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Section Three: Article 12 of the CRC and New York State Law

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Section Three: Article 12 of the CRC and New York State Law

by Chantima Chokloikaew²⁷⁵

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.²⁷⁶

The purpose of this Section is to simulate the CRC reporting system within the context of New York State law. Part I will set out CRC's Article 12 and its relationship to other provisions of the CRC. Part II will examine relevant provisions of New York State law that concern the child—education, healthcare, family law, and juvenile justice—and make contrasts and draw comparisons between these laws and the child's right to participation guaranteed under Article 12 of the CRC. Part III will conclude that there are ways in which New York State law could be strengthened in order to be in compliance with the requirements and intent of Article 12 of the CRC.

I. ARTICLE 12 OF THE CRC

Article 12 of the CRC sets out the child's right to involvement in decision-making when that decision affects the child. It provides that children have the right to say what they think should happen and have their opinions taken into account when adults are making decisions that affect children.²⁷⁷ This respect for the views of the child should not, however, be construed as giving children authority over adults or as allowing children to tell their parents what to do.²⁷⁸ Article 12 does not interfere with parents' rights and responsibilities to express their views on matters affecting their children.²⁷⁹ Article 12 merely encourages adults to listen to the

²⁷⁵ J.D. Candidate, Albany Law School; B.A., New York University.

²⁷⁶ See CRC, *supra* note 2, art. 12.

²⁷⁷ See CRC, *supra* note 2, art. 12.

²⁷⁸ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 145.

²⁷⁹ *Id.*

opinions of children and to involve them in the decision-making process.²⁸⁰

The CRC as a whole regards the child as an active subject of rights.²⁸¹ Article 12 of the CRC sets forth the idea that a child is an individual with fundamental human rights, views and feelings of her or his own.²⁸² It is a departure from the traditional rights given to children, that regard children more as an object of the law, or subjects of the laws that mandate how they are treated.

Traditionally, in most matters affecting children, a child's rights are derivative rights, stemming from her or his parents. One example of how a system of derivative rights can negatively affect a child is in asylum law, where a child's refugee status is tied to that of her or his parent(s), even though the child's own experiences may earn that child refugee status on her or his own.²⁸³ Under the CRC, the child would be the active subject of her or his own rights and could apply for refugee status independently of her or his parent(s).²⁸⁴

The phrase "due weight in accordance with the age and maturity of the child" in Article 12 of the CRC refers to the evolving capacities of the child.²⁸⁵ Article 12 stresses the need to "respect the child's developing capacity for decision making."²⁸⁶ There is no minimum age set by these provisions.²⁸⁷ This means that the only reason to deprive a child of the right to intervene on her or his own behalf is when the child is clearly incapable of forming her or his own views. The due weight provision is about the child's right to participate in matters and be heard.²⁸⁸

The evolving capacity principle²⁸⁹ in the CRC serves to distinguish between the child's capacity to form views and the separate capacity to communicate those views, which are to be taken into consideration in accordance with age and maturity.²⁹⁰ Article 40 of the CRC also distinguishes between a child's capacity to form views

²⁸⁰ *Id.*

²⁸¹ *Id.* at 148.

²⁸² *Id.*

²⁸³ See Immigration & Nationality Act, 8 U.S.C. §§ 1101–1537 (2008).

²⁸⁴ See generally THE GENERAL MEASURES OF THE CONVENTION ON THE RIGHTS OF THE CHILD—THE PROCESS IN EUROPE AND CENTRAL ASIA 12, UNICEF INNOCENTI RESEARCH CENTRE, <http://www.unicef-irc.org/publications/pdf/crcmeasures.pdf>.

²⁸⁵ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 145.

²⁸⁶ *Id.*

²⁸⁷ See CRC, *supra* note 2, art. 12.

²⁸⁸ See *id.*

²⁸⁹ See generally *id.* art. 5.

²⁹⁰ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 149.

versus the ability to communicate those views in reference to juvenile justice proceedings, where a child can receive the free assistance of an interpreter “if the child cannot understand or speak the language used.”²⁹¹ Obligations under Article 12 cannot be circumvented by the best interest principle.²⁹² The reference to “procedural rules of national law” in the Implementation Handbook suggests that domestic legislation should have express and specific provisions to allow for implementation of a child’s rights under Article 12.²⁹³ Article 12 also specifically provides for the child’s right to be heard in judicial and administrative proceedings, such as court hearings and other formal decision-making that affects the child. Examples of decision-making that affects a child include education, health, family, juvenile justice, institutionalized placement, and other care.²⁹⁴

A child’s right to be heard is interrelated with Article 19 of the CRC, which protects a child from violence.²⁹⁵ Under Article 19, effective complaint procedures are an essential element of child protection, especially in family, school, and alternative care environments.²⁹⁶ In the context of child protection, which overlaps with family life, Article 12 requires the establishment of procedures for the child to complain and report independent of his or her parents.²⁹⁷ This independence is also required for health services as it relates to child protection—for example, an unwanted pregnancy resulting from incest or abuse.²⁹⁸

Articles 3 and 12 of the CRC are also related to a child’s right to be heard. Article 3 recognizes a child as an individual, and requires protection of children as a group by ensuring that their best interest is a “primary consideration” in any decision-making process.²⁹⁹ Article 12 serves as a subset of Article 3 by looking at each child on an individual level and calling for participation from the child in decision-making when appropriate. Article 12 then calls for States Parties to give due consideration to the views and opinions of the child when determining a course of action to be

²⁹¹ See CRC, *supra* note 2, art. 40(2)(b)(vi).

²⁹² UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 149.

²⁹³ *Id.* at 151 (citing OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS ET AL., MANUAL ON HUMAN RIGHTS REPORTING 429 (1997)).

²⁹⁴ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 145.

²⁹⁵ CRC, *supra* note 2, art. 19.

²⁹⁶ See UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 157.

²⁹⁷ See *id.*

²⁹⁸ See *id.*

²⁹⁹ CRC, *supra* note 2, art. 3.

taken.³⁰⁰

II. RELEVANT NEW YORK STATE LAWS REGARDING A CHILD'S INPUT

A. Education

The Committee recognizes that legal frameworks alone will not achieve the necessary attitudes and practices within families, schools, or communities to incorporate a child's input. To improve child participation in decision-making, the Committee has encouraged a variety of strategies for implementing Article 12, including, in particular, in educational settings.³⁰¹ One suggestion includes incorporating principles of the CRC within the school curriculum.³⁰² For example, a school could establish mechanisms for children to experience and enhance their capacity for participation by intervening in school councils regarding matters relating to their education.³⁰³

The New York Education Law provides for a child's participation in matters relating to their education on an individual basis and only under certain circumstances.³⁰⁴ The Education Law recognizes a child, until the age of twenty-one, as an individual in its provisions relating to education of children with handicapping conditions³⁰⁵ and children in child care institutions.³⁰⁶ Children in child care institutions who have not yet graduated from high school are entitled to a "free and appropriate education in the least restrictive environment for that child,"³⁰⁷ and the program offered is determined by the needs of the individual child.³⁰⁸ In the section regarding children with handicapping conditions, the law calls for special education committees to meet, evaluate, choose appropriate support systems, and appropriately place the child in an educational setting based on the child's individual strengths, weaknesses, and needs.³⁰⁹ The emphasis on individuality is seen even in the education plan resulting from the special education meetings, called Individualized Education Plans ("IEPs").³¹⁰ Addi-

³⁰⁰ *Id.* art.12.

³⁰¹ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 153.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ See N.Y. EDUC. LAW § 4402 (McKinney 2006).

³⁰⁵ *Id.* The term "handicapping condition" is used in Article 89 of the New York Education Law to refer to a student with a disability. See *id.* art. 89, §§ 4401-4410-b.

³⁰⁶ *Id.*

³⁰⁷ *Id.* § 4002(1).

³⁰⁸ *Id.* § 4002(2).

³⁰⁹ *Id.*

³¹⁰ *Id.* § 4002.

tionally, section 4402 of the New York Education Law provides for the minimum member composition requirements of a special education committee, which include parents, various special education school officials, and, “if appropriate, the student.”³¹¹

While the Education Law’s express requirement that the child’s participation be taken into consideration is in line with the principles of Article 12 of the CRC, New York law does not comport fully with the requirements of Article 12. First, there is no express provision for the views of the child to be considered.³¹² Even in the provision that sets forth the mandatory members of the special education committee, the student’s participation in developing an IEP is only required “if appropriate,” which effectively makes the student’s presence optional and no longer mandatory.³¹³ It is unclear who gets to decide on the appropriateness of a child’s presence at a special education committee meeting and, in practice, most students do not attend the meetings despite their age, maturity, and capacity to understand and express their views due to the discomfort of being surrounded by authority figures. Even when the child is present, there is no mention of any consideration or weight to be given to the child’s views. There should be the express mention of and an alternative method to ascertaining the child’s views so that the child may express her or his views freely. Possible methods include having the child write out her or his preferences before the meeting, or soliciting the child’s input in a less intimidating setting, such as in a one-on-one discussion with a trusted member of the special education committee.

Outside the realm of special education, New York’s Education Law glaringly omits any reference to a child’s opinions, and certainly does not ensure a child the right to freely express them. This lack of promotion of participation of the child as an individual or as a member of children as a group in a major part of their life and development is not in line with the principles set forth in Article 12.

B. Healthcare

The CRC upholds a child’s right to participate in decisions concerning their health and health care.³¹⁴ The CRC does not sup-

³¹¹ *Id.* § 4402 (1)(b)(1)(a).

³¹² *See id.* § 4002.

³¹³ *See id.*

³¹⁴ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 162; *see also* CRC, *supra* note 276, arts. 1, 24.

port the setting of a minimum age for participation, but rather requires respect for the “evolving capacities” of the child to make decisions for her or himself.³¹⁵ A child’s opinion is required “both in relation to the overall planning, delivery and monitoring of health services . . . and also in relation to the treatment of the individual child, and the child’s right to consent or refuse consent to treatment.”³¹⁶

The general rule in New York State is that only a person over the age of eighteen years old may consent to medical care on her or his own behalf.³¹⁷ However, New York law does not set a minimum age of consent for medical, dental, health, and hospital services for any person who is pregnant and seeking prenatal care.³¹⁸ By virtue of becoming a parent, the young person is emancipated from having to seek consent for medical treatment, and has autonomy over medical decisions involving the pregnancy.³¹⁹ Furthermore, while the general rule is that only a person over age eighteen may consent to medical care on her or his own behalf,³²⁰ New York carves out an exception which allows services to be rendered to “persons of any age without the consent of parent or legal guardian” when there exists an emergency requiring “immediate attention and an attempt to secure consent would delay treatment and increase risk to . . . life and health.”³²¹

A less extreme example of health taking precedent over age-related procedure concerns prison inmates. An inmate who is under eighteen and for whom no medical consent was obtained prior to commitment or transfer is granted the capacity “to consent to routine medical, dental, and mental health services and treatment.”³²² Subdivision 3 of this statute allows for the inmate’s parent or legal guardian to institute legal proceedings to deny provision of said services at any time before the inmate turns eighteen.³²³ The effect of this subdivision is to take away the minor inmate’s capacity to consent originally and, as such, seems inconsistent with the practice of taking the views of the child into consideration in matters affecting the child. Moreover, while these

³¹⁵ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 323.

³¹⁶ *Id.*

³¹⁷ N.Y. PUB. HEALTH LAW § 2504(1) (McKinney 2006).

³¹⁸ *Id.* § 2504(3).

³¹⁹ *Id.*

³²⁰ *Id.* § 2504(1).

³²¹ *Id.* § 2504(4).

³²² N.Y. CORRECT. LAW § 140 (McKinney 2006).

³²³ *Id.* § 140(3)(a).

provisions for a minor to consent may satisfy the obligations of Article 12, they are an extremely limited exception to a general rule requiring the consent of a parent or other legal guardian in matters of a child's healthcare.

In order to honor the obligations set forth in Article 12 of the CRC and to recognize the child as an active subject within the law, no minimum age should be required to maintain the evolving capacities principle that the child acquires the right to make decisions once he or she is considered to have "sufficient understanding."³²⁴ In the alternative, New York should enact a provision requiring parents and healthcare providers to confer with and take into consideration the child's views in accordance with the child's age and maturity in all healthcare decisions.

C. *Family Law*

Article 20 of the CRC concerns children deprived of their family environment and entitles the child to special protection and assistance provided by a State Party.³²⁵ The CRC stresses the importance of protecting the child's right to participation in all such settings.³²⁶

Under its findings and purpose section, the New York Family Court Act declares that minors who are "the subject of family court proceedings or appeals in proceedings originating in the family court should be represented by counsel of their own choosing or by law guardians."³²⁷ This declaration is based on the idea that "minors . . . often require the assistance of counsel to help protect their interests and to help them express their wishes to the court."³²⁸

One area where New York law and the CRC are fully aligned is New York's permanency hearing regulations, which provide that the family court consider the child's input regarding her or his permanency plan.³²⁹ This accords with a federal statutory requirement to consult with the child in an age-appropriate manner.³³⁰ New York's requirement that the child is consulted with in an age-appropriate manner accords with the elements of Article 12 that require consideration of the child's participation and evolving ca-

³²⁴ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 162.

³²⁵ CRC, *supra* note 2, art. 20.

³²⁶ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 158.

³²⁷ N.Y. FAM. CT. ACT § 241 (McKinney 2006).

³²⁸ *Id.*

³²⁹ N.Y. COMP. CODES R. & REGS. tit. 22, § 205.17(e) (2007).

³³⁰ 42 U.S.C. § 675(5)(C)(iii) (2008).

pacities.³³¹ Courts have not interpreted “consult” to require posing a literal question to the child.³³² This reflects a similar understanding contained in the CRC.³³³ Rather, the statutory requirement of the “age-appropriate” standard recognizes the evolving capacity of a child, but contains no mention of whether due weight is to be given in accordance with the child’s age and maturity. Nonetheless, this is a step in the right direction, as a child should be able to express his or her view without coercion or constraint.³³⁴ The permanency hearing regulations mandate that the court ascertain the child’s views, meaning that they allow for the child’s presence in court, as the child may be required to answer questions should the court determined that it does not know the child’s position.³³⁵ This, then, would not be in keeping with the CRC, as the child is no longer viewed as an active subject but rather as an object of the law.

The New York Family Court Act acknowledges a child’s right to “signify assent” to visitation with or custody of their parent or guardian where otherwise the parent or guardian would not be allowed to enforce a visitation or custody order because they were convicted of murder of a close relative of the child, such as the other parent, guardian, or sibling.³³⁶ This provision not only provides the child with an opportunity to be heard, but effectively gives the child the ultimate authority on the matter. This surpasses the goals and principles of Article 12.

However, one concern in the New York Family Court Act is the language regarding the child’s age. The statute covers a child of “suitable age,” but does not define the phrase.³³⁷ Again, as in the Education Law’s use of the term “if appropriate” to describe a child’s participation in a special education committee meeting,³³⁸ the question here becomes who decides the “suitable age” of a child. This leaves open the possibility of ad hoc court decisions regarding the suitability of the child’s age. A more optimistic interpretation can arguably view that this “suitable age” reservation

³³¹ 42 U.S.C. § 675(5)(C)(iii) (2008).

³³² U.S. DEP’T OF HEALTH & HUMAN SERVICES’ ADMIN. FOR CHILDREN & FAMILIES, CHILD WELFARE POLICY MANUAL § 8.3C.2c [hereinafter CHILD WELFARE POLICY MANUAL].

³³³ See CRC, *supra* note 2, art. 12; UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 149.

³³⁴ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 149.

³³⁵ See N.Y. COMP. CODES R. & REGS. tit. 22, § 205.17(e).

³³⁶ N.Y. FAM. CT. ACT § 1085.

³³⁷ *Id.*

³³⁸ See N.Y. EDUC. LAW § 4402 (1)(b)(1)(a), discussed in Part II.A of this article.

takes into account the evolving capacities of the child and allows the child to freely express her or his views. Assuming it is a valid interpretation, there is still an inherent minimum age, as it is doubtful that a court would find a three-year old to be of “suitable age” to assent to such a matter. The tone of the family law provisions seems to be one of “best interest of the child,” which in practice potentially means that the child has no say or real opportunity to participate. This is further evidenced by the law providing for the placement of the child “in the custody of a relative or other suitable person . . . or [in the custody] of the local commissioner of social services or of such other officer, board or department as may be authorized to receive children as public charges, or a duly authorized association, agency, society or in an institution suitable for the placement of a child.”³³⁹

This section of the Family Court Act makes no mention of child participation in the placement decision, and states simply that “the court may place the child.”³⁴⁰ The child only has the right to consent to or deny a placement to be made or continued after his or her eighteenth birthday.³⁴¹ Since childhood under the CRC ends at age eighteen, this statute does not provide for the child’s voice to be heard or considered in proceedings affecting where they will live until they have attained the age of majority.³⁴² The same is true of the provision regarding disposition of adjudication of permanent neglect.³⁴³

Most of the laws in the Family Court Act view each child as an individual, but not necessarily as an individual with the right to be heard. Rather, much of the Family Court Act views each child as an individual having a unique set of personal circumstances that are to be addressed by the court, not as an individual with her or his own views which merit consideration. Thus, the Family Court Act’s interpretation of a child’s individuality does not meet the goals and requirements of Article 12 of the CRC.

D. Juvenile Justice

The Committee has interpreted Article 12 of the CRC as requiring complaint procedures to be made available to children, and has stressed the need for setting in place complaint proce-

³³⁹ N.Y. FAM. CT. ACT § 1055(a).

³⁴⁰ *Id.*

³⁴¹ *Id.* § 1055(e).

³⁴² *Id.*

³⁴³ *Id.* § 631.

dures in situations where a child's liberty is restricted.³⁴⁴ The view of the Committee is that "access to effective complaint procedures is an essential element of child protection,"³⁴⁵ especially to protect children from maltreatment in institutions such as juvenile facilities.³⁴⁶

In New York, a "juvenile delinquent"³⁴⁷ put under arrest has no more rights regarding "respect for their views" than an adult, except that a child may be appointed a law guardian instead of an attorney.³⁴⁸ There are no provisions for the child's right to express views in a juvenile justice proceeding.³⁴⁹ A child's age is taken into consideration only as one factor in determining the suitability of questioning and determining the reasonable period of time for questioning.³⁵⁰

New York law does provide for some internal facility oversight for children in State custody.³⁵¹ According to New York State regulations, there must exist within the New York State Office of Children and Family Services ("OCFS") an Office of the Ombudsman staffed by attorneys.³⁵² The ombudsmen are entitled to visit facilities, hear children's grievances, investigate alleged violations, and otherwise represent the rights of incarcerated children vis-à-vis OCFS.³⁵³ However, a 2006 Human Rights Watch ("HRW") report reveals shortcoming in the implementation of such provisional safeguards.³⁵⁴ In its examination of grievance reporting, HRW found a serious lack of accountability, oversight, and transparency in OCFS facilities.³⁵⁵ There were reports of girls attempting to address complaints to the OCFS ombudsman but receiving no re-

³⁴⁴ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 503; *see also* CRC, *supra* note 276, art. 37.

³⁴⁵ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 157.

³⁴⁶ *See generally id.* at 155.

³⁴⁷ "Juvenile delinquent" means a person over seven and less than sixteen years of age, who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law." N.Y. FAM. CT. ACT § 301.2(1).

³⁴⁸ *Id.* § 320.3.

³⁴⁹ *See id.* § 343.1.

³⁵⁰ *Id.* § 301(8).

³⁵¹ N.Y. EXEC. LAW § 523-c (setting out the duties of the office of the ombudsman).

³⁵² *Id.* § 523.

³⁵³ *Id.* § 523-c.

³⁵⁴ HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION, CUSTODY AND CONTROL: CONDITIONS OF CONFINEMENT IN NEW YORK'S JUVENILE PRISONS FOR GIRLS, <http://www.hrw.org/sites/default/files/reports/us0906webwcover.pdf>.

³⁵⁵ *Id.* at 121-28.

sponse.³⁵⁶ Other girls were not put in contact with the ombudsman, or were told explicitly that they could not speak to the ombudsman.³⁵⁷

Interestingly, developments in juvenile justice are beginning to collectively take into consideration children's voices in matters affecting other children. Programs in recent years have given young people an opportunity to participate in the government, thereby educating and involving the students in their communities and matters that affect them. These include youth courts and the Youth Justice Board.³⁵⁸ There are nearly one hundred active youth courts across New York State.³⁵⁹ The teenage members of youth courts learn about the justice system, and, acting as judge, jury, and advocate, hear real cases that are referred by courts, police precincts, and schools involving truancy, vandalism, and assault.³⁶⁰ The goals of youth courts are to promote community restitution and engagement by the child who committed the harm.³⁶¹

The Youth Justice Board is specific to New York City and fosters participation in government in another way. It is an after-school program bringing together fifteen to twenty teenagers from different New York City schools to "devise recommendations on justice system issues that affect youth, such as school safety, juvenile offenders returning to New York City following placement in a state facility, and the permanency planning process."³⁶² The program engages the participants in a dialogue with policymakers. For example, one presentation in 2007 concerned ideas for improving New York City's permanency planning process with the goal of helping "foster care youth participate in their court cases so that the process could better meet their needs."³⁶³ The members of the Youth Justice Board conducted interviews, observed court, and held focus groups with youth in foster care system. Their research culminated in a report presented to key stakeholders in New York City's child protection system.³⁶⁴ The Youth Justice Board spent the remainder of the year working with stakeholders in the permanency planning process to implement some of the Board's

³⁵⁶ *Id.* at 122.

³⁵⁷ *Id.*

³⁵⁸ Jacqueline Sherman & Dory Hack, *Preparing Young Citizens for Democracy*, N.Y. ST. BAR ASSOC. J., Jan. 2008, at 24.

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.* at 25.

³⁶³ *Id.* at 26.

³⁶⁴ Sherman & Hack, *supra* note 358, at 26.

recommendations.³⁶⁵

Although they are not in the scope of New York's statutory provisions, programs such as the Youth Justice Board are fully in keeping with the aims of Article 12, and of the CRC as a whole. Despite the fact that these programs do not involve individual child participation in matters concerning them, they do involve the voice of children as a whole, which urges the governing bodies to view each child as an active subject of rights. This effective implementation of experimental programs based on aspiration rather than law is a positive counterbalance to the pattern we have seen of aspirational statutes lacking effective implementation.

Article 12 underlines the idea of the child as an active subject and bearer of her or his own rights. Previous human rights documents channeled the right of the child through the parents. For example, under New York's Human Rights law—which provides New Yorkers protections against discrimination—the definition of familial status for anti-discrimination measures confers protections through the parent's status and not on the basis of the child's own individuality.³⁶⁶

Article 12 of the CRC reinforces the idea of a child's evolving capacities in the phrases “capable of forming his or her own views”³⁶⁷ and “due weight in accordance with the age and maturity of the child.”³⁶⁸ These phrases have been interpreted as ensuring that the child's views are respected even in situations where the child may be able to form views but not able to communicate them.³⁶⁹ However, despite these positive trends, there is still need for much reform. Children's issues do not simply affect children. More than affecting families, children's rights and issues affect communities now and in the future. In other countries, youth parliaments³⁷⁰ enable children to meet once a year to discuss current legislation, and offer opportunities for children to be involved in the legislative decision-making process. New York's counterpart to this is the Youth Justice Board.³⁷¹ If the CRC were closely followed in New York, youth participation in legislation and government

³⁶⁵ *Id.*

³⁶⁶ N.Y. EXEC. LAW § 292 (26); § 296 (2-a); (3-b); (5).

³⁶⁷ CRC, *supra* note 2, art. 12(1).

³⁶⁸ *Id.*

³⁶⁹ UNICEF IMPLEMENTATION HANDBOOK, *supra* note 89, at 149.

³⁷⁰ See, e.g., U.K. Youth Parliament, <http://www.ukyouthparliament.org.uk/> (last visited Feb. 16, 2010); Scottish Youth Parliament, <http://www.syp.org.uk/> (last visited Feb. 16, 2010); Youth Parliament Pakistan, <http://www.pildat.org/youthparliament/YP2008/AboutYPP.asp> (last visited Feb. 16, 2010).

³⁷¹ See Sherman & Hack, *supra* note 358, at 24.

would not be limited to after-school programs such as the Youth Justice Board. The CRC advises that a coordinating body be responsible for overseeing group participation as well as individual child participation in decision-making. This is just one of the many ways in which New York could do more to benefit children, their families, and communities.

Section Four: The Availability of Preventative Rehabilitation Services for Children Engaged in Prostitution; CRC Article 34 and its Optional Protocol

*by Jeremy A. Cooney*³⁷²

*“Trafficking and exploitation plague all nations, and no country, even ours, is immune.”*³⁷³

The numbers of trafficked children are staggering. The federal State Department estimates that each year approximately 400,000 children are trafficked across international borders as sexual commodities.³⁷⁴ Alarming, while the number of trafficked children is progressively increasing, the age of entry into prostitution is steadily decreasing. The average age of girls who enter into the sex trade is between twelve and fourteen years old, while for boys and transgender youth it is between the ages of eleven and thirteen years old.³⁷⁵ As a result, there has been an international response to this “modern form of slavery”³⁷⁶ and to help combat commercial sexual exploitation of children.

Significant disparities exist between the international child rights movement and the laws of the United States with respect to formulating a meaningful response to protecting children from exploitation. Despite growing pressure from the global community,

³⁷² J.D. Candidate, Albany Law School, 2010; B.A., Hobart College, 2004.

³⁷³ Letter from Condoleezza Rice, Former U.S. Secretary of State, in *TRAFFICKING IN PERSONS REPORT 3* (2008), available at <http://www.state.gov/g/tip/rls/tiprpt/2008/105375.htm>.

³⁷⁴ *Id.* at 23.

³⁷⁵ U.S. Dep’t of Justice, Child Exploitation and Obscenity Section, Child Prostitution, <http://www.justice.gov/criminal/ceos/prostitution.html> (last visited Mar. 29, 2010).

³⁷⁶ Dorchon A. Leidholdt, *Prostitution: A Modern Form of Slavery*, in *MAKING THE HARM VISIBLE: GLOBAL SEXUAL EXPLOITATION OF WOMEN AND GIRLS: SPEAKING OUT AND PROVIDING SERVICES* (Donna M. Hughes & Claire M. Roche, eds., 1999), available at <http://www.uri.edu/artsci/wms/hughes/mhvs slave.htm>.