

## **The Child as ‘Democratic Citizen’ – Challenging the ‘Participation Gap’<sup>1</sup>**

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### Abstract

This article centres on the position of children as ‘democratic citizens’. Incorporating discussions of key aspects of democratic and citizenship theory, it considers the ways in which children may interact with, and contribute to, the exercise of political power in democratic societies. Having briefly discussed the position of children vis-à-vis democratic processes, the author focuses on that provision of the Convention on the Rights of the Child (CRC) which is arguably of greatest use in terms of serving as a springboard for children to input into democratic decision-making processes that affect them: Article 12 CRC. The author proceeds to consider the approach of the Committee on the Rights of that Child to children’s participation rights under the CRC, arguing that the Committee has failed to construe and apply Article 12 in such a way as to address effectively children’s exclusion from democracy. This gap in the Committee’s jurisprudence necessarily filters down into the practice of states. The article concludes by highlighting key points that should be borne in mind when arguing in favour of particular mechanisms and structures aimed at increasing child participation in democratic decision-making and hence strengthening their democratic citizenship.

### Introduction

It is significant that, despite notable exceptions such as Article 45 of the Ecuadorean Constitution,<sup>2</sup> Articles 78 and 79 of the Venezuelan Constitution<sup>3</sup> and Article 41(6)(k) of the draft Kenyan Harmonised Constitution,<sup>4</sup> recognition of children’s participation rights other

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<sup>2</sup> Article 45 provides that children and adolescents have, amongst other things, the right to social participation and to be consulted in matters affecting them. It also states that the State guarantees their freedom of expression and association, the free operation of student councils and other forms of association. (Translation by author).

<sup>3</sup> Articles 78 and 79 of the Venezuelan Constitution provide respectively (amongst other things) that the state must promote children’s progressive incorporation into active citizenship, and that young people have the right and duty to be active participants in the development process.

<sup>4</sup> The Draft Kenyan Harmonized constitution of 17 November 2009 Article 41(6)(k) states that every child has a right ‘to know of decisions affecting the child, express an opinion and have that opinion taken into account, taking into consideration the age and maturity of the child and the nature of the decision.’

than in a legal, adjudicatory context is rare within child-specific provisions across countries.<sup>5</sup> This contrasts with the significant rise in recognition of the ‘protection’ and ‘provision’ rights set out in the UN Convention on the Rights of the Child at the domestic constitutional level.

The relatively low priority accorded to children’s participation rights in constitutional schema is well-illustrated by one of the most celebrated children’s rights provisions – that set out in the South African constitution. There was widespread political support for children’s rights, evident in the process leading to the adoption of the children’s rights section in the chapter on fundamental rights in the Interim Constitution of South Africa (and, subsequently, the Final Constitution).<sup>6</sup> Constitutional negotiations involved much discussion of the particular suffering experienced and sacrifices made by children during the liberation struggle with participants in the national debate on rights arguing that, as children had played a central and highly visible role in the South African struggle for dignity, they were owed a debt by the nation.<sup>7</sup>

Despite the role of children as political actors during apartheid it is notable that the South African Constitution does not make provision for children’s participation rights other than providing for a right to legal representation in criminal<sup>8</sup> and, in limited circumstances, civil proceedings.<sup>9</sup> Instead, the child’s right to participate is enshrined at a statutory level in a provision that only came into force over a decade after the Final Constitution.<sup>10</sup> Clearly, however, guaranteeing that right in legislation is not the same as according it constitutional status. Admittedly, children are accorded the constitutional political rights of all ‘citizens’ to form a political party, to participate in the activities of, or recruit members for, a political party; and to campaign for a political party or cause.<sup>11</sup> They are also entitled to the right to

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<sup>5</sup> B. Duncan, *Constitutional Reforms in Favor of Children* (UNICEF: 2008) 52, available at: [http://www.unicef.org/policyanalysis/files/Constitutional\\_Reforms\\_in\\_Favour\\_of\\_Children.doc](http://www.unicef.org/policyanalysis/files/Constitutional_Reforms_in_Favour_of_Children.doc).

<sup>6</sup> J. Sloth-Nielsen, ‘Chicken Soup or Chainsaws: Some Implications of the Constitutionalisation of Children’s Rights in South Africa’ (1996) *Acta Juridica* 6 at 22. For more on the negotiations on the children’s rights provisions in the Constitution, see M. Chaskalson and R. Spitz, *The Politics of Transition: A Hidden History of South Africa’s Negotiated Settlement*, (2000) at 364-6; H. Corder and L. Du Plessis, *Understanding South Africa’s Transitional Bill of Rights* (1994) at 185-7.

<sup>7</sup> Bennett Woodhouse, B., ‘The Constitutionalisation of Children’s Rights: Incorporating Emerging Human Rights in Constitutional Doctrine’ 2 *U. Pa. J. Const. L.* 1 at 37-8 (1999).

<sup>8</sup> Section 35 of the South African Constitution.

<sup>9</sup> *Ibid*, Section 28(1)(h)

<sup>10</sup> Section 10 of the Children’s Act No38 of 2005, which came into force in July 2007, provides that: “[e]very child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.”

<sup>11</sup> Article 19(1) of the South African Constitution.

free, fair and regular elections for any legislative body established in terms of the Constitution.<sup>12</sup> However, the key political rights to vote and run for public office are reserved to ‘adult citizens’.<sup>13</sup>

Numerous justifications and aims have been proffered for children’s participation. These vary from upholding children’s rights to enhancing the child’s self-esteem to improving decision-making.<sup>14</sup> Crucially, work in the area of child participation reflects a consistent concern with the linkage between participation and the evolution/development of the child as a current and/or future citizen. Similarly, commentators on child participation demonstrate a preoccupation with the relationship between child participation and the enhancement of democracy (in terms of the functioning and/or outputs of the democratic system) including the strengthening of the child’s sense of, and interest in, participation in democracy and their own democratic citizenship.<sup>15</sup>

The lack of protection afforded to children’s democratic participation rights in law and in practice is deeply problematic in light of the centrality of political participation to both the exercise of power in democracies and to traditional notions of citizenship. The denial of children’s participation in democratic decision-making processes not only poses a serious obstacle to the conceptualisation of children as full ‘citizens’ but undermines the legitimacy of the outputs of so-called representative democratic decision-making bodies in relation to children’s rights issues.

This article centres on the position of children as ‘democratic citizens’. Incorporating discussions of key aspects of democratic and citizenship theory, it considers the ways in which children may interact with, and contribute to, the exercise of political power in democratic societies. Having briefly discussed the position of children vis-à-vis democratic processes, the author focuses on that provision of the Convention on the Rights of the Child (CRC) which is arguably of greatest use in terms of serving as a springboard for children to

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<sup>12</sup> Ibid, Article 19(2).

<sup>13</sup> Ibid, Article 19(3).

<sup>14</sup> For a discussion of the numerous aims of child participation proffered by various commentators. See N. Thomas, ‘Towards a Theory of Children’s Participation’ (2007) 15 IJCR 199-218 at 200.

<sup>15</sup> See, e.g., G. Lansdown, *Promoting Children’s Participation in Democratic Decision-Making* (Florence: Innocenti Research Centre, 2001) 6-7.

input into democratic decision-making processes that affect them: Article 12 CRC. The author proceeds to consider the approach of the Committee on the Rights of that Child to children's participation rights under the CRC, arguing that the Committee has failed to construe and apply Article 12 in such a way as to address effectively children's exclusion from democracy. The article concludes by highlighting key points that should be borne in mind when arguing in favour of particular mechanisms and structures aimed at increasing child participation in democratic decision-making and hence strengthening their democratic citizenship.

### The Position of Children in Democracy & Why Political Participation Matters from a Citizenship Perspective

Children are unenfranchised. It is frequently said that they do not, and cannot, constitute a political constituency able to gain ground through political action.<sup>16</sup> The executive and the legislature are not electorally accountable to them and are, therefore, not immediately dependent on their goodwill in order to ensure re-election. As non-voters, children have no opportunity to exert direct influence on the policymaking process. As a result, their interests are unlikely to occupy a consistently large space on the agenda of elected law and policy-makers.<sup>17</sup> Where children and their issues do occupy 'political space', this is largely due to the emotive effect of child-related discourse. Such discourse is generally paternalistic rather than rights-based and is primarily motivated and directed by parental or societal perceptions of children, their activities and their interests. Thus, where child-related issues are on politicians' agendas, children's exclusion from democratic decision-making processes means that their views and input generally will not be.

But why the focus on democratic participation? One might argue that the lack of direct accountability to children of the elected branches could be compensated for through the exertion by children of indirect influence on democratic decision-making processes. This

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<sup>16</sup> See, e.g., J. Sloth-Nielsen, 'Chicken Soup or Chainsaws: Some Implications of the Constitutionalisation of Children's Rights in South Africa' (1996) *Acta Juridica* 6 at 7.

<sup>17</sup> There are some countries in which children may take part in municipal, local or other elections at a younger or older age than is required for participation in national elections. However, this is exceptional. In the vast majority of countries, children become enfranchised for the purpose of all elections at the same age. Therefore, the arguments made in this article will proceed on the basis that children become entitled to vote in all elections at the same age before which they have no opportunity to participate directly in democratic decision-making procedures.

might occur, for instance, through child lobbying activities or the ability of children to rely on voting ‘proxies’ to forward their interests. That is, through a form of ‘virtual representation’.<sup>18</sup> There is no doubt, however, that the limited organisational capacities, the lack of control over or input into the media, as well as the developmental and economic deficit of many children, severely reduces the ability of children as a group to exert indirect influence on political decision-making.<sup>19</sup> Furthermore, it has been argued elsewhere that children are unable to rely fully on others (whether elected representatives, parents, or adults in general) to ensure that their rights-related interests are forwarded adequately in the democratic process. In brief, this is due to (a) the lack of a comprehensive identity of interests between children and potential representatives, and (b) the inability of children to rely on ‘proxies’ where those proxies will not benefit from children’s rights being afforded protection.<sup>20</sup> As a result, the principle of political accountability does not appear to operate effectively in relation to children and their rights and interests are unlikely to be prioritised within democratic decision-making processes.

Recent years have seen a growing awareness and discussion of ‘the child as citizen’, both amongst children’s rights advocates and academics.<sup>21</sup> In doing so, attention has been focussed on the extent to which children ‘fit in with’ traditional conceptions of citizenship and citizenship theory.<sup>22</sup>

Citizenship is a contested, multifaceted notion, with conceptions and perceptions of citizenship differing amongst both academic commentators<sup>23</sup> and children themselves.<sup>24</sup> For

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<sup>18</sup> The theory of virtual representation is most closely associated with Edmund Burke. For an in-depth consideration of Burke’s concept of virtual representation, see H. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967) at 172-180.

<sup>19</sup> Clearly this will not be the case for all children, as is demonstrated by, for example, the experiences of working children’s organisations. For more, see, M. Liebel, ‘Working Children as Social Subjects: The Contribution of Working Children’s Organizations to Social Transformations’ (2003) 10 *Childhood* 265 at 280.

<sup>20</sup> For more, see, A. Nolan, *Children’s Socio-economic Rights, Democracy and the Courts* (Oxford: Hart, forthcoming 2011). For a useful extensive discussion of the shortcomings of the fiduciary model of parent-child relations in the context of political representation, see E. Cohen, ‘Neither Seen Nor Heard: Children’s Citizenship in Contemporary Democracies’ (2005) 9(2) *Citizenship Studies* 221 at 228-9.

<sup>21</sup> See, e.g., E. Cohen, *Semi-Citizenship in Democratic Politics* (New York: CUP, forthcoming). See also, the work of Mehmoona Moosa-Mitha and other authors cited *infra*.

<sup>22</sup> See, e.g., R. Lister, ‘Why Citizenship: where, how and why children’, (2007) 8 *Theoretical Inquiries in Law* 693; H. Stalford, ‘The citizenship status of children in the European Union’ (2000) 8 *The International Journal of Children’s Rights* 101.

<sup>23</sup> See, e.g., W. Kymlicka & W. Norman, ‘Return of the Citizen: A Survey of Recent Work on Citizenship Theory’ (1994) 104(2) *Ethics* 352-381.

<sup>24</sup> See, e.g., R. Lister, N. Smith, S. Middleton & L. Cox, ‘Young People and Citizenship’ 33 in Tisdall et al, *Children, Young People and Social Inclusion: Participation for What?* (Bristol: The Policy Press, 2006) 33 and

the sake of simplicity, I will take TH Marshall's celebrated, if much criticised,<sup>25</sup> analysis of citizenship as my starting point. Marshall regarded citizenship as being composed of three elements: civil, political and social.<sup>26</sup> This article will primarily focus on children's enjoyment (or not) of what Marshall labels the 'political' element of citizenship.<sup>27</sup> That is, the 'right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body'.<sup>28</sup> Marshall is concerned with 'political' citizenship related to the ability to hold political office or to vote – both of which are denied to some or all children in all liberal democracies. Indeed, according to Marshall, children 'by definition' cannot be citizens. They are 'citizens in the making', rather than 'full members of the community'.<sup>29</sup>

This piece focuses on children's relationship to democratic politics. A consideration of the child's relationship to democratic political processes entails a broader, different construal of 'the right to participate in the exercise of political power' than that employed by Marshall. In light of this, I prefer to use the terminology of the 'democratic' element of children's citizenship (instead of the 'political element') which I take to encompass a more nuanced sense of how children may interact with, and contribute to, the exercise of political power in a society. I am, however, primarily concerned with children's relationship with, and impact on, democratic government, including law and policymaking. This contrasts with those commentators who equate 'democracy' with non-political institutions and systems such as civil society.<sup>30</sup>

Naturally, participation does not simply arise in the context of democratic decision-making and it is clear that participation need not be 'political' in nature. Indeed, the political arena of participation may not even be that which is of greatest or most immediate importance to children in terms of the realisation of their rights on a day-to-day basis in light of the way that children's rights are frequently either provided by, or mediated through, their family unit.

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A. Smith, 'Children as Citizens and Partners in Strengthening Communities' (2010) 80(1) *American Journal of Orthopsychiatry* 103. See also, in a UK context, the findings of A. Anderton & R. Abbott, [Youth engagement – Deliberative research](#) (Youth Citizenship Commission: January 2009)

<sup>25</sup> See, e.g., B. Turner, 'Citizenship studies: A general theory' (1997) 1(1) *Citizenship Studies* 5 — 18 at 11-16.

<sup>26</sup> 'Citizenship and Social Class' in TH Marshall, *Sociology at the Crossroads* (London: Heinemann, 1963) at 73-74.

<sup>27</sup> Ibid.

<sup>28</sup> Marshall at 74.

<sup>29</sup> Marshall at 84, 87.

<sup>30</sup> See, e.g., G. Lansdown, *Promoting Children's Participation in Democratic Decision-Making* (Florence: Innocenti Research Centre, 2001) at 6 and throughout.

This is particularly evident in areas such as housing, social security and freedom of thought, conscience or religion. Where the right to education is at issue, the key forum for child participation may be the school or the educational context more broadly. However, bearing in mind that the arguments being made in this article relate to the position of children with regard to democratic law and policy-making processes, it is logical that the democratic citizenship-related 'aims of participation' should be our central focus here. That is not to suggest that the public political and the private spheres are not strongly inter-related (or that the dividing lines between those spheres are clear-cut or logical). For instance, public laws and policies ultimately define the parameters of parental provision or mediation of rights and injustice within the private sphere in terms of participation or distribution of rights-related goods may only be remediable through direct intervention by the public sphere through political action.

I acknowledge that by primarily focussing on a variant of the 'political' element of citizenship, this work only pays limited attention to other elements of Marshall's typology that may relate to the effective implementation of children's rights, either through democratic decision-making structures or otherwise. For instance, the social element of children's citizenship is clearly linked to children's enjoyment of their socio-economic rights, in light of Marshall's construal of social rights as constitutive of that element of citizenship. Indeed, one could go so far as to say that the failure to give effect to the social element of children's citizenship renders the political or democratic element redundant or impossible given the constraints that a failure to implement children's socio-economic rights will impose on their ability to exercise political and civil rights. However, while children may be accorded those socio-economic rights that would seem to accord with notions of 'social citizenship', one of the underlying concerns of this article is the failure of those exercising political power to give effect to children's rights (including socio-economic rights), thereby severely curtailing children's enjoyment of this element of citizenship. One of the key causes for this failure is the non-accordance to children of the right to participate in the exercise of political power.

Similarly, the civil element of citizenship has a key role to play in children's enjoyment of their rights. Many of the rights that Marshall associates with civil citizenship - and which have a clear relationship with children's enjoyment of 'democratic' citizenship - are accorded to children. This is the case under both the Convention on the Rights of the Child (CRC) and many national constitutions. Such rights include the rights to freedom of expression,

association or thought and conscience. While the CRC and some constitutions accord those rights to children specifically,<sup>31</sup> under other constitutions, children enjoy such rights due to their inclusion within the right-holder category of 'everyone'. However, even where children are accorded the civil and political rights accorded to 'everyone', they may not enjoy the full exercise of such rights in practice due to biological, socially and legally constructed obstacles.

For instance, as stated above, the CRC accords children a number of rights traditionally associated with the exercise of the role of democratic citizen, such as the right to freedom of association and peaceful assembly and the right to freedom of expression. However, the role accorded to parents and others responsible for the child in Article 5 CRC to provide 'in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child' of Convention rights suggests that, in practice, children's enjoyment of these admittedly broadly phrased rights may not be as expansive as that of adults who are accorded similarly expressed rights under non-child-specific international human rights law. This is due to the fact that the civil and political rights accorded to adults under international human rights law are not linked to, adults' 'evolving capacities'. Furthermore, the best interests principle in Article 3 CRC could also, in theory at least, be used to 'trump' children's attempts to operationalise their civil and political rights where such activity is perceived (by adults) to be contrary to their 'best interests'.

The relative conditionality of the civil rights set out in the CRC has contributed to the concerns of some commentators about the extent to which the UNCRC can serve as a vehicle for a (broadly construed) conception of children's citizenship.<sup>32</sup> Ultimately, however, children's denial of 'political' rights is more profound than the denial of civil rights. Furthermore, their non-enjoyment of political rights is more directly linked to their exclusion from the political processes and institutions that are primarily responsible for implementing

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<sup>31</sup> See, e.g., Articles 39 and 45 of the Constitution of Ecuador (2008). See above for a discussion of Article 45, see below. Article 39 provides that 'The State guarantees the rights of the young and promotes their effective exercise through policies and programmes, institutions and resources to establish and maintain in a permanent manner their participation and inclusion in all areas, particularly in the space of public power. The State recognises the young as strategic actors in the development of the country and guarantees them education, health, life, recreation, sports, free time, freedom of expression and association. The State promotes their assignment to work in fair and dignified conditions, with an emphasis on training, guaranteed access to a first job and the promotion of their entrepreneurship skills.'

<sup>32</sup> See, e.g., A. Invernizzi & B. Milne, 'Conclusion: Some Elements of An Emergent Discourse on Children's Right to Citizenship' (2005) 9 *Journal of Social Sciences* 83 at 84.

rights. Hence, it makes sense to focus on the political element of citizenship to a greater extent. In addition, it is children's political rights that are arguably most closely associated with active – as opposed to passive – citizenship.<sup>33</sup>

My concern is very much with the liberal notion of 'citizenship' as a rights-based or focussed status, rather than with broader conceptions of citizenship such as, for instance, those linked to identity or membership of a community.<sup>34</sup> The fact that I am working with what some might regard as a rather 'denuded' legal version of citizenship is not to suggest that citizenship as 'identity' or 'membership of a community' is not hugely important to children – and to particular groups of children especially. Indeed, the inclusive/exclusive dichotomy resulting from the failure of 'universalist' conceptions of citizenship to accommodate what Lister calls a "“differenced-centred” theorisation of citizenship' will have clear implications both in terms of where the line of exclusion falls between adults and children and between some children and other children.<sup>35</sup> Commentators such as Cockburn have warned against the reduction of citizenship to legal rights held against the state and others: in his view, a more public-spirited and radical conception needs to be adopted that acknowledges participation and civic activity.<sup>36</sup> I do not claim that child participation linked to citizenship should take place solely in the formal, public political sphere (that is, through voting and representation) rather than encompassing the wide range of other social relations in which children are embedded, including those traditionally considered to be in the 'private' realm.<sup>37</sup> However, this article is focussed, in particular, on child exclusion from the political sphere. Therefore, the conceptualisation of citizenship as rights operating against the state in the public sphere is one which seems particularly appropriate. This work centres on a liberal model of citizenship on the basis that the core of republican models of citizenship - political agency and active participation in self-rule – is denied to children.

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<sup>33</sup> For instance, Habermas argues that only rights of political participation ground the citizen's reflexive, self-referential legal standing, while negative liberties (that is, civil rights) and social rights can, in contrast, be conferred by a paternalistic authority. (J. Habermas, *Between Facts and Norms* (Cambridge: Polity Press, 1996) at 504).

<sup>34</sup> For a critique of rights-based approaches to children's citizenship and a construction of children's citizenship as a form of political identity, see J. Kulynych, 'No Playing in the Public Sphere: Democratic Theory and the Exclusion of Children' (2001) 27(2) 231.

<sup>35</sup> R. Lister, 'Why Citizenship: where, how and why children', (2007) 8 *Theoretical Inquiries in Law* 693 at 698.

<sup>36</sup> T. Cockburn, 'Children as Participative Citizens: A Radical Pluralist Case for "Child-friendly" Public Communication' (2005) 9 *Journal of Social Science* 19 at 22.

<sup>37</sup> This is the approach recommended by Cockburn and many others working in the context of child citizenship.

Although much discussion around citizenship in recent years has focussed on the responsibilities associated with citizenship, again this will not be a major focus in this piece. This is due to the fact that the alleged responsibilities corresponding to rights-based citizenship have only a limited role to play with regard to the enforcement of children's rights by either the elected branches of government or the courts. That is not to ignore the fact that, in many societies, there is increasing attention being paid to the notion of children's 'duties' or 'responsibilities'. A pre-occupation with the relationship of citizenship, rights and responsibilities was demonstrated in the UK Government's 2009 Green Paper on Rights and Responsibilities which relied on Marshall's work in outlining the argument that the rights associated with UK citizenship cannot be divorced from the notion of 'responsibilities'.<sup>38</sup> When it came to discussing the possibility of including children's rights in such a Bill, the UK Government referred to the responsibilities of parents, Government and wider society with regard to ensuring the proposed right of the child 'to achieve wellbeing'.<sup>39</sup> The Paper also highlighted the need for young people to be aware of 'their own responsibilities' in UK society.<sup>40</sup> In doing so, however, the Green Paper emphasised that the proposed right would not depend on children fulfilling such responsibilities.<sup>41</sup> Children's duties form part of a number of different Constitutions – both binding or otherwise.<sup>42</sup> Thus far, however, the increasing emphasis on child responsibilities has not yet resulted in government (or the courts) justifying a failure to give effect to children's rights in terms of children failing to meet their citizenship related responsibilities, either in the UK or elsewhere. This is perhaps unsurprising bearing in mind the frequent perception of children as having more reduced capacities than adults and hence less 'responsible'. What is perhaps more notable is the failure of governments to recognise rights claims of children amounting from their performance of 'adult' responsibilities (e.g., carers allowance for child carers).

### Children's Participation Rights or 'The "Gap" in the CRC

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<sup>38</sup> This is ironic given that Marshall's understanding of citizenship has been explicitly criticised on the grounds that it does not accord adequate attention to the notion of responsibilities. See Kymlicka *supra* at 355-369

<sup>39</sup> UK Government, Green Paper on 'Rights and Responsibilities: developing our constitutional framework', para 2.34-2.37.

<sup>40</sup> UK Government, Green Paper on 'Rights and Responsibilities: developing our constitutional framework', para 2.38.

<sup>41</sup> UK Government, Green Paper on 'Rights and Responsibilities: developing our constitutional framework', para 2.38.

<sup>42</sup> See, Article 47 of the Constitution of Cambodia; Article 22 Constitution of Eritrea.

Participation rights are one of the key potential vehicles for children with regard to the exercise of political power. As Lister highlights, such rights are of particular significance for children and young people because they cannot express their voice through the ballot box.<sup>43</sup> Recent years have seen much discussion of the participation rights of the child, most notably in the context of the CRC. Article 12 of the CRC arguably has the most potential as a springboard for children to input into democratic decision-making processes that affect them of all the provisions in that instrument.<sup>44</sup> I say ‘potential’ because, as we will see below, while the Committee has focussed on the notion of children as active participants in society, it has not addressed to any great extent the concept of children as democratic citizens (in the sense of having the right to have a direct formal input into democratic decision-making processes).<sup>45</sup>

Considerable controversy surrounds the question of what constitutes participation, with commentators such as Hart, Lansdown, Treseder, Shier, and Arnstein proffering different typologies and models of child participation.<sup>46</sup> ‘Participation activities’ differ in terms of their aims, structures and who is involved.<sup>47</sup> A key issue is the extent to which child participation entails adults being directed by, or acting upon, children’s input and the degree to which (if at all) it involves power being transferred from adults to children.

Many of the same questions arise in relation to child participation as do with regard to adult participation. Is it the process of participation that is important or is it the product of participation that is crucial? Different understandings of the value and aims of participation have implications for children’s participation in a range of different contexts – whether

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<sup>43</sup> R. Lister, ‘Why Citizenship: where, how and why children’, (2007) 8 *Theoretical Inquiries in Law* 693 at 704.

<sup>44</sup> Other key provisions include the principle of the evolving capacities of the child (Article 5) and the rights to freedom of expression (Article 13), freedom of association and peaceful assembly (Article 15) and freedom of thought, conscience and religion (Article 14).

<sup>45</sup> By democratic decision-making processes, I refer only to democratic decision-making processes in relation to the political sphere, not other contexts.

<sup>46</sup> See, R. Hart, *Children’s Participation: from tokenism to citizenship*, (Geneva: UNICEF International Child Development Centre, 1992); G. Lansdown, *Promoting Children’s Participation In Democratic Decision-Making*, UNICEF (2001) and P. Treseder, *Empowering children and young people training manual: promoting involvement in decision-making* (London, Save the Children, UK, 1997) at 7; H. Shier, ‘Pathways to participation: openings, opportunities and obligations: a new model for enhancing children’s participation in decision-making, in line with article 12.1 of the United Nations Convention on the Rights of the Child’ (2001) 15(2) *Children & Society* 107; S. Arnstein, ‘A Ladder of Citizen Participation’ (1969) 35(4) *Journal of the American Institute of Planners* 216-224.

<sup>47</sup> K. Tisdall and J. Davis, ‘Making a difference? Bringing children’s and young people’s views into policy-making’ (2004) 18 (2) *Children & Society* at 131-132

political or otherwise. While children are not generally directly involved in political participation, it is important to bear in mind that, while participation in other contexts does enhance children's sense of inclusion and dignity, unless that participation results in (or aims to result in) children's views of the good influencing particular decision-making in those contexts, it is arguably of limited value. We will return to the key issue of the product or outcomes of child participation in the political context below.

In its most extensive statement on the child's right to participation prior to its General Comment No.12 on the Right of the Child to be heard,<sup>48</sup> the Committee urged states to guarantee systematic inclusion of the child's right to participation in policy matters, as well as ensuring that child participation is taken into account in resource allocation.<sup>49</sup> The Committee has stated further that, where the best interests of large numbers of children are at stake, heads of institutions, authorities, or governmental bodies should also provide opportunities to hear the concerned children from such undefined groups and to give their views due weight when they plan actions, including legislative decisions, which directly or indirectly affect children.<sup>50</sup> The Committee is thus clearly concerned with ensuring child participation in a broad range of legislative, executive and administrative processes and contexts.

Elsewhere, the Committee has spoken about the need for 'consultation' with children to be meaningful and for their views to be given due weight: 'appearing to "listen" to children is relatively unchallenging; giving due weight to their views requires real change'.<sup>51</sup> According to the Committee, the involvement of, and consultation with, children must also avoid being tokenistic and aim to ascertain representative views.<sup>52</sup> Consultation or merely listening to children, however, is very different in nature from true participation. While consultation entails the eliciting of information from children which is subsequently applied by adult policymakers, the latter entails the involvement of children in the decision-making of policymakers. It is clear, however, that the Committee is prepared to describe consultative

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<sup>48</sup> ComRC, General Comment No.12 on the Right of the Child Too Be Heard (2009) CRC/C/GC/12.

<sup>49</sup> ComRC, Day of General Discussion: *The right of the child to be heard*, 29 September 2006, at para 25, available at:

[http://www2.ohchr.org/english/bodies/crc/docs/discussion/Final\\_Recommendations\\_after\\_DGD.doc](http://www2.ohchr.org/english/bodies/crc/docs/discussion/Final_Recommendations_after_DGD.doc).

<sup>50</sup> ComRC, General Comment No.12 on the Right of the Child Too Be Heard (2009) CRC/C/GC/12 at para 73.

<sup>51</sup> ComRC, General Comment No.5 on General measures of implementation for the Convention on the Rights of the Child (2003), UN Doc. CRC/GC/2003/5 at para 12.

<sup>52</sup> ComRC, General Comment No.5 on General measures of implementation for the Convention on the Rights of the Child (2003), UN Doc. CRC/GC/2003/5 at para 12.

processes as ‘participation’. For instance, the Committee has described the term ‘participation’ as ‘used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes’.<sup>53</sup> Laura Lundy has argued that the successful implementation of Article 12 requires consideration of the implications of four separate factors: Space, Voice, Audience and Influence.<sup>54</sup> In its limited work on child democratic participation, the Committee has been happy to address the issues of space (children must be given the opportunity to express a view), voice (children must be facilitated to express their views) and audience (the view must be listened to).<sup>55</sup> It has engaged to a far lesser degree with the issue of influence. That is, the requirement that the child’s view must be acted upon, as appropriate.<sup>56</sup>

The Committee’s understanding of consultation as constituting participation is probably unsurprising given the emphasis in Article 12 on the child’s ‘right to be heard’ and the fact that children’s views are not determinative under that provision. However, an approach to child participation that is limited to consultation is unlikely to result in children becoming involved in traditionally adult spheres that are crucial to the realisation of their rights. Nor is it likely to achieve the potential of activating children as political actors: to change political and policy-making processes and outcomes.<sup>57</sup>

The Committee has decried the fact that the child’s rights to express her view on issues that affect her and to have those views duly ‘considered’ continues to be impeded by, amongst other things, political barriers.<sup>58</sup> It has frequently exhorted states to conduct a regular review of the extent to which children participate in the development and evaluation of laws and policies affecting them and to evaluate the extent to which children’s views are taken into consideration, including their impact on relevant policies and programmes.<sup>59</sup> However, the Committee has failed to adopt a detailed, convincing stance on the issue of child participation

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<sup>53</sup> ComRC, General Comment No.12 on the Right of the Child To Be Heard (2009) CRC/C/GC/12 at para 3.

<sup>54</sup> See L. Lundy, “‘Voice’ is not enough: conceptualizing Article 12 of the United Nations Convention on the Rights of the Child” (2007) 33(6) *British Educational Research Journal* 927.

<sup>55</sup> *Ibid* at 933.

<sup>56</sup> *Ibid* at 933.

<sup>57</sup> K. Tisdall & R. Bell, ‘Included in Governance? Children’s Participation in “public” decision making’ in Tisdall et al (eds) *Children & Young People and Social Exclusion: Participation for What* (Bristol: Policy Press, 2006) 105 at 115.

<sup>58</sup> ComRC, General Comment No.12 on the Right of the Child To Be Heard (2009) CRC/C/GC/12.at para 4

<sup>59</sup> See, e.g., Mexico (2006) CRC/C/MEX/CO/3, para 28(d); Uzbekistan (2006) CRC/C/UZB/CO/2, para 29(d).

in law and policy-making processes that affect them by outlining in detail how the views of children should be given ‘due weight’ in practice.<sup>60</sup> For instance, by suggesting what weight should be accorded to children’s views in particular, concrete contexts or when balanced against the views of other, more powerful actors. In fairness to the Committee, its failure to do so may be at least partially attributable to the fact that the lack of a complaints mechanism associated with the CRC means that the Committee is ordinarily called on to deal with general questions of implementation of CRC rights. In contrast, a complaints mechanism would enable the Committee to apply and develop CRC standards in the context of concrete fact scenarios. The constraints of the reporting procedures, including the limited time available to focus on particular reports and for discussion with delegates and other stakeholders, also pose practical or operational obstacles to the Committee’s work in this and other areas. That said, the Committee’s failure to engage with such questions in the context of its concluding observations (which enable the Committee to address specific domestic situations and issues to some extent at least) is a shortcoming that should be remedied.

More generally, in urging States parties to establish clear guidelines on how the views presented by children in such forums are taken into account by the formal political process and in policy making,<sup>61</sup> the Committee has failed to outline a more direct participatory role for, or system of representation of, children in such processes which would result in their views being potentially determinative in relation to decision-making affecting their rights.<sup>62</sup> For instance, by recommending the amendment of the franchise to introduce a weighted voting system, under which children are accorded a share of an adult vote which increases over time proportionate to the child’s age. Nor, despite being prepared to adopt quite an assertive stance with regard to age limits in the contexts of labour,<sup>63</sup> legal majority<sup>64</sup> and criminal responsibility,<sup>65</sup> has the Committee addressed the implications of Article 12 for

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<sup>60</sup> See, e.g., the Committee’s statements in France (2009) CRC/C/FRA/CO/4 at paras 39-40.

<sup>61</sup> ComRC, Day of General Discussion: *The right of the child to be heard*, 29 September 2006, at para 31, available at:

[http://www2.ohchr.org/english/bodies/crc/docs/discussion/Final\\_Recommendations\\_after\\_DGD.doc](http://www2.ohchr.org/english/bodies/crc/docs/discussion/Final_Recommendations_after_DGD.doc).

<sup>62</sup> I say ‘potentially’ here because simply because one is afforded the opportunity to participate in democratic decision-making processes does not mean that one’s exercise of that opportunity will determine the decisions/actions of democratic majorities.

<sup>63</sup> See, e.g., the Committee’s statements in the context of considering states parties compliance with Article 32(1) CRC in its concluding observations.

<sup>64</sup> E.g., Iran (2005) CRC/C/15/123 at para 19.

<sup>65</sup> See, e.g., General Comment No.10 on Children’s Rights in Juvenile Justice (2007), para 32. Here, the Committee stated that a minimum age of criminal responsibility below the age of 12 years is not ‘internationally acceptable’. CRC/C/GC10.

voting ages other than to commend states for enacting lower voting ages.<sup>66</sup> This is notwithstanding the Committee's acknowledgement that 'given that few States as yet have reduced the voting age below 18, there is all the more reason to ensure respect for the views of unenfranchised children in Government and Parliament'.<sup>67</sup> The Human Rights Committee stated in its General Comment No.25 on the right to participate in public affairs, voting rights and the right of equal access to public service that the right to vote at elections must be established by law and subject 'only to reasonable restrictions, such as setting a minimum age limit for the right to vote'.<sup>68</sup> It did not, however, prescribe what an 'unreasonable' age limit might be.

Freeman contests whether it is appropriate for a Convention which is to be targeted world-wide to specify a voting age when voting means so little in most of the world.<sup>69</sup> This is a legitimate point, however, the Committee's failure to actively encourage States parties to lower voting age means that it is failing to provide support to those children (and their advocates) who are campaigning for a reduction in the age of enfranchisement. A statement from the Committee would constitute an important advocacy tool for such groups. The Committee's relative silence on this issue is also problematic in light of the fact that state action on voting ages is not necessarily always focused on the question of lowering such ages. In 2007, the Guardian Council in Iran approved a Bill passed by the Iranian Parliament increasing the voting age in national elections from 15 to 18.<sup>70</sup> The legislation was apparently motivated by government concerns that younger voters voted in high numbers for Reformist opposition parties in the December 2006 elections.<sup>71</sup> This move constituted an explicit disempowerment of children between the ages of 15 and 18 in terms of denying them direct political participation. While there have been moves towards returning the age of enfranchisement to 15, this has not yet occurred.<sup>72</sup>

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<sup>66</sup> See, e.g., Venezuela (2007) CRC/C/VEN/CO/2 where the Committee welcomed the fact that, following the Community Council Act, young adolescents can vote at the municipal levels at the age of 15 (para 37).

<sup>67</sup> General Comment. No.5 at para 12.

<sup>68</sup> Human Rights Committee, General Comment No.25 on The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) (1996), CCPR/C/21/Rev.1/Add.7 at para 10.

<sup>69</sup> M. Freeman, 'The Future of Children's Rights' (2000) 14 *Children & Society* 277 at 287.

<sup>70</sup> 'Iran increases voting age from 15 to 18 in national elections', *USA Today*, 13 January 2007:

[http://www.usatoday.com/news/world/2007-01-13-iran-voting-age\\_x.htm](http://www.usatoday.com/news/world/2007-01-13-iran-voting-age_x.htm).

<sup>71</sup> See, 'Iran parliament raises voting age to 18', *Times of India*, 2 January 2007:

<http://maillogout.indiatimes.com/articleshow/msid-1025045,prtpage-1.cms>

<sup>72</sup> 'Ahmadinejad wants voting age at 15 again', 20 April 2009:

<http://www.presstv.ir/detail.aspx?id=91999&sectionid=351020101>. On November 24 2009, the New York Times reported that the Iranian government had decided to implant 6,000 Basij militia centers in elementary schools across Iran to promote the ideals of the Islamic Revolution. According to the head of the student and

In General Comment No.12 and elsewhere,<sup>73</sup> the Committee refers positively to ‘the growing number of local youth parliaments, municipal children’s councils and ad hoc consultations where children can voice their views in decision-making processes’ describing these as ‘structures for formal representative participation in local government’.<sup>74</sup> At the same time, it has criticised governmental failure to have regard to the outputs of such bodies and has acknowledged that, while one-off or regular events like child parliaments can be stimulating and raise general awareness, Article 12 requires consistent and ongoing arrangements.<sup>75</sup> Indeed, a child participant in the working group on ‘A new democratic dynamic: child participation in the public sphere’ at the October 2009 Celebration of the 20<sup>th</sup> Anniversary Celebration of the CRC in Geneva made the crucial point that events such as ‘child parliamentary days’ may involve children talking to each other rather than to adults. Thus, in practice, the opportunity for inter-generational dialogue may be severely circumscribed. Unfortunately, observations such as this were not integrated into the recommendations of the working group, which ultimately merely echoed points previously made by the Committee in relation to child participation.<sup>76</sup>

The Committee has expressed concern about bodies such as youth parliaments or councils being unrepresentative in terms of gender or geographical region and only allowing for the engagement of a relatively small number of children.<sup>77</sup> For instance, some children’s municipal councils or committees are elected only by members of ‘children’s clubs’ rather than by the entire child and youth population of the municipality or area/constituency that such a body is meant to represent.<sup>78</sup> In others, voting for Council members is restricted to

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cultural section of the Basij, the group was opening the elementary school centers because “students of this age are more open to influence than older students, and for this reason we want to promote and establish the ideas of the revolution and the Basij,” (R. Worth, ‘Iran Expanding Effort to Stifle the Opposition’ *New York Times*, 24 November, 2009).

<sup>73</sup> See, e.g., ComRC, Day of General Discussion: *The right of the child to be heard*, 29 September 2006, at para 31, available at:

[http://www2.ohchr.org/english/bodies/crc/docs/discussion/Final\\_Recommendations\\_after\\_DGD.doc](http://www2.ohchr.org/english/bodies/crc/docs/discussion/Final_Recommendations_after_DGD.doc).

<sup>74</sup> ComRC, General Comment No.12 on the Right of the Child To Be Heard (2009) CRC/C/GC/12 at para 127.

<sup>75</sup> ComRC, General Comment No.5 on General measures of implementation for the Convention on the Rights of the Child (2003), UN Doc. CRC/GC/2003/5 at para 12.

<sup>76</sup> ‘Draft recommendations as submitted by the thematic Working Groups’, ‘20<sup>th</sup> Anniversary of Adoption of the Convention on the Rights of the Child, Geneva, 8-9 October 2009, available at [www.crin.org](http://www.crin.org). This event as a whole was marked by largely tokenistic child participation with child participants a tiny minority of participants as a whole.

<sup>77</sup> ComRC General Comment No.12 on the Right of the Child To Be Heard (2009) CRC/C/GC/12 at para 127. See the questions posed to the state by the Committee in Netherlands Summary Record 578, paragraph 23.

<sup>78</sup> For an excellent example of a broad group of children voting for children council members, see the experience of the Child Friendly Municipality Initiative in the Dominican Republic. Information is available at:

children at school or of a certain age.<sup>79</sup> The Committee has not, however, engaged with the issue that the ‘representativeness’ of such bodies is generally dependent on adult definitions of representativeness, rather than resulting from those of children (or all of the children that such bodies are intended to represent). This is undoubtedly at least partially attributable to the fact that the Committee is made up exclusively of adults.

It is highly questionable whether providing a child with an opportunity to express their views with regard to political decision-making that does not result in those views effectively influencing decision-making does, in fact, constitute ‘formal representative participation’ – whatever the Committee might suggest to the contrary. Indeed, while it may constitute ‘formal’ participation (in the sense of ‘going through the motions’), it seems highly unlikely to qualify as substantive or ‘effective’ (in the sense of children’s views being brought to bear). The Committee seems to have gone further in the context of the rights of children with disabilities, stating that ‘children should be represented in various bodies such as parliament, committees and other forums where they may voice views and participate in the making of decisions that affect them as children in general and as children with disabilities specifically.’<sup>80</sup> Importantly, this especial focus on children with disabilities, together with the Committee’s concern that child participation be ‘representative’ reflects an awareness that especial care must be taken that the voices of the most vulnerable and marginalised children should be heard.

It is, of course, important not to become overly focussed on formal direct forms of participation in political processes. That said, bearing in mind the reality that such forms of participation seem more likely to have a concrete impact on political decision-making with regard to children’s rights than indirect ones, the Committee’s failure to address them in adequate depth is problematic. One might also argue that a focus on the part of the Committee on children’s participation in formal political decision-making processes would be inappropriate as such a conception of participation reflects an understanding of participation in terms of a child’s capacity for individualistic autonomous decision-making. It

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([http://www.unicef.org/republicadominicana/english/advocacy\\_partnerships\\_12854.htm](http://www.unicef.org/republicadominicana/english/advocacy_partnerships_12854.htm). See also, the experience of the Children’s Municipal council of Gaza:

<sup>79</sup> See, e.g., the comments of the Committee in Chile Summary Report CRC/C/SR.763 at para 59 criticising the fact that the Youth Parliament gave a voice only to children enrolled in school.

<sup>80</sup> ComRC, General Comment No. 9 on the rights of children with disabilities (2006), UN Doc. CRC/C/GC/9 at para 32.

is arguable that child participation would be more appropriately understood as simply an expression of agency by the child.<sup>81</sup>

Admittedly, the Committee has recognised the agency of younger children, stating that such children ‘make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language’.<sup>82</sup> In its General Comment specifically devoted to Article 12, the Committee highlighted that the full implementation of that provision ‘requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences’.<sup>83</sup> However, the Committee’s recognition of younger children’s agency is arguably tempered by its direction that Article 12 should be implemented from the earliest stages ‘in ways appropriate to the child’s capacities, best interests, and rights to protection from harmful experiences’.<sup>84</sup> Thus, giving effect to the participation rights in Article 12 is to be constrained by, or subjugated to, the more welfare or protection-focused elements of the CRC. More positively, the Committee has emphasised that the right of participation requires adults ‘to show patience and creativity by adapting their expectations to a young child’s interests, levels of understanding and preferred ways of communicating’.<sup>85</sup> Overall, however, the Committee has paid only limited attention to more complex notions of participation as an expression of agency.

### The Way Forward?

The Committee’s failure to employ Article 12 effectively to address children’s exclusion from democracy is perhaps unsurprising in light of Shier’s observation that, until recently, there has been little sign of mutual learning or cross-fertilisation between the fields of child and youth participation and participatory governance.<sup>86</sup> This is despite the fact that supporters

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<sup>81</sup> For an argument in favour of the latter approach, see M. Moosa-Mitha, ‘Children as Public Actors: Navigating the Tensions’ (2005) 9(4) *Citizenship Studies* 369 at 380-381.

<sup>82</sup> ComRC, General Comment No.7 on implementing child rights in early childhood (2005), UN Doc. CRC/C/GC/7/Rev.1 at para 14.

<sup>83</sup> ComRC, General Comment No.12 on the Right of the Child To Be Heard (2009) CRC/C/GC/12 at para 31.

<sup>84</sup> ComRC, General Comment No.7 on implementing child rights in early childhood (2005), UN Doc. CRC/C/GC/7/Rev.1 at para 14(a).

<sup>85</sup> ComRC, General Comment No.7 on implementing child rights in early childhood (2005), UN Doc. CRC/C/GC/7/Rev.1 at para 14(c).

<sup>86</sup> H. Shier, ‘Children as Public Actors: Navigating the Tensions’ (2009) *Children and Society* 24 at 24.

of the CRC have praised the Convention for constructing children as ‘active citizens’ and for calling ‘upon states to ensure that they are active, participating citizens, playing a role in governance “according to their age and maturity”, rather than simply being passively governed’.<sup>87</sup>

It is important to note that I am not arguing that children’s non-participation and non-representation in terms of democratic processes would be automatically remedied by extending the vote to children.<sup>88</sup> However, bearing in mind the centrality of the ‘right to vote’ to the counter-majoritarian objection to judicial review, it is important to highlight that voting and democratic decision-making as they currently operate do not provide children with an engine to advance their rights and interests directly or effectively through the political system. Merely extending the vote to children will not, in and of itself, bring about the societal, cultural and structural reform that is necessary to address the disadvantage and relative powerlessness experienced by children as a group in society.<sup>89</sup> (Furthermore, bearing in mind that there is evidence that some groups of children do not wish to vote (or do not wish other children to vote),<sup>90</sup> extending the franchise to children might risk undermining children’s participation-related preferences). Ultimately, even if there was universal suffrage of children, there would still be some who would not be able to vote (for instance, the very young). This is not to suggest that most children lack the competence to vote or should not be granted the right to vote – rather, it is simply a recognition that there will inevitably be some children for whom ‘voting’ will not serve as a mechanism by which to ensure participation in the decisions affecting them.<sup>91</sup>

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<sup>87</sup> See D. Stasiulis, ‘The Active Child Citizen: Lessons from Canadian Policy and the Children’s Movement’ (2002) 6(4) *Citizenship Studies* 507 at 509.

<sup>88</sup> Commentators have, however, presented strong moral arguments in favour of extending the vote to children, see, e.g., S. Lecce, ‘Should Democracy Grow up? Children and Voting Rights’ (2009) 4 *Intergenerational Justice Review* 133 (exploring whether the disenfranchisement of children is morally defensible or, in fact, constitutes social injustice).

<sup>89</sup> For a similar argument, see J. Kulynych, ‘No Playing in the Public Sphere: Democratic Theory and the Exclusion of Children’ (2001) 27 *Social Theory and Practice* 231.

<sup>90</sup> See, in an Irish context, the results of National Youth Federation youth poll. Here, 51% of 17-year-olds polled felt that the voting age in Ireland should be lowered to 16-year-olds compared to 68% of 16-year-olds and 71% of 15-year-olds. Those who conducted the poll concluded that this result might be caused by from the tendency of age groups, and particularly younger age groups, to seek certain rights and privileges over age groups younger than themselves. (National Youth Federation, *National Youth Poll* (Dublin, National Youth Federation, 2004).

<sup>91</sup> That is not to suggest that voting will be possible for all adults either. However, while all children go through a period in which they would not be able to exercise the right to vote, this is not necessarily the case for adults.

Nor am I suggesting that democratic decision-making processes as they stand will afford optimal participation even to those children who are able to exercise the vote. A number of commentators have argued convincingly that changes may need to be made to democratic decision-making processes and – indeed – mechanisms and fora for involvement more generally - as they are currently constituted in order to render ‘democracy’ more inclusive.<sup>92</sup> Thomas highlights that, if the challenge of children’s participation is to open up existing institutions to ‘the voices of children’, then it is necessary to ask how far those existing institutions have to change in order for this to happen.<sup>93</sup> In making such changes from a child-centric perspective, account must be taken of Hinton’s observation that children’s ability to engage with government as active citizens is often prevented not only by structural obstacles but also by the sub-conscious biases that result from dominant understandings of childhood.<sup>94</sup> Changes to democratic processes may not serve to ensure effective participation for excluded groups in the absence of a broader cultural shift in attitude towards members of those groups and the value to be accorded to their views. This is certainly true in the case of children whose exclusion from direct participation in the democratic system is so profound. There also needs to be a careful interrogation of systems of participation for children in democracy to ensure that participation is effective – in terms of ensuring that it results in children’s views and interests being given effect in political decision-making - rather being simply formal or tokenistic in nature.

Shier has noted that, as a general rule, the younger the children involved, the less well-served they will be by processes that mimic those used by adults and the more crucial it therefore becomes to devise, test and validate new processes appropriate to the evolving capacities of young children.<sup>95</sup> This should be borne in mind when arguing in favour of the particular mechanisms and structures aimed at increasing child participation in democratic decision-making. It certainly calls for the Committee and others working in the context of child participation to employ considerably greater imagination when considering models by which children might participate in and input into democratic processes. If, as Young says, the

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<sup>92</sup> See, e.g., Iris Marion Young, *Democracy and Inclusion* (Oxford: Oxford University Press, 2000). Young does not, however, expressly the position of children in her work.

<sup>94</sup> R. Hinton, ‘Children’s Participation and Good Governance: Limitations of the Theoretical Literature’ (2008) 16 *International Journal of Children’s Rights* 285, 294.

<sup>94</sup> R. Hinton, ‘Children’s Participation and Good Governance: Limitations of the Theoretical Literature’ (2008) 16 *International Journal of Children’s Rights* 285, 294.

<sup>95</sup> Thomas, ‘Towards a Theory of Children’s Participation’ (2007) 15 *IJCR* 199-218 at 207.

<sup>95</sup> H. Shier, ‘Children as Public Actors: Navigating the Tensions’ (2009) 24(1) *Children & Society* 24 at 33.

normative legitimacy of a democratic decision depends on the degree to which those affected by it have been included in the decision-making processes and have had the opportunity to influence the outcomes,<sup>96</sup> then the legitimacy of democratic decision-making on children's rights is seriously open to question.

## Conclusion

In sum, participation as described by the CRC (at least insofar as it has been construed by Committee) seems unlikely to play a key role in guaranteeing democratic citizenship to children.<sup>97</sup> As Freeman highlights, denial of citizenship rights to children means they are not regarded as active agents and their interests can easily be ignored.<sup>98</sup> Given the impact that children's exclusion from democracy has for both the potential and actual realisation of their rights, the Committee's failure to engage with this issue adequately poses a serious threat to the implementation of children's civil, political, socio-economic and cultural rights.

It is crucial that the Committee should proceed to proactively and self-consciously develop its work in this area. September 2009 saw UNICEF sending out a call for examples of children interacting directly with parliamentarians where interaction has had an impact on budgets, lawmaking, or the direction of policy and planning.<sup>99</sup> Apparently, UNICEF's research in this area will ultimately inform a guidebook on child and adolescent participation within parliamentary processes that will be presented to parliamentarians and other stakeholders across the globe in efforts to enhance participation within these processes. While this is not a Committee initiative, it is to be hoped that the research will serve as a useful evidence base for the Committee in developing its work in this context.

The failure of the Committee on the Rights of the Child to lead the way in relation to children's democratic participation and citizenship means that there is neither strong motivation nor guidance for states to guarantee such in their own laws. This gap in the

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<sup>96</sup> Iris Marion Young, *Democracy and Inclusion* (Oxford: Oxford University Press, 2000) at 5-6.

<sup>97</sup> Milne has made a similar observation in relation to the notion of citizenship more generally. (B. Milne, 'Is "Participation" as it is Described by the United Nation Convention on the Rights of the Child (UNCRC) the Key to Children's Citizenship?' (2005) *Journal of Social Sciences* 31). I would not, however, go as far as Milne who argues that 'The UNCRC is a substantial and quite thorough instrument for the denial of children's citizenship whilst giving a foretaste of what it may be to those who are allowed to try to assert themselves through choice, expression and action' (at 41).

<sup>98</sup> M. Freeman, 'The Future of Children's Rights' (2000) 14 *Children & Society* 277 at 287.

<sup>99</sup> Call sent out on Children's Rights Information Network on 24 September 2009.

Committee's jurisprudence necessarily filters down into the practice of states. Ultimately, in its future consideration of Article 12, the Committee must advance beyond simply acknowledging and condemning children's limited role in democratic decision-making, to outlining what concrete measures must be taken by states both in law and in practice so as to ensure that children's democratic citizenship is secured.