The empowerment of children in justice systems: Participation and relational representation

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My aim is to examine broadly some of the fundamental elements that inform children’s representation in justice systems and evaluate some of the challenges and obstacles we face in ensuring children adequate representation.
Outline

- Justice systems
- Participation – representation
- Types of representation
- Relational representation
Main documents

- General comment no. 12 (2009) The right of the child to be heard - GC 12
- General Comment no. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) - GC 14
- Recommendation CM/Rec(2012)2 on the participation of children and young people under the age of 18 - Rec 2012
Justice systems
Justice systems

- Justice systems – exercise of rights
- Capacity and competence
  - initiate legal action – access to justice
  - participate in legal action already initiated – in justice
- Formal – informal justice systems
- Complex interaction between different systems
Participation – representation
Participation

- Best interest principle cannot be applied if requirements of participation are not met – GC 14
- Art. 12 CRC participation
- Children as rights holders - empowerment
- Children should actively participate in interpreting, implementing and upholding their rights – a dynamic approach
Participation and representation in justice systems

- Art. 12(2) CRC – the child must be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative.

- GC12, The Guidelines and Rec 2012 offer the dynamic interpretation:
  - providing the right, means, space, opportunity and support when necessary for children to contribute to the decision making process.
Participation menu

Traditional Kids menu

- Appetizer
- Main course
- Dessert

Dynamic Kids menu

- Appetizer
- Main course
- Dessert

For children with =

Participation

- Information
- Process / decision
- Follow up

Adjustments Support

For children with =

Participation Adjustments Support
Types of representation
Types of representation

- Parental representation
- Separate representation
  - Best-interest representation
  - Child-directed representation
- Self-advocacy
- Relational representation
Parental representation - challenges

- Art. 5 CRC parental responsibility
  - respect the responsibilities, rights and duties of parents … to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention
  - risk, care and control?
  - conflicts of interests?
  - complex personal relationships
    - family is important
    - parents are present
Separate representation - challenges

- The appointment or role of a special person other than the parent with the task of representing and advocating for the interests of a child in a justice system (a child advocate)
- Mechanism to enable children to exercise their right to actively participate in justice systems
- Keywords – child empowerment, control and contribution
- Complexity of proceedings?
- Multifaceted special knowledge and training?
Different types of separate representation - challenges

- Best-interest representation
  - the child advocate safeguards the interests of the child
- Child-directed representation
  - the child advocate represents the views of the child
- Tension – conflicting roles?
Self-advocacy

- The right of the child to be present and directly involved in proceedings without having their voice moderated by a third party
- Empowerment – critical thinking and critical expression
- Support and advice
Relational representation

inform
listen
advise
communicate
rationalize
explain

present
representation
relationships

Child empowerment

professional
unbiased
sensitive
nurturing
respectful
facilitating
engaging