

APPENDIX

Author(s): Hege Stein Helland

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7.1 Ghana – Child Exploitation Protective System

Ghanaian child protection legislation affirms children’s right to have their opinions heard in matters involving their well-being, but there are no established policies to promote children’s participation (Abdullah *et al.*, 2018).¹ In addition to the CRC, Ghana has also ratified the African Charter on the Rights and Welfare of the Child (1990) stating that the best interests of the child shall be “*the* primary consideration” (Article 4(1) and that the child’s expressed views “shall be taken into consideration by the relevant authority” (Art 4(2)). Moreover, the legislation sets no mandatory age requirements for children’s participation. Scholars of the Ghanaian system (Cudjoe, Abdullah and Chua, 2020) have suggested that this could reflect the insignificant position of participation in Ghana’s child protection system rather than as a real commitment to hearing *all* children. A large number of children² are under state care in Ghana (Cudjoe, Abdullah and Chua, 2020), but children are rarely included in decisions about placement options, even when they are

¹ It should be noted that Ghana’s laws traditionally have been influenced by English common law (De Bruin, 2010).

² Orphaned children (measured in 2007).

physically present in the decision-making processes. One of the barriers to the involvement of children is related to cultural practices and expectations. Parental influence is strong, and children are socialized to keep quiet when adults interact (Twum-Danso, 2009). This leads to exclusion of children's voices as well as parents interrupting or hindering children to speak in meetings, which may also lead to children feeling intimidated and not wanting to express their true feelings. More generally, the construction of childhood and prioritization of basic rights over participatory rights hinder the realization of participatory rights (Twum-Danso, 2009). Other barriers are related to resources, where heavy workloads prevent social workers to prioritize participatory practices (Abdullah et al., 2018). Research into children's own experiences indicates that participation is characterized by tokenism, and children report that they feel uninformed and that decision-making is 'adults' business' (Cudjoe, Abdullah and Chua, 2020; Cudjoe, Uggerhøj and Abdullah, 2020).

7.2 Russia – Child Deprivation Protective System

In Russia, which has one of the highest proportions of children in substitute care in Europe – and perhaps also the world – child protection legislation also affirms children's right to participation. After the end of the communist era, legislators 'made significant efforts to bring Russian legislation concerning the rights of the child directly or indirectly into compliance with the CRC' (Kravchuk, 2014: 29). However, the best interest assessment is, as mentioned previously, highly discretionary and influenced by paternalism, and research suggests that the best interest is often interpreted as *not* hearing the child to avoid inflicting emotional stress. Moreover, research points to huge gaps in including children (see e.g., Kravchuk, 2014). Despite having policies dedicated to children's participation³, implementation has not been successful. For example, a recent study on institutionalized children between ten and seventeen years shows that nearly half the children report not being heard when the decisions affecting their interests were made (Odinokova and Rusakova, 2019). It is assumed that the lack of public monitoring indicators has contributed to an attitude that implementation is optional (Kalabikhina and Kuchmayeva, 2016 in: Odinokova and Rusakova, 2019). As in Ghana, cultural and political practices and expectations are important in understanding the shortcomings in allowing for participation in practice. Traditional paternalistic attitudes towards children as

³ The National Strategy for Action in Children's Interests was in force in 2012–2017. This was according to Heland-Kurzak and Filipova (2020: 63), 'the first document that promoted the idea of child participation in the life of the society in Russia'.

less competent and the reluctance in incorporating ‘western values’ as well as international standards are suggested to be important barriers to the realization of children’s right to participate. Natalya Kravchuck (2014) also argues that Russian official policies alienate citizens, including children, from democratic procedures. This may be reflected in legislation and decision makers’ attitudes towards children as active participants in decisions.

In the child maltreatment systems, participation for children is atypical, but still more common than in the two former systems. Within this ideal type, we may place Estonia.⁴

7.3 Estonia – Child Maltreatment Protective System

The first mention of participation in Estonian child protection legislation came in 2014. The new legislation puts a clear responsibility on child protection caseworkers to include children but does not provide any guidance as to which methods to use (Toros and Falch-Eriksen, 2021), and practitioners exhibit a lack of skills and competence for child-centred and inclusive practice (Toros *et al.*, 2017; Toros and LaSala, 2018). Studies show that while children themselves express wishes to be included, participation from children in decision-making processes is limited and children report that they do not feel listened to (Arbeiter and Toros, 2017; Lauri *et al.*, 2021). The minimum age for being heard is ten years, and although age appears to matter for involvement, children over this threshold also express similar concerns.⁵ One possible explanation for this is that practitioners tend to take a protective stance when it comes to child participation, and children, especially younger ones, are seen as incompetent (Lauri *et al.*, 2021; Toros and Falch-Eriksen, 2021). Therefore, efforts at encouraging participation become insufficiently implemented in practice (see Toros and Falch-Eriksen, 2021).

Another explanation is related to their approach to child protection work. Studies have shown that decision makers in child protection apply an authoritarian, deficit-based approach with less focus on capabilities, which has been used to explain why children’s perspectives are not included in assessments (Arbeiter and Toros, 2017; Toros *et al.*, 2015). Although there appear to be child-friendly mechanisms in place, especially

⁴ It should be said in relation to this category that some systems’ orientation is rather strong on the involvement of children and may be approaching the two latter systems, such as England (Thoburn, 2023).

⁵ Code Civil Procedure, CCP, s. 552.

for hearing older children in court, studies show that children rarely participate in judicial proceedings, often with the argument that children are incompetent and that participation is harmful (Toivonen *et al.*, 2021; Toros *et al.*, 2014). In the literature, structural and legislative reasons are pointed out for these challenges, as well as cultural issues such as adult orientation and old child-rearing practices (see Toivonen *et al.*, 2021).

In child well-being and child rights systems, children are seen as active agents and participation is typical or required. In these two categories, we may place the Netherlands and Norway, respectively.

7.4 The Netherlands – Child Well-being Protective System

In the Netherlands, children's right to participation is firmly embedded in the child protection system (Bouma *et al.*, 2018). Recent policy changes have led to an emphasis on the inclusion of children and increased child orientation (Witte *et al.*, 2020). However, critical inquiries have pointed to shortcomings in the current policy among others with regards to the lack of procedures and guidelines for implementation and for not providing a clear, uniform and coherent national policy (Bouma *et al.*, 2018). Reports from the Children's Ombudsman reveal that children do not participate enough in decisions and the government has itself stated there is a need for improvement (Witte *et al.*, 2020). Not hearing younger children appears to be a particularly widespread problem. Studies show that children under the age of 12 years have scarce chances of participating in decision-making processes, both in the courts and in the child protection agencies (see Rap *et al.*, 2019). Even though there are no age limits for participation and decision makers are free to hear younger children, they appear to operate by a strict age limit of 12 years.

Generally, there is a gap between intention and practice, and studies show that meaningful participation is lacking, and that decision makers are using children's participation strategically, rather than aiming for meaningful participation (van Bijleveld *et al.*, 2014). It is suggested that younger children are often viewed as incompetent and vulnerable, and that the importance of protection essentially trumps participation. Challenges for successful implementation are reported as both policymaker- and decision maker-related and range from a lack of time and capacity, decision makers' paternalistic attitudes and use of presumptions, lack of knowledge about obligations, unclear policy and guidelines for implementation as well as formal structures that allow for overly discretionary assessments as to who gets to participate, which eventually has led to major local differences in children's participation (Rap *et al.*, 2019).

7.5 Norway – Child Rights Protective System

In Norway, children’s participation has a strong standing in child protection law, and it is also a constitutional right for children (Nylund, 2019). There is a clear public policy for children to participate, and children of all ages that are considered capable to form an opinion should participate in decision-making processes. Studies show that overall older children’s voices are often present in court decision-making and that spokespersons are often appointed (Magnussen and Skivenes, 2015; Vis and Fossum, 2013). However, while children’s voice is mentioned it is often not given weight or proper consideration, both in court and in the child protection agencies (Helland and Skivenes, 2019; Magnussen and Skivenes, 2015; Vis and Fossum, 2013). These findings fit well with research that finds that decision makers often find it sufficient to merely *hear* the child. This is a recurring criticism, and it has been claimed that the child’s right to participation appears tokenistic or a formality (Gerds-Andresen and Aarum Hansen, 2021).

There appears to be an ambiguity between the strong legal protection of the right to participate and practice. A common finding in studies on the Norwegian system is that younger children’s voices, as well as those with disabilities, are often absent from decision-making and that there is insufficient documentation for why children have not participated (Magnussen and Skivenes, 2015).⁶ Studies on decision-making processes also show that large proportions of children are not talked to at the investigative stages and that many children feel that participation is not done in meaningful ways. While Norway is an example of a child’s rights system with an ideological orientation towards viewing children as citizens, there is still a long way to go in terms of children’s participation. The reasons why implementation of children’s right to participate is not at a level one could expect is suggested to be related to poor communication skills, protective attitudes, organizational structures that are not child-friendly and the lack of guidance on *how* to include children beyond mere consultation or tokenism (Vis *et al.*, 2012).

⁶ Norway has been urged by the CRC Committee to increase its efforts to strengthen compliance in practice with the child’s right to be heard, and to train their professionals in age-appropriate, empowering and meaningful participation (CRC/C/NOR/CO/5-6).