CHAPTER 3

Participation and Article 12

3.1 Introduction

As described in the previous chapter, the image of the modern child introduced by the CRC and in childhood studies is that of an autonomous individual. Agency, competence and capability are key elements in this understanding of the child and her abilities.\(^1\) One manifestation of agency and a person’s capacity and capability of making choices is that of being involved in, and exercising influence over, decisions affecting an individual’s situation and community, or what has become a key concept in children’s rights discourse: ‘participation’.\(^2\) For some, ‘participation’ has become almost synonymous with children’s rights. It is described as expressing ‘an essential feature of the Convention’\(^3\) or at least what constitutes the most innovative feature of the CRC – that of seeing the child as a person capable of agency as opposed to being only an object of protection.\(^4\) Child participation in society as such, however, is nothing new. Throughout history children have always played active parts, voluntarily or forcibly, in one way or another: in the home, at work, within communities, in schools and in times of war. The difference today is that the child’s right to have a say in decisions concerning him or her has been recognised, though not without opposition. In this chapter, the main focus is on ‘participation’ in the context of Article 12 of the CRC. It begins with an overview of the different interpretations and understandings of ‘participation’ as an introduction to the complexity of the concept. It should be noted that while the actual word ‘participation’ is not used in Article 12 (‘participation’ being a broader concept

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1 For a discussion on these concepts, see Chapter 2.
than the rights established in Article 12) the article is still often referred to and understood as expressing ‘the right to participation’.5

Article 12 of the CRC has not (as its pendant provision Article 3 on the best interests of the child) been asserted to be a vague outline of a general position. The wording of the article is quite clear and requires state parties to put in place the necessary legislation and policies to enable all children to exercise their right to be heard.6 The difficulty instead seems to lie in understanding the scope and limitations of Article 12, as well as what the clearly stated obligations actually mean in practice and what their consequences might be. As a result, implementation of Article 12 for all children and in ‘all matters affecting the child’ has proved to be a complicated task for many CRC treaty states. The purpose of this chapter is to analyse the content and scope of Article 12 as well as to provide the necessary context for understanding the problems encountered when seeking to implement child participation rights.

3.2 Participation as a Concept

3.2.1 Identifying and Defining Participation
‘Participation’ can be understood in various ways depending on the context.7 It can refer to generally taking part in an activity, or in effect actually taking part in decision-making.8 In ordinary language, participation simply means some form of engagement with others. This is something children and adults do every day, as ‘participation’ in this sense is part of the implied acceptance of belonging to a family or community. One initial point to be made (at least concerning child participation) is that one should distinguish between consultation and participation. ‘Consultation’ (so described) refers to listening to

6 The General Comment contains fairly detailed recommendations on how this is to be accomplished. UN Committee on the Rights of the Child, General Comment No 12 (1 July 2009) The Right of the Child to be Heard UN Doc CRC/C/GC/12 paras 48–69.