The Participation Disc
A Concept Analysis of (a) Child (‘s Right to) Participation

Katrien Herbots
Affiliated Researcher, Institute of Social Law and Leuven Institute of Criminology, University of Leuven
katrien.herbots@keki.be

Johan Put
Professor, Institute of Social Law and Leuven Institute of Criminology, University of Leuven, Belgium
johan.put@law.kuleuven.be

Abstract

Over twenty years after the adoption of the UN Convention on the Rights of the Child, child participation and the child’s right to participate still remain subjects of discussion and interpretation. This article aims to examine critically the notion of “participation” through a literature analysis that cuts across several academic disciplines. A framework for understanding participation is proposed in the form of a participation disc. The CRC is critically examined against the background of this participation disc. The significance to be attached to the CRC participation rights will be ascertained with a particular focus on Article 12. An assessment, by means of a theoretical review, leads to the conclusion that enacting the participation rights in the CRC is a result of a casuistic and fragmentary approach to participation rather than a well-considered view of participation. Therefore, a certain vigilance is required when interpreting, implementing and monitoring CRC participation rights.

Keywords
participation – children’s rights – Convention on the Rights of the Child
1 Introduction

Over the past decades, a great deal of attention has been given to child participation as well as the child’s right to participate, and in particular to Article 12 of the United Nations Convention on the Rights of the Child, adopted on 20 November 1989. One of the fundamental values of this human rights treaty is the recognition of the child as a subject of rights, whereby some rights can be defined as a legal translation of participation.

More than 20 years later and a general comment of the UN Committee on the Rights of the Child (CRC Committee) specifically devoted to Article 12 (CRC Committee, 2009) richer, this paper wants to give an impetus to consider again to what child participation refers, whether it is formulated as a child’s right and what (exactly) this right contains.1

Through a literature analysis, a thorough understanding of child participation is sought in order to make the concept operational. Since the notion of participation cuts across academic disciplines, this will be done from an interdisciplinary perspective.

The paper starts with an analysis of the notion ‘participation’ (2). The position will be taken that analysing and understanding participation by means of a framework seems to be more valuable than working with a sharp definition. It will be argued that participation can be represented as a “participation disc”, containing four main fields which can be further subdivided. The subsequent section (3) addresses the commonly accepted starting point of the child’s right to participate, namely the participation rights as enacted in the CRC. These provisions will be examined, making use of the participation disc. The paper concludes with critical considerations relating to the CRC’s view of participation, deduced and interpreted through the former analysis. Attention is drawn to a clear interpretation of child participation in the name of CRC’s participation rights.

---

1 This study of a theoretical analysis of the ‘participation’-concept was finished in August 2011. Consequently, relevant literature, published after 2011, may be missing from this contribution. As well it should be noted that since the completion of the current article, the Participation Disc – arising out of this theoretical analysis – was applied as referenceframe for research in Flanders (Belgium) on participation rights of children in separation circumstances (Interdisciplinary Project on the Optimisation of Separation trajectories): www.kuleuven.be/isr/onderzoek/mapjeugdrecht/ipos and www.scheidingsonderzoek .ugent.be.
Understanding Participation: Not a Single Definition, Rather a Framework

Participation is defined in the dictionary as to ‘take part or become involved in something’ (*Cambridge Advanced Learner's Dictionary*, 3rd edn.). Some analyses describe the meaning behind the participation of the child in processes, decisions, activities, the life of the community, etc. (*inter alia*, Cattrijse & Delens-Ravier, 2006; Hart, 1992; Thomas, 2007; UNICEF, 2001; CRC Committee, 2009). Children's participation may be described as a framework, such as the multi-layered concept consisting of six dimensions presented by Kirby, Lanyon, Cronin & Sinclair (2003). Others identify component factors that contribute to a framework describing children's participation in collective decision-making in the political world (Thomas, 2007).

Children's participation should be regarded as a complex notion, not easily encapsulated by a single definition.

From this perspective, describing participation by means of a framework is a valuable tool. Such a framework not only serves for linking and examining different approaches to participation (UNICEF, 2001), but it also facilitates the development of participation across many and varied situations.

After a thorough examination of the relevant literature, we propose that such a framework, used to analyse and understand participation, should consist of four main components: purpose (why?), context (where?), stakeholders (who?) and mode (how?) of participation. Each component can be subdivided into some essential factors.

First, participation always fulfils one or more purposes, namely as a means to achieve another goal or as an end in itself. Second, for determining the context in which participation takes place the social level of the participation activity and the topic of the activity have to be clarified. Third, the subdivision "child, parents and other adults" contributes to an understanding of who the (possible) stakeholders are. And fourth, typologies of participation and distinguishable styles in participation clarify the mode of participation.

This framework will be examined more closely.

2.1 The Purpose of Participation
Finding out the purpose of participation refers to the identification of the ideological presuppositions regarding why participation is invoked. The way participation is held and how it is evaluated, will differ according to the purpose (Thomas, 2007). Clarity relating to the purpose also encourages honesty concerning the level and the impact of participation (Sinclair, 2004).
Participation can refer to an outcome or to a process (Kilkelly, 2010; Thomas, 2007; Vis and Thomas, 2009). In other words, participation can be considered as a means to achieve a certain goal(s) or as an end in itself (inter alia, Cattrijsse & Delens-Ravier, 2006; Kirby et al., 2003; Leys, Reyntens & Gobert, 2007; UNICEF, 2001). Where the former refers to the instrumental dimension of participation, the latter relates to its constitutional dimension (Hanson & Vandaele, 2003).

### 2.1.1 Participation as a Means to Achieve another Goal

In looking at children’s participation as a means, the (identified) outcomes can be defined as legal, political or social reasons (Kirby et al. and references mentioned there).

Possible legal reasons for children’s participation include: to uphold children’s rights, to fulfil legal responsibilities (Sinclair & Franklin, 2000, cited in Sinclair, 2004), to realise the promotion and protection of human rights (Cattrijsse & Delens-Ravier, 2006) and to empower children and to tackle abuses and neglect of their rights (Lansdown, 2001).

Social reasons can include: to improve social services, to promote children’s protection (Sinclair & Franklin, 2000, cited in Sinclair, 2004; Lansdown, 2001), to empower and enhance self-esteem (De Winter, 1995; Sinclair & Franklin, 2000, cited in Sinclair, 2004), to strengthen young people’s status in relation to adults (Matthews, 2003, cited in Thomas, 2007), to foster learning, to build life skills and to enable self-protection (UNICEF, 2001), to give a sense of fitting in and belonging (De Winter, 1995), to enhance personal and social development (Children and Young People’s Unit, 2001, cited in Kirby et al., 2001) and to treat the child as agentic meaningmaker (Van Gils, 2001).

Finally, political reasons for children’s participation can be indicated, such as: to enhance democratic processes, to improve decision-making (Sinclair & Franklin (2000) cited in Sinclair, 2004), to enhance (consciousness of democratic) citizenship and social inclusion (Children and Young People’s Unit, 2001, cited in Kirby et al., 2001; De Winter, 1995).

Children’s participation will usually be motivated by a combination of different reasons. In care and protection decisions, for example, participation can be considered to serve a combination of legal and social reasons since the function of participation is to benefit child’s satisfaction, to improve cooperation with parents and other services, to have an impact on decisions, to improve the knowledge of the child’s point of view, and/or to improve the understanding of the child’s abilities (Vis & Thomas, 2009).
For their purposes, Cattrijsse and Delens-Ravier define participation as an outcome in methodological-technical terms. Participation serves to meet other objectives, which are taken for granted and remain unquestioned. It is used as a technique fulfilling several functions, namely integration, pacification or education, and is oriented towards achieving a consensus. Consequently, participation contributes to a process of policy-making (Cattrijsse & Delens-Ravier, 2006).

2.1.2 Participation as an End in itself
A basic principle is that participation may be considered as an end in itself. Participation is considered to be a fundamental human right (UNICEF, 2001), a fundamental right of citizenship (Hart, 1992) or a democratic principle (Leys et al., 2007 and references mentioned there). From this perspective, Cattrijsse and Delens-Ravier (2006) consider participation as critical-political. According to them, participation is a primary policy condition and essentially based on a dissension approach. Though actual participation of everyone is taken as a point of departure, this participation is considered as very different and very unequal. Participation fundamentally means being present. In this conception, the outcome of participation never can be defined since it is an open process of continuing dialogue. The crux of participation is emancipation and liberation.

2.1.3 A Continuum-Approach
The two conceptualisations of (child) participation (means or end in itself) are not as contradictory as they may initially appear and neither approach should be valued above the other. They are rather two ends of a continuum between which lies a grey area. Brown puts it aptly: ‘[w]hilst it is necessary to be clear about different ideological origins (…), it is important not to get too tied up in neat theoretical typologies. In practice, activities are shot through with multiple purposes and ideological justifications that shift over time and with respect to different audiences’ (2000, cited in Leys et al., 2007: 11).

2.2 The Context of Participation
To determine the context in which participation takes place, issues such as the social level and the topic of the participation activity need to be clarified. Mechanisms to achieve participation are likely to be different depending on the context (Sinclair, 2004). Such an analysis also permits clarification about where and in which activities, situations, etc. participation occurs and, equally important, which are outside its scope.
2.2.1 Social Level
Participation takes place at distinct social levels of society. In the literature, several ways were used to categorize such levels.

The ecological model divides the actual environment in which a child lives into subsystems (Bronfenbrenner, 1994). Originally five subsystems were defined and arranged concentrically from the innermost level to the outermost. The three most-known and most used levels are the micro-, the meso- and the macrosystem. Where the microsystem refers to the relationship between a child and his/her immediate environment, the macrosystem goes beyond individual cases and denotes the institutional patterns of a particular (sub)culture and the mesosystem is situated in between, referring to individual cases which are not immediately linked to the everyday context (Bronfenbrenner, 1994; Kuiper en Zijsling, 2010).

Additionally, the scope of participation can be divided into, on the one hand, the private sphere of a child’s life, such as the nuclear family or relations between individuals and, on the other hand, the public sphere of a child’s life, such as school, (youth) associations and public services (Kirby et al., 2003; Sinclair, 2004).

The form, the application, the meaning, the significance, etc. of participation differs from level to level. Indeed, each level has its own characteristics and assignments which reflect on the purpose, the stakeholders and the mode of participation (Baert, 2010). Nevertheless, a minimum of interaction and combination between the different levels is required to conduct participation.

2.2.2 Topic
The topic of participation relates to the substantive issues or domains in which participation takes place, such as matters concerning family, school, health, child care, juvenile justice, etc.

The impact of this factor through which the child has the possibility to participate on his/her life and/or sphere of interests, varies from everyday choices to more serious decisions (Kirby et al., 2003; Lansdown, 2005a), or from status quo decisions to more decisive ones.

2.3 The Stakeholders
An appraisal of children’s participation requires an understanding of who the actors are. Common actors include the child (children) themselves, the parent(s) and other adults.

---

2 Starting from the innermost level to the outside, Bronfenbrenner (1994) distinguished five systems of the ecological environment of a (developing) person: the microsystem, the mesosystem, the exosystem, the macrosystem and the chronosystem.
As is the case for the context, stakeholder analysis leads to verification of to whom the project is directed and to whom it is not. However, being outside the scope of participation is distinguishable from the (free) choice of a child not to participate or to leave the participative activity at any stage (Lansdown, 2001), for participation is characterised by its voluntary nature.

Within the scope of this paper, the following analysis is focused on the child as actor.

In general, pursuant to Article 1 of the CRC, each person under the age of 18 years is considered as a child. The diversity of this group of participants needs to be taken into account. Factors such as images of childhood, minority and other child-specific characteristics undoubtedly influence (the) child’s ability to participate.

2.3.1 Images of Childhood

There has always been variation in the way children are viewed across different societies. Images of childhood differ. Childhood has to be seen as a construction influenced by the specific economic, cultural, political and historical context and hence it is subjected to variation (e.g. Demunter in Verhellen, 1996; Habashi, Driskill, Lang & DeFalco, 2010; Thomas, 2000/2002; Uprichard, 2008; Vandenbroeck & Bouverne-De Bie, 2006; Veerman, 1992). A certain image of childhood affects the attitude towards children (Demunter in Verhellen, 1996; Hemrica & Heyting, 2004). Hence discussions about children’s participation are tied up with social constructions of childhood.

Attitudes towards Children

Childhood and in casu discussions about child participation are underpinned by the perspectives a society (or discussants) holds towards children. These essential perspectives, which frame arguments and discussions about child’s participation, cut across the academic disciplines.

The child’s welfare perspective, representing the view of children as a “becoming” with special requirements of care, protection and guidance while lacking (full) competence, is often seen as antipodal to the child’s rights perspective. In the latter the child is seen as a subject of rights, as an agent or as a social and moral actor with the capacity to participate (Eriksson & Näsman, 2008; Hemrica & Heyting, 2004).

However, this dichotomy in thinking about children (Lauwers & Van Hove, 2010) has been questioned. A more pragmatic third dimension combines these two perspectives in recognizing the child as a subject of rights and simultaneously as a subject of care, guidance and protection (Hemrica & Heyting, 2004; Röbäck & Höjer, 2009).
ii  Competence

Competence is often presumed as a precondition for participation (Couzens in Alen, Bosly, De Bie, Vande Lanotte, Delplace, Herman, Reynaert, Staelens, Steel & Verheyde, 2007; Hemrica & Heyting, 2004). A child’s competence is generally assessed by his/her level of understanding, maturity and/or age.

Two points of particular interest can be derived from these requirements. First, such an assessment of level of understanding and maturity is usually unilaterally conceived in a cognitive sense, since skills such as rationality, long-term perspectives, understanding and giving reasons are often required. However, competence refers also to moral, emotional or social capacities (Hemrica & Heyting, 2004). Such an open approach permits, amongst other things, the acceptance that babies too have a certain degree of consciousness (Alderson, Hawthorne & Killen, 2005).

With respect to age, consideration should be given to the evolving nature of competences. Children (and people in general) do not simply acquire ability at a predetermined age, rather they learn and develop the skills to participate (Ang et al., 2006a; Cockburn, 2005; Hart, 1992; Thomas 2000/2002).

Consequently, persons who assess the competence of children should be trained in doing this (Ang et al., 2006a) whereby competence should be assessed in concreto, i.e. in relation to the particular participative situation in question (Ang et al., 2006a; Schofield and Thoburn, 1996 cited in Thomas, 2000/2002). However, the assessment standards should not place the child in a condition wherein even most adults would fail (Archard & Skiveness, 2009; Röbäck & Höjer, 2009; Van Bueren, 1995).

iii  The Child as Participant

Considering the child as a participant implies a perspective that recognises the competence of the child, i.e. his/her capacity for autonomy. Taking this autonomy seriously also means recognising its limits (Brems in Willems, 2002). Children acquire their competence gradually, with recognition of their specific interests and under the protective guidance and direction of adults, initially their parents (inter alia Couzens in Alen et al., 2007; Freeman, 1992; Hemrica & Heyting, 2004; Oldham, 1994 in Habashi et al., 2010; Röbäck & Höjer, 2009; Thomas, 2000/2002; Van Bueren, 1995).

This conciliation of an in se welfare perspective with a children’s rights perspective, is also called “dynamic self-determination” (Eekelaar, 1994, cited in Thomas 2000/2002), “liberal paternalism” (Freeman, 1997) or the “being and becoming” child (Uprichard, 2008).
2.3.2 Minority
The limit of childhood at 18 years corresponds with the age of minority in most countries (e.g. Resolution (72) 29 of 29 September 1972 on the lowering of the age of full legal capacity adopted by the Committee of Ministers of the Council of Europe). Minority, as a legal concept, is a protection status offered by the law (a legal construction). In line with the best interests of the child, it is assumed that a person from birth until a certain age needs assistance, protection and provision. The protection offered consists generally of parental authority (parental rights and responsibilities) and the lack of (full) legal capacity of the minor (Lansdown, 2005b). Numerous international instruments confirm the principle of parental responsibilities.3

Despite the diminishing and evolving nature of parental authority as the minor grows older and despite the legal exceptions to the child’s legal incapacity, minority has an impact on (the exercise of) participation, since participation can be considered as conflicting with the child’s (legal) position in society (also supra 2.3.1.ii. Competence), or as an infringement on parental rights (for a critical dissertation, see, inter alia, Couzens in Alen et al., 2007: Reynaert, Bouverne-De Bie & Vandevelde, 2009; Willems, 2002).

2.3.3 Other Child-Specific Characteristics
Every child is different. Internal and external characteristics make every child unique. Special attention should be given to vulnerable groups of children, such as children with disabilities, children with a mental and/or physical illness, the girl child, etc. (Cattrijsse & Delens-Ravier, 2006). In order for all children to have equal access to participation, it may be necessary to adapt the techniques used.

2.4 Mode of Participation
The mode of participation can be classified in different typology and style categories.

2.4.1 Typologies
Child participation can occur in different ways and at different moments. To reflect the distinction between ways of participation, several typologies of child participation have been developed.

---

Overview

The most known typologies regarding to children's participation in public decision-making, are Hart's ladder of participation (1992), Treseder's circles (1997) and Shier's pathways to participation (2001).

Hart adapted Arnstein's (1969) ladder of citizen participation into a ladder of child participation. The model consists of eight rungs. The three lowest rungs are considered to be non-participation, since children are “manipulated”, “decorated” or “tokenised”. “Assigning and informing children” and “consulting and informing children” are the middle levels of the ladder. The highest rungs, namely the highest possible levels of participation, are qualified as “adult initiated, shared decisions”, “child-initiated and directed”, with at the top “child-initiated, shared decisions” (1992: 8). Hart holds a hierarchical view to participation.

Treseder's circles are an adaptation of Hart's ladder rather than a new model. By omitting Hart's non-participation rungs Treseder suggests that there are five approaches to participation. These are each represented as a circle, thus removing the hierarchical element from the model. Depending on the settings and the circumstances a different approach to participation may be used. The standard is an informed child whose contribution is voluntary. However, there are varying interactions between adult and child initiatives and decision-making (1997).

Shier's alternative model is conceptualised as an additional tool for enhancing child participation in decision making, in particular in line with Article 12 of the CRC. Shier's model is based on five levels of participation. In the first level, children are listened to. Secondly, children are supported in expressing their views. Taking children's views into account forms the third level of participation, which is also the mandatory level for those countries that ratified the CRC. The fourth level consists of involving children in decision-making processes. At the top level adults share their power and responsibility for decision-making with children. In addition, at each level three stages of commitment (of individuals and organisations) are identified: openings, opportunities and obligations. The model thus provides a sequence of 15 questions as a tool for planning participation (2001). Like Hart, Shier ascribes to participation a hierarchic structure.

Furthermore, in the context of private decision-making issues, Hart’s ladder is applied, although in a form adapted to the context. Thoburn, Lewis and Shemmings (1995) renamed and clustered the rungs in a hierarchical scale, ranging from not involved (placated/manipulated), via involved to some extent (keeping fully informed, consultation) to involved (involvement, participation, partnership). Keeping fully informed has to be considered as a basic requirement if the practice would be rated as participatory at all.

Thomas’ model (2000/2002) is distinct since its value mainly lies in the empowering elements by which the degree of participation of a child in
(decision-making processes) can be assessed. Although Thomas assigns to Hart’s ladder an ‘enormous value as a way of identifying dramatically how seriously individuals are included in decision-making processes’ (2000/2002: 176), he presents an alternative: the so-called climbing wall, which allows a closer look at what facilitates (effective) child participation in decision-making. The wall must be seen as a construction “built” by bricks or pillars, representing the different aspects of involvement in decision-making, which can extend differentially. Thomas discerns six aspects of key importance in involving children: choice a child has over his/her participation, information about the situation and his/her rights, control over the decision-making process, voice in any discussion, support in speaking up, and degree of autonomy in making decisions independently (2000/2002).

Dahlstrand assigns to the child three different roles which are equivalent to Hart’s three rungs at top level: 1) child as informant, 2) child as co-actor (taking their views into account), and 3) child as actor (having a decisive say in matters). Regarding the latter, a difference with Hart’s model is that even though the child is not actually present when decisions are made, their views and opinions are nevertheless relevant and thus considered as being worthy of being shared with adults (2004 in Röbäck & Höjer, 2009).

In addition to Hart’s ladder, other models distinguish different forms of participation. Lücker-Babel, for example, subdivides participation in speaking, full association or participation in the decision-making process and the right to veto (1995). Other subdivisions include: to express opinions, to have these opinions considered, to play some role in decision-making and to make individual decisions (Flekkøy and Kaufman, 1997).

ii The Issue of Power
Classifying forms of participation in typologies raises the question of power: who has the power, e.g. to define the objectives or to direct the activity?

Discussions about the degree to which power is handed over to or removed from adults and given to children (Shier, 2001; Thomas 2007) fits into a static concept of power. From this perspective, power is synonymous with concepts such as “power over”, “possessed”, “concentrated”, “a form of social control” (Cockburn, 2005; Gallagher, 2008a; Gallagher, 2008b).

A dynamic conception of power describes power as a process that emerges from people, and not something that can be done to them (Cockburn, 2005). Power can be understood as ambivalent; at the same time agency and subjection, self-realisation and control, compliance and subordination, being governed and the basis of autonomy and freedom (Gallagher, 2008a with reference to Foucault). Power is ‘a situation in which one “entity” ... acts towards another
entity so as to influence the actions of that entity, in the course of which it is a
general term for certain kinds of actions, viewed at different scales and relational' (Gallagher, 2008a: 402). The rationality of power is found in its effects, and not in the mind of those who exercise it (Gallagher, 2008a). From this perspective, child participation presents questions regarding the ways in which power is exercised: what happens when children participate, what goes on when they participate, which mode of participation empowers children (Cockburn, 2005; Gallagher, 2008a; Thomas, 2007)?

iii A Compilation of Different Forms of Participation
With Hart's model as a starting point and taking into account the other typologies, we believe the following forms of participation can be distinguished:

- Initiation: the child takes initiatives to start up, to define, to work out, etc. the activity, the decision-making process (alone or with an adult).
- Information: the child gets (gathers and is given) information.
- Consultation: the child can express his/her views, opinions, areas of interest, etc.
- Engagement: the child is consulted and his/her views, opinions, interests, etc. are taken into account; the child (has the possibility to) acts in association with other participants.
- Decision: the child takes the final decision, having the last word about the whole or an aspect of it (alone or with an adult).

“Information” is not only a form of participation, it is also the basic requirement if one wants to denote a situation as participative (Cattrijssse & Delens-Ravier, 2006; Thoburn et al., 1995; Treseder, 1997). Participation is only possible if the child knows and understands what is going on, what is expected of him/her, what he/she can expect, etc. This requirement does not preclude the participation from starting up without the required information (e.g. for reasons of spontaneity) insofar as the necessary information is obtained as soon as possible. The uni-directionality of the flow of information, in which the receiver of information holds a passive role, is not problematic on condition that the flow of information is not exclusively or continually one-way. The possibility of a bi-directional flow of information (i.e. reciprocity) has to be guaranteed at the moment of informing or in a further stage (Rowe & Frewer, 2005).

All forms of participation have intrinsic value and, in principle, no method of participation is better or worse than another. Hence, a hierarchical approach of the distinct forms of participation is advised against, as is a static approach to the notion of power. However, some distinctions have to be made. On the
one hand, a certain sequence in the various forms of participation cannot be denied. Each form of participation can imply a fulfillment of the, in the above-mentioned typology, previous forms. For example, “consultation” is not possible without “information” and “engagement” cannot take place without both “information” and “consultation”. In this sense “initiation” occupies a particular position; it can form the starting point of a participation process without implying that the child completes the full participation process or, in other situations, it can imply the previous fulfillment of other possible forms of participation (e.g. the child initiates something after being informed about the expectations and consulted about his/her wishes).

On the other hand, a difference in intensity of partaking must be recognised and valued. Participation can vary along a continuum from less intensive (e.g. informing) through to more intensive (e.g. deciding together). The latter is not necessarily better or, in hierarchical terms, the highest aspiration (Leys et al., 2007). The choice of a specific form of participation should be considered in relation to the purpose of participation, its context and the stakeholders concerned.

2.4.2 Styles in Participation
Participation can encompass different styles. All these styles have to be taken as two ends of a continuum, wherein many intermediate forms and combinations are possible (Van Gils, 2001). Child participation styles are commonly referred to as individual vs. collective and active vs. passive. Where individual participation includes participation in personam, with assistance or through a representative, collective participation refers to participation (by representation) of a group of children. Active participation refers to situations where the child initiates and controls his/her participation, alone or together with adults (Smith, 2002) in the grounded conviction that his/her involvement will make a difference (Kirby et al., 2003; Shier, 2001). Active participation supposes participation based on an approach, with a focus on reflection and dialogue, and hereby the possible presence of conflict (Cattrijse & Delens-Ravier, 2006; Cockburn, 2005). By contrast, passive participation mostly refers to participating in activities defined by others (Smith, 2002) without giving children guarantees that their voices, ideas, suggestions, etc. become part of the decision-making process itself (Kirby et al., 2003).

Other styles in participation are formal vs. informal, internal vs. external, direct vs. intermediary, etc. (Lansdown, 2005a; Van Gils, 2001).

2.5 Conclusion
Understanding child participation is only possible when taking notice of the complexities. Participation appears to be a “container” concept and can be
conceived as a notion with an open and ongoing understanding (Ang et al., 2006a). Participation involves indeed more than just taking part in something (Lansdown, 2005a). Vis and Thomas (2009: 156) argue correctly that ‘talking with children is not necessarily the same thing as child participation’. Hence, participation is more than just discourse. Play, gestures, drawings, etc. can also contribute to the process of participation.

Participation is not synonymous with inclusion, or consensus seeking (behaviour) or dominance. Rather, it entails dialogue and an interchange of ideas (e.g. Cattrijse & Delens-Ravier, 2006; Rowe and Frewer, 2005; Van Gils, 2001). Participation favours the establishment of relations (Thomas, 2007). Variation in views is a characteristic feature of participation.

In interpreting, completing, implementing and monitoring child participation certain minimum guidelines seem to be required. The framework explained and elaborated above could contribute to a better understanding of this notion. In this paper, participation is approached from its four main components: the purpose of participation, the context in which participation takes place, the relevant stakeholders and the mode of participation. These distinctive components are considered to be inextricably linked with each other. Therefore, the conceptual description of participation can best be illustrated as a ‘participation disc’ (see Figure 1).
Approaching participation by means of this participation disc will lead to a first insight into questions such as why participation, where, by whom and how to participate.

Such attempt to a more integrated approach to the concept of participation also illustrates how the interpretation given to participation can differ and change over time. Therefore, participation can be viewed as a process rather than a static, one-off event.

3 The Child’s Right to Participate as Enacted in the UN Convention on the Rights of the Child

With the adoption of the CRC wherein child participation is enacted as a right of the child, progress is made with implementing and monitoring child participation under the banner of children’s rights, often particular with reference to Article 12 CRC.

This paper focuses on those CRC rights reasonably or directly linked to participation. However, given the comprehensive nature (see infra) of the convention, the remaining rights can contribute to understanding, interpreting and realising participation rights or can encompass participatory components.

After the identification of the several participation rights enacted in the CRC and the explanation of the most important characteristics of these rights, the understanding of the child’s participation rights is further explored. The “participation-disc” will be used as a review frame.

3.1 A Cluster of Participation Rights

Although participation rights constitute one of the merits of the CRC, the first draft of the convention did not refer hereto. It was only in the second draft text presented by Poland and during the subsequent discussions held in the open-ended Working Group, charged with drafting the CRC, that the originally exclusive attention to the child in need of special protection and priority care extended to additionally seeing the child as an active and participating member of the society and the family (Detrick, 1992).

The CRC does not enact a general provision on the right of the child to participate. Rather, a “cluster of CRC rights” is identified as being participation rights (Hanson & Vandaele, 2003).

The most well-known participation article is Article 12 enacting the child’s right to express his/her views freely in matters affecting the child, whereby due weight has to be given to this opinion, and in particular enacting
the child’s right to be heard in any judicial and administrative proceedings affecting him/her. This Article is indicated by the CRC Committee as one of the four general principles of the CRC (besides non-discrimination, best interests and right to life, survival and development), which implies that Article 12 is not only a right in itself but should also be considered in the interpretation and implementation of all other rights (CRC Committee, 1991; CRC Committee, 2005a). In order to strengthen the understanding of what Article 12 entails and how fully to implement it for every child, whilst highlighting successful and positive approaches to implementation, the CRC Committee devoted one of its general comments exclusively to Article 12 (CRC Committee, 2009).

Other provisions in the CRC containing participatory rights are on the one hand formulated in a more general way, namely the evolving capacities of the child in the exercise of the rights set forth in the CRC, as legitimate limitation ground for parental guidance/responsibilities (Art. 5), freedom of expression and the right to information (Art. 13), the right to freedom of thought, conscience and religion (Art. 14.1), the right to freedom of association and assembly (Art. 15.1), the right to information (Art. 17), active participation as a goal for disabled children (Art. 23.1) and the right to participate in cultural and artistic life (Art. 31). On the other hand, some participation rights are formulated in more concrete terms, namely the right to participate and make views known in proceedings of separation of the child from his/her parents (Art. 9.2), the right to informed consent in cases of adoption (Art. 21), the right of the child deprived of his/her liberty to legal and other appropriate assistance and the right to challenge the legality of this deprivation (Art. 37.d) and the right of a juvenile in conflict with the law to be informed and to play an active role in the proceedings (Art. 40.2) (Ang et al., 2006a and references mentioned there; Lücke-Babel, 1995; UNICEF, 2003; Verhellen, 2000; CRC Committee, 2007; CRC Committee, 2009).

3.2 Characteristics of the Child’s Participation Rights

3.2.1 A Human Right

As a universal, legally-binding convention proposed by and undertaken under the auspices of the United Nations Commission on Human Rights, the CRC is a human rights instrument (Cantwell in Detrick, 1992). In particular, children’s rights, in the light of the CRC and its Facultative Protocols, form a cluster of general human rights, specific human rights for children, and human rights for specific categories of children (Verhellen, 2000). Hence, the child’s right to participate as set forth in the CRC is a human right (for a conceptual analysis of the notion human rights, see e.g. Dembour, 2010).
The codification of children’s rights is not only encountered in the CRC, since children’s rights are enacted as well on international, regional and national level. Article 12 is, for example, reflected in various instruments (i.e. international resp. regional conventions, regional recommendations, international guidelines, national Acts, etc.).

However, it must be made clear that not every right of a child or each codification of a right can be considered as a child’s right under the banner of human rights.

3.2.2 Intrinsic Connection with the other CRC Rights
The present paper is mainly directed towards the participation rights within the CRC. The comprehensiveness of the CRC nevertheless requires and implies an integrated approach. The rights enumerated in the CRC, which cover all the traditionally defined areas of human rights, cannot and may not be read in an isolated or a fragmentary way (Cantwell in Detrick, 1992; Lücker-Babel, 1995; Verhellen, 2000). All these rights are interrelated (UN General Assembly, A/47/41, 1993).

Consequently, the CRC participation provisions must not only be balanced mutually but also with the other rights (Flekkøy and Kaufman, 1997; Lücker-Babel, 1995), which are often indicated as protection and provision rights. All the participation provisions are underpinned not only by Article 12 as a general principle but also by the other general principles, in particular non-discrimination (Art. 2), the child’s best interests (Art. 3) and the child’s rights to life, survival and development (Art. 6).

As demonstrated by an analysis of academic children’s rights literature, an exclusive focus on children’s participation rights (Reynaert et al., 2009), should be avoided.

3.3 Understanding the Child’s Participation Rights
The participation disc is used as tool to understand the child’s participation rights as enacted in the CRC. Any right of participation is considered by the four main components by which, in our point of view, participation should be approached. This paper considers the constituent factors of those four components of the participation disc to be relevant also; these are included in the analysis, as represented in the tabular overview (see Table 1). Possible styles in participation are included in the discussion without any representation in the tabular review.

Closer attention will be given to the main findings of this analysis, with particular attention to Article 12, since this Article is presumed to be the benchmark of a child’s right to participate (Ang et al., 2006a; Hanson and Vandaele, 2003 and references herein).
A recourse to the convention, the practice of the CRC Committee (in particular the general comments and the guidelines) and the “Travaux Préparatoires” of the convention mainly assisted this interpretative analysis.

The applicability of a specific main component resp. factor is indicated by the relevant terminology or by the use of a “x”. In case of ambiguity, a “?” was used. The involvement of another party (parent or a third one), without any further specification, is indicated by a “+”.

3.3.1 CRC’s Participation Rights in General

i Formulation of the Right to Participate
As mentioned above, the CRC neither enshrines nor describes participation. The child’s right to participate is rather enacted in various manners: as a specific right (e.g. to make views known in matters affecting the child which has to been given due weight and the right to be heard in proceedings (Art. 12), to receive information (Art. 13 and 17), to informed consent (Art. 21), to challenge decisions related to deprivation (Art. 37), as a freedom (e.g. freedom of association and assembly (Art. 15)) or as a general description in a particular situation (participation in community (Art. 23)).

ii Purpose
The instrumental and constitutional dimension of the participation rights as enshrined in the CRC are intrinsically connected (Hanson and Vandaele, 2003). On the one hand, all participation rights are enacted to achieve another goal, namely the possibility to participate in a specific situation (e.g. Art. 21: informed consent in the case of adoption) or in general (e.g. Art. 23.1: participation of disabled children in the community in order to maximise their inclusion in the society, see also Detrick, 1992 with references to the “Travaux Préparatoires”, UN Doc. E/CN.4/1983/62; CRC Committee, 2006).

On the other hand, since the CRC is a human rights instrument, all enacted rights are conceptualised as an end in itself.

iii Context
Since the CRC concerns first and foremost the relationship between child and State, the obligation to implement lies with the State. However, the State also has a commitment to provide the conditions necessary for the child to exercise these rights in a context beyond the State (Art. 4; Flokkoy and Kaufman, 1997). From this perspective, the enacted child’s right to participate is mostly applicable on macro, meso and micro level of a child’s life. The CRC also puts the child as holder of a certain participation right explicitly linked to the distinct levels of his actual environment.
### Provision in CRC Right to...

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Context</th>
<th>Level</th>
<th>Field</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Achieve another goal</strong></td>
<td><strong>End in itself</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Table 1</strong> Children’s participation rights analysed according to the participation disc</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Purpose</th>
<th>Context</th>
<th>Level</th>
<th>Field</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>exercise their rights</td>
<td>x</td>
<td>Micro</td>
<td>All CRC-rights</td>
</tr>
<tr>
<td>9.2</td>
<td>participate in proceedings make views known</td>
<td>x</td>
<td>Meso</td>
<td>Procedure in case of separation from parent(s)</td>
</tr>
<tr>
<td>12.1</td>
<td>express views have his/her views being giving due weight</td>
<td>x</td>
<td>Meso</td>
<td>All matters affecting the child</td>
</tr>
<tr>
<td>12.2</td>
<td>be heard/to speak</td>
<td>x</td>
<td>Meso</td>
<td>Procedure relating to all matters affecting the child</td>
</tr>
<tr>
<td>13</td>
<td>freedom of expression seek, receive, impart information</td>
<td>x</td>
<td>Meso</td>
<td>All</td>
</tr>
<tr>
<td>14</td>
<td>freedom of thought, conscience and religion</td>
<td>x</td>
<td>Meso</td>
<td>All</td>
</tr>
<tr>
<td>15</td>
<td>freedom of association and assembly</td>
<td>x</td>
<td>Meso</td>
<td>All</td>
</tr>
<tr>
<td>17</td>
<td>access to information from the mass media</td>
<td>x</td>
<td>Meso</td>
<td>Appropriate information</td>
</tr>
<tr>
<td>21</td>
<td>informed consent</td>
<td>x</td>
<td>Meso</td>
<td>Adoption procedure</td>
</tr>
<tr>
<td>23.1</td>
<td>active participation in community</td>
<td>x</td>
<td>Meso</td>
<td>Disabled child</td>
</tr>
<tr>
<td>31</td>
<td>participate freely in cultural life and the arts</td>
<td>x</td>
<td>Meso</td>
<td>Cultural and artistic activities</td>
</tr>
<tr>
<td>37.c-d</td>
<td>maintain contact with family have legal and other appropriate assistance challenge the deprivation before a court or other authority</td>
<td>x</td>
<td>Meso</td>
<td>Procedure concerning the deprivation of liberty</td>
</tr>
<tr>
<td>40.2. b.ii-vi</td>
<td>be informed legal or other appropriate assistance have a fair hearing examine/have examined witnesses challenge the decision and measures have assistance of an interpreter</td>
<td>x</td>
<td>Meso</td>
<td>Juvenile justice procedure</td>
</tr>
</tbody>
</table>
### Framework components

<table>
<thead>
<tr>
<th>Stakeholders</th>
<th>Mode</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Child</td>
</tr>
<tr>
<td></td>
<td>In general</td>
</tr>
<tr>
<td>Child</td>
<td>x</td>
</tr>
<tr>
<td>Parents</td>
<td>x</td>
</tr>
<tr>
<td>Others</td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>
Some participation rights are rather restricted to the meso level. They are in particular enacted as procedural rights (i.e. a formalised style in participation), mainly provided in decisions decisive for a child's life (e.g. separation from parent(s) (Art. 9.2); proceedings relating to matters affecting the child (Art. 12.2); adoption (Art. 21) and juvenile justice (Art. 37 and 40) (i.e. topic of participation).

The topic in which a child has a right to participate is sometimes formulated in rather general terms (e.g. Art. 13: freedom to express views). However, most of the enacted participation rights are directed to specific groups of children (e.g. Art. 23.1: disabled children) or to special circumstances (e.g. Art. 21: adoption). Participation of the child is encouraged in rather everyday choices (e.g. Art. 12.1: all matters affecting the child) as well as in more serious decisions (e.g. Art. 40: child in conflict with the law).

iv Stakeholders
A characteristic feature of the CRC, as being a human rights treaty, is the assignment of rights. The child is acknowledged as a subject of rights. However, the focus of the CRC is not exclusively oriented towards a rights perspective. Also a welfare perspective can be discerned because of the comprehensive character of the treaty, all the CRC rights being of equal force and standing. First and foremost, the CRC considers the child as a subject (and not an object) of care, protection and guidance, as illustrated by provisions such as the best interests (Art. 3), the evolving capacities (Art. 5) and setting restrictions to the child's opinion based on age and maturity (Art. 12) (Ang et al., 2006a; Archard, 2006; Archard and Skiveness, 2009; Detrick, 1999 with references to the “Travaux Préparatoires”; Eriksson and Näsmann, 2008; Van Bueren, 1995; CRC Committee, 2009). Not only the child's right to express his/her views (Art. 12) is held as a general principle by the CRC Committee (1991; 2005), but also the child's best interests must always remain a primary consideration (Art. 3). Both articles have equal force and standing (Archard and Skiveness, 2009). Hence, the CRC's perspective towards children can be considered as a reconciliation of both a rights and a welfare perspective (Cantwell in Detrick, 1992; Reynaert et al., 2009).

All children under the age of 18 years (Art. 1) have participation rights, irrespective of their age, maturity, mental capacity, gender etc. (in conformity with Art. 2 enacting the non-discrimination clause). The right to an active participation in community, for instance, is explicitly recognised for children with disabilities (Art 23.1). Active participation refers inter alia to
the involvement of children (with and without disabilities) in programmes and activities designed in an integrated and participatory fashion (CRC Committee, 2006).

This general assignment does not imply that all participation rights apply right away to all children, but it does imply that once a child is within the scope of application of a specific participation right, he/she is holder of this right.

Nevertheless, the child’s capacity, his/her age and level of maturity remain a point of reference. For example, Article 5 explicitly refers to the child’s evolving capacities when it comes to the exercise of his/her rights. Further, the child’s expressed views must be considered in line with its level of maturity (Article 12).

Most of the participation rights refer, at first sight, to the child as an individual. However, this individualisation of the child is not absolute. First, in enacting the child’s freedom of association and assembly (Flokkøy and Kaufman, 1997) Article 15 explicitly outlines the child’s possible existence as a member of a group, such as family, peers, a union of working children, etc. (Hanson and Vandaele, 2003).

Second, although the CRC focuses on the child, it still respects the rights, responsibilities and duties of others, in the first place the parents (e.g. Art. 9.2.: right to participate and make views known of all interested parties in proceedings concerning separation from parent(s)). Age, level of maturity and/or the (evolving) capacities of the child are sometimes used as criterion (Art. 5: parental guidance; Art. 14.2: freedom of thought, conscience and religion and parental guidance). Even during the preparatory work of the CRC, the search for an equilibrium between the rights of the child and the correlative rights of his/her parents was emphasised (inter alia with reference to Art. 5 CRC: Detrick, 1992 with references to the “Travaux Préparatoires”, UN Doc. E/CN.4/1988/28).

Mainly with respect to procedural rights adults, mostly the parents, are recorded as stakeholders (e.g. Art. 21: “if required, persons concerned have given their consent to the adoption”). Some rights do not explicitly refer to adults as stakeholder, yet the possession and exercise by the child of the relevant participation rights implies the former’s involvement (e.g. Art. 37: right to have legal or appropriate assistance in case of deprivation of liberty).

In addition, the holistic and comprehensive nature of the CRC requires an interrelated interpretation and implementation. Articles enacting participation rights must be considered together with articles such as the best interests (Art. 3) and evolving capacities of the child under parental guidance (Art. 5) (see supra and infra).
Mode of Participation

Except for participation by way of information (Arts. 13 and 17) the CRC does not use the terms of the typology of participation, like consultation, engagement, etc. Sometimes a general description is used, such as “the right to participate in (…)” (Arts. 9.2, 23.1 and 31), another time a specific application adapted to the situation is used without any reference to the typology, e.g. the right to informed consent (Art. 21: adoption). So, identifying the distinct form(s) of participation, hold up by the CRC, implies an interpretative analysis, mainly guided by the description of the typology (supra 2.4.1.iii), the “Travaux Préparatoires” and the text of the convention, and the various general comments and guidelines of the CRC Committee.

“Information” occupies a relatively central position. It is a right in itself (Arts. 13 and 17) as well as a certain form of participation. Often it is also a basic requirement for the realisation of a particular participation right. Besides, concerning Article 12, the CRC Committee has explicitly recognised this “precondition role” of information (CRC Committee, 2009). The distinct features of information are clearly interwoven.

Where participation rights are assigned to either specific groups of children (e.g. Art. 23.1: disabled children) or children in specific circumstances (e.g. Art. 21: child to be adopted; Art. 40: child in conflict with the law), the guideline is such that these children are often called upon to play a more active, intensive and/or a more initiating role. Mostly, these situations pertain to significant decision points within children’s lives (e.g. adoption) or relate to areas important for their development (e.g. Art. 31: cultural and artistic activities). For example, active participation of juveniles in conflict with the law in proceedings is explicitly recognised by the CRC Committee (CRC Committee, 2007).

Nevertheless, the active participation of children is often more or less (compulsory) guided, by parental guidance (e.g. Art.14.2: in the exercise of the child's freedom of thought, conscience and religion), by other persons (Arts. 37 and 40: right to (legal), appropriate assistance) and, in general, by respect of the evolving capacities of the child in order that he/she can properly exercise his/her rights (Art. 5).

The exercise of those participation rights that also form freedom rights (civil rights) may be subjected to restrictions set by public authorities (Arts. 13.2, 14.3 and 15.2). These limitation clauses are (almost) identical to related human rights provisions, such as those enacted in the International Covenant on Civil and Political Rights (Brems, 2006; Thorgeirsdóttir, 2006).
A number of rights occupy a so-called central position rather than being either a pure passive or a high intensive and very active form of participation. Participation refers *in casu* to having a say in a matter of private life, in the public domain and also in proceedings, without conferring to the child a right to decide (Art. 9.2. and 12).

Due to the more general scope of application, the visibility and the more detailed feature of Article 12, Article 9.2 received a reduced attention (Lücker-Babel, 1995 and references herein).

3.3.2 Article 12, CRC
Article 12 outlines the child's right to express his/her view freely in matters affecting him/her; it states that this view has to be given due weight and makes particular reference to the child's right to be heard in judicial and administrative proceedings affecting him/her.

Article 12 gave an impetus to (inter)national literature, (scientific) research, legislation, case law, specific websites, etc. because many authors consider it the 'heart of the participatory articles' (Flekkøy and Kaufman, 1997: 32), which 'contributes widely to the success of the crc' (Lücker-Babel, 1995: 392).

Despite this, an analysis based on the relevant components of the participation disc demonstrates that the scope of Article 12's application is not unlimited, unrestricted or general.

**Purpose**
The child's right to express his/her views in matters affecting him/her and the right to be heard can be considered as a crucial element in the participation process. It allows the inclusion of relevant perspectives and experiences and can enhance the quality of solutions (CRC Committee, 2009). Activities and decisions where due weight is given to the child's opinion are generally more child-centered in their function (Couzens in Alen *et al*., 2007). This right also forms a fundamental value of the CRC (CRC Committee, 2009) since it 'manifests that the child holds rights which have an influence on his/her life, and not only rights derived from his/her vulnerability (protection) or dependency on adults (provision)' (CRC Committee, 2009: para. 18). It is considered as a starting point of intense exchange between child and adults in all relevant contexts of the child's life (CRC Committee, 2009).

Obviously, Article 12 is at once a means and an end in itself. The fact that the CRC Committee identifies Article 12 also as a general principle, confirms the duality. The right to have a voice is, on the one hand, a right in
itself, but on the other, it guides the interpretation and implementation of all other CRC-rights (CRC Committee, 2003; CRC Committee, 2009).

ii Context

Article 12’s scope of application is very broad. This article not only plays a cross-cutting role, since it is identified as a general principle by the CRC Committee, but the clause ‘all matters affecting the child’ should be interpreted more broadly than just as a reference to the specific rights as enacted in the CRC (CRC Committee, 2009). The open-ended Working Group rejected proposals to list, and therefore restrict, relevant criteria. Instead, matters will be deemed relevant if they affect the child’s life. However, the question still remains as to exactly when a matter affects a child, especially since substantive issues relating to a child’s life occur at distinct levels (micro, meso and/or macro) with or without an immediate and/or decisive impact and with or without an immediate concern for the child (Detrick, 1999 with references to the “Travaux Préparatoires”).

Article 12 applies indeed to the child’s private and public life, such as family, school, the community, health care, etc. (Art. 12.1), with special attention to judicial and administrative proceedings, initiated by the child or by others as long as the procedure in question affects the child (Art. 12.2) (CRC Committee, 2009; Ang et al., 2006a). Both kinds of these proceedings may involve alternative dispute mechanisms, such as mediation (CRC Committee, 2009).

In all circumstances, expressing his/her views or being heard is a right of the child, and this encompasses the right to choose not to express views or to be heard. There can be no question of any obligation (Ang et al., 2006a; Detrick, 1999 with reference to the “Travaux Préparatoires”; CRC Committee, 2009). Moreover, the adverb “freely” in Article 12.1 refers to expressing his/her own perspectives or to be heard voluntarily and without any pressure (CRC Committee, 2009).

iii Stakeholders

Article 12 concerns all children capable of forming his/her own view. The clause regarding the capacity of the child should not be seen as a restriction but rather as an obligation to the State party to assess this capacity. Every child regardless of age, gender, race, colour, language, disability, etc. (Art. 2, CRC, CRC Committee, 2009; Abramson, 2008) is presumed to have the capacity; the onus of proof relating to the required capacity does not rest with the child (CRC Committee, 2009). Article 12 does not enact assessing capacity by imposing an age limit and this practice is, therefore, discouraged by the CRC Committee (CRC Committee, 2009). The CRC Committee does not limit capacity to just the cognitive context but maintains the position that children, even in early
childhood, i.e. below the age of eight, are active participants. Consequently non-verbal communication is also considered a legitimate vehicle for expressing views and feelings (CRC Committee, 2005; CRC Committee, 2009). Capacity requires indeed rather a sufficient understanding of the matter affecting the child than a comprehensive knowledge (CRC Committee, 2009).

The age and maturity of the child must be considered in order to give due weight to the expressed opinion since, in itself, listening to the child is insufficient. What has been said or done, has to be considered and taken seriously (CRC Committee, 2009; Ang et al., 2006a). A case-by-case examination of the individual capacity of the child (CRC Committee, 2009) with clear reasoning, is preferable to a less specific assessment.

Considering the evolving capacities of the child, the exercise by the child of this participation right shall evolve from a more or less absolute parental direction and guidance to an increasing level of the child’s own responsibilities (Art. 5, CRC, CRC Committee, 2005; CRC Committee, 2009; Couzens in Alen et al., 2007 and references herein; Krappmann, 2010).

Mindful of the reconciliation of a rights perspective and a welfare perspective within the CRC, the CRC Committee urges that the implementation of the child’s right to express views in matters affecting them should both ensure the child protection, for example against harmful experiences, and be appropriate to their best interests and capacities, e.g. for children experiencing difficulties in making their views heard (CRC Committee, 2005; CRC Committee, 2009; CRC Committee, 2011).

iv  

Mode of Participation
The child should not only have his/her views taken into consideration, which includes also non-verbal forms of communication (i.e. “consultation”), his/her opinion has also to be considered as credible as appropriate with his/her age and maturity (i.e. “engagement”). Given this due weight clause and the parental guidance in line with the child’s evolving capacities according to Article 5, Article 12 grants no decision-power to children. Hence, a child’s right to self-determination is beyond the scope of Article 12 (Couzens in Alen et al., 2007; Van Bueren, 1995).

Principally the child expresses his/her opinion directly. However, with regard to the hearing in formal proceedings the child can decide to communicate directly or through a representative or an appropriate body (Art. 12.2), under the condition that the method chosen is determined by the child and the interests of the child are represented exclusively (CRC Committee, 2009). This representative is not necessary the child’s parents or a lawyer and may be, for example, a social worker.
The right to have a voice is both a right of the individual child and a right of groups of children (CRC Committee, 2009).

The adjective “in particular” in Article 12.2 indicates that other interpretations besides hearing the child in proceedings still are possible (Van Bueren, 1995).

The requirements of the CRC Committee relating to achieving child engagement are comprised of five steps: preparation, the hearing itself, assessment of the child’s capacity, information relating to importance to be attributed to the child’s views and, finally, provisions regarding complaints, remedies and redress. The effective application of these five steps has every time to be adapted to the given context (CRC Committee, 2009).

3.4 Conclusion

Child participation is outlined in several rights in the CRC. The participation rights can also be considered as human rights and they must be interpreted and implemented comprehensively with the other in the CRC enacted rights.

Analysis of children's participation rights through the participation disc model demonstrates that whilst all participation rights have in common an intrinsic connection of the instrumental and constitutional dimensions, the participation rights themselves vary in context, relevant stakeholders and forms of participation.

An analysis of the context shows that the rights usually identified as participation rights, in particular Articles 12 up to 17 (inter alia Verhellen, 2000), all have an influence on both the “social level” and the “topic”, with the exception of Article 12.2. The cluster of participation rights is, however, broader than only these rights. Indeed, the CRC also enacts rights containing participative elements depending on the context in which a child finds itself. From this perspective, the analysis shows rather a fragmentary, specific and casuistic attribution of participation rights to the child. The main topic of children's participation rights according to the CRC is, therefore, situational or group-based.

The CRC recognises children as right holders and considers them as full members of the family and of the society with the right to interact with their environment at distinct social levels and on various topics affecting their lives. Yet, the CRC aims to emphasise that participation rights do not stand for (absolute) individuality. Indeed, given the comprehensive nature of the CRC, participation rights are inextricably linked with children’s protection and provision rights. In particular, principles such as age, maturity and capacity, the best interest of the child and parental rights, play a fundamental role in guiding children's participation rights.
In literature relating to the child’s right to participate, as enacted in the CRC, much attention is paid to the ways of participation. Several typologies have been described and discussed (see supra 2.4.1. Typologies). Within the participation disc, which attempts to understand the concept of participation as a whole, typology is a factor of the component “mode of participation”. Analysing the CRC participation rights in conformity with the typology of participation required a certain exercise in interpretation. Indeed, except for participation by way of information, the CRC does not use terms such as consultation, engagement, etc. Documents (guidelines, general comments, etc.) emerging from the CRC Committee neither address nor indicate the specific types of participation to be used or followed. Leaving aside the question whether this margin leaves scope for multiple interpretations and encourages creativity, it also produces some ambiguity.

The most well known and arguably the most important participation article is Article 12, which outlines the child’s right to express his/her view freely in matters affecting him/her which has to be given due weight and in particular the child’s right to be heard in judicial and administrative proceedings affecting him/her. However, this right is, compared to most other CRC participation rights, limited by context (i.e. all matters affecting the child), relevant stakeholders (i.e. the due weight clause and the possibility of indirect hearing through representatives, as well as Art. 5, CRC, parental exercise and guidance in line with the child’s evolving capacities) and mode of participation (i.e. engagement).

Perhaps for this reason, Article 12 looks set to remain the key participation article and to play an underpinning role in the CRC. Article 12 advances the thesis that children can make a valuable contribution to matters affecting them, in all levels of their actual environment, without giving children the right to choose, to decide or to “be the boss”. Indeed, listening to and respecting the child’s opinion has to be distinguished from unconditionally adopting the child’s point of view (inter alia Cattrijsse & Delens-Ravier, 2006; Shier, 2001). Article 12 also considers the child as a full member of the family and society, without shifting the responsibilities unilaterally to the child.

It is regrettable that even a general comment, issued by the CRC Committee relating to Article 12, striving for clarification, summarises that article in its title as a “right of the child to be heard”. As our analysis clearly demonstrates, children’s participation in conformity with Article 12 implies much more than just being heard. The term “being heard” refers to a rather passive approach than that it puts the child (actively) in his/her rights. Moreover, the danger
exists that, without a profound knowledge of the treaty and the relevant general comment, Article 12 exclusively will be associated with the procedural interpretation of expressing views, as given in the second paragraph of the same article.

4 Discussion

This paper aimed to discuss the notion of child participation since this is, with the adoption of the CRC, enacted as a right of the child.

First, we tried to understand the concept of child participation by means of an analysis of literature from different disciplines. The present analysis revealed participation as a complex concept of which the meaning is not univocal. Therefore participation is approached by means of a framework (Kirby et al., 2003; Thomas, 2007; UNICEF, 2001), consisting of four main components: the purpose of participation, the context of participation, the stakeholders and the mode of participation. Each of these four main components was further elaborated and divided into several factors. The framework has been illustrated as a participation disc.

The present paper both demonstrates and accepts the idea that participation is a process and an open-ended term. Children’s participation knows diverse interpretations, depending on the four components of the framework used. The ambiguous and indistinct nature of the concept can be considered as a weakness. However, this weakness could also be its strength. The notions urges us to think, to disclose perspectives as well as to return to basic questions as why, when, where, in what, by whom and how to participate.

Second, we focused on participation as a right of the child. The CRC was the point of departure. The elaborated “participation disc” was applied to the participation rights that the CRC contains. Also, some specific characteristics of the CRC participation rights were highlighted.

The CRC does not lay down a general or explicit right to participation; rather it prefers to give meaning to participation through several participation rights. This is in line with the findings of the first part of the paper where a clear definition of participation is rejected.

Further analysis however seems to indicate an absence of a well-considered view on participation and child participation in particular. First, labeling rights into clusters of participation, protection resp. provision took place just after the elaboration and ratification of the CRC. Second, to date, it is not clear which rights are exactly and/or exclusively participation rights. This lack of clarity is
partly counterbalanced by the comprehensiveness of the convention. Third, an understanding of the distinct participation rights by means of the participation disc indicates, in line with the former conclusion, a variety with regard to context, relevant stakeholders and mode of participation. When implementing participation rights, this variety in understanding has to be taken into account. The margin of interpretation relating to the mode of participation (i.e. typology) could entail uncertainty in terms of understanding and in consequence in terms of implementing and monitoring a child’s right to participate. Fourth, indention although a general comment relating to Article 12, often described as the ‘heart of the participatory articles’ (Flekkøy and Kaufman, 1997: 32), throws some light on the expectations stipulated by the CRC Committee in terms of understanding, implementing and monitoring, at the same time an opportunity has been missed to fit Article 12 in to the whole of children’s participation (rights).

In sum, participation of the child enacted as a right in the CRC seems to be inspired by a consensus thinking of the Member States, which formed the connecting thread in the elaboration and implementation of the convention, rather than by a well-considered view on participation and the child’s participation rights in particular.

In understanding child participation, it is also important to be aware that the CRC sets a universal minimum requirement regarding child participation and sets it within a human rights context. Participation of children as enshrined in the CRC is not the same as participation in itself, nor can it be interpreted as the unique way of how participation has to be understood. A refining of these CRC participation rights by regional and/or national instruments may be possible and will surely happen, but this refinement may not always be classified under the banner of children’s rights as being human rights. Hence, respecting and realising children’s participation rights, as it is enshrined in the CRC, starts with a clear understanding of the notion “participation”.

References


Committee on the Rights of the Child, General guidelines regarding the form and content of initial reports to be submitted by States Parties under Article 44, paragraph 1 (a), of the Convention, CRC/C/5, 1991.

Committee on the Rights of the Child, General guidelines regarding the form and content of periodic reports to be submitted by States Parties under Article 44, paragraph 1 (b), of the Convention, CRC/C/58/Rev.1, 2005a.


