

ORIGINAL ARTICLE

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The Committee on the Rights of the Child and Article 12: Applying the Lundy model to treaty body recommendations

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Abstract

Article 12 of the United Nations (UN) Convention on the Rights of the Child (CRC) requires that states afford children the opportunity, subject to certain qualifications, to express their views on all matters that affect them. Alongside the substantive, procedural and normative significance of this right, Article 12 both reflects and contributes to progressive understandings of childhood more generally; it recognizes children as agentic beings ‘with integrity and personality and the ability to participate freely in society and articulate a view’. Nevertheless, the fulfilment of this legal right is often not realized, requiring ongoing efforts to help translate it into practice. This article examines how the UN Committee on the Rights of the Child (CommCRC), through recommendations to state parties issued as part of its monitoring function, can assist, or hinder the realization of Article 12. The primary argument advanced is that when issuing recommendations, the CommCRC ought to draw on the Lundy Model of Child Participation as an organizing concept- one utilized to weave together the substance of their recommendations in ways more instructive, useful, and impactful than the current approach.

Keywords: Convention on the Rights of the Child; Lundy Model; right to be heard; participation

1. The chasm between the potential and realization of Article 12

Defined as one of the four general principles of the United Nations Convention on the Rights of the Child,¹ Article 12 ‘ensures respect for the child as an actor in his or her everyday life whose views should be considered in all decisions that affect him or her’.² Procedurally, it also ‘provides a means to ensure further implementation of children’s rights in all matters affecting children, empowering them to act for their rights and challenge abuses’.³ In addition, Article 12 both reflects and contributes to progressive understandings of childhood more generally. Prior to the adoption of the CRC, a widely held view was that children were ‘adults in waiting’.⁴ Informed, in part, by insights from developmental psychology, children, according to this school of thought, are ‘natural rather than social phenomena and this naturalness includes an inevitable process of

¹1989 United Nations Convention on the Rights of the Child, UNTS 1577.

²W. Vandenhoe, G. E. Türkelli and S. Lembrechts, *Children’s Rights: A Commentary on the Convention on the Rights of the Child and Its Protocols* (2015), 143.

³*Ibid.*

⁴J. Qvortrup, ‘The Waiting Child’, (2003) 11 *Childhood* 267.

maturation⁵ towards an idealized, fixed end.⁶ Whilst on this journey, children lack many of the characteristics associated with adulthood, such as independence, competence, and agency.⁷ Many of the rights contained within the CRC reinforce this perception; through a range of articles, the Convention prioritizes the protection of children, identifying the roles that adults, parents, family, schools, and the wider community are to play in upholding protection-oriented rights.

Article 12 diverges from the developmental view of the child, or tendencies to focus solely on child protection. In doing so, Article 12 closely aligns with ways of thinking more attributed to the new sociology of childhood or what is now referred to as ‘childhood studies’.⁸ In contrast to the notion that childhood is a natural and universal state, the field of social studies of childhood problematizes and transforms the ‘natural’ category of the child into a ‘social-cultural’ one.⁹ As James and Prout note, ‘childhood, as distinct from biological immaturity, is neither a natural nor a universal feature of human groups but appears as a specific structural and cultural component of many societies’.¹⁰ One of the key ideas of the new sociology of childhood is not only that childhood as a social construct is subject to contextual variations, but that children are actively involved in the socialization process, navigating, and making sense of it. In doing so, children demonstrate fluctuating levels of agency and competency depending on the wider environments in which they exist and relationships that they are party to.¹¹ Article 12 both draws on and contributes to these insights not least by endowing children with a legal basis under international to claim the space and opportunities to express this agency in various ways and forums. For Peleg, for instance, ‘Article 12 transforms the image of children under the law, conceptualizing them as active agents who should have a voice in their lives and departing from the paternalistic perception of children as “human becoming”’.¹²

Nevertheless, despite its potential to empower children, the realization of Article 12 continues to be hampered in a range of ways.¹³ The suggested reasons for limited uptake are many and diverse. For some, the right as promulgated in the CRC is highly ambiguous and qualified. Krappman, for instance, has posed a series of questions, which unveil some of uncertainties surrounding it. These include such questions as ‘What does the expression “to be heard” actually mean?’; ‘Do the clauses “capable of forming an own view according to age and maturity” exclude children from the communication of their views?’; and ‘Is the right to be heard a right to decide or a right to influence a decision?’¹⁴ For others, entrenched views of children as ‘adults in waiting’ are ingrained socially and culturally and thus frequently difficult to alter.¹⁵ That is to say, progressive understandings of children’s agency notwithstanding, some continue to perceive that children,

⁵A. Quennerstedt and M. Quennerstedt, ‘Researching Children’s Rights in Education: Sociology of Childhood Encountering Educational Theory’, (2010) 35 *British Journal of Sociology and Education* 115, 119–20.

⁶C. McDonald, ‘The Importance of Identity in Policy: The Case for and of Children’, (2009) 23 *Children & Society* 241.

⁷*Ibid.*

⁸See E. K. M. Tisdall et al., *Critical Childhood Studies: Global Perspectives* (2023).

⁹See S. Ali Norozi and T. Moen, ‘Childhood as a Social Construction’, (2016) 6 *Journal of Educational and Social Research* 75.

¹⁰A. James and A. Prout, *Constructing and Reconstructing Childhood* (1990).

¹¹T. Abebe, ‘Reconceptualising Children’s Agency as Continuum and Interdependence’, (2019) 8 *Social Sciences* 81, at 6.

¹²N. Peleg, ‘International Children’s Rights Law: General Principles’, in U. Kilkelly and T. Liefgaard (eds.), *International Human Rights of Children* (2019), 148.

¹³G. E. Türkelli, W. Vandenhole and J. Wouters, ‘Introducing New Frontiers in Children’s Rights: From Protection to Empowerment’, (2021) 39 *Nordic Journal of Human Rights* 103.

¹⁴L. Krappmann, ‘The weight of the child’s view (Article 12 of the convention on the rights of the child)’, (2010) 18 *International Journal of Children’s Rights* 501. See also P. McCafferty, ‘Implementing Article 12 of the United Nations Convention on the Rights of the Child in Child Protection Decision-Making: A Critical Analysis of the Challenges and Opportunities for Social Work’, (2017) 23 *Child Care in Practice* 327.

¹⁵J. Tobin, ‘Understanding a Human Rights Based Approach to Matters Involving Children: Conceptual Foundations and Strategic Considerations’, in A. Invernizzi and J. Williams (eds.), *The Human Rights of Children: From Visions to Implementation* (2011), 61.

as adults in waiting, must be protected by some third party, in turn subordinating any consideration of children's agency. Regardless of the barriers, the implementation of this right is frequently stifled, despite the substantive, procedural, normative, and symbolic importance that attach to it. In this context, accountability of states regarding the implementation of Article 12 is of paramount importance. As Lansdown assesses:

Child participation will never become a reality without holding governments fully to account for introducing the necessary legislation, policy and practice to ensure that children are enabled to claim their right to be heard and be taken seriously in all decisions affecting them.¹⁶

Against this backdrop, the Committee on the Rights of the Child (CommCRC or the Committee), as a UN Treaty Body, has an important role to play. Treaty bodies are responsible for monitoring the implementation of UN human rights treaty commitments. The CommCRC as the primary mechanism responsible for overseeing compliance with the CRC is, therefore, well-placed to help respond to some of the many challenges facing the realization of Article 12. Despite the potential of the CommCRC to advance the realization of Article 12, however, 'systematic research of the committee's monitoring efforts of the implementation of Article 12 is missing'.¹⁷ This article seeks to address this deficit by examining the role of the CommCRC plays in both addressing uncertainties surrounding the scope and meaning of Article 12 while also promoting its uptake. More specifically, the discussion focuses on the recommendations issued to state parties in the region of Africa following the reporting process. The primary argument advanced is that through its recommendations, the Committee has the potential to simultaneously develop and elaborate on the substantive and procedural elements of Article 12, while also promoting its implementation. However, these recommendations are not only often broad and ambiguous, but also fail to connect specific recommendations in such a way that better reflects the holistic and multifaceted approach necessary to implement Article 12.

In response, this article will suggest that the Lundy Model of Child Participation could be a useful organizing framework – one utilized to weave together the substance of their recommendations in ways more authoritative, useful, and impactful.¹⁸ There are various models advanced to improve participation of children in society.¹⁹ For instance, Hart's Ladder of Participation is a concept developed by Roger Hart.²⁰ The ladder is a visual representation of different levels of children's involvement in decision-making processes. The ladder consists of rungs, each representing a different level of participation. These include, manipulation, decoration, tokenism, adult-initiated and shared decisions with children, and child-initiated, shared decisions with adults.²¹ This model is a useful tool for evaluating the degree of meaningful participation of children in various contexts, such as schools, communities, or organizations. The Lundy Model builds on Hart's model by developing practical steps to help improve the

¹⁶G. Lansdown, 'The Realisation of Children's Participation Rights: Critical Reflections', in B. Percy-Smith and N. Patrick Thomas (eds.), *A Handbook of Children and Young People's Participation* (2009), 11.

¹⁷See Krappmann, *supra* note 14, at 510.

¹⁸See L. Lundy, "'Voice' Is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child', (2007) 33 *British Educational Research Journal* 927.

¹⁹See, for example, P. Treseder, *Empowering Children and Young People: Promoting Involvement in Decision Making* (1997); N. T. Wong, M. A. Zimmerman and E. A. Parker, 'A Typology of Youth Participation and Empowerment for Child and Adolescent Health Promotion', (2010) 46(1–2) *American Journal of Community Psychology* 100, available at [dx.doi.org/10.1007/s10464-010-9330-0](https://doi.org/10.1007/s10464-010-9330-0); H. Shier, 'Pathways to Participation: Openings, Opportunities and Obligations', (2001) 15(2) *Children & Society* 107, available at [dx.doi.org/10.1002/chi.617](https://doi.org/10.1002/chi.617).

²⁰R. Hart, 'Children's Participation: From Tokenism to Citizenship', (1992) 4 *Innocenti Series (UNICEF International Child Development Centre)*.

²¹*Ibid.*

participation of children. It comprises four separate but interrelated components necessary to ensure the realization of the right. These are, namely, space, voice, audience, and influence. It has been selected over other models given its attention to participation as a right of children rendering it most closely aligned with the UN Committee on the Rights of the Child. It also helps to identify practical, interrelated steps that states should be taking to support implementation of Article 12.

This article is organized as follows. Section 2 outlines the methodology adopted and the methodological decisions taken. Section 3 utilizes qualitative content analysis to frame existing recommendations in the wider context of literature on Article 12, mapping several ways in which the CommCRC might help address some of the limitations associated with the implementation of this right. Section 4 then considers some of the drawbacks associated with how the CommCRC engages with Article 12 and advocates using the Lundy Model of Child participation as organizing framework to help weave together the different themes addressed in recommendations.

2. Methodology

The CommCRC is the primary mechanism responsible for overseeing compliance with the CRC and like other treaty bodies, has several tools at its disposal in executing this duty.²² The primary mandate of all UN Committees is to review the reports submitted periodically by states parties in accordance with the treaties' provisions.²³ The monitoring provisions of the CRC are to be found chiefly in Article 44, which established the system of state party reporting. The state report is the first stage of a process and is based on the obligation of state parties to submit, usually every four or five years, a report on the implementation of each UN human rights treaty and Optional Protocol it has ratified.²⁴ These are to be compiled in accordance with the CRC Committee's Revised Guidelines for periodic reports.²⁵ In issuing reports, states are also required to comment on both progress made and areas that require further implementation.²⁶ The Committee also draws on other information available to the Committee, such as reports of Special Rapporteurs, concluding observations of other human rights treaty bodies, and the results of the Universal Periodic Review (UPR) conducted by the Human Rights Council (HRC). This stage is followed by a so-called constructive dialogue between the state under review and the Committee.²⁷ The Committee invites non-governmental organizations, and UN agencies, who submitted reports to discuss them in pre-sessional meetings which take place approximately six months before the meeting with a delegation of the state party concerned.²⁸ Treaty bodies complete each state assessment by issuing concluding observations. In this document, the Committee acknowledges the progress made via the various legislative measures, policies, and programs the state party has undertaken and presents its concerns on the lack of or insufficient

²²S. Molloy, 'Advancing Children's Rights in Peace Processes: The Role of the Committee on the Rights of the Child', (2022) 22 *Human Rights Law Review* 1.

²³One exception is the Subcommittee on the Prevention of Torture, which executes the Optional Protocol to the Convention against Torture.

²⁴M. O'Flaherty and P-L. Tsai, 'Periodic Reporting: The Backbone of the UN Treaty Body Review Procedures', in M. C. Bassiouni and W. A. Schabas (eds.), *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* (2011), 37.

²⁵CommCRC, Treaty specific guidelines regarding the form and content of periodic reports to be submitted by States Parties under Art. 44, para. 1(b), of the Convention on the Rights of the Child, United Nations (3 March 2015) (Revised Reporting Guidelines).

²⁶See Molloy, *supra* note 22.

²⁷S. Egan, *The UN Human Rights Treaty System: Law and Procedures* (2011).

²⁸J. Sloth-Nielsen, 'Monitoring and Implementation of Children's Rights', in Kilkelly and Liefgaard, *supra* note 12, at 31.

implementation of specific Articles of the CRC.²⁹ The concluding observations end with recommendations to enhance the implementation of human rights.³⁰

This article focuses on recommendations issued by the CommCRC to African parties to the CRC between 20 June 2009 and 2 September 2022. While Africa has its own children's rights treaty – the African Charter on the Rights and Welfare of the Child (ACRWC, 1999) – the discussion below is concerned with the role of CommCRC in promoting compliance with children's participation under the CRC. For that reason, reference to the ACRWC is not discussed. It is useful at this juncture to briefly outline the sequence of steps that led to these methodological choices and in particular the decision to limit the analysis to one region. Firstly, recommendations issued by the CommCRC were identified using the Universal Human Rights Index – a database of The Office of the High Commissioner for Human Rights (OHCHR) on human rights recommendations issued by three key pillars of the United Nations human rights protection system.³¹ Focusing specifically on the CommCRC, the initial search returned some 10,768 recommendations across 264 documents. A process of trial and error was then adopted to narrow the universe of cases examined. Initially, the search term selected was 'Article 12'. The term 'views of the child' was also included as a search term. This approach brought up a wide range of responses where the word view has been used, often in ways that had no bearing on Article 12. The term 'participant' was subsequently selected and utilized having produced the most accurate results.³² The next step was to limit the date range. The search was narrowed to capture recommendations issued between 20 June 2009 and 2 September 2022. The latter date reflects the original search date, which was maintained throughout the project for consistency. The former date captures all recommendations issued after the publication of CommCRC's General Comment on Article 12.³³ General Comment 12 attempts to clarify the substance of Article 12. Although opportunities exist for comparing recommendations prior to and after the adoption of General Comment 12, this was beyond the scope of this project.

The combination of these approaches narrowed the results to 745 recommendations from 221 documents. The intention at this stage was to code the 745 recommendations and to examine as part of the analysis variations across regions. Organized according to region, the data broke down as indicated in Table 1:

However, it became apparent that a cross-regional study was beyond the possibilities of this study. Recommendations are frequently delivered in paragraphs, with each recommendation covering multiple issues. As such, the coding process and data produced expands considerably when mapping recommendations according to multiple categories and themes. Given that the immediate objective of this work was to examine how the Committee seeks to promote the realization of children's right to participate rather than a cross regional analysis of the issue, the decision was taken to focus specifically on one region. Africa was selected as it returned the highest level of recommendations that included references to child participation. It is recognized that this

²⁹Particularly relevant in conflict-affected settings, the Committee also acknowledges the impact of war on realising children's rights. See CommCRC, Concluding Observations regarding Bosnia and Herzegovina, CRC/C/15/Add.260 (21 September 2005), para. 5.

³⁰M. O'Flaherty, 'The Concluding Observations of United Nations Human Rights Treaty Bodies', (2006) 6 *Human Rights Law Review* 1, at 27.

³¹See Office of the High Commissioner for Human Rights, Universal Human Rights Index (UHRI), available at uhri.ohchr.org/en/.

³²This is not to suggest that this search term does not also capture incorrect results, which had to be vetted. As an example, recommendations issued to the State of Palestine stipulates that: 'The Committee urges the State party to: (a) Prevent children's participation in violence and apply all feasible measures to ensure their protection from the effects of hostilities and to care for child victims . . . ' (CRC/C/PSE/CO/1 State of Palestine: Concluding Observations, para. 25.) In these examples, while participation is included in the concluding observations of the CommCRC, the term is not used in the context of Art. 12. As developed below, part of the coding process involved removing inconsistent uses of the term.

³³UN Committee on the Rights of the Child (CRC), General Comment No. 12 (2009): The Right of the Child to Be Heard, CRC/C/GC/12 (20 July 2009), available at www.refworld.org/docid/4ae562c52.html.

Table 1. Recommendations according to region

Region	Number of Recommendations	Number of Documents
Africa	188	54
Asia-Pacific	180	61
Eastern Europe	98	30
Latin America and the Caribbean	141	35
Western Europe and Others	138	41
Total	745	221

is a limitation of the study, not least because it precludes any findings relating to similarities, convergences, or divergences regarding how the Committee deals with Article 12 on different continents. Equally, this can hamper more considered analysis of how, if at all, the Committee approaches cultural and regional differences. Nevertheless, focusing on Africa does provide a broad pool of recommendations to examine and analyse, supporting the primary goal of understanding the CommCRC's role as it relates to advancing Article 12.

Once the universe of concluding observations that form the basis of this study was identified, qualitative content analysis was employed to thematically code the text of recommendations. Content analysis is an umbrella term used to indicate different research methods for analysing texts and describing and interpreting the written artifacts of a society. The content of texts is interpreted through coding and identifying theme or patterns, with the actual approaches ranging from impressionistic, intuitive, and interpretive analyses to systematic quantitative textual analyses.³⁴ The content of recommendations was first coded according to specific terms (courts, schools, councils etc.). Once this was achieved, these terms were then grouped. As noted above, the initial process of narrowing the data sample returned a number of recommendations, which did not speak to participation in line with Article 12. A consequence of the coding process was the elimination of redundant recommendations leaving the initial number of recommendations reduced from 188 to 124.³⁵ This remainder of this article presents and analyses the results of this research.

3. Findings

CommCRC, through recommendations, addresses several themes. These have been grouped as recommendations addressing preconditions for the realization of Article 12 (Section 3.1), issues that affect the child (Section 3.2), forums and mechanisms to promote the realization of Article 12 (Section 3.3), and groups of children that are to benefit from Article 12 (Section 3.4).

3.1 Preconditions for Article 12

Implementation of human rights treaties does not occur in a vacuum and is often subject to and shaped by the wider contexts in which it is being implemented. Indeed, General Comment 12 reflects the importance of ensuring 'conditions for expressing views that account for the child's individual and social situation and an environment in which the child feels respected and secure

³⁴K. G. Short, 'Critical Content Analysis as a Research Methodology', in H. Johnson, J. Mathis and K. G. Short (eds.), *Critical Content Analysis of Children's and Young Adult Literature: Reframing Perspective* (2016), 1.

³⁵Dataset on file with the author.

when freely expressing her or his opinions³⁶ and asks state parties to ‘ensure appropriate conditions for supporting and encouraging children to express their views’.³⁷

In relation to Article 12 and as noted above, a significant challenge is the persistence of ongoing perceptions regarding the capabilities of children and the utility of their voice in public debate. Reflecting on the role of adults, Leonard argues that while the concept of agency recognizes children as actively constructing their own childhoods, it must be located within the positioning of childhood relative to adulthood.³⁸ She advocates considering how children and adults relate to one another, to understand the opportunities and constraints under which children practise agency and, thus, can be considered as agentic. For Leonard then, the agency of children emerges from and operates within generational relationships.³⁹ Le Borgne and Tisdall also observe that:

The realisation of children’s participation rights remains highly dependent on adults, who in one way or another hold powerful positions such as legal guardians of children, administrative or political decision-makers, or front-line professionals. The attitudes of such adults toward children and childhood strongly influence whether or not the adults recognise, facilitate and support children’s participation.⁴⁰

When considering the impact of Article 12, the position of adults relative to children is frequently identified as an important factor in its realization.⁴¹ Yet, adults continue to approach Article 12 with varying degrees of scepticism.⁴² Lundy, in an article published with the British Educational Research Journal, maps adult concerns according to three groups.⁴³ The first is ‘scepticism about children’s capacity (or a belief that they lack capacity) to have a meaningful input into decision making’.⁴⁴ Secondly, adults ‘worry that giving children more control will undermine authority and destabilise the school environment’.⁴⁵ Thirdly, there is concern that ‘compliance will require too much effort’.⁴⁶ Thus, a barrier to increasing the opportunities for children to express their views are the reluctance of others, particularly adults, to create the spaces and occasions for children to do so.

In response, the Committee can address what are termed here as preconditions for Article 12 as part of its recommendations to state parties. This category attempts to capture recommendations that have at their core the intention of shifting perceptions, increasing awareness, creating, or furthering levels of expertise in giving effect to the right and law reforms to assist in these processes. One of the ongoing obstacles to the successful implementation of Article 12 is limited awareness of the provision itself. The Committee observes in General Comment 12, for example, that:

if the adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all its confirmation of the equal status of children as the subjects of rights, it is most unlikely that the rights set out in the Convention will be realised for many children.⁴⁷

³⁶See General Comment No. 12, *supra* note 33, para. 23.

³⁷*Ibid.*, para. 49.

³⁸M. Leonard, *The Sociology of Children, Childhood and Generation* (2016).

³⁹*Ibid.*

⁴⁰C. Le Borgne, E. Kay and M. Tisdall, ‘Children’s Participation: Questioning Competence and Competencies?’, (2017) 5 *Social Inclusion* 122, at 123. See also J. E. Doek, ‘The Human Rights of Children: An Introduction’, in Kilkelly and Liefwaard, *supra* note 12, at 15.

⁴¹D. Reynaert, M. Bouverne-De Bie and S. Vandevelde, ‘A Review of Children’s Rights Literature since the Adoption of the United Nations Convention on the Rights of the Child’, (2009) 16(4) *Childhood* 518.

⁴²J. M. Beier, ‘Implementing Children’s Right to Be Heard: Local Attenuations of a Global Commitment’, (2019) 18 *Journal of Human Rights* 215, at 220.

⁴³See Lundy, *supra* note 18.

⁴⁴*Ibid.*, at 930.

⁴⁵*Ibid.*

⁴⁶*Ibid.*, at 930–1.

⁴⁷See General Comment 12, *supra* note 33, para. 66.

To address this, the CommCRC frequently recommends that state parties work on improving awareness of the provision. As an example, a recommendation in Sao Tome and Principe asks the state party to '[c]onduct programmes and awareness-raising activities to promote the meaningful and empowered participation of all children within the family, community and schools'.⁴⁸ In other cases, recommendations ask for 'awareness-raising among the public and among professionals working in the area of child rights'⁴⁹ or 'awareness-raising activities . . . for all professionals in contact with children'.⁵⁰ Recommendations can also promote the role of the media in information sharing,⁵¹ alongside encouraging state parties to work with civil society organizations also advocating for children's participation.⁵² Some recommendations are more encompassing in terms of outreach. For instance, a recommendation to Benin asks the state to:

Provide educational information to, among others, parents, teachers, government administrative officials, the judiciary, children themselves and society at large, on children's right to participate and to have their views taken into account.⁵³

Recommendations can also promote training in child participation, itself an extension of awareness raising while also helping to garner the necessary expertise to facilitate the inclusion of children's views in different forums and regarding a range of issues. A recommendation to Zambia, for instance, asks that the state party '[r]einforce measures to ensure that professionals working with and for children systematically receive appropriate training on hearing and taking into account children's views in all decisions that affect them'.⁵⁴ Others preface the importance of ensuring 'that children's views are given due consideration in the courts and in all relevant administrative and other processes concerning' by undertaking 'training of professionals'⁵⁵ or the 'training of associated professionals'.⁵⁶ In a similar vein, recommendations can promote training alongside 'operational procedures or protocols for professionals working with and for children to ensure respect for the views of children'.⁵⁷ Recommendations regarding training can also be directed towards children, 'including peer training . . . on relevant skills to facilitate their effective participation in all matters affecting the child'.⁵⁸

The CommCRC also promotes the inclusion of children in public consultation on national policy development, including consultation with children on issues that affect them.⁵⁹ Some of the

⁴⁸Concluding Observations of the Committee on the Rights of the Child: Sao Tome and Principe, CRC/C/STP/CO/2-4 (28 October 2013), para. 28.

⁴⁹Concluding Observations of the Committee on the Rights of the Child: Sudan, CRC/C/SDN/CO/3-4 (22 October 2010), para. 34.

⁵⁰Concluding Observations of the Committee on the Rights of the Child: Zimbabwe, CRC/C/ZWE/CO/2 (6 March 2016), para. 33.

⁵¹Concluding Observations of the Committee on the Rights of the Child: Mauritius, CRC/C/MUS/CO/3-5 (26 February 2015), para. 32.

⁵²Concluding Observations of the Committee on the Rights of the Child: CRC/C/BDI/CO/2 (19 October 2010), para. 27.

⁵³Concluding Observations of the Committee on the Rights of the Child: Benin, CRC/C/BEN/CO/3-5 (25 February 2015), para. 27.

⁵⁴Concluding Observations of the Committee on the Rights of the Child: Zambia, CRC/C/ZMB/CO/5-7 (27 June 2022), para. 20.

⁵⁵Concluding Observations of the Committee on the Rights of the Child: Somalia, CRC/C/SOM/CO/1 (22 June 2022), para. 31.

⁵⁶Concluding Observations of the Committee on the Rights of the Child: Lesotho, CRC/C/LSO/CO/2 (25 June 2018), para. 23.

⁵⁷Concluding Observations of the Committee on the Rights of the Child: Rwanda, CRC/C/RWA/CO/5-6 (28 February 2020), para. 17.

⁵⁸Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010), para. 35.

⁵⁹Concluding Observations of the Committee on the Rights of the Child: Mauritius, CRC/C/MUS/CO/3-5 (26 February 2015), para. 32.

Committees contributions in this vein recommend undertaking efforts ‘to standardize such consultation at a high level of inclusiveness and participation, including consulting with children on issues that affect them’.⁶⁰ Provisions such as these also introduce another course of action – that of toolkits and guidelines to help support the promotion of children’s rights to participate. As an illustration, recommendations ask that state parties ‘[d]evelop procedures and guidelines for social services and justice professionals to ensure in practice the application of children’s right to be heard in all administrative and judicial proceedings concerning them’.⁶¹ Other recommendations from the CommCRC encourage state parties to put in place specific guidelines which explain in a child-friendly manner the right of the child to be heard in administrative and judicial proceedings, in particular regarding custody and children without a family environment.⁶²

As a final example, recommendations can also focus attention on negative attitudes that impede the realization of Article 12. To this end, recommendations have asked states ‘to eliminate traditions and beliefs that impede the proper valuation of children’s opinions’,⁶³ and promoted awareness-raising activities such as dialogue with traditional and religious leaders.⁶⁴ It is notable, however, that in the few cases where culture or tradition is acknowledged by the CommCRC, it tends to be in a negative light; cultural views and practices might impede the realization of Article 12. This reflects the position adopted in General Comment 12, which stipulates that ‘some societies, customary attitudes and practices undermine and place severe limitations on the enjoyment of this right’.⁶⁵ It continues elsewhere that state parties should:

Combat negative attitudes, which impede the full realization of the child’s right to be heard, through public campaigns, including opinion leaders and the media, to change widespread customary conceptions of the child.⁶⁶

However, some, such as Fraser, identify the opportunities for advancing human rights more generally by acknowledging the plurality of contexts in which human rights are applied.⁶⁷ Fraser notes, for example, that:

[W]hile human rights apply universally, their domestic implementation should be contextualised. Attention is increasingly being paid to local perspectives of human rights and to the variety of contexts and cultural norms relevant to human rights enjoyment . . .⁶⁸

She continues that ‘the existence and influence of plural normative orders provides opportunities for implementing human rights’.⁶⁹ Certainly, in many cases cultural practices harm children. This is evidenced through robust responses to cultural relativism claims.⁷⁰ Yet, the perception of

⁶⁰Concluding Observations of the Committee on the Rights of the Child: Sao Tome and Principe, CRC/C/STP/CO/2-4 (28 October 2013), para. 28.

⁶¹Concluding Observations of the Committee on the Rights of the Child: Djibouti, CRC/C/DJI/CO/3-5 (26 June 2022), para. 18.

⁶²Concluding Observations of the Committee on the Rights of the Child: Egypt, CRC/C/EGY/CO/3-4 (15 July 2011), para. 41.

⁶³Concluding Observations of the Committee on the Rights of the Child: Guinea, CRC/C/GIN/CO/3-6 (28 February 2019), para. 20.

⁶⁴Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010), para. 35.

⁶⁵*Ibid.*, para. 76.

⁶⁶See General Comment 12, *supra* note 33, para. 49.

⁶⁷See J. Fraser, *Social Institutions and International Human Rights Law Implementation: Every Organ of Society* (2020).

⁶⁸*Ibid.*, at 41.

⁶⁹*Ibid.*, at 46.

⁷⁰See, for discussion, G. André, ‘Anthropologists, Ethnographers and Children’s Rights: Critiques, Resistance and Powers’, in W. Vandenhoe et al., (eds.), *Routledge International Handbook of Children’s Rights Studies* (2015), 112.

children as adults in waiting, a view attributed to many as the imposition of a Western-premised idea of childhood, is challenged by research from, amongst others, anthropology, sociology, law, and children's geography.⁷¹ A range of existing scholarly contributions demonstrate that in many cultures, children are regarded as influential agents, actively involved in shaping their own lives.⁷² Viewed from this perspective, it is also possible that while culture and tradition, like socioeconomic conditions and wider relational webs, can hinder children's ability to act as agents, they can also be facilitators of it. Better attention could, therefore, be paid to the particular contexts that the CommCRC is addressing.

3.2 Matters that affect the child

Alongside seeking to alter attitudes towards, expertise in, and awareness of Article 12, the CommCRC frequently utilizes recommendations, not only to promote compliance with Article 12 but also to expand on the issues that are understood to 'affect the lives of children'. This contribution is particularly important considering the wording adopted in Article 12 itself. In its General Comment 12, the CommCRC noted that the Open-ended Working Group established by the Commission on Human Rights, and which drafted the text of the CRC, rejected a proposal to define these matters by a list limiting the consideration of a child's or children's views. Instead, it was decided that the right of the child to be heard should refer to 'all matters affecting the child'. The Committee goes on to express concern that 'children are often denied the right to be heard, even though it is obvious that the matter under consideration is affecting them, and they are capable of expressing their own views with regard to this matter'.⁷³

Against this backdrop, the Committee utilizes recommendations to organically expand what it understands the phrase by 'matters affecting the child'. For instance, Committee recommendations issued to Zambia urge that state party to ensure the views of children on such issues as child marriage, sexual and reproductive health, and environmental matters are heard.⁷⁴ Similarly, the Committee has previously recommended to Kenya that hearing the views of the child be a requirement for all official decision-making processes that relate to children, including 'custody cases, child welfare decisions, criminal justice, immigration and environmental matters' (see Figure 1).⁷⁵

In other cases, opportunities for children to express their views are implied, particularly by recommending the involvement of children in helping to address a particular issue such as corporal punishment,⁷⁶ rest and leisure,⁷⁷ violence and abuse,⁷⁸ and tackling poverty reduction.⁷⁹

⁷¹See, for example, *ibid.*; B. Mayall, 'The Sociology of Childhood and Children's Rights', in Vandenhoe et al., *ibid.*, at 77; E. Brems, 'Inclusive Universality and the Child-Caretaker Dynamic', in K. Hanson and O. Nieuwenhuys (eds.), *Reconceptualising Children's Rights in International Development: Living Rights, Social Justice, Translations* (2013), 199; S. C. Aiken, 'Children's Rights: A Critical Geographic Perspective', in Vandenhoe et al., *ibid.*, at 131.

⁷²See, as examples, T. Abebe, 'Interdependent Rights and Agency: The Role of Children in Collective Livelihood Strategies in Rural Ethiopia', in Hanson and Nieuwenhuys, *ibid.*, at 71; T. Abebe, 'Reconceptualising Children's Agency as Continuum and Interdependence', (2019) 8(3) *Social Sciences* 81.

⁷³See General Comment 12, *supra* note 33, para. 27.

⁷⁴Concluding Observations of the Committee on the Rights of the Child: Zambia, CRC/C/ZMB/CO/5-7 (27 June 2022), para. 20; Concluding Observations of the Committee on the Rights of the Child: Cabo Verde, CRC/C/CPV/CO/2 (26 June 2013), para. 30.

⁷⁵Concluding Observations of the Committee on the Rights of the Child: Rwanda, CRC/C/RWA/CO/3-4 (8 July 2013), para. 24.

⁷⁶Concluding Observations of the Committee on the Rights of the Child: Guinea, CRC/C/GIN/CO/2 (13 June 2013), para. 48. See also Concluding Observations of the Committee on the Rights of the Child: Algeria, CRC/C/DZA/CO/3-4 (18 July 2012), para. 44.

⁷⁷Concluding Observations of the Committee on the Rights of the Child: Rwanda, CRC/C/RWA/CO/5-6 (28 February 2020), para. 40.

⁷⁸Concluding Observations of the Committee on the Rights of the Child: Togo, CRC/C/TGO/CO/3-4 (8 March 2012), para. 44; Concluding Observations of the Committee on the Rights of the Child: Benin, CRC/C/BEN/CO/3-5 (25 February 2015), para. 37.

⁷⁹Concluding Observations of the Committee on the Rights of the Child: Sao Tome and Principe, CRC/C/STP/CO/2-4 (28 October 2013), para. 53.

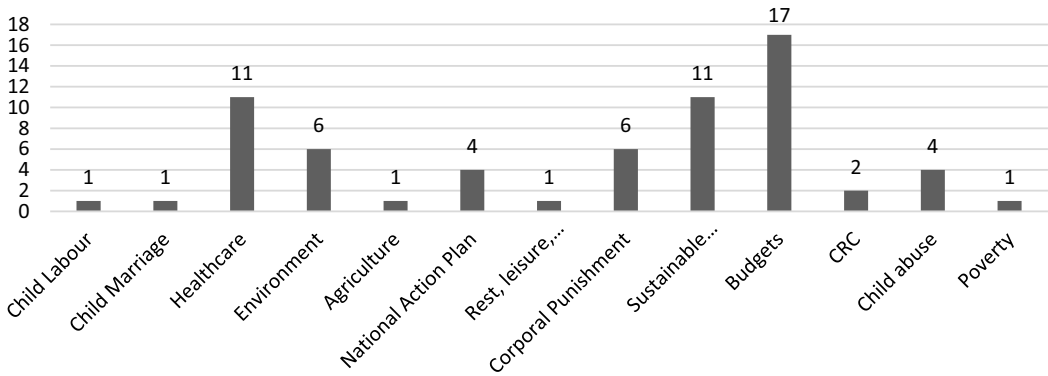


Figure 1. Recommendations according to issue.

Recommendations can also promote the views of children by highlighting the importance of their inclusion in efforts to implement wider, multifaced policy agendas. A useful example in this regard are recommendations that promote the participation of children in projects around the realization of the Sustainable Development Goals (SDGs). It is relatively common for recommendations to encourage the state in question to ‘ensure the meaningful participation of children in the design and implementation of policies and programmes aimed at achieving all 17 Sustainable Goals’.⁸⁰ These Goals cover a range of issues which include poverty,⁸¹ good health and well-being,⁸² gender equality,⁸³ climate action,⁸⁴ and peace, justice and strong institutions. By integrating the SDGs into recommendations, the Committee is implicitly expanding the range of issues regarding which children’s views ought to be solicited.⁸⁵ Indeed, the importance of engaging children in national reviews of the SDGs has been addressed by such organizations as the United Nations International Children’s Emergency Fund (UNICEF), promoting the need to organize consultations, surveys, and focus groups.⁸⁶ Another that recommendations encourage states to promote the participation of children is through the process of setting budgets. Recommendations have targeted the inclusion of children in decisions around ‘increasing the level of financial resources allocated for the implementation of the Convention’,⁸⁷ and allocating ‘adequate human, financial and technical resources at all levels of government for the implementation of all policies, plans, programmes and legislative measures directed at children’.⁸⁸ Importantly, in all recommendations addressing budgetary concerns as they relate to children, recommendations stipulate that state parties ‘[e]nsure transparent and participatory budgeting through public dialogue, especially with children’.⁸⁹

⁸⁰Concluding Observations of the Committee on the Rights of the Child: Madagascar, CRC/C/MDG/CO/5-6 (9 March 2022), para. 6.

⁸¹UN General Assembly, Transforming Our World: The 2030 Agenda for Sustainable Development, A/RES/70/1 (21 October 2015), available at www.refworld.org/docid/57b6e3e44.html, SDG Goal 1.

⁸²*Ibid.*, SDG Goal 3.

⁸³*Ibid.*, SDG Goal 5.

⁸⁴*Ibid.*, SDG Goal 13.

⁸⁵*Ibid.*, SDG Goal 16.

⁸⁶UNICEF, Activate – SDG Awareness Building & Meaningful Participation Of Children, Adolescents & Youth, available at www.unicef.org/media/64161/file/HLPF_2020_2PAGER_FINAL_Child_participation.pdf.

⁸⁷Concluding Observations of the Committee on the Rights of the Child: Guinea, CRC/C/GIN/CO/2 (13 June 2013), para. 18.

⁸⁸Concluding Observations of the Committee on the Rights of the Child: Mauritania, CRC/C/MRT/CO/3-5 (26 November 2018), para. 9.

⁸⁹Concluding Observations of the Committee on the Rights of the Child: Seychelles, CRC/C/SYC/CO/5-6 (5 March 2018), para. 10.

In other cases, recommendations seek to use the law to affect change. Some promote the adoption or amendment of legislation, providing for the right of children to express their views. State parties are often asked, by way of illustration, to '[e]nsure that children's views are given due consideration in the courts and in all relevant administrative and other processes concerning them through, inter alia, the adoption of appropriate legislation ...'⁹⁰ Recommendations can also specify laws that must be amended. For instance, recommendation to Rwanda encourages the state:

Ensure that children's views are given due consideration in courts, schools and relevant administrative processes concerning children by, inter alia, amending Law No. 32/2016 so that children's views are respected in administrative and judicial proceedings concerning custody, divorce and all types of adoption.⁹¹

Similarly, a recommendation issued to Côte d'Ivoire recommends a 'comprehensive legal provision establishing the right of the child to be heard without discrimination due to age, disability or any other circumstance',⁹² while one directed to Cabo Verde asks that it 'review the Statute of the Child and Adolescent to ensure that children's views are given due consideration in all matters concerning them'.⁹³ In other cases, beyond general provisions to legislate for the right of children to participate, recommendations can also specify the particular objectives that legislation should achieve. One example is lowering the minimum age of ten when children must be heard in matters affecting them.⁹⁴ A related approach is to promote mechanisms and processes to ensure children's views are heard and given due consideration in national and local decision-making processes for adopting laws.⁹⁵ For instance, some recommendations promote 'adequate human, technical and financial resources in order to facilitate children's effective engagement with national legislative processes on issues that affect them'.⁹⁶

3.3 Forums for the realization of Article 12

Lansdown remarks that '[m]eaningful and sustained realisation of children's participation rights requires the introduction of a wide range of legislative, policy and practice provisions which establish both entitlement and the opportunity to hold governments and others to account to realise that entitlement.'⁹⁷ General Comment 12 elaborates on the breadth of measures that state parties out to adopt to help create forums where children's views can be sought. They include, as examples, putting in place measures to ensure children's views are heard in the family,⁹⁸ schools,⁹⁹

⁹⁰See, for example, Concluding Observations of the Committee on the Rights of the Child: Somalia, CRC/C/SOM/CO/1 (22 June 2022), para. 31. See also Committee on the Rights of the Child: Congo, CRC/C/COG/CO/2-4 (23 February 2014), para. 33.

⁹¹Concluding Observations of the Committee on the Rights of the Child: Rwanda, CRC/C/RWA/CO/5-6 (28 February 2020), para. 17.

⁹²Concluding Observations of the Committee on the Rights of the Child: Côte d'Ivoire, CRC/C/CIV/CO/2 (12 July 2019), para. 23.

⁹³Concluding Observations of the Committee on the Rights of the Child: Cabo Verde, CRC/C/CPV/CO/2 (26 June 2019), para. 30. See also Committee on the Rights of the Child: Lesotho, CRC/C/LSO/CO/2 (25 June 2018), para. 6.

⁹⁴Concluding Observations of the Committee on the Rights of the Child: Angola, CRC/C/AGO/CO/5-7 (27 June 2018), para. 17.

⁹⁵Concluding Observations of the Committee on the Rights of the Child: Mauritania, CRC/C/MRT/CO/3-5 (26 November 2018), para. 20.

⁹⁶Concluding Observations of the Committee on the Rights of the Child: Senegal, CRC/C/SEN/CO/3-5 (6 March 2016), para. 30.

⁹⁷See Lansdown, *supra* note 16, at 14.

⁹⁸See General Comment 12, *supra* note 33, paras. 90–96.

⁹⁹*Ibid.*, paras. 107–114.

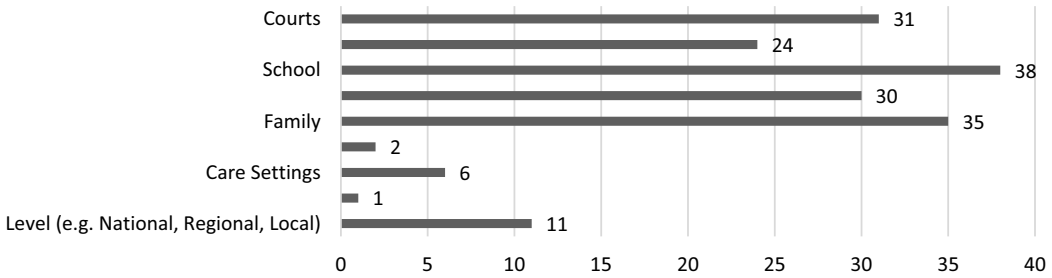


Figure 2. Recommendations according to forum.

in play and recreation,¹⁰⁰ in the workplace,¹⁰¹ in care,¹⁰² in healthcare,¹⁰³ and at different levels (see Figure 2).¹⁰⁴

The Committee, through its recommendations, promotes implementation of Article 12 while further expanding on the scope of the obligations inherent in it by elaborating on the forums which could help facilitate the realization of this right. Perhaps unsurprisingly, the Committee most frequently encourages children’s participation in schools. For example, recommendations frequently encourage that states ‘promote the meaningful and empowered participation of all children within . . . schools and include children in decision-making in all matters related to children’.¹⁰⁵ Some recommendations encourage the participation of children at all levels of the educational system and ‘[to] ensure they can freely discuss, participate and express views and opinions on all matters affecting them’,¹⁰⁶ so that ‘children’s views are given due consideration’.¹⁰⁷ Relatedly, recommendations can also draw attention to the importance of including children who are out of school.¹⁰⁸

One of the most frequent issues addressed in recommendations targeting schools but also in terms of national and local level government is what might be termed children’s platforms. These are primarily mechanisms led by children, which exist as vehicles for children’s voices to be heard in relation to some specific issue or to assist participation in some arena or process. For instance, recommendations often focus on establishing a children’s parliament¹⁰⁹ or youth parliament.¹¹⁰ Others encourage the state to re-establish a children’s parliament¹¹¹ or strengthen an existing

¹⁰⁰*Ibid.*, para. 115.

¹⁰¹*Ibid.*, paras. 116–17.

¹⁰²*Ibid.*, para. 97.

¹⁰³*Ibid.*, paras. 98–104.

¹⁰⁴*Ibid.*, paras. 127–128.

¹⁰⁵Concluding Observations of the Committee on the Rights of the Child: Djibouti, CRC/C/DJI/CO/3-5 (3 August 2022), para. 18; Concluding Observations of the Committee on the Rights of the Child: Côte d’Ivoire, CRC/C/CIV/CO/2 (12 July 2019), para. 23.

¹⁰⁶Concluding Observations of the Committee on the Rights of the Child: Tunisia, CRC/C/TUN/CO/3 (16 June 2010), para. 56.

¹⁰⁷Concluding Observations of the Committee on the Rights of the Child: Rwanda, CRC/C/RWA/CO/5-6 (28 February 2020), para. 17.

¹⁰⁸Concluding Observations of the Committee on the Rights of the Child: Somalia, CRC/C/SOM/CO/1 (22 June 2022), para. 31.

¹⁰⁹Concluding Observations of the Committee on the Rights of the Child: Somalia, CRC/C/SOM/CO/1 (22 June 2022), para. 31.

¹¹⁰Concluding Observations of the Committee on the Rights of the Child: Zambia, CRC/C/ZMB/CO/2-4 (13 March 2016), para. 30.

¹¹¹Concluding Observations of the Committee on the Rights of the Child: Eswatini, CRC/C/SWZ/CO/2-4 (22 October 2021), para. 31.

one.¹¹² Some recommendations focus on the continuation of what are termed Children's Consultative Forums,¹¹³ Children's Municipal Councils,¹¹⁴ and National Children's Forum.¹¹⁵ Others refer to 'children's participation in county clubs/assemblies',¹¹⁶ or Councils for Children.¹¹⁷ Recommendations also ask that state parties establish student council bodies,¹¹⁸ 'student unions and pupils councils',¹¹⁹ or student governments.¹²⁰ These types of mechanism can, in theory, empower children by providing avenues for voicing their views and opinions.¹²¹

Recommendations can also focus on ensuring that such mechanisms receive sufficient funding. For instance, recommendations have encouraged 'continuous funding and support for the Children's Parliament as a platform for the meaningful participation of children'.¹²² In Botswana, a recommendation asks the state to allocate sufficient technical, human and financial resources to the effective functioning of the Children's Consultative Forum.¹²³ In a similar fashion, a recommendation to Sao Tome and Principe asks the state to 'institutionalize the Children's Parliament as a regular event and ensure that it is provided with a meaningful mandate and adequate human, technical and financial resources, in order to facilitate children's effective engagement with national legislative processes on issues that affect them'.¹²⁴ Similarly, the Committee asks Zimbabwe to '[e]nsure adequate budget allocation for the effective functioning of the Youth Parliament, Cabinet and Council to enable these structures to represent children's issues effectively with policy and lawmakers at the various levels of Government'.¹²⁵

Schools are frequently included alongside two other sites that can be conducive to soliciting the view of children- the family and community. Recommendations can, for instance, encourage states to 'pay further attention to the right of every child to be heard . . . in the community and in

¹¹²Concluding Observations of the Committee on the Rights of the Child: Mozambique, CRC/C/MOZ/CO/3-4 (27 November 2019), para. 19.

¹¹³Concluding Observations of the Committee on the Rights of the Child: Botswana, CRC/C/BWA/CO/2-3 (26 June 2019), para. 28.

¹¹⁴Concluding Observations of the Committee on the Rights of the Child: Mauritania, CRC/C/MRT/CO/3-5 (26 November 2018), para. 20.

¹¹⁵Concluding Observations of the Committee on the Rights of the Child: Angola CRC/C/AGO/CO/5-7 (27 June 2018), para. 17.

¹¹⁶Concluding Observations of the Committee on the Rights of the Child: Liberia, CRC/C/LBR/CO/2-4 (13 December 2012), para. 40.

¹¹⁷Concluding Observations of the Committee on the Rights of the Child: Angola, CRC/C/AGO/CO/2-4 (19 October 2010), para. 23.

¹¹⁸Concluding Observations of the Committee on the Rights of the Child: Senegal, CRC/C/SEN/CO/3-5 (6 March 2016), para. 30. See also Concluding Observations of the Committee on the Rights of the Child: Zimbabwe, CRC/C/ZWE/CO/2 (6 March 2016), para. 33; Concluding Observations of the Committee on the Rights of the Child: Sao Tome and Principe, CRC/C/STP/CO/2-4 (28 October 2013), para. 28.

¹¹⁹Concluding Observations of the Committee on the Rights of the Child: Egypt, CRC/C/EGY/CO/3-4 (15 July 2011), para. 41.

¹²⁰Concluding Observations of the Committee on the Rights of the Child: Cameroon, CRC/C/CMR/CO/2 (18 February 2010), para. 31.

¹²¹See, for example, T. Tuukkanen, M. Kankaanranta and T-A. Wilksa, 'Children's Life World as a Perspective on Their Citizenship: The Case of the Finnish Children's Parliament', (2013) 20 *Childhood* 131.

¹²²Concluding Observations of the Committee on the Rights of the Child: Lesotho, CRC/C/LSO/CO/2 (25 June 2018), para. 23.

¹²³Concluding Observations of the Committee on the Rights of the Child: Botswana, CRC/C/BWA/CO/2-3 (26 June 2019), para. 28.

¹²⁴Concluding Observations of the Committee on the Rights of the Child: Sao Tome and Principe, CRC/C/STP/CO/2-4 (28 October 2013), para. 28.

¹²⁵Concluding Observations of the Committee on the Rights of the Child: Zimbabwe, CRC/C/ZWE/CO/2 (6 March 2016), para. 33. See also Concluding Observations of the Committee on the Rights of the Child: Zambia, CRC/C/ZMB/CO/5-7 (27 June 2022), para. 20.

society at large'.¹²⁶ Others ask that state parties 'strengthen its efforts to ensure that children's views are given due consideration in the community'.¹²⁷ Discussions on community also dovetail with different geographic and spatial levels at which the right to participation is promoted. In some cases, recommendations target the local. For instance, the Committee has recommended that certain state parties 'formalize children's participation in various forums, including at the local level'¹²⁸ while some prioritize the community level.¹²⁹ Where local participation is promoted, the Committee has also acknowledged and sought to shift cultural views that might impede the child's voice being heard. For example, and as noted above, the Committee has previously recommended that Gambia conducts 'programmes and awareness-raising activities to promote the meaningful and empowered participation of all children in the community, including the traditional community ... and community child protection committees'.¹³⁰ Often, the Committee refers to multiple geographical spaces demonstrating, at least implicitly, the scope of measures required to realize Article 12. For instance, some recommend that efforts continue to ensure 'children's views are heard and given due consideration in national and local decision-making processes for adopting laws, policies and programmes concerning children'.¹³¹ Other recommendations refer to 'regional and local levels',¹³² some to 'national and community',¹³³ while others again address 'all levels, national, provincial and municipal'.¹³⁴

The importance of ensuring that children's views are heard in the home is also included in recommendations.¹³⁵ However, in most cases, recommendations are general and generic, including 'the family' as one of the important forums for children's views to be heard. It is common, for instance, for recommendation to ask a state party to '[p]romote meaningful and empowered participation of all children within the family'.¹³⁶ There are also references to alternative care settings in recommendations. For example, the Committee has encouraged some state parties to '[d]evelop awareness-raising programmes, including campaigns to promote the meaningful and empowered participation of all children in the "family and alternative care settings"'.¹³⁷ Others refer to promoting children's views in 'care settings',¹³⁸ those without

¹²⁶Concluding Observations of the Committee on the Rights of the Child: Burkina Faso, CRC/C/BFA/CO/3-4 (9 February 2010), para. 33.

¹²⁷Concluding Observations of the Committee on the Rights of the Child: Cameroon, CRC/C/CMR/CO/2 (18 February 2010), para. 32.

¹²⁸Concluding Observations of the Committee on the Rights of the Child: Gabon, CRC/C/GAB/CO/2 (8 July 2017), para. 25.

¹²⁹Concluding Observations of the Committee on the Rights of the Child: Malawi, MWI/CO/3-5 (6 March 2017), para. 16.

¹³⁰Concluding Observations of the Committee on the Rights of the Child: Gambia, CRC/C/GMB/CO/2-3 (18 February 2015), para. 34.

¹³¹Concluding Observations of the Committee on the Rights of the Child: Mauritania, CRC/C/MRT/CO/3-5 (26 November 2018), para. 18.

¹³²Concluding Observations of the Committee on the Rights of the Child: Cameroon, CRC/C/CMR/CO/2 (18 February 2010), para. 32.

¹³³Concluding Observations of the Committee on the Rights of the Child: Lesotho, CRC/C/LSO/CO/2 (25 June 2018), para. 23.

¹³⁴Concluding Observations of the Committee on the Rights of the Child: Angola, CRC/C/AGO/CO/2-4 (19 October 2010), para. 23.

¹³⁵Concluding Observations of the Committee on the Rights of the Child: Zambia, CRC/C/ZMB/CO/5-7 (27 June 2022), para. 20; Concluding Observations of the Committee on the Rights of the Child: Angola, CRC/C/AGO/CO/5-7 (27 June 2018), para. 17.

¹³⁶Concluding Observations of the Committee on the Rights of the Child: Somalia, CRC/C/SOM/CO/1 (27 June 2022), para. 18.

¹³⁷Concluding Observations of the Committee on the Rights of the Child: Ethiopia, CRC/C/ETH/CO/4-5 (7 July 2015), para. 32.

¹³⁸Concluding Observations of the Committee on the Rights of the Child: Gambia, CRC/C/GMB/CO/2-3 (19 February 2015), para. 34.

parental care,¹³⁹ or children without a family environment.¹⁴⁰ Many recommendations refer to the participation of children in administrative procedures. A relatively consistent approach is to urge states parties to:

Introduce a comprehensive legal provision establishing the right of the child to be heard without discrimination due to age, disability, or any other circumstance, in any administrative and judicial proceedings and ensure that the child's opinion is taken into account in accordance with the child's age and maturity.¹⁴¹

Other recommendations address the salience of inclusion in 'relevant administrative and other processes concerning children and in the family'.¹⁴² Courts are another forum where the views of children are actively promoted. Those recommendations that address Article 12 in the context of courts are general in nature encouraging state parties to 'promote the full implementation of the right of the child to participate actively in decisions concerning his or her welfare in the . . . in the courts'.¹⁴³ Others are somewhat more direct, particularly as it relates to local-level judicial mechanisms. For example, the Committee has previously recommended to Sudan that it:

[C]onduct programmes and awareness-raising activities to promote the meaningful and empowered participation of all children in the family, the community, including the traditional community, schools, and the care and judicial systems, including the Children's Court, the Cadi courts.¹⁴⁴

3.4 Groups of children

The CommCRC, through recommendations, can also promote the participation not just of children generally but specific groups of children, particularly those marginalized. Scholars like Michael Freeman have for some time identified that a universal model of children's rights has excluded certain groups of children, for instance disabled children, street children, girls, LGBTQ children, and refugee children.¹⁴⁵ More specifically for present purposes, Afua Twum-Danso Imoh and Samuel Okyere find that the concept of 'children having a voice' continues to be the dominant understanding of child participation that prevails, especially within policy and practitioner circles, both at international and local levels in the Global North and Global South. According to these authors:

[t]his has resulted in a largely one-dimensional approach which tends to disregard the views, experiences and perceptions of a significant proportion of children and young people, especially those growing up in impoverished communities within cultures that have long been guided by norms which contrast sharply with dominant children's rights discourses.¹⁴⁶

¹³⁹Concluding Observations of the Committee on the Rights of the Child: Rwanda, CRC/C/RWA/CO/3-4 (8 July 2013), para. 24.

¹⁴⁰Concluding Observations of the Committee on the Rights of the Child: Egypt, CRC/C/EGY/CO/3-4 (15 July 2011), para. 41.

¹⁴¹Concluding Observations of the Committee on the Rights of the Child: Côte d'Ivoire, CRC/C/CIV/CO/2 (12 July 2019), para. 23.

¹⁴²Concluding Observations of the Committee on the Rights of the Child: Mozambique, CRC/C/MOZ/CO/3-4 (27 November 2019), para. 19.

¹⁴³Concluding Observations of the Committee on the Rights of the Child: Sudan, CRC/C/SDN/CO/3-4 (22 October 2010), para. 34.

¹⁴⁴Concluding Observations of the Committee on the Rights of the Child: Gambia, CRC/C/GMB/CO/2-3 (12 February 2015), para. 34.

¹⁴⁵M. Freeman, 'The Future of Children's Rights', (2000) 14(4) *Children & Society* 277, cited in D. M. Rodgers, *Children in Social Movements: Rethinking Agency, Mobilization and Rights* (2020), 11.

¹⁴⁶A. O. Twum-Danso Imoh and S. Okyere, 'Towards a More Holistic Understanding of Child Participation: Foregrounding the Experiences of Children in Ghana and Nigeria', (2020) 112 *Children and Youth Services Review* 1, at 4.

Similarly, others point out ‘that children from marginalized groups have reduced access such as poor children, children from rural areas, children with disabilities, often also girls’.¹⁴⁷ In response, through recommendations promoting the participation and views of children, the Committee can be said to expand the beneficiaries of this right in more explicit ways. For instance, a recommendation to Cameroon asks the state party to ‘ensure the participation of indigenous children in the planning, implementation and evaluation of plans and programmes that concern them’.¹⁴⁸ In other cases, the Committee is even more specific. In Rwanda, the CommCRC asks the state, on multiple occasions, to ensure the views of Batwa children are heard.¹⁴⁹ Similarly, in the Central African Republic, the Committee asks the state:

Develop a national action plan to decrease the infant mortality and malnutrition rates of pygmy children, with the participation of pygmy communities and children, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures related to them.¹⁵⁰

Recommendations can also target the inclusion of the views of minority children.¹⁵¹ The Committee has also included children with disabilities in its recommendations, asking state parties to ensure that these children have the opportunity to express their views, concerns and complaints during the preparation, planning and implementation of laws, policies and programmes relating to children.¹⁵² Others ask state parties to introduce a comprehensive legal provision establishing the right of the child to be heard without discrimination due to disability.¹⁵³ Recommendations can also promote the inclusion of children with disabilities in the aforementioned children’s parliament.¹⁵⁴ A different group is that of street children or ‘children in street situations’.¹⁵⁵ In some cases, recommendations encourage states to ensure that street children’s views are heard. Other recommendations are not issued in the context of Article 12 but nevertheless touch upon the participation of street children. For instance, a recommendation issued to Mozambique asks the state to:

Conduct a comprehensive study to assess the scope, nature and root causes of the presence of children in street situations in order to develop a national strategy and plan of action, with the participation of children, to support such children.¹⁵⁶

¹⁴⁷See Krappmann, *supra* note 14, at 511.

¹⁴⁸Concluding Observations of the Committee on the Rights of the Child: Cameroon, CRC/C/CMR/CO/2 (18 February 2010), para. 32.

¹⁴⁹Concluding Observations of the Committee on the Rights of the Child: Rwanda, CRC/C/RWA/CO/3-4 (8 July 2013), para. 24.

¹⁵⁰Concluding Observations of the Committee on the Rights of the Child: Central African Republic, CRC/C/CAF/CO/2 (8 March 2017), para. 69.

¹⁵¹Concluding Observations of the Committee on the Rights of the Child: Ethiopia CRC/C/ETH/CO/4-5 (7 July 2015), para. 32.

¹⁵²Concluding Observations of the Committee on the Rights of the Child: Rwanda, CRC/C/RWA/CO/3-4 (8 July 2013), para. 24.

¹⁵³Concluding Observations of the Committee on the Rights of the Child: Côte d’Ivoire, CRC/C/CIV/CO/2 (12 July 2019), para. 23.

¹⁵⁴Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010), para. 35.

¹⁵⁵Concluding Observations of the Committee on the Rights of the Child: Ethiopia, CRC/C/ETH/CO/4-5 (9 July 2015), para. 32.

¹⁵⁶Concluding Observations of the Committee on the Rights of the Child: Mozambique, CRC/C/MOZ/CO/3-4 (27 November 2011), para. 45.

Another group of children frequently targeted through recommendations on Article 12 are those in ‘disadvantaged or vulnerable situations’.¹⁵⁷ As a final note, recommendations can also be encompassing, addressing a range of groups of children and various arenas and platforms. As an illustration, a recommendation in Nigeria encourages the state to strengthen the effective functioning of the Children’s Parliaments, especially the implementation of its mandate to deliberate and contribute to draft child-oriented bills and ensure that their composition is representative of all segments of society, including orphans, children with disabilities, refugee children, and other children with special needs.¹⁵⁸

4. Challenges of incoherence and interrelatedness

The discussion above has sought to map ways in which, through recommendations, the CommCRC seeks to promote the realization of Article 12 CRC. On one hand, recommendations exist to improve implementation of treaty commitments. From recommendations on adopting laws to establishing mechanisms, alongside creating space and opportunities in such places as the home, schools, courts, and care settings, on a range of issues that affect them, CommCRC plays an important role in developing this breadth of requirements on the part of the state while simultaneously promoting implementation of them. In addition, and in response to assertions that Article 12 lacks clarity and certainty, the Committee can also be interpreted as building on earlier developments in General Comment 12 by further elaborating on the contours of rights, the steps that take out to make and the groups of children that are to benefit.

General Comment 12 is particularly important in this regard, not least for building on the substantive and procedural obligations required to ensure the realization of Article 12. Nevertheless, General Comments are, by their nature, general. They are not context-specific but rather exist as guidance for all states. In theory, treaty body recommendations could contextualize the generality of general comments through more specific and pointed ways when engaging with different state parties. Nevertheless, one of the problems associated with treaty body recommendations is that they are broad and sweeping. The generic nature of treaty body recommendations is a criticism that has been levelled against the system of reporting more generally. Mechlem, notes, for instance, that ‘given the relatively short time that the treaty bodies can dedicate to each country, the concluding observations remain often at a rather general level, and their jurisprudential impact is marginal and exceptional’.¹⁵⁹ Some elaborate that the generality of recommendations renders evaluations of their ability to effect change problematic. For Sloth Nielson,

concluding observations are not necessarily sufficiently detailed to enable conclusions to be drawn about the actual effectiveness, or the comparability of different implementation mechanisms: all too often reference made (in a positive vein) to the existence of one body or another, or (in a negative vein) to its absence, or the need for it to be strengthened.¹⁶⁰

Krommendijk captures the limitations succinctly in noting that:

[t]he COs [concluding observations of which recommendations are a part] are usually fairly short and lack a legal and evidential basis and often do not make clear how the recommended measures are related to particular treaty norms. It is thus not surprising that many States treat

¹⁵⁷Concluding Observations of the Committee on the Rights of the Child: Mauritania, CRC/C/MRT/CO/3-5 (26 November 2018), para. 20.

¹⁵⁸Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010), para. 35.

¹⁵⁹K. Mechlem, ‘Treaty Bodies and the Interpretation of Human Rights’, (2021) 42 *Vanderbilt Law Review* 905, at 923

¹⁶⁰J. Sloth-Nielsen, ‘Implementation of Children’s Rights: A Study of What is Required in Selected Theme Areas’, (2015) *Working Paper Commissioned by the African Child Policy Forum*, at 7, cited in Sloth-Nielsen, *supra* note 28, at 45.

the COs as sweeping statements of a general nature, an aspirational wish list or mere opinions that can easily be disregarded as opposed to authoritative and compelling statements.¹⁶¹

On one level, the generic nature of recommendations undermines one of the unique features of the CommCRC's reporting process. Scholars like Hesterman and Molloy have alluded to the fact that a particularly novel aspect of the reporting process as it relates to the CommCRC is the possibility for children to participate.¹⁶² The logic of accumulating information from multiple sources – international, regional, and local – and, children, is to better reflect the specifics of the context in question and the challenges facing children. Moreover, especially regarding Article 12, the active encouragement of children's involvement is vital. Without the involvement of children, it is primarily adults defining what child participation means, issues to prioritize, steps to be taken and measures adopted. This reinforces the view that children are adults in waiting, dependent on adults to act for them.¹⁶³ However, the real utility of this participatory approach is called into question when generic recommendations are issued, undermining the extent to which seeking out context-specific information as it pertains to Article 12 is utilized. In theory, the CommCRC, as the primary monitoring body of the CRC, has an important function as a role model. One of the primary components of the Lundy Model, as discussed below, is that alongside creating opportunities for children's views to be heard, there must also be sufficient follow-up. This requires not only that children have an audience for their views but also that there are appropriate channels whereby these views are listened to and utilized, or explained why that have not. Currently, the generic nature of COs would appear to suggest that the CommCRC does not reflect inputs from children in the recommendations it issues. This also seems to run against ongoing efforts to encourage bottom-up approaches to children's rights.¹⁶⁴

More pertinent for the present discussion is that the broad and sweeping nature of recommendations ensures that they are likely to have little impact. For example, what do recommendations that prioritize 'awareness raising' of Article 12 mean? Is this referring to awareness of the right itself or awareness regarding the steps that ought to be taken in order to help ensure that a child's right to be heard is realized? If the latter, what specific steps? Similarly, where the Committee refers to 'appropriate training', what specifically is being recommended? What should a state regard as 'appropriate training'? What issues should be trained on to help ensure the right is realized? Similarly, how should consultations be conducted? What should toolkits address? And what do terms like 'empowered', 'meaningful', or 'child friendly' mean in practice? How can states ensure consistency in the measures they are adopting at different levels – national, regional, local or in various forums – schools, family, courts etc.? The danger in promoting broad and sweeping recommendations is that without being more concrete, they do little to advance the realization of Article 12 in meaningful and consistent ways. Moreover, as demonstrated above, recommendations often contain broad categories of suggested steps with no sense of how the recommendations contained within these different categories interact, depend upon the realization of other recommendations, or how these recommendations can support each other. Yet, a significant challenge remains – how are UN treaty bodies generally and the CommCRC

¹⁶¹J. Krommendijk, 'Less Is More: Proposals for How UN Human Rights Treaty Bodies Can Be More Selective', (2020) 38 NQHR 5, at 9.

¹⁶²See W. Heesterman, 'An Assessment of the Impact of Youth Submissions to the United Nations Committee on the Rights of the Child', (2005) 13 *International Journal of Children's Rights* 351; see Molloy, *supra* note 22.

¹⁶³J. Habashi et al., 'Constitutional Analysis: A Proclamation of Children's Right to Protection, Provision, and Participation', (2010) 18 *International Journal of Children's Rights* 267.

¹⁶⁴See W. Vandenhole, 'Localizing the Human Rights of Children', in M. Liebel and K. Hanson (eds.), *Children's Rights from Below: Cross-Cultural Perspectives* (2012), 80; D. Reynart, M. De Bie and S. Vandeveldel, 'Children, Rights and Social Work: Rethinking Children's Rights Education', (2010) 8(1) *Social Work and Society* 69; M. Liebel and K. Hanson (eds.), *Children's Rights from Below: Cross-Cultural Perspectives* (2012); N. Blanchet-Cohen, 'Indigenous Children's Rights: Opportunities in Appropriation and Transformation', in Vandenhole et al., *supra* note 70, at 371.

specifically to improve recommendations when they are constrained in the information they can include? The remaining discussion offers a modest response as the problem relates to Article 12 by drawing on the Lundy Model of child participation. This Model, it will be argued, could be utilized to further elaborate on the weaknesses in current constructions of treaty body recommendations while also proposing how the model might help to address them.

4.1 The Lundy Model

The Lundy Model aims to understand how the children's participation processes can be operationalized in light of the legal standards set forth in the UNCRC.¹⁶⁵ Lundy focused solely on conceptualizing children's participation from a rights and identified four core concepts relevant to the realization of this right: space, voice, audience and influence.¹⁶⁶ The first component is space: 'Children must be given the opportunity to express a view.'¹⁶⁷ According to Lundy, a 'prerequisite for the meaningful engagement of children and young people in decision making is creating an opportunity for involvement – a space in which children are encouraged to express their views'.¹⁶⁸ She continues that:

The use of the word “assure” rather than the more diluted phrases such as “take appropriate measures to ensure” or “use their best efforts to ensure” which appear elsewhere in the UNCRC indicates a positive obligation to take proactive steps to encourage children to express their views; that is, to invite and encourage their input rather than simply acting as a recipient of views if children happen to provide them.¹⁶⁹

The second component of the Lundy Model is voice; Article 12 gives children a right to express their views freely.¹⁷⁰ Children's right to express their view is not dependent upon their capacity to express a mature view; it is dependent only on their ability to form that perspective, mature or not. The third component is audience.¹⁷¹ Lundy sought to stress that children and young people have 'a right of audience', they must be guaranteed an opportunity to communicate their views to an individual or body with the responsibility to make decisions.¹⁷² To this end, the final component of the Lundy Model targets 'influence'.¹⁷³ Even if some form of space is carved out to facilitate the inclusion of children's views, and notwithstanding efforts to redefine the salience of this inclusion, it is essential that any perspectives offered from children can influence the wider negotiations. In general, a key challenge when implementing a child's right to participate is to find ways to ensure that adults go beyond simply listening to children and young people; that they take children's views seriously and are open to being influenced by them. Importantly, while these components are often presented in a sequential matter, they are interconnected. That is to say, efforts geared towards realizing one component impact upon and are necessarily dependent on

¹⁶⁵See Lundy, *supra* note 18; L. Lundy, 'In Defence of Tokenism? Implementing Children's Right to Participate in Collective Decision-Making', (2018) 25(3) *Childhood* 340, at 346.

¹⁶⁶*Ibid.* See also D. Kennan et al., 'Developing, Implementing and Critiquing an Evaluation Framework to Assess the Extent to Which a Child's Right to be Heard is Embedded at an Organisational Level', (2021) 14(1) *Child Indicators Research* 1931; S. Molloy, 'Contemplating the Lundy Model as a Framework for Children's Participation in Peace Negotiations', (2022) 30(4) *International Journal of Children's Rights* 957.

¹⁶⁷See Lundy, *supra* note 18, at 933.

¹⁶⁸*Ibid.*

¹⁶⁹*Ibid.*, at 934.

¹⁷⁰*Ibid.*, at 935–6.

¹⁷¹*Ibid.*, at 936–7.

¹⁷²D. Kennan, B. Brady and C. Forkan, 'Space, Voice, Audience and Influence: The Lundy Model of Participation (2007) in *Child Welfare Practice*', (2019) 31(3) *Practice* 205, at 212–13.

¹⁷³See Lundy, *supra* note 18, at 937–9.

other components. In this way, the Lundy framework has provided a model which illuminates that for Article 12 to be realized, different but mutually reinforcing elements must be present:

child participation cannot be defined purely in terms of children having a “voice”; thus, partaking in social life also requires the existence of meaningful “space”, the presence of an “audience” to listen to what children have to say, and mechanisms to “influence” decision-making.¹⁷⁴

4.2 The Lundy Model and CommCRC recommendations

While not explicit, treaty body recommendations reflect many of the requirements of the Lundy Model of Child Participation. Firstly, treaty body recommendations focus attention on the importance of creating spaces for children. These include, as examples, children’s parliaments, in court, and in the family. In doing so, through recommendations the Committee further develops General Comment 12. Furthermore, CommCRC does a useful job in expanding the types of issues in relation to which children’s views could and should be sought. These include direct references to such issues as poverty reduction and corporal punishment but also less directly by drawing on broader projects like the SDGs, which, as noted, are multifaceted in their content. In addition, in drawing attention to a diverse range of children, the CommCRC helps to demonstrate the importance of a cross-section. For instance, Lundy notes that ‘[i]t is important that the views of a diverse range of children are sought, and that participation is not just afforded to the articulate and literate’.¹⁷⁵

Nevertheless, while it is progressive that the CommCRC expands on the issues that are of relevance to the child, Lundy identifies that ‘[a]n important first step is that children are asked which matters they consider impact on them, and how (or indeed whether) they would like to be involved in influencing the outcome of the decision’.¹⁷⁶ Lundy, drawing on the underpinning research for her article highlights that:

Children complain that the issues which they are allowed to influence are predetermined by adults and that, in school councils, for example, the issues which they get to discuss are predetermined by teachers.¹⁷⁷

She continues that:

[C]hildren should be asked whether or not they wish to participate in decision making. Article 12 is a right (not a duty) to express a view and there will be occasions when children and young people will not want to be involved. This too should be respected.¹⁷⁸

The CommCRC does not direct attention to engaging children on the very subject of which issues are of relevance to them, nor is it contemplated that processes and procedures should be established to ensure the voluntary participation of children. The recommendations, therefore, seek to support the implementation of Article 12 while simultaneously overlooking the very essence of what the right seeks to protect – the involvement of children. Similarly, recognizing different groups of children is undoubtedly important. However, the CommCRC does not touch upon intersectionality or differences within particular groups. Instead, there is an underlying

¹⁷⁴P. Cuevas-Parra, ‘Multi-Dimensional Lens to Article 12 of the UNCRC: A Model to Enhance children’s Participation’, (2022) 21 *Children’s Geographies* 3, at 12.

¹⁷⁵See Lundy, *supra* note 18, at 934.

¹⁷⁶*Ibid.*

¹⁷⁷*Ibid.*

¹⁷⁸*Ibid.*

assumption that, for instance, terms like street children can be used in ways that captures the views of all street children. Indeed, Cuevas-Parra identifies that children's right to participate is often undermined by dominant identities and traditional social constructions.¹⁷⁹ This author adapts Lundy's Model with an expanded typology that includes three dimensions: 'intersecting identities', 'enabling environments', and 'dimension factors'.¹⁸⁰ In doing so, Cuevas-Parra helps elucidate that those complex forms of exclusion and marginalization, which are the result of a range of intersecting categories, including race, ethnicity, socioeconomic status, gender, and sexual identities, can hinder children's participation. The Committee, if attempting to advance Article 12 for children, could utilize its recommendations to reflect these nuances.

While components like Space and Voice are important, they mean little if children do not have the audience and influence to affect change. Once again, the CommCRC often touches on these aspects, albeit without connecting these recommendations to others. For instance, and as noted, one of the main barriers to the realization of Article 12 is the perception of children. As Lundy notes: '[t]here may be a misperception that the right to express a view is somehow dependent on "the age and maturity of the child"'.¹⁸¹ Existing literature identifies the impacts of these perceptions and helps to connect the prevalence of these views with steps like seeking to engage children on that which matters to them. For instance, Robinson, Quennerstedt, and I'Anson have examined what they term problems of translation. This relates primarily to divergences that emerge between the requirements as laid out under Article 12 and developed by General Comment 12 on one hand, and that which forms the basis of legislation, on the other. They found that current English education legislation significantly narrows children's right 'to express those views freely in all matters affecting the child' and encourages processes and procedures to support the expression of pupils' views to be defined by adults.¹⁸²

Against this backdrop, CommCRC recommendations that target awareness raising and training in child participation are positive steps. But this awareness and training is only useful if it is brought to bear on space and views thus demonstrating the need to connect existing recommendations with others. For instance, awareness raising recommendations often say little about how to construct the type of spaces that are conducive to the views of the child being heard. Yet, as Lundy notes, there are various aspects to what an appropriate space should look like. As an example, '[t]he space offered to children to participate must be a safe space'.¹⁸³ The spaces must also be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalized children, including both girls and boys, to be involved.

In contemplating the ways in which, through recommendations on training and guidelines, those responsible can create environments that enable children to voice their opinions, the CommCRC could play an important role in assisting in the implementation of Article 12. For instance, adopting the Lundy Model, the CommCRC could be more precise in some of the fundamental characteristics of space, to include access to children with disabilities.

Similarly, recommendations say little about how professionals and others should or could be trained to support the views of the child being formed in the first place. Yet, any genuine commitment to the views of the child being heard will often require initial steps focused on providing the necessary to do so. Generalized recommendations about 'training' and awareness raising say little about this aspect. There is also little consideration given to the medium by which children could express their views. Implicit in existing recommendations is that views can be articulated orally. An important feature of the Lundy Model, however, is the relationship it draws

¹⁷⁹See Cuevas-Parra, *supra* note 174.

¹⁸⁰*Ibid.*

¹⁸¹See Lundy, *supra* note 18, at 935.

¹⁸²C. Robinson, A. Quennerstedt and J. I'Anson, 'The Translation of Articles from the United Nations Convention on the Rights of the Child into Education Legislation: The Narrowing of Article 12 as a Consequence of Translation', (2020) 31 *Curriculum Journal* 517.

¹⁸³See Lundy, *supra* note 18, at 934.

between Article 12 and other rights. For instance, Lundy proposes linking Article 12 of CRC to, as examples, Article 2 (right to non-discrimination), Article 3 (best interest), Article 5 (the right to guidance from adults), Article 13 (right to information), and Article 19 (right to be protected from abuse).¹⁸⁴ To this end, when addressing the view component, Lundy has noted the importance of including ‘younger children through the organisation of fun activities such as plays, puppet shows, videos and drawing projects’.¹⁸⁵ Demonstrating the interrelatedness of rights, Lundy assesses that facilitating different ways to articulate views lie in accordance with Article 13 of the UNCRC, which states that children’s right to freedom of expression includes a right to impart information ‘either orally, in writing or print, in the form of art, or through any other media of the child’s choice’.¹⁸⁶

Relatedly, while the CommCRC articulates a range of spaces and matters of interest, it does not engage with training or awareness raising in respect of the processes and procedures necessary to ensure that these children are listened to, the mechanism by which these views are utilized. On the first matter, Lundy notes that the use of the term ‘influence’ in the Lundy Model encapsulates the concept of ‘due weight’ as expressed in Article 12 of the CRC. For Lundy: One of the most common and cogent criticisms levelled at Article 12 is that it is easy for adults to comply with the various outward signs of consultation and ultimately ignore children’s views.¹⁸⁷ Tokenistic or decorative participation is not only in breach of Article 12 but can be counterproductive. Krappmann, for instance, has found that if students’ councils or fora for children in the community exist, children often complain that they get no response or their views are not given weight.¹⁸⁸ Although it is beneficial for the CommCRC to draw attention to the need for and potential importance of these platforms, general provisions, which fail to elaborate on some of the important constituent parts, are unlikely to have the desired effect. For instance, is there a guarantee that adults will be present, if so which adults.

Moreover, despite the attention directed towards spaces and matters that affect the child, alongside training and awareness raising, there is no sense of how the views of the child will be utilized. A useful example is that of research. For instance, in relation to health, a recommendation to Djibouti encourages the state to ‘undertake a comprehensive study to assess the nature and extent of adolescent health and mental health concerns, with the full participation of adolescents . . .’¹⁸⁹ The issue of engaging children in research has been discussed at length in the literature.¹⁹⁰ As Lundy and others notes, young children can contribute very effectively to many aspects of research processes, including the focus of research questions, choice of methods, interpretation of data, and outputs.¹⁹¹ The same authors also suggest that:

The key to involving children as co-researchers in a way that is respecting of their rights is ultimately dependent on how the children are perceived by the adult researchers. If the children are seen as rights holders (which entails recognition of their competence, agency, and entitlement to influence decisions affecting them), then it follows that their view will be treated seriously and acted upon wherever possible. In particular, children’s perspectives that

¹⁸⁴*Ibid.*, at 932.

¹⁸⁵*Ibid.*, at 935.

¹⁸⁶*Ibid.*

¹⁸⁷*Ibid.*, at 938.

¹⁸⁸See Krappmann, *supra* note 14.

¹⁸⁹Concluding Observations of the Committee on the Rights of the Child: Djibouti, CRC/C/DJI/CO/3-5 (23 June 2022), para. 34.

¹⁹⁰See, as examples, R. Tiefenbacher, ‘Finding Methods for the Inclusion of All Children: Advancing Participatory Research with Children with Disabilities’, (2023) 37 *Children and Society* 3; A. Clark, *Listening to Young Children, Expanded Third Edition: A Guide to Understanding and Using the Mosaic Approach* (2017); A. James, ‘Giving Voice to Children’s Voices: Practices and Problems, Pitfalls and Potentials’, (2007) 109(2) *American Anthropologist* 261.

¹⁹¹L. Lundy, L. McEvoy and B. Byrne, ‘Working with Young Children as Co-Researchers: An Approach Informed by the United Nations Convention on the Rights of the Child’, (2011) 22 *Early Education & Development* 714, at 731.

depart from the orthodoxy and challenge the adult researchers' perspectives should be welcomed, discussed, and incorporated at every given opportunity.¹⁹²

Firstly, and related to the above, although promoting children in research is important, the Committee frequently fails to connect the salience of adults, their perceptions of children, and the necessity of providing the necessary information to children, is often ignored. More importantly, however, there is little attention directed towards how the views expressed by children will ultimately be utilized or at least considered in such a way that demonstrates that these views have helped to inform opinion. Of course, there might be many circumstances in which, for a variety of reasons, the views of the child have not been utilized. The point is that, according to the Lundy Model, there must be forms of accountability that explain this and why. Without these procedures, it is possible that efforts geared towards children's participation will simply be tokenistic.

5. Conclusion

Article 12 of the CRC is significant for a multitude of reasons. Alongside the legal, normative, and practical utility of the right, the legal recognition of children's rights to express their view in matters that affect them is itself a formal recognition of their agency. As such, it both implicitly and explicitly challenges long-persisting and deeply pervading views that children are adults in waiting, on a journey to reach the status of adulthood and with it more progressive rights to engage more meaningfully and fully in public and private life. Yet, at the same time, it is the implications of this recognition that often paralyze the full realization of the right. In addition to levels of uncertainty and ambiguity surrounding the text of Article 12, the continuation of those views that limit the agency and capacity of children provide the foundations for prioritizing rights and obligations that better align with preconceived ideas of what children are and need. This often leads to a greater level of importance attached to provision-based rights and those that are protection-oriented in nature.

The CommCRC as the primary mechanism responsible for overseeing the implementation of the CRC has an important role to play. While various tools are utilized to shape rights and obligations and promote compliance with treaty requirements, the fundamental and most pervasive approach adopted by treaty bodies are concluding observations and, from the perspective of effecting change, recommendations. This Article has suggested that the Committee can promote Article 12 in two fundamental respects. The first is to further elaborate and develop what the right means and thus requires of states. This aspect aligns with and builds on General Comment 12. By expanding on issues that affect the child, addressing various categories of children and developing the range of forums and means by which the views of the child can be ascertained, through recommendation the Committee plays an important role in developing Article 12's meaning. The second approach is both a consequence of substantive development and a direct contribution itself and relates to monitoring implementation. Most obviously, in promoting awareness raising, training, expertise and consultation, the CommCRC can be interpreted as promoting implementation by addressing the wider context within which implementation takes place and the attitudes or indifference that have precluded Article 12's realization. In addition, although recommendations that address issues and forums are developing the contours of the right, they are equally about translating the right from paper to practice. That is to say, the anticipated consequence of identifying children's platforms as part of the right are to, in turn, encourage states to ensure that these platforms exist, are funded and effective. As such, the CommCRC through its approach to Article 12 helps elucidate the iterative nature of monitoring state compliance with human rights treaties; one that requires ongoing interpretation and

¹⁹²*Ibid.*

elaboration while simultaneously ensuring that these nuances are reflected in how states attempt to realize the right in question.

At the same time, the practical impact of this bifold approach is likely deficient. For one, the Committee appears to use rather general and generic language. Recommendations, while addressing a range of themes, are rarely connected, appearing instead as singular and unconnected components. In reality, the realization of Article 12 necessitates a concerted effort, one that links such issues as spaces, matters affecting the child, training, adults, and awareness-raising in ways that support and reinforce each other. To this end, the Lundy Model of Child Participation, which prioritizes four separate but interrelated components of space, voice, audience, and influence, was suggested as constituting a useful framework for the Committee to adopt when issuing recommendations. Through this model, the CommCRC would be well-placed to connect presently disparate and seemingly unconnected recommendations in ways that are mutually beneficial to and dependent on improvements in other areas. In adopting this approach, the CommCRC could better promote the realization of Article 12 in ways that are more instructive, useful, and impactful than the current approach. Moreover, in promoting the Lundy Model, it is also possible that the CommCRC better align its approach not only as regards including children in the consultation process, which, to its credit, it has sought to do but also adopting measures to ensure that the views expressed by children are listened to and acted upon.