a) of the Convention in order to remain consistent with the ICCPR.³⁹ Also, when the German Democratic Republic took the floor during the drafting process and argued that Article 13 of the Convention should include an additional restriction to the freedom of expression which would protect 'the spiritual and moral well-being of the child', the delegate of the United States argued that extra restrictions of freedom of expression should be avoided and that this restriction did not appear anywhere in the International Covenant on Civil and Political Rights. It would thus be unfair to impose children alone with this additional restriction. Furthermore, the delegate pointed out that the paternalistic flavour of the amendment was against the spirit of the convention.⁴⁰ Article 13 of the Convention is thus clearly a derivative of Article 19 of the International Covenant on Civil and Political Rights. It is also provides for an expansion of the child's right to freedom of expression.

3.2 The right to hold opinions

Article 13 of the Convention differs from Article 19 ICCPR as Article 13 of the Convention does not explicitly provide for the right to hold opinions. Although Finland, Poland, Senegal and the United States of America during the drafting process of the Convention proposed to include that "the child shall have the right to hold opinions without interference",⁴¹ the right to hold opinions did not make it into the final version of Article 13 of the Convention. The *travaux préparatoires* do not reveal why this proposal was not adopted. Sharon Detrick has suggested that the drafters of the Convention were possibly of the opinion that this right was already covered by Article 12 of the Convention concerning the right of the child to

(2)Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (3)The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a)For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

³⁸ Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the rights of the child. Volume 1*, New York and Geneva: United Nations 2007, p. 448 (para. 36), p. 449 (para. 44), p. 450.

³⁹ Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the rights of the child. Volume 1*, New York and Geneva: United Nations 2007, p. 450.

⁴⁰ Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the rights of the child. Volume 1*, New York and Geneva: United Nations 2007, p. 451.

⁴¹ Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the rights of the child. Volume 1*, New York and Geneva: United Nations 2007, p. 449.

freely express its views and/or Article 14 of the Convention concerning among other things the child's right to freedom of thought.⁴²

On the other hand, Herdís Thorgeirsdóttir has argued that the right to freedom of opinion is implied in Article 13(1).⁴³ In its concluding observations the Committee gives rise to support the theory that the right to freedom of opinion is at least incorporated into the whole of the Convention. For instance, the Committee has recommended in its concluding observations on Ethiopia "that greater efforts be made to promote the participation of children in family, school and social life, and the effective enjoyment of their fundamental freedoms, including the *freedom of opinion*, expression and association".⁴⁴

It is not clear from the concluding observations of the Committee whether 'the right to freedom of opinion' refers to the freedom to *hold* opinions or the freedom to *express* opinions. In its concluding observations on the United Kingdom, the Committee speaks of "the right of the child to express his/her opinion" in the context of Article 12 of the Convention.⁴⁵ In other cases the Committee only mentions 'freedom of opinion'.⁴⁶ The freedom to hold opinions without interference as enshrined in Article 19 ICCPR is an absolute right. Article 19(3) ICCPR does provide for a clause with allowed restrictions, but this clause does not apply to the right to hold opinions. The status of the holding of opinions under the Convention is not completely clear. This means that it is also not clear what regime should be applied to the holding of opinions by children and whether or not the holding of opinions can be restricted or limited by state authorities. If for instance the freedom to hold opinions is included in Article 13 or Article 15 of the Convention, then a regime of restrictions applies that is different from the regime in Article 19 ICCPR which does not allow restrictions.

3.3 The right to seek, receive and impart information

⁴² Sharon Detrick, *A commentary on the United Nations Convention on the Rights of the Child*, Den Haag: Martinus Nijhoff Publishers 1999, p. 236.

⁴³ Herdís Thorgeirsdóttir, H., 'Article 13: The right to freedom of expression' in A. Alen, *A commentary on the United Nations Convention on the Rights of the Child*, United Nations 2006.

⁴⁴ Emphasis added. UN Doc. CRC/C/62, para. 89 (Concluding observations: Ethiopia 1997).

⁴⁵ UN Doc. CRC/C/38, para. 213 (Concluding observations: United Kingdom of Great Britain and Northern Ireland 1995). See also UN Doc. CRC/C/46, para. 63 (Ukraine 1995) and UN Doc. CRC/C/108, para. 183 (Concluding observations: Democratic Republic of Congo 2001).

⁴⁶ UN Doc. CRC/C/87, para. 117 (Concluding observations: Honduras 1999); UN Doc. CRC/C/87, para. 231 (Concluding observations: Nicaragua 1999); UN Doc. CRC/C/90, para. 49 (Concluding observations: Venezuela 1999); UN Doc. CRC/C/90, para. 181 (Concluding observations: Mexico 1999); UN Doc. CRC/C/94, para. 373 (Concluding observations: Peru 2000); UN Doc. CRC/C/97, para. 425 (Concluding observations: Malta 2000); UN Doc. CRC/C/100, para. 622 (Concluding observations: The Comores 2000); and UN Doc. CRC/C/140, para. 543 (Concluding observations: Democratic People's Republic of Korea 2004) and CRC/C/143, para. 343 (Concluding observations: Equatorial Guinea 2005).

The child's right to freedom of expression includes the right to freedom to seek, receive and impart information and ideas of all kinds. This right is an important pre-requisite to realise participation of children.⁴⁷ This freedom implies a passive and an active approach by States Parties. On the one hand, States Parties are required to refrain from interfering with the free process of seeking, receiving and imparting information. On the other hand, States Parties are required to actively enable children to receive and impart information. The child's right to freedom to seek, receive and impart information and ideas of all kinds is closely related to Article 17 of the Convention. Article 17 of the Convention emphasises the important function performed by the mass media: "States *shall ensure* that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health". Article 17 of the Convention also indicates a positive obligation for States Parties. Article 17 of the Convention will be discussed separately in section 5 of this paper.

3.4 Positive obligations

The assertion that the child's right to freedom of expression implies a positive obligation for the States Parties to actively enable children to enjoy their right to freedom of expression is supported by an analysis of concluding observations by the Committee: "Regarding the implementation of article 13 of the Convention, the Committee is concerned about the *insufficient measures undertaken* by the State Party to promote children's right to participation within the family, at school, and in society in general".⁴⁸ Another reflection of Article 13 imposing a positive obligation to promote child participation and to guarantee effective enjoyment of the right to freedom of expression can be found in concluding observations on Mexico:

With regard to the State Party's initiatives to promote children's participatory rights, the Committee is of the opinion that these efforts need to be improved and strengthened. In the light of articles 12, 13, 14 and 15 of the Convention, the Committee recommends that further *measures be undertaken to promote the participation of children in the family*, at school and in other social institutions, as well as to guarantee their *effective enjoyment of the fundamental freedoms, including those of opinion, expression and association*.⁴⁹

⁴⁷ UN Doc. CRC/C/43/3, para. 995 (Day of General Discussion on the Right of the Child to be Heard 2006).

⁴⁸ UN Doc. CRC/C/79 para. 40 (Concluding observations: Hungary 1998). See also in particular with regards to Article 13 of the Convention: UN Doc. CRC/C/146 para. 112 (Concluding observations: Albania 2005).

⁴⁹ Emphasis added. UN Doc. CRC/C/90, para. 178 (Concluding observations: Mexico 1999).

Measures that are to be undertaken by States Parties can be distinguished by either measures that are aimed at effectively enabling children to exercise their to freedom of expression and measures that are aimed at raising awareness of the child's right to freedom of expression. Measures that are aimed at raising awareness of child's right to freedom of expression will be discussed hereafter.

Participatory rights of children and their implications need to be fully understood by the population at large in order for children to effectively participate in society. This requires public awareness of the rights of children. The Committee puts forward several suggestions to raise awareness. First, awareness can be raised through information campaigns.⁵⁰ States Parties may also be required to develop a systematic approach to increase public awareness through the media.⁵¹ Another way to make the Convention widely known is to integrate the rights of the child into the curriculum of schools.⁵² In a couple of cases the Committee also mentions groups of people that need to be sensitized and educated about the civil rights and freedoms of every child. These groups include: institutions,⁵³ parliamentarians and government officials,⁵⁴ professional groups,⁵⁵ schools,⁵⁶ communities,⁵⁷ families,⁵⁸ parents and children.⁵⁹

3.5 Restrictions and limitations

Article 13(2) of the Convention sets the conditions according to which the right to freedom of expression can be restricted. Restrictions should both be provided by law and be necessary for either the respect of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals. This phrasing closely resembles the provisions on the restriction of freedom of expression as enshrined in Article 19(2) of the International Covenant on Civil and Political Rights.

With regard to the requirement of 'provided by law' the Committee has argued that the legal restrictions should be clear. In one of its concluding observations on Iran the Committee stated that "although the

⁵⁰ For instance: UN Doc. CRC/C/46, para. 107 (Concluding observations: Germany 1995) and UN Doc. CRC/C/69, para. 110 (Concluding observations: Australia 1997);

⁵¹ UN Doc. CRC/C/84 para. 169 (Concluding observations: Yemen 1999);

⁵² UN Doc. CRC/C/54, para. 176 (Concluding observations: Nepal 1996). Also see UN Doc. CRC/C/57, para. 156 (Concluding observations: Concluding observations: United Kingdom of Great Britain and Northern Ireland: Dependent Territories (Hong Kong) 1996); UN Doc. CRC C/80, para. 132 (Concluding observations: Kuwait 1998).

⁵³ UN Doc. CRC/C/97 para. 424 (Concluding observations: Malta 2000).

⁵⁴ UN Doc. CRC/C/87 para. 48 (Concluding observations: Barbados 1999) and UN Doc. CRC/C/87 para. 185 (Concluding observations: Chad 1999).

⁵⁵ UN Doc. CRC/C/87 para. 48 (Concluding observations: Barbados 1999) and UN Doc. CRC/C/87 para. 185 (Concluding observations: Chad 1999).

⁵⁶ UN Doc. CRC/C/97 para. 424 (Concluding observations: Malta 2000).

⁵⁷ UN Doc. CRC/C/97 para. 424 (Concluding observations: Malta 2000).

⁵⁸ UN Doc. CRC/C/97 para. 424 (Concluding observations: Malta 2000).

⁵⁹ UN Doc. CRC/C/87 para. 48 (Concluding observations: Barbados 1999) and UN Doc. CRC/C/87 para. 185 (Concluding observations: Chad 1999).

freedoms of expression and assembly are formally recognized in the Constitution, the exercise of these rights by children are restricted by *vaguely worded limitation clauses* (i.e. ‘in accordance with Islamic criteria’), which potentially exceed the permitted restrictions set out in paragraph 2 of articles 13 and 15 of the Convention”.⁶⁰ In 2005, Iran was under scrutiny again. The following can be read in the Committee’s concluding observations on Iran:

The Committee remains concerned that, although freedom of expression and of assembly is formally recognized in the Constitution, the protection of this freedom is restricted by the requirement to interpret it in accordance with Islamic principles without clarifying at the outset the basis on which an action or expression is considered to be in keeping with such principles.

The Committee reiterates its recommendation, expressed in its previous concluding observations, that the State Party establish clear criteria for determining whether a given action or expression is in accordance with Islamic law and the Convention in order to avoid arbitrary interpretations.⁶¹

Whereas the Committee in 2000 cautiously argued that Iran’s restriction clauses were not clear, in 2005 the Committee was more rigorous when it pointed out that the unclear provisions can bring about arbitrary interpretations.

Limitations of the right to freedom of expression on which the Committee has taken a critical stance include: stringent registration and licensing requirements for the media and publications,⁶² strict administrative control of student councils and school regulations,⁶³ closing down of Internet chat rooms,⁶⁴ and disproportionate use of force by police authorities.⁶⁵ The Committee has also stated in its concluding observations on the Republic of Korea that it “is concerned at the limitations on students’ freedom of expression and association due to *strict administrative control of student councils and school regulations* that limit or prohibit outside political activities of students in elementary and secondary schools”.⁶⁶

With regard to Internet access in Uzbekistan, the Committee has noted the following:

In the light of article 13 (the child’s right to seek, receive and impart information) and article 17 of the Convention (the right of access to information, including information and material

⁶⁰ UN Doc. CRC/C/97, para. 54 (Concluding observations: Islamic Republic of Iran 2000).

⁶¹ UN Doc. CRC/C/146, para. 478-479 (Concluding observations: Islamic Republic of Iran 2005).

⁶² UN Doc. CRC/C/111, para. 560 (Concluding observations: Uzbekistan 2001).

⁶³ UN Doc. CRC/C/124, para. 114 (Concluding observations: Republic of Korea 2003).

⁶⁴ UN Doc. CRC/C/124, para. 114 (Concluding observations: Republic of Korea 2003).

⁶⁵ UN Doc. CRC/C/146, para. 330 (Concluding observations: Belize 2005).

⁶⁶ Emphasis added. UN Doc. CRC/C/124, para. 114 (Concluding observations: Republic of Korea 2003).

from a diversity of cultural, national and international sources), the Committee is concerned that stringent registration and licensing requirements for the media and publications, as well as restrictions on Internet access, do not comply with article 13, paragraph 2, of the Convention.⁶⁷

The right to seek, receive and impart information is limited when information is injurious to the well-being of the child. The Committee regularly recommends States Parties to protect children from either 'injurious' or 'harmful' information.⁶⁸ Article 17(e) of the Convention provides that States Parties are encouraged to develop appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18 of the Convention. This means that States Parties have to strike a balance between protecting children from harmful information and the child's right to freedom of expression including the right to seek, receive and impart information. The Committee considers pornography and 'violence' or 'brutal violence' as either injurious⁶⁹ or harmful information.⁷⁰ Since 2005, the Committee also regards 'racism' as harmful information.⁷¹ Since 2005, the Committee also regards 'racism' as harmful information.⁷²

4. Article 12 – Respect for the views of the child

Article 12 of the Convention reads:

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

⁶⁷ Emphasis added. UN Doc. CRC/C/111, para. 560 (Concluding observations: Uzbekistan 2001).

⁶⁸ See for instance: UN Doc. CRC/C/62, para. 113 (Concluding observations: Panama 1997).

⁶⁹ UN Doc. CRC/C/73, para. 119 (Concluding observations: Federated States of Micronesia 1998); UN Doc. CRC/C/84, para. 141 (Concluding observations: Sweden 1999); UN Doc. CRC/C/87, para. 80 (Concluding observations: St. Kitts and Nevis 1999) and CRC/C/97, para. 108 (Concluding observations: Georgia 2000).

⁷⁰ UN Doc. CRC/C/97, para. 366 (Concluding observations: Cambodia 2000); UN Doc. CRC/C/100, para. 518 (Concluding observations: Marshall Islands 2000); UN Doc. CRC/C/103, para. 279 (Concluding observations: Lithuania 2001) and UN Doc. CRC/C/140 para. 606 (Concluding observations: Democratic People's Republic of Korea 2004).

⁷¹ UN Doc. CRC/C/146, para. 113 (Concluding observations: Albania 2005); UN Doc. CRC/C/146, para. 186 (Concluding observations: Luxembourg 2005); UN Doc. CRC/C/146, para. 253 (Concluding observations: Austria 2005); CRC/C/153 para. 58 (Concluding observations: Australia 2006) CRC/C/153 para. 426 (Concluding observations: Finland 2006); UN Doc. CRC/C/41/3 para. 554 (Concluding observations: Lithuania 2006) and UN Doc. CRC/C/41/3 para. 625 (Concluding observations: Azerbaijan 2006).

⁷² UN Doc. CRC/C/146, para. 113 (Concluding observations: Albania 2005); UN Doc. CRC/C/146, para. 186 (Concluding observations: Luxembourg 2005); UN Doc. CRC/C/146, para. 253 (Concluding observations: Austria 2005); CRC/C/153 para. 58 (Concluding observations: Australia 2006) CRC/C/153 para. 426 (Concluding observations: Finland 2006); UN Doc. CRC/C/41/3 para. 554 (Concluding observations: Lithuania 2006) and UN Doc. CRC/C/41/3 para. 625 (Concluding observations: Azerbaijan 2006).

representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 12 of the Convention is one of four general principles of the Convention.⁷³ The other three general principles of the Conventions are laid down in Articles 2, 3 and 6 of the Convention. These articles concern non-discrimination, the protection of the best interest of the child and the right to life. In a report on the Day of General Discussion on The Right of the Child to be Heard, the Committee stated with regard to Article 12 of the Convention as a general principle that “this means that the implementation of article 12 is an integral part of the implementation of the other articles of the Convention, as well as a free-standing right of the child”.⁷⁴ Implementation of Article 12 of the Convention cannot be made contingent on budgetary constraints.⁷⁵ General principles require to be made widely known to and understood by adults and children alike, Article 12 of the Convention is not an exception. In its concluding observations on Honduras, the Committee indicated that:

It is important that such information [to make the principles and provisions of the Convention widely known to and understood by adults and children alike] should be prepared *in the languages of children belonging to minorities or indigenous groups and should reach the people living in the remote rural areas*. Training material and programmes about the rights of the child should also be prepared and provided to personnel and professionals working with children, including judges, teachers, those working in institutions for children and law enforcement officials.⁷⁶

In order to make the principles and provisions of the Convention widely known to and understood by adults and children alike, States Parties ought to pay special attention to children belonging to minorities or indigenous groups. People in remote rural areas should not be neglected, they should also be reached. The Committee does not refer to Article 30 of the Convention which protects ethnic, religious or linguistic minorities or persons of indigenous origin to enjoy their own culture, to profess and practise their own religion, and to use their own language. Although the Committee refrains from mentioning Article 30 of the Convention, there is indeed a connection between the child’s right to freedom of expression and the States Party’s duties to promote freedom of expression and Article 30 of the Convention.

⁷³ This is acknowledged in most Concluding observations and reaffirmed in: UN Doc. CRC/C/43/3, para. 982 (Day of General Discussion on the Right of the Child to be Heard 2006).

⁷⁴ UN Doc. CRC/C/43/3, para. 982 (Day of General Discussion on the Right of the Child to be Heard 2006).

⁷⁵ UN Doc. CRC C/34, para. 74 (Concluding observations: Indonesia 1994).

⁷⁶ UN Doc. CRC C/34, para. 50 (Concluding observations: Honduras 1994), emphasis added. Also see UN Doc. CRC C/50, para. 68 (Concluding observations: Mongolia 1996) and UN Doc. CRC/C/54, para. 255 (Concluding observations: Cyprus 1996).

As to the training material and programmes about the rights of the child for personnel and professionals working with children, the Committee has also mentioned lawyers, military officials and personnel, teachers, school administrators, health personnel, including psychologists, social workers, officials of central or local administrations, personnel of child-care institutions, parliamentarians and government officials and the mass media.⁷⁷ Parents in particular should be educated about the importance of children's participation.⁷⁸ The Committee recommended States Parties to further promote parent education on parenting and to disseminate information to parents on the rights enshrined in the Convention, in particular on the right of the child to express his or her views, as they are of benefit to the whole family.⁷⁹

4.1 The child who is capable of forming his or her own views

States Parties have to assure to the child who is capable of forming his or her own views the right to express those views freely. The Convention here focuses on the child who is capable of forming his or her own views. This part of Article 12 of the Convention can be seen as a limitation of the right of the child to express his or her own views, for the scope of Article 12 of the Convention seems to be limited. The Secretariat during the drafting process of the Convention added:

“Because article 7 [*Article 12 of the Convention*] introduces a new restriction on the freedom of expression, namely, that the child be capable of forming his/her own views, there arises a possible conflict with article 7a [*Article 13 of the Convention*] which itself follows article 19, paragraphs 2 and 3, of the International Covenant on Civil and Political Rights”⁸⁰

However, this approach underestimates the real meaning of Article 12 of the Convention. The Committee notes that the phrase “capable of forming his or her views” should not be seen as a limitation, but rather as an obligation for States Parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible.⁸¹ Article 12 of the Convention gives children the right to have their views taken into account because it also provides that the views of children are to be given due weight in accordance with the age and maturity of the child. The Committee often refers to Article 12 of the Convention in the context of the ‘right of the child to be *heard*’ or the ‘*respect for the views of the child*’. Article 12 of the

⁷⁷ UN Doc. CRC/C/73, para. 49 (Concluding observations: Libyan Arab Jamahiriya 1998); UN Doc. CRC C/80, para. 132 (Concluding observations: Kuwait 1998) and UN Doc. CRC C/87, para. 185 (Concluding observations: Chad 1998).

⁷⁸ UN Doc. CRC C/69, para. 110 (Concluding observations: Australia 1997) and UN Doc. CRC C/79, para. 89 (Concluding observations: Democratic People's Republic of Korea 1998).

⁷⁹ UN Doc. CRC/C/43/3, para. 1000 (Day of General Discussion on the Right of the Child to be Heard 2006).

⁸⁰ Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the rights of the child. Volume 1*, New York and Geneva: United Nations 2007, p. 442.

⁸¹ UN Doc. CRC/C/GC/12, para 20 (General Comment No. 12 The Right of the Child to be Heard 2009).

Convention broadens the scope of the child's right to freedom of expression by adding a right to be heard and in some situations, depending on the maturation of the child, by giving due weight to the child's view. Articles 12 and 13 of the Convention together provide the an extensive right to freedom of expression in comparison to other treaties that protect the right to freedom of expression. With regards to the aforementioned, Geraldine van Bueren has written the following:

The duty on the State Party is to assure the right to freedom of expression in 'all matters affecting the child' and as a result places duties on the state in relation to matter traditionally relegated to the private sphere. In this respect articles 12 and 13 ought to be read together. Thus the right to freedom of expression enshrined in the Convention on the Rights of the Child would appear to be broader than other treaty provisions enshrining the right to freedom of expression. [...] Together Articles 5,12 and 13 of the Convention shifts the onus from what decisions children are not competent to take to how children can participate and which parts of decisions they are able to take. Underlying this change in focus is the rejection of perceptions of children as partly formed human beings and their acceptance in international law as individuals who are capable as being as rational as adults.⁸²

Article 12 of the Convention provides that due weight should be given to the views of the child in accordance with the age and maturity of the child. In the case of Denmark the Committee has stated that "[...] the State Party is urged to effectively promote and encourage respect for the views of children below the age of 12 years, according to his/her evolving capacities, and in light of article 12 of the Convention".⁸³ In this case the views of children below the age of 12 years are to be respected. But in this case the Committee was focused on the right of the child to be heard in legal proceedings, and not so much at the right of the child to be heard in a broad sense. The same accounts for concluding observations on Eritrea, in which the age of 15 years is mentioned in the context of the right to be heard in the Eritrean Transitional Civil Code.⁸⁴ In the 2009 General Comment on Article 12 the Committee emphasises that Article 12 of the Convention imposes no age limit on the right of the child to express her or his views.⁸⁵ The Committee notes that "full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication including, play, body, language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences".⁸⁶

⁸² G. van Bueren, *The international law on the rights of the child*, Den Haag: Martinus Nijhoff Publishers 1998, p. 137.

⁸³ UN Doc. CRC/C/80, para. 63 (Concluding observations: Denmark 2001).

⁸⁴ UN Doc. CRC/C/132, para. 49 (Concluding observations: Eritrea 2003); See also: UN Doc. CRC/C/137, para. 555 (Concluding observations: Slovenia 2004) and UN Doc. CRC/C/146, para. 105 (Concluding observations: Albania 2005).

⁸⁵ UN Doc. CRC/C/GC/12, para 21 (General Comment No. 12 The Right of the Child to be Heard 2009).

⁸⁶ UN Doc. CRC/C/GC/12, para 21 (General Comment No. 12 The Right of the Child to be Heard 2009).

The Committee distinguishes the right to be heard of an individual child and the right to be heard as applied to a group of children, for instance a class of schoolchildren.⁸⁷ The task of assessing a child's age and maturity is a difficult task. This task is even more difficult when children express themselves collectively. States Parties should however consider children as a group to be heard, and the Committee "strongly recommends that States Parties exert all efforts to listen to or seek the views of those children speaking collectively".⁸⁸

4.2 Matters affecting the child

Article 12 of the Convention is not clear about what matters affect the child and when the child is free to express its views. The second paragraph of Article 12 of the Convention indicates that children shall have the "opportunity to be heard in any judicial and administrative proceedings affecting the child". This may suggest that Article 12 of the Convention should be narrowly interpreted as providing children with a right to participation only in formal procedures, e.g. adoption or a legal separation of parents. But the opposite is true. Besides the judicial and administrative proceedings mentioned in Article 12(2) of the Convention, the Committee has made clear that participation should also take place at home and in families,⁸⁹ in schools,⁹⁰ in care institutions,⁹¹ social institutions,⁹² in social life,⁹³ (traditional) communities,⁹⁴ in the work place,⁹⁵ in decision-making processes,⁹⁶ in policy development,⁹⁷ in political

⁸⁷ UN Doc. CRC/C/GC/12, para 10 (General Comment No. 12 The Right of the Child to be Heard 2009).

⁸⁸ UN Doc. CRC/C/GC/12, para 10 (General Comment No. 12 The Right of the Child to be Heard 2009).

⁸⁹ UN Doc. CRC/C/GC/12, para 90 (General Comment No. 12 The Right of the Child to be Heard 2009).

⁹⁰ UN Doc. CRC/C/GC/12, para 105 (General Comment No. 12 The Right of the Child to be Heard 2009).

⁹¹ UN Doc. CRC/C/80 para. 170 (Concluding observations: Thailand 1998); UN Doc. CRC/C/84 para. 76 (Concluding observations: Belize 1999); UN Doc. CRC/C/94 para. 398 (Concluding observations: Grenada 2000); UN Doc. CRC/C/97 para. 105 (Concluding observations: Georgia 2000); UN Doc. CRC/C/97 para. 478 (Concluding observations: Suriname 2000); UN Doc. CRC/C/100 para. 253 (Concluding observations: United Kingdom of Britain and Northern Ireland – Overseas territories 2000); UN Doc. CRC/C/103 para. 337 (Concluding observations: Lesotho 2001); UN Doc. CRC/C/108 para. 385 (Concluding observations: United Republic of Tanzania 2001); UN Doc. CRC/C/124, para. 357 (Concluding observations: Czech Republic 2003); UN Doc. CRC/C/132, para. 50 (Concluding observations: Eritrea 2003); UN Doc. CRC/C/132, para. 178 (Concluding observations: Zambia 2003); UN Doc. CRC/C/133, para. 538 (Concluding observations: Georgia 2004); UN Doc. CRC/C/137, para. 56 (Concluding observations: Indonesia 2004); UN Doc. CRC/C/143, para. 340 (Concluding observations: Equatorial Guinea 2005) and UN Doc. CRC/C/48/3, para. 27 (Concluding observations: Bulgaria 2009).

⁹² UN Doc. CRC/C/90 para. 211 (Concluding observations: Mali 1999); UN Doc. CRC/C/94 para. 154 (Concluding observations: Sierra Leone 2000) and UN Doc. CRC/C/97 para. 424 (Concluding observations: Malta 2000).

⁹³ UN Doc. CRC/C/67 para. 63 (Concluding observations: Ethiopia 1997); UN Doc. CRC/C/67 para. 194 (Concluding observations: Syrian Arab Republic 1997); UN Doc. CRC/C/84 para. 117 (Concluding observations: Honduras 1999) and UN Doc. CRC/C/100 para. 513 (Concluding observations: Marshall Islands 2000).

⁹⁴ UN Doc. CRC/C/87 para. 79 (Concluding observations: St. Kitts and Nevis 1999); UN Doc. CRC/C/94 para. 398 (Concluding observations: Grenada 2000); UN Doc. CRC/C/97 para. 424 (Concluding observations: Malta 2000); UN Doc. CRC/C/97 para. 478 (Concluding observations: Suriname 2000); UN Doc. CRC/C/100 para. 253 (Concluding observations: United Kingdom of Britain and Northern Ireland – Overseas territories 2000); UN Doc. CRC/C/100 para. 622 (Concluding observations: The Comores 2000); UN Doc. CRC/C/103 para. 455 (Concluding observations: Palau 2001); UN Doc. CRC/C/108 para. 385 (Concluding observations: United Republic of Tanzania 2001); UN Doc. CRC/C/111 para. 427 (Concluding observations: Gambia 2001); CRC/C/114 para. 409 (Concluding observations: Malawi 2002); UN Doc. CRC/C/132, para. 50 (Concluding observations: Eritrea 2003); UN Doc. CRC/C/132, para. 178 (Concluding observations: Zambia 2003); UN Doc. CRC/C/133, para. 203 (Concluding observations: Pakistan 2004); UN Doc. CRC/C/133, para. 468 (Concluding observations: Bangladesh 2004); UN Doc. CRC/C/137, para. 56 (Concluding observations: Indonesia 2004); UN Doc. CRC/C/143, para. 340 (Concluding observations: Equatorial Guinea 2005); UN Doc.

activities,⁹⁸ in society at large⁹⁹ and all spheres that affect children's lives.¹⁰⁰ An analysis of the Committee's concluding observations leads to the conclusion that the Committee has stretched Article 12 of the Convention over time by generalising ('society at large' and 'all spheres that affect children's lives') the relationships in which Article 12 of the Convention should be complied with. Article 12(2) of the Convention should thus be understood as a particularization of the general right of the child to freely express his or her views as enshrined in Article 12(1) of the Convention, which does not rule out a broad interpretation of the right of the child to freely express his or her views. The drafting history of Article 12 of the Convention also gives evidence in support of the former. The Polish proposal of the Convention contained only the word "matters", not "all matters". The word "all" was added on initiative of the United States delegation to ensure that the child's right to express his or her views were to be subjected to the limits of a list, as contained in the Polish proposal.¹⁰¹

With regard to the broad definition of "matters" the Committee notes:

While the Committee supports a broad definition of "matters", which also covers issues not explicitly mentioned in the Convention, it recognizes the clause "affecting the child", which was added in order to clarify that no general political mandate was intended. The practice, however, including the World Summit for Children, demonstrates that a wide interpretation of matters affecting the child and children helps to include children in the social processes of their community and society. *Thus, States parties should carefully listen to children's views wherever their perspective can enhance the quality of solutions.*¹⁰²

CRC/C/143, para. 484 (Concluding observations: Antigua and Barbuda 2005) and UN Doc. CRC/C/48/3, para. 27 (Concluding observations: Bulgaria 2009).

⁹⁵ UN Doc. CRC/C/GC/12, para. 116 (General Comment No. 12 The Right of the Child to be Heard 2009).

⁹⁶ UN Doc. CRC/C/103 para. 337 (Concluding observations: Lesotho 2001) and UN Doc. CRC/C/124, para. 115 (Concluding observations: Republic of Korea 2003).

⁹⁷ UN Doc. CRC/C/137, para. 630 (Concluding observations: Japan 2004).

⁹⁸ UN Doc. CRC/C/124, para. 115 (Concluding observations: Republic of Korea 2003).

⁹⁹ UN Doc. CRC/C/73 para. 97 (Concluding observations: Ireland 1998); UN Doc. CRC/C/79 para. 38 (Concluding observations: Hungary 1998); UN Doc. CRC/C/79 para. 159 (Concluding observations: Japan 1998); UN Doc. CRC/C/80 para. 105 (Concluding observations: Bolivia 1998); UN Doc. CRC/C/84 para. 169 (Concluding observations: Yemen 1999); UN Doc. CRC/C/84 para. 115 (Concluding observations: Honduras 1999); UN Doc. CRC/C/84 para. 183 (Concluding observations: Chad 1999); UN Doc. CRC/C/94 para. 225 (Concluding observations: Costa Rica 2000); UN Doc. CRC/C/108 para. 114 (Concluding observations: Turkey 2001); UN Doc. CRC/C/118, para. 331 (Concluding observations: Switzerland 2002); UN Doc. CRC/C/121, para. 57 (Concluding observations: Argentina 2002); UN Doc. CRC/C/124, para. 167 (Concluding observations: Italy 2003); UN Doc. CRC/C/137, para. 280 (Concluding observations: Germany 2004); UN Doc. CRC/C/140, para. 188 (Concluding observations: Rwanda 2004); UN Doc. CRC/C/140, para. 331 (Concluding observations: Liberia 2004); UN Doc. CRC/C/140, para. 407 (Concluding observations: Myanmar 2004); UN Doc. CRC/C/143, para. 197 (Concluding observations: Croatia 2005); UN Doc. CRC/C/150, para. 233 (Concluding observations: Bosnia and Herzegovina 2005); UN Doc. CRC/C/150, para. 691 (Concluding observations: Costa Rica 2005) and UN Doc. CRC/C/150, para. 573 (Concluding observations: Russian Federation 2005).

¹⁰⁰ CRC/C/114 para. 281 (Concluding observations: Mozambique 2002); UN Doc. CRC/C/114, para. 531 (Concluding observations: Andorra 2002); UN Doc. CRC/C/118, para. 555 (Concluding observations: Switzerland 2002); UN Doc. CRC/C/146, para. 323 (Concluding observations: Belize 2005); UN Doc. CRC/C/146, para. 402 (Concluding observations: Bahamas 2005); UN Doc. CRC/C/150, para. 58 (Concluding observations: Saint Lucia 2005) and UN Doc. CRC/C/150, para. 768 (Concluding observations: Yemen 2005).

¹⁰¹ Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the rights of the child. Volume 1*, New York and Geneva: United Nations 2007, p. 440, para. 78-79.

¹⁰² Emphasis added. UN Doc. CRC/C/GC/12, para. 13 (General Comment No. 12 The Right of the Child to be Heard 2009).

4.3 Positive obligations

Similar to Article 13 of the Convention, Article 12 of the Convention requires States Parties to take positive action. States Parties ought to assure the child who is capable of forming his or her own views, the right to express those views freely. This requires a new stance towards children on the family level but also on the level of society as a whole. The Committee clearly regards the family as the cornerstone of society as a participatory family structure, where the child can freely express views, provides an important model to encourage child participation in the wider society.¹⁰³ Besides the family, schools play an important role in order to enhance and promote child participation. The Committee encourages the active consultation of children in the development and evaluation of school curricula, including in the development of methodology, as greater participation is conducive to increasing the involvement of children in the learning process.¹⁰⁴ The Committee calls on States Parties to provide teachers with training on participatory teaching methodologies and its benefits, and on paying special attention to the needs of vulnerable children, whose difficult situation may lead them to dropping out of school.¹⁰⁵

On the community level, the Committee urges States Parties to move from an events based approach to the right to participation, to the systematic inclusion of children in policy matters to ensure that they can express their views and effectively participate in all matters affecting them.¹⁰⁶ To put it simply, the Committee wishes for structural accommodation of child participation. In its concluding observations the Committee distinguishes different types of general measures that States Parties are to undertake. Depending on the situation in the country in question, these measures are recommended by the Committee mostly in general formulations. These measures are: the promotion and facilitation of respect for the views of the child, providing educational information (or awareness raising) and training, and regularly reviewing the extent to which children's views are taken into consideration.¹⁰⁷ For instance, as noted in concluding observations on El Salvador:

In light of article 12 of the Convention, the Committee recommends that the State Party: (a) Strengthen its efforts to promote, within the family, schools and other institutions, respect for the views of children, especially girls, and facilitate their participation in all matters affecting them; (b) Undertake national awareness-raising campaigns to change traditional

¹⁰³ UN Doc. CRC/C/43/3, para. 1002 (Day of General Discussion on the Right of the Child to be Heard 2006).

¹⁰⁴ UN Doc. CRC/C/43/3, para. 1005 (Day of General Discussion on the Right of the Child to be Heard 2006).

¹⁰⁵ UN Doc. CRC/C/43/3, para. 1007 (Day of General Discussion on the Right of the Child to be Heard 2006).

¹⁰⁶ UN Doc. CRC/C/43/3, para. 1014 (Day of General Discussion on the Right of the Child to be Heard 2006).

¹⁰⁷ The Committee likes to see that children are involved in monitoring the implementation of the Convention: UN Doc. CRC/C/43/3, para. 1008 (Day of General Discussion on the Right of the Child to be Heard 2006).

authoritarian attitudes; (c) Continue to strengthen children's participation in councils, forums, children's parliaments and the like; (d) Regularly review the extent to which children's views are taken into consideration, including their impact on relevant policies and programmes.¹⁰⁸

The above cited concluding observations include three elements: the promotion of child participation, awareness raising of child participation and regular review of the extent to which children's views are taken into account. In some cases the Committee recommends States Parties to seek assistance from, among others, UNICEF in order to enable children to express views and to have those views taken into consideration.¹⁰⁹ NGO's can also play an important role to further promote child participation and facilitate international exchanges of experience and best practices.¹¹⁰

5. Article 17 – The media and diversity

Article 17 of the Convention reads:

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;

¹⁰⁸ UN Doc. CRC/C/140, para. 50 (Concluding observations: El Salvador 2004).

¹⁰⁹ UN Doc. CRC/C/73, para. 49 (Concluding observations: Libyan Arab Jamahiriya 1998); UN Doc. CRC C/80, para. 132 (Concluding observations: Kuwait 1998); UN Doc. CRC/C/97, para. 53 (Concluding observations: Islamic Republic of Iran 2000); UN Doc. CRC/C/97, para. 186 (Concluding observations: Jordan 2000); UN Doc. CRC/C/103, para. 321 (Concluding observations: Egypt 2001); UN Doc. CRC/C/103, para. 404 (Concluding observations: Saudi Arabia 2001); UN Doc. CRC/C/108, para. 455 (Concluding observations: Bhutan 2001); UN Doc. CRC/C/111, para. 180 (Concluding observations: Oman 2001); UN Doc. CRC/C/111, para. 303 (Concluding observations: Qatar 2001); UN Doc. CRC/C/111, para. 557 (Concluding observations: Uzbekistan 2001); UN Doc. CRC/C/114, para. 60 (Concluding observations: Lebanon 2002); UN Doc. CRC/C/114, para. 354 (Concluding observations: Chile 2002); UN Doc. CRC/C/114, para. 484 (Concluding observations: Bahrein 2002); UN Doc. CRC/C/118, para. 282 (Concluding observations: Tunisia 2002); UN Doc. CRC/C/118, para. 395 (Concluding observations: United Arab Emirates 2002); UN Doc. CRC/C/132, para. 485 (Concluding observations: Morocco 2003); UN Doc. CRC/C/41/3, para. 62 (Concluding observations: Brazil 2006); UN Doc. CRC/C/146, para. 323 (Concluding observations: Belize 2005); UN Doc. CRC/C/146, para. 469 (Concluding observations: Islamic Republic of Iran 2005) and UN Doc. CRC/C/153, para. 141 (Concluding observations: Algeria 2006).

¹¹⁰ UN Doc. CRC/C/43/3, para. 1017 (Day of General Discussion on the Right of the Child to be Heard 2006).

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Besides Articles 12 and 13 of the Convention, Article 17 of the Convention which recognizes the child's right of access to information and the right to receive information and the importance of the mass media in these processes, is of importance in this study to the interpretation of the right to freedom of expression by Committee on the Rights of the Child. Article 17 of the Convention, which can be seen as an elaboration of the right to information, indicates that States Parties "*shall ensure* that the child has access to information and material from a diversity of national and international sources".¹¹¹ Article 17 of the Convention is thus an order directed at the States Parties to provide for a diverse supply of information. The Committee explicitly recognizes that the freedom of expression also includes the right to receive information.¹¹² Article 17 of the Convention underlines the important function performed by the mass media. In 1996 the Committee acknowledged in a report on the Day of General Discussion on The Child and the Media, that the media is important for offering children the possibility of expressing themselves. This requires that there exist media which communicate with children.¹¹³

Article 17 of the Convention is closely related to Article 12 of the Convention, or the participatory rights of children in general. The media should be part of a systematic approach to increase public awareness of the participatory rights of children in order to make these rights and its implications fully understood by the population at large.¹¹⁴ The Committee recommended Ecuador to "strengthen its efforts to ensure that children's views are given due consideration in the family, schools, courts and relevant administrative and other settings, *as well as in the media*, in accordance with article 12 of the Convention".¹¹⁵

The Convention lacks a definition of 'mass media'. Also the Committee leaves us wondering with regard to its conception of 'mass media'. The Committee seems to consider only traditional media when talking of mass media as it separates mass media from the Internet in at least three of its concluding

¹¹¹ Emphasis added.

¹¹² UN Doc. CRC/C/118, para. 283 (Concluding observations: Tunisia 2002); UN Doc. CRC/C/44/3, para. 508 (Concluding observations: Malaysia 2008).

¹¹³ UN Doc. CRC/C/50, p. 81 (Day of General Discussion on the Child and the Media 1996).

¹¹⁴ See for instance: UN Doc. CRC/C/84 para. 169 (Concluding observations: Yemen 1999).

¹¹⁵ Emphasis added. UN Doc. CRC/C/150 para. 420 (Concluding observations: Ecuador 2005).

observations.¹¹⁶ When the Internet is mentioned in concluding observations, it is mentioned in the context of pornography, violence, racism or otherwise harmful content.¹¹⁷ The concluding observations on Luxembourg in 2005 are illustrative of this tendency:

The Committee recommends that the State Party continue to take all appropriate measures to effectively protect children from being exposed to violence, racism and pornography through mobile technology, video movies, games and other technologies, including the Internet. The Committee further suggests that the State Party develop programmes and strategies to use mobile technology, video advertisements and the Internet as a means for raising awareness among both children and parents of information and material injurious to the well-being of children.¹¹⁸

Internet is regarded as a source of harmful information. Furthermore, the Internet is portrayed as a means for raising awareness among both children and parents of information and material injurious to the well-being of children.

In 2008, the International Telecommunication Union (ITU) did a statistical study on the use of information and communication technology by the world's children and youth.¹¹⁹ The ITU notes that there are many types of policies which could be pursued to promote the use of ICT by children. *Inter alia*, providing access to computers and the Internet in schools and making changes to school and higher education curricula to encourage the ICT and language skills that are needed in a global Information Society. "An important aim of such policies is to raise a generation that is capable of using ICT and can benefit from its use (for instance, by utilizing information available on the Internet and communicating with others)".¹²⁰ These considerations by the ITU illustrate the importance the Internet has in gathering information and communicating with others, two aspects that are key to freedom of expression. In contrast, the Committee does not regard the Internet, at least not explicitly, as a means by which children can express themselves.

In the case of Maldives, the Committee was concerned about children's access to appropriate information from a diversity of sources, especially those aimed at the promotion of the child's social, spiritual and moral well-being and physical and mental health. It recommended the State Party to provide children

¹¹⁶ UN Doc. CRC/C/146, para. 253 (Concluding observations: Austria 2005) and UN Doc. CRC/C/150, para. 697 (Concluding observations: Costa Rica 2005) and UN Doc. CRC/C/41/3 (Concluding observations: Thailand 2006).

¹¹⁷ UN Doc. CRC/C/108, para. 515 (Concluding observations: Monaco 2001); UN Doc. CRC/C/111, para. 138 (Concluding observations: Greece 2001); UN Doc. CRC/C/146, para. 49 (Concluding observations: Sweden 2005) and UN Doc. CRC/C/146, para. 186 (Concluding observations: Luxembourg 2005).

¹¹⁸ UN Doc. CRC/C/146, para. 186 (Concluding observations: Luxembourg 2005). See also: UN Doc. CRC/C/153, para. 427 (Concluding observations: Finland 2006)

¹¹⁹ International Telecommunication Union, *Use of information and communication technology by the world's children and youth. A statistical compilation*, June 2008, available at: <http://www.itu.int/ITU-D/ict/material/Youth_2008.pdf>.

¹²⁰ International Telecommunication Union, *Use of information and communication technology by the world's children and youth. A statistical compilation*, June 2008, p. 43.

living in the atolls with access to children's books and magazines, including through online media.¹²¹ The Committee does well, as it acknowledges the great reach the Internet has to offer. But, this again is an example of the Committee considering the Internet as just a mere outlet of information and not a communicative tool or interactive environment.

Platforms like for instance social networking websites may indeed impose dangers to children, but at the same time these platforms enable children to form groups with a shared interest.¹²² The child's rights to freedom of association and to freedom of peaceful assembly, as enshrined in Article 15 of the Convention, does not end where the analogue world transcends into the digital world. Nor does the child's right to freedom of expression. The Committee under appreciates the Internet as a way for children to express their views and to associate and assemble themselves. It is not clear why the Committee takes such a restricted view on the Internet by considering the Internet as a mere outlet and not so much as an interactive environment that facilitates two-way traffic.

5.1 Diversity

Article 17 of the Convention urges for access to information and material from a diversity of national and international sources. In a couple of cases the Committee also points at promoting the development and accessibility of a wide variety of information reflecting the cultural diversity within State Parties.¹²³ In the case of Croatia the Committee was concerned "at the lack of adequate measures to encourage the mass media to disseminate information that would promote a spirit of understanding of differences".¹²⁴ Diversity does not only lead to a broad spectrum of information, but may also promote peace as it promotes a spirit of understanding of differences.

The child's right to seek, receive and information and ideas of all kinds implicates pluralism at the supply side on the marketplace of information. The absence of pluralism in the activities of the major organs of the mass media limits the freedom of the child to receive information, this is recognized by the Committee

¹²¹ UN Doc. CRC/C/45/3, para. 151 (Concluding observations: Maldives 2007).

¹²² The story of Tess Chapin, a 15-year-old from New York, illustrates this. She was grounded for five weeks after coming home too late. She started a popular Facebook group and assembled with other children to make a statement. See: Susan Dominus, 'A Facebook Movement, Against Mom and Dad', *The New York Times*, January 15 2010, available at: <<http://www.nytimes.com/2010/01/16/nyregion/16bigcity.html>>.

¹²³ UN Doc. CRC/C/111, para. 560 (Concluding observations: Uzbekistan 2001); UN Doc. CRC/C/114, para. 139 (Concluding observations: Greece 2002); Doc. CRC/C/143, para. 203 (Concluding observations: Croatia 2005) and Doc. CRC/C/146, para. 478 (Concluding observations: Islamic Republic of Iran 2005).

¹²⁴ UN Doc. CRC/C/143, para. 202 (Concluding observations: Croatia 2005).

in its concluding observations on the Federal Republic of Yugoslavia.¹²⁵ Traditionally there have been two approaches to ensure pluralism or diversity of content. (1) Diversity can be ensured within one specific medium, and (2) it can be ensured through a combination of multiple independent media within a particular sector.¹²⁶ The Committee has not engaged in what constitutes pluralism.

Article 17(c) of the Convention provides that States Parties shall encourage the production and dissemination of children's books. These books should be disseminated all over the country. In the case of the Marshall Islands, the Committee recommended that the State Party reinforces measures for the production of programmes and books for children and disseminate them within the country, in particular the outer islands.¹²⁷ The Committee has also recommended this to Lithuania in 2001 and 2006.¹²⁸

5.2 Limitation: protection from harmful content

Article 17(e) of the Convention provides that States Parties shall encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18 of the Convention.¹²⁹ The right to receive information is not an absolute right. The importance of free access to information often goes hand in hand with the importance of children not being exposed to pornography, violence, racism or otherwise harmful content. Pornography is often being mentioned by the Committee as a reflection of harmful content, frequently in relation to the Internet. Whereas the mass media are often depicted as very important in the process of ensuring that the child has access to information, the Internet is less prominent in discussion of access to information.

¹²⁵ UN Doc. CRC/C/50, para. 91 (Concluding observations: Federal Republic of Yugoslavia 1996).

¹²⁶ Peggy Valcke, *Digitale diversiteit: Convergentie van media-, telecommunicatie- en mededingingsrecht*, Ghent: Larcier 2004, p. 124.

¹²⁷ UN Doc. CRC/C/100, para. 518 (Concluding observations: Marshall Islands 2000).

¹²⁸ UN Doc. CRC/C/103, para. 279 (Concluding observations: Lithuania 2001) and UN Doc. CRC/C/41/3, para. 554 (Concluding observations: Lithuania 2006).

¹²⁹ Article 18(1) of the Convention provides that "States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern".

6. Conclusion

The right to freedom of expression as enshrined in the Convention of the Rights of the Child is part of a cluster of participatory rights. The Committee also treats those rights as if they were a cluster. This implicates that the Committee's approach to the different rights enshrined in Articles 12, 13 and 17 of the Convention may seem as amalgamating rights that are then hard to distinguish. Article 13 of the Convention provides children with at least the same level of protection as Article 19 of the International Covenant on Civil and Political Rights, as the former is a derivative of the latter. The status of the 'right to hold opinions', however, is not clear. This causes indistinctness as to the regime that should be applied to the holding opinions and whether or not the holding of opinions may be restricted or limited by state authorities.

Article 12 of the Convention adds to the protection of the child's right to freely express himself or herself. This article provides that States Parties 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 committee has a broad view of what matters affect the child. These matters are not limited to legal or procedural matters. By generalizing and broadening its understanding of what matters affect the child, the Committee has broadened the protection of the right of the child to express his or her views. As Article 12 of the Convention also provides that the views of the child are to be respected, the Convention of the Rights of the Child presumably provides children with the most extensive protection of the freedom of speech in comparison to other international treaties.

For children to effectively exercise their right to freedom of expression, families, schools, communities and societies need to adapt themselves. The Committee acknowledges this and emphasises that the participatory rights of children, including the rights to freedom of expression, need to be promoted. This may be achieved through parent education on parenting and by disseminating information on the rights enshrined in the Convention or training and education in general, but also through information campaigns in the media. Another way to make the participatory rights of children widely known is to integrate the rights of the child into the curriculum of schools. The Committee has also stressed that the child's right to freedom of expression is a right that should be tailored to children.

The right to access of information has its foundations in both Article 13 and Article 17 of the Convention. Article 17 of the Convention implies diversity at the level of information supply. Diversity does not only lead to a broad spectrum of information, but may also promote peace as it promotes a spirit of understanding of differences. In a couple of cases the Committee has mentioned a lack of pluralism in the media landscape, but unfortunately the Committee has never elaborated on what exactly constitutes pluralism. The child's right to access of information is limited when harmful information is involved. The Committee is clear about what constitutes harmful information: violence, pornography and racism. The media and the Internet are often mentioned in the context of harmful information, and not so much as platforms to effectively enable children to express themselves. The Committee often regards the media and the Internet as mere outlets for information. Especially with regard to the Internet, the Committee takes a conservative stance and does not fully appreciate the conversational aspect of the Internet. Furthermore, the Committee does not consider the Internet when it discusses the right to access to information. It is time for the Committee to recognise the full potential the Internet has to offer to further advance the child's right to freedom of expression.