

Identity and Child Participation Rights in Family Law Proceedings

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Webinar Overview

The **intersection** between children's UNCRC rights relating to **identity & participation in family law proceedings**:

- * **Article 8:** To **preserve their identity** [3 aspects: nationality, name & family relations]
- * **Article 9(3):** To maintain **personal relations & direct contact with both parents** on a regular basis if separated from one or both, unless contrary to their best interests
- * **Article 12 (1):** To **express their views**, due weight in accordance with age & maturity
(2): opportunity to be heard in any **judicial & administrative proceedings affecting them**
- * **Article 13:** Freedom of expression
- * **Article 14:** Freedom of thought, conscience & religion
- * **Article 15:** Freedom of association & peaceful assembly
- * **Article 17:** Access to information

What is Participation?

- * Defining participation is **not straightforward**
- * Not referred to in **UNCRC** → **General Comment No 12** (2009):

*This **term has evolved** and is now widely used to describe **ongoing processes**, which **include information-sharing and dialogue** between children and adults based on **mutual respect**, and in which **children can learn** how their views and those of adults are taken into account and shape the outcome of such processes.*

Participation is a Fundamental Human Right ...

*All people have **a right to express their views when decisions are being made that directly affect their lives** – and **children are people too**. Whether it is **an individual decision** about where a child will live following her parents' divorce, **or broader issues ...** children have a right to articulate their concerns, participate in the development of policy and be taken seriously.*

Gerison Lansdown, *Promoting Children's Participation in Democratic Decision-Making*,
UNICEF Innocenti Insight, February 2001, p. 7

What is Identity?

A constellation of historical & evolving characteristics

- * **Internal: Individual / unique characteristics & perception of one self** e.g., gender, physical features, attributes, abilities
- * **External:** Personal identity that is **shaped by social & cultural context** initially within the family/community → later with peers & other adults
- * *Collectively these characteristics provide children with an understanding of where they have come from, who they are, and the right to decide who they will become*

John Tobin & Jonathan Todres (2019). Article 8: The Right to Preservation of a Child's Identity, in *The UN Convention on the Rights of the Child* (pp. 279-304). Oxford University Press, p. 283.

Identity as a Dynamic Concept

- * The formation of identity is recognised as **dynamic**, with **evolving experiences and relationships** which include **change and transitions**.

DEEWR, (2009) *Belonging, Being & Becoming - The early years learning framework for Australia*, p. 20

- * A **strong identity** is underpinned by **a sense of belonging** – **of worth and respect for who we are**.

Arthur, L. Beecher, B. Death, E. Dockett, S. & Farmer, S (2012) *Programming & Planning in Early Childhood Settings*, 5th Edition, Cengage Learning

Children as Co-constructors of Their Own Identity

- * When they **build relationships with people** and evaluate the responsiveness of others towards them
- * This **recognises children's agency** → their ability to make choices and decisions and influence their world
- * Children with **positive identities** will be **more involved**

What are Family Law Proceedings?

- * 'Family law proceedings' → a **flexible term**
- * Relating to **all the areas** in which a family, and/or the children of a family, are involved
- * **Out-of-court** dispute resolution processes
- * **In-court** dispute resolution processes

Important Synergies to Consider

- * Important **synergies** between historically unconnected areas of international family law regarding the impact of those events & proceedings on the identity of the children involved in them
 - Within the **traditional** categories of family law, e.g., custody proceedings
 - Or the **less traditional** categories e.g., asylum proceedings
- * **Freeman & Taylor *Children and Young People's Identities in International Law: Life Events, Law and Selfhood*** (Edward Elgar Studies in International Family Law, forthcoming 2024)

Links Between Identity & Participation in Family Law Proceedings

- * Identity is also the result of how other people define the child, how he or she is **understood (or not) & shown respect (or not)**
→ **social experiences serve as a ‘mirror’ for their identities**

Vandenbroech, M. (2008) in *Developing Positive Identities: Diversity and Young Children*, in Early Childhood in Focus series
Woodhead, M. & Brooker, L, The Open University.

- * **Role played by parents and [professionals]** in assuring a child's positive identity ...and helping them respond to new and sometimes challenging situations.

Woodhead, M. & Brooker, L.(2008) *Developing Positive Identities: Diversity and Young Children*, in Early Childhood in Focus series, The Open University.

Children's Role in Defining Their Identity is More Likely to Flourish When They Can Participate

- * The elevation of children's views in the determination of their identity **challenges certain traditional ideas of childhood** → children are typically relegated to the shadows → but a child's cultural, religious & family identity **should not be exclusively defined by adults**
- * **Children must have a voice in this process** consistent with their other UNCRC rights (e.g., 13, 14, 15, 17)
- * Undoubtedly **adults** will influence a child's identity → the **UNCRC** however not only anticipates but requires that **children themselves play an active role in the construction & discovery of their own identity**, consistent with their evolving capacities.

Why Opportunities to Participate in Family Law Proceedings are Important for a Child's Identity



*These are **significant decisions** that impact children's safety, well-being, **identity** and belonging.*

Woodman et al (2023) Children's participation in child protection – How do practitioners understand children's participation in practice? Roche & McArthur, *Child & Family Social Work*, 28(1), 125-135