

## Submission from the Child Rights International Network - CRIN to the Forum on Human Rights, Democracy and the Rule of Law

CRIN is pleased to present this submission on the theme of “Widening the Democratic Space: the role of youth in public decision-making.” While the theme focuses on ‘youth’, we believe it is unnecessary to exclude younger children from these discussions, as we have advocated for recently in our paper on [children’s rights and minimum ages](#).

In this submission, we have highlighted a few areas of children’s rights that we feel deserve further discussion, including: children’s right to [freedom of expression](#), [freedom of assembly](#), the [right to vote](#), and [access to justice](#) and challenging public decisions.

### Introduction

Children have all their human rights. Not because they are "the future" or "the adults of tomorrow", but because they are human beings today. This means children, like all adults, must have their civil and political rights respected. These rights are the foundation of democracy and the rule of law.

The ability to enjoy one’s civil and political rights is key to living in an open and free society. These rights belong to every human, including children and youth. Otherwise only the views of the powerful are on display, and those holding minority views risk persecution, leaving societies stagnated in the status quo. Dissent, as long as the expression of it does not harm others, should never be quashed; and those legitimately in power ought not be afraid of it.

Unfortunately, children are rarely given opportunities to participate in public life because they are seen as simply appendages of their parents, community or the state. For example, no country in the world allows under-16s to vote and only a minority allow children aged 16-18 the vote. This is because children are routinely dismissed as incapable of making reasoned decisions.

Their rights to be heard, freedom of expression and ability to protest are denied all over the world. Taking a look at how a society views children’s civil and political rights is a good gauge of how that society views children - as rights holders or merely an extension of their parents.

Yet, despite opposition, children are expressing themselves, and not just on matters concerning them. Pictures from protests around the world show children taking to the streets, [occupying](#) their schools to save public education, demanding their rights and speaking out about what they want for their communities. The internet has revolutionised the way we communicate, and children are at the forefront of this new technology.

## Freedom of Expression

Freedom of expression is rarely part of children's rights advocacy – at least as a stand-alone issue - yet it is critical for the realisation of all children's rights. And if children are restricted from holding or expressing opinions, or from receiving information through the media (subject to certain, limited, exceptions), how can they describe the ways in which their rights are being respected, fulfilled, or, on the other hand, infringed? Similarly, organisations and media outlets must, in all countries in all regions of the world, feel secure in the knowledge that the information they disseminate will not be subject to unreasonable interference.

The right to freedom of expression, embodied in [article 13](#) of the Convention on the Rights of the Child, is closely linked with [article 12](#) on the right to participate. However, the Committee on the Rights of the Child has noted that, while both articles are strongly linked, they do elaborate different rights. In their [General Comment on Article 12](#), the Committee said: "Freedom of expression relates to the right to hold and express opinions, and to seek and receive information through any media. It asserts the right of the child not to be restricted by the State party in the opinions she or he holds or expresses. As such, the obligation it imposes on States parties is to refrain from interference in the expression of those views, or in access to information, while protecting the right of access to means of communication and public dialogue."

On the other hand, the Committee continued, "Article 12...relates to the right of expression of views specifically about matters which affect the child, and the right to be involved in actions and decisions that impact on her or his life."

The Committee also noted the different obligations created by the different articles. It said: "Article 12 imposes an obligation on States parties to introduce the legal framework and mechanisms necessary to facilitate active involvement of the child in all actions affecting the child and in decision-making, and to fulfil the obligation to give due weight to those views once expressed. Freedom of expression in article 13 requires no such engagement or response from States parties. However, creating an environment of respect for children to express their views, consistent with article 12, also contributes towards building children's capacities to exercise their right to freedom of expression."

## Freedom of association

The ability to interact is especially critical for children's development. If children cannot associate freely with one another, how can they be expected to form views about the world, participate actively in society and stand up for their rights and those of others later in life?

While in many cases the denial of political rights extends to the population of a country as a whole, in others, children - but not adults – are excluded from participating in protests or from forming or joining associations simply because of their age.

The most obvious example is the imposition of curfew laws. Curfew laws typically apply only to children. Such laws not only stigmatise and criminalise young people, but also obstruct them from building relationships and getting involved in society. Laws on disobedience or anti-social behaviour too, can exclude children from public places and criminalise them for taking part in public life. For examples of status offences and how to challenge them, see [CRIN's Global Report on Status Offences](#).

This situation reflects the view of children as helpless human beings incapable of making informed decisions without the manipulation of adults, and provides yet more evidence of the fact that while children's protection rights are widely accepted, their civil and political rights are relegated to pariah status.

[Article 15](#) embodies children's rights to freedom of association and assembly, including their right to form and join associations and gather peacefully as well as to associate freely with friends and others in public spaces. Freedom of association is closely linked to other articles of the Convention. [Article 13](#) on children's right to freedom of expression is particularly relevant: restricting children's freedom of association of course restricts children's right to freedom of expression and vice versa.

### **Right to vote**

No country in the world allows under-16s to vote in national elections and only a minority allow suffrage to children aged between 16 and 18 in national or municipal elections, some with conditions such as being employed or married.

The Committee on the Rights of the Child has yet to develop a position on the voting age. It has, however, commended States for lowering their voting age from 18 to 16 and has consistently emphasised the importance of children's involvement in democratic processes, for instance through children's parliaments.

The fact that children are excluded from political processes which wield influence over elected representatives, including the vote, is a major reason why their rights continue to be unfulfilled. There is no protective reason for depriving children of the right to vote; on the contrary, it can encourage interest in the world around them and enhance their capacities.

Individuals should be allowed to vote as and when they choose to do so and are able to register for voting. Such a method would eliminate the use of arbitrary age restrictions which ignore the wide range of skills and competencies possessed by different children. This should be done by increasing the opportunities for young people to register to vote through schools, at local authority level and through other institutions to ensure all children are included. In this connection, schools and other educational bodies should promote active citizenship education on democracy and politics (see section on civil and political rights in education).

Democracy requires that everyone should have a voice in making the decisions that govern their lives if they choose to do so - and that includes children. Children's parliaments and

other organisations aimed at involving children in democratic processes are important but should not divert from the right to vote. While it is true that the electoral preferences of parents form a powerful influence on children's voting patterns, this is the case whether we are 10, 20, 50 or 80 years of age.

In short, the arguments about capacity and judgement that are used to deny children the vote today are the same as those used to deny women the vote in the past (and present in some places), as well as people from racial and ethnic minorities.

The issue of the right to vote for children became ever more relevant following the Brexit vote in the United Kingdom where children were denied any say despite campaigners arguing for 16 year olds to be able to vote. As Helen Stalford wrote, "the UK's exit from the EU could be catastrophic for children in terms of an inevitable and significant reduction in the economic, legal, and procedural provision currently available to them."<sup>1</sup> A large majority of young people between the ages of 18 to 25, 75 percent, voted to remain; many young children and young people are blaming older generations of stealing their futures by voting to leave. The tensions between older and younger generations caused the UN Special Rapporteur on Older Persons to denounce ageist attacks against older generations<sup>2</sup>. We think children should have been allowed to vote.

### **Access to justice for children and challenging public decisions**

Violations of children's rights often stem from laws and the actions of the state, and the way that States incorporate human rights standards into national law correspondingly places the burden for their protection on government bodies. This is why so much children's rights litigation takes place through administrative or constitutional law - the law that governs how the state functions - and why properly developed complaints mechanisms are so important in this area. Children must be able to bring complaints through these process in order to engage in public decision making, ensure their rights are taken into account in those decisions and to challenge decisions when they are not in accordance with their rights.

#### *Standing*

Restrictive rules on legal standing - that is the rules governing who is able to bring a case to court - can prevent children from challenging a violation of their rights or where their rights have not been taken into account in public decision making, regardless of the strength of their case. The most basic requirement here is that a child be able to bring a case in his or her own name. Legal systems may put in place a range of restrictions as to how a case may be brought and by whom, but this almost universally respected standard ensures that the law treats children as their own legal person with interests that the court should protect

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<sup>1</sup> Not seen, not heard: the implications of Brexit for children, Helen Stalford 8 June 2016, <https://www.opendemocracy.net/brexitdivisions/helen-stalford/not-seen-not-heard-implications-of-brexit-for-children>

<sup>2</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20241&LangID=E>

Once this basic right is in place, the question is how a child can approach the court and through whom. The countries of the world overwhelmingly enshrine a general rule that children lack the standing to approach courts by themselves and require children to do so through a representative. This representative might be the child's parent, litigation guardian, guardian ad litem or 'next friend who instructs lawyers and makes decisions about how to proceed in court. Many children will want this support, but where decisions on whether a child is required to act through a representative do not take account of their capacity and desire to act on their own behalf, they have more limited value in empowering children to engage with the justice system and in challenging public decision makers.

### *Collective complaints*

Collective action - that is a legal action that allows a number of claimants or victims to bring a case or complaint together or in the public interest - can be a particularly effective way of challenging widespread or large scale violations of children's rights while reducing the burden on any given child victim. These can be vital where large numbers of children are negatively affected by public policy. Combined cases, test cases, group litigation, class actions and public interest litigation can all fulfil this function with varying degrees of effectiveness.

### *NGOs bringing cases in the interests of children*

Child focused non-governmental organisations will often be well placed to challenge widespread violations of children's rights or simply to support an individual child seeking redress where their rights have not been taken into account in public decision making. Yet procedures that enable organisations to do so are far from universal: around a half of States allow NGOs to bring cases in their own name, while a slightly larger majority of 54 per cent permit NGOs the more limited power to intervene in cases that have already been filed.