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Child Participation in the Family Courts – Lessons from the Israeli Governmental Pilot Project

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ABSTRACT

The purpose of this paper is to present the Israeli governmental pilot project for child participation in the family courts that operated in the years 2006-2009 in two family courts in Israel. The pilot was aimed at implementing the recommendations of the Israeli CRC Legislative Committee. The article will focus on the ongoing influence of the evaluation study on the pilot project's operation and its larger implication on the formulation of policy and legislation in this area.

Israel was the first county to establish a governmental pilot project aimed at regulating child participation in a judicial proceeding which was accompanied by an evaluation study and aimed at establishing legislation in this field. The outcome of the pilot should therefore be of significant interest to the International Community.

According to the model for participation implemented in the pilot, a special unit for Child participation, staffed by social workers and psychologists was established within the family courts. The child is offered the possibility of meeting directly with the judge who is hearing his/her case, or of conveying his/her words to the court through a Participation worker.

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The evaluation study related to the participation of 448 children aged 6–18 years. Informants included participation workers, judges, parents and children.

Four major dilemmas in establishing policy regarding child participation and the implications of the evaluation study regarding them will be discussed:

A. is it preferable for children to be heard directly by the judge or through a mental health professional?

B. Should the child's statements be privileged?

C. From what age should participation be permitted?

D. Would the very invitation of the child to participate cause or exacerbate incitement of the child?
Child Participation in the Family Courts – Lessons from the Israeli Governmental Pilot Project.\(^4\)

Tamar Morag,\(^5\) Dori Rivkin,\(^6\) Yoa Sorek\(^7\)

Introduction

The purpose of this paper is to present the Israeli governmental pilot project for child participation in the family courts, which operated in the years 2006-2009. The pilot was designed to apply the recommendations of the CRC Legislative Committee appointed to implement the UN Convention on the Rights of the Child (hereinafter: the UN Convention\(^8\)) in Israeli law. The article will focus on the ongoing influence of the evaluation study on the pilot project’s operation and on the project’s larger implications for the formulation of policy and legislation in this area.

Israel was the first country to establish a governmental pilot project aimed at regulating child participation in a judicial proceeding which was accompanied by an evaluation study and aimed at developing legislation in this field. The outcome of the pilot should therefore be of significant interest to the International Community.

\(^4\) We are grateful to the Ashalim Association for Planning and Development of Services for Children and Youth at Risk and their Families for funding the formative research; to the members of CRC legislative Subcommittee on Children and their Families and to the members of the pilot’s Implementation Committee for their partnership in the process of constructing the proposed bill and the pilot project; special thanks to Judge Saviona Rotlevy, Chair of the Israeli CRC Legislative Committee, for her encouragement to write this paper and for her comments. Thanks for Rachel Birnbaum and to Nicola Taylor for their advice and assistance. To Yael Slater for her helpful comments and to Ilana Tregerman for her research assistance. This paper was presented at: World Congress on Family Law & Children’s Rights. Halifax, Canada. August 2009 and at the Association of Family and Conciliation Courts 47th Annual Conference Denver Colorado in June 2010. We thank the participants of these sessions for their insightful comments.

The pilot project was carried out by the Ministry of Justice and the Ministry of Welfare and Social Services, with the help of Ashalim Association for Planning and Development of Services for Children and Youth at Risk and their Families.\(^3\)

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According the model for participation implemented in the pilot, a special unit for Child participation, staffed by social workers and psychologists was established within the family courts. The child is offered the possibility of meeting directly with the judge who is hearing his/her case, or of conveying his/her words to the court through a Participation worker. The evaluation study related to the participation of 448 children aged 6 – 18 years. Informants included participation workers, judges, parents and children.

This paper comprises six parts. The first part concerns the principle of participation and the ways in which this principle has been interpreted by the UN Committee on the Rights of the Child (hereinafter: the UN Committee). The second part deals with the special challenges facing the implementation of the right of participation in family court proceedings. The main findings of research relating to child participation in family courts as well as the current Israeli law in this area will be discussed. The third part of the paper will be devoted to the aims and working methods of the Israeli CRC Legislative Committee and to a discussion of the model it developed for children's participation in family courts. The fourth part of the paper will discuss the methodology of the formative research and its principal findings. The fifth part will discuss changes introduced to the Pilot Project over the course of its operation following the findings of the formative research. The sixth part will present the main lessons learned from the pilot and from the evaluation research as to the appropriate policy regarding the participation of children in family court proceedings. The advantages and disadvantages of the model applied in the pilot will be examined, and directions for the continued development and improvement of the model will be proposed.

I. The Right of Participation in Accordance with the UN Convention on the Rights of the Child

A. The Right of Participation
The principle of participation is anchored in Art. 12 of the UN Convention, which states:

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.

According to the language of the article, this right comprises three major components: the right of the child to be heard, the right to do so freely, and the right to have due weight attributed to the opinion of the child.

The right of participation has often been presented as a principle that symbolizes the process of change in the conception of children and their rights, which has been attributed to the UN Convention. This is evident in the following passage from the UN Committee on the Rights of the Child:

“The new and deeper meaning of this right is that it should establish a new social contract. One by which children are fully recognized as rights-holders who are not only entitled to receive protection but also have the right to participate in all matters affecting them, a right which can be considered as the symbol for their recognition as rights holders.”

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B. Interpretation of the Principle of Participation by the UN Committee

The UN Committee's interpretation of Art. 12 of the UN Convention added depth and breadth to its meaning. This interpretative process was clearly reflected in the General Comment of the Committee with respect to the interpretation of Art. 12. In the context of this paper, it is important to note two central aspects of the UN Committee's interpretation of Art. 12:

1) To which children does the right of participation apply? Under Art. 12, the right to participation is granted only to a child who is “capable of forming his or her own views.” In the framework of the General Comment, this limitation was accorded a meaning that significantly restricted its scope. The Committee has taken the view that no age limit should be set as a condition for realization of the right of participation in legal proceedings, and participation should be allowed, insofar as possible, even at very young ages. According to the Committee, it must be recognized that even infants are capable of expressing a position or a desire by non-verbal means, including body language, play, and facial expressions.

2) Meaningful and Effective Participation: The UN Committee has stressed that the meaningful and effective participation of children must be assured, and tokenism avoided. Here, the Committee established several principles and standards, which include, inter alia, the following:

a. Transparency and honesty in relation to the purpose of the participation and the weight attributed to what the child says;

b. Ensuring the child's freedom to choose whether to participate;

c. Ensuring an environment suited to children;

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10 Committee on the Rights of the Child, General Comment No. 12, The Right of the Child to be heard (2009), U.N Doc. CRC/ C/GC/12 available at: http://www2.ohchr.org/english/bodies/crc/comments.htm (hereinafter General Comment No.12).
11 General Comment No. 12, Para. 21.
d. Ensuring full equality of opportunity in realization of the right of participation;

e. Providing the child with information in a manner suited to his or her needs and abilities;

f. Protecting the child from harm in the course of participation or as a result thereof;

g. Establishing clear rules about confidentiality and privilege in relation to what the child says;

h. Providing the child with information about decisions that affect him or her.

The Committee also emphasized that participation should be viewed as a process that involves preparation and feedback.

II Child Participation in Family Court Proceedings

The right of participation applies to all areas of children's lives. Nevertheless, implementation of this right in the context of family court proceedings in general, and custody proceedings in particular, has encountered a great deal of opposition over the years, both in Israel and in other countries. Many scholars have noted that, until recently, children have almost always been excluded from divorce proceedings. Amongst the major arguments raised by the opponents of the participation of children in divorce proceedings are the following: concern for undermining parental authority; fear of placing children in situations in which they are required to take sides; concern for increasing incitement of children against one of their parents; doubts about the ability of children to formulate positions on the said subjects; a lack of sufficient expertise on methods of participation amongst judges; and concern for compromising the fairness of the proceeding due to the need to ensure the confidentiality of

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the child's views. At the same time, it would appear that the very recognition of the need to include children in legal proceedings has increased in recent years across many legal systems.\textsuperscript{14} The basis of this recognition lies primarily in the growing acknowledgment of the right of participation as an independent right of children, anchored in the UN Convention.\textsuperscript{15} This recognition has been enhanced by a series of empirical studies demonstrating the advantages of hearing children in family court proceedings.\textsuperscript{16} These studies indicate that children whose parents are going through a divorce are usually interested in expressing their positions and their feelings regarding decisions that affect their lives, although in most cases they do not wish to be the ones making the decision.\textsuperscript{17} They also reveal that most children wish to receive information regarding their parents' divorce, and that withholding information from them significantly increases their level of anxiety.\textsuperscript{18} A number of studies indicate that involving children sometimes allows them to better adapt to the new situation that is created following the divorce; it can lead to improved communication between parent and child; and lower the level of conflict between the parents.\textsuperscript{19} Furthermore, some studies indicate that hearing the child can improve the child's self-image, and afford the child a sense of recognition. These studies also show that hearing the child adds a new, important perspective to the legal proceedings regarding the wellbeing of the child.\textsuperscript{20}


\textsuperscript{16} For a survey of these studies see: Taylor \textit{research update, supra} note 10, Birnbaum and Bala, \textit{supra} note 11.

\textsuperscript{17} Carol Smart, Bren Neale, Amanda Wade, \textit{The Changing Experience of Childhood, Families and Divorce} (2001); Cashmore and Parkinson, \textit{supra} note 10.

\textsuperscript{18} Carol Smart \textit{From Children’s Shoes to Children’s Voices}, 40 (3) FAM. CT. REV., 307 (2002).


Recognition of the obligation to implement the right of participation in the context of divorce proceedings is expressed in § 52 of the General Comment of the UN Committee, according to which “all legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes.” Birnbaum and Bella point out that in the wake of the growing recognition of the right of children to participation, most of the discussion in recent years has been diverted from the actual need to hear children to questions relating to the appropriate ways in which to involve them.\(^{21}\)

A. Participation of Children in the Israeli Family Courts

The right of children to participation in the family court has not yet been fully and comprehensively recognized in Israeli legislation. Whereas a number of particular arrangements require that children be heard in specific proceedings,\(^{22}\) no provision has yet been enacted in Israel requiring the participation of children in all proceedings in the family court, including custody proceedings. References to the importance of hearing children in custody proceedings may already be found in the case law of the Supreme Court from the 1950's and 1960's.\(^{23}\) However, there is no recognition of the right of participation as an independent right of the child in Israeli case law prior to the late 1980's. Beginning in the mid-1990's, there are indications of a growing recognition of the right of children to participate in proceedings in the courts in general, and in the family court in particular.\(^{24}\)

This viewpoint is reflected in the following statement of Justice Dorner:

\(^{21}\) Birnbaum and Bella, *supra* note 11, at 310.

\(^{22}\) § 36 of the Capacity and Guardianship Law, 5722-1962, 16 LSI 106 (Isr.) establishes an obligation to hear a ward prior to the appointment of a guardian; § 19 of the same Law states that a child who has reached the age of ten shall not be converted without his consent; § 7 of the Adoption of Children Law, 5741-1981, 35 LSI 360 (Isr.), states that if an adopted child has reached the age of nine years, or if he has not yet reached the age of nine years but he is capable of understanding the matter, the court will not issue an adoption order unless it is satisfied that the adopted child wishes to be adopted by that adoptive parent.


“From the conception of the child as an independent entity is derived his right to have his will and desires considered, within the bounds of that which is possible. This approach was expressed in art. 12 of the UN Convention on the Rights of the Child.”

However, despite the growing recognition of the right of children to participate in family court proceedings, there is still a great lack of consistency in the approach of the family court judges regarding the implementation of this right. In practice, children are not heard in the majority of the cases adjudicated in the family courts concerning child custody.

**B. Studies Examining the Question of Participation of Children in Custody Proceedings in Israel**

Few studies have dealt with the participation of children in the Israeli courts. Hacker examined 189 divorce files heard in the Ramat Gan District Family Court between 1996 and 1998. She also conducted some forty in-depth interviews with parents, judges and professionals, including lawyers and social workers. Her findings show that there has been a significant change in the rhetoric employed by the courts and the professionals such as lawyers and social workers with respect to recognition of the right of participation of children. Having said that, according to the reports of the judges whom she interviewed, children were actually heard only in isolated cases over this period.

Schuz's study examined the extent of participation of children in the family courts in recent years, and the weight given to children’s wishes. For this purpose, a sample of family court judgments reported in digital databases in the years 2005-2007 involving children over the age of six was selected. The study related to the case law that dealt with custody

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26 *id.*
arrangements, visitation, and judgments on child abduction according to the Hague Convention. Of the 52 cases which were included in the sample, children were heard by the judge in 14 cases; all the children were aged nine or older. When Schuz isolated the cases involving children aged twelve or over, she found that in half the cases, the children were heard. According to Schuz, this sample study indicates that there is apparently a significant increase in the hearing of children over the last decade.  

III The Israeli CRC Legislative Committee

A. Aims of the Committee

In 1998, the Minister of Justice appointed the CRC Legislative Committee. The Committee was charged with examining the entire corpus of Israeli child law in view of the principles of the UN Convention on the Rights of the Child, and to devise mechanisms for implementing the Convention in domestic legislation. Judge Saviona Rotlevy of the Tel Aviv District Court was appointed Chair of the Committee. The Committee was divided into six subcommittees according to the different aspects of children’s lives. The reports of the CRC Legislative Committee were submitted to the Minister of Justice in 2004. Some of the recommendations of the Committee have already been incorporated in legislation, and the majority is still in the process of implementation.

One of the main goals of the CRC Legislative Committee was to promote the systematic regulation of matters concerning children, as well as to set in motion a profound change in

29 Schuz, like Morag, discusses the difficulty of conducting a statistical study of the extent of hearing of children in view of the fact that a significant portion of the judgments of the family courts are not reported.  
31 The Reports of the Committee were comprised of the General report and the reports of the following subcommittees: Sub-Committee on Education; Sub-Committee on Placement Outside the Home; Sub-committe on the Child in the Criminal Process; and Sub-Committee on Separate Legal Representation for Children in Civil Proceedings.
the thinking about children and their rights under Israeli law. This is clearly manifested in the introduction to the Committee’s Report, which was written by the Chair, Judge Rotlevy:

“The Convention expresses a profound change in thinking in all that concerns children and in the conception of their rights and their status in society, as well as in relation to childhood – its definition and its meaning. This change was analyzed and studied in depth by the Committee, and found expression in its work and recommendations.”

The main tools employed by the CRC Legislative Committee to define the fundamental conceptions of the Convention were the following four principles, defined by the UN Committee as the guiding principles of the Convention: equality; the welfare of the child; participation, and survival and development. The plenary of the CRC Legislative Committee formulated detailed legislative models for each of these principles. The principles of the Convention were interpreted based on the work of the UN Committee on the Rights of the Child and the work of leading academics in the field of children’s rights.

B. Recommendations of the CRC Legislative Committee of the Subject of the Participation of Children

Recommendations on Child Participation in Family Courts were formulated by the Subcommittee on Children and their Families. Two basic principles underlie the proposed

33 These principles were defined as guiding principles for the interpretation of the Convention (by the UN Committee). For a definition of these principles by the committee see, inter alia, Committee on the Rights of the Child, Overview of the Reporting Procedures, U.N. Doc. CRC/C/5 ¶13 (24.10.1994). For a description of the interpretative procedure that led to the acceptance of these principles as guiding principles by the UN Committee, see: M. NOWAK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 6: THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT (2005).
34 Prof. Gary Melton from the USA and Prof. Michael Freeman from England were appointed as Special Advisers to the Committee and held a series of meetings with its members to discuss theoretical issues concerning the definition of the concept of the child. The main tool for interpretation of the Convention that was available to the Committee was the Handbook that was drawn up by UNICEF on implementation of the Convention. In this Handbook, the main decisions of the Committee on interpretation of the Convention are cited: RACHEL HODGKIN AND PETER NEWELL, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 30-35. (2002).
legislation for the participation of children that was formulated by the committee on this matter:

a) The child has an independent right of participation;

b) A variety of modes of participation should be developed, and action taken to adapt these modes to the characteristics of the child and his or her wishes.

The first two sections of the proposed law are of particular interest for the purpose of this paper:

Section One of the Draft Law states:

“All children have the right to express their feelings, views and positions and to be heard freely in every matter affecting them that arises in the family court”.

The purpose of this section is, primarily, to formulate recognition of the right to participation as an independent right of children. A comparison of the provision proposed by the CRC Legislative Committee with the wording of Art. 12 of the Convention reveal two main differences. First, the requirement that the right of participation be limited to a child who is capable of expressing his or her own opinion was omitted by the committee. The committee therefore adopted a position similar to that of the UN Committee, according to which the right of participation may not be made conditional upon the ability of the child to make decisions, and it must be applied even in respect of very young children. Second, the original wording of Art. 12 was expanded, and the right of children to express their positions was extended to recognition of the right of children “to express their wishes, feelings, views and positions”. Thus the Subcommittee sought to express the view that the child is not required to take a position on matters being adjudicated by the court, and that there is room for complex and sensitive dialogue with the child, which allows for a variety of emotional

and intellectual expressions. In formulating the wording of the section, the Subcommittee opted for the term, "the right to express" and not the term, "the right to be heard." The term "express" is held by the Committee because it is a more encompassing term that covers a wide range of forms of communication, including non-verbal communication. In addition, the participation of the child is formulated from the perspective of the child (the right to express) rather than that of the expert (the right to be heard).

Section Two of the Draft Law states:

“The Right of the Child to an Appropriate Hearing

2(a) In order to realize the right of the child to express him or herself and to be heard, he or she will be given the opportunity to express their feelings, their views and their positions on the matter being adjudicated in a manner that is suited to his or her age, developing abilities, desires and needs, and insofar as possible directly before the judge hearing the case.”

The point of departure for the Draft Law is that a variety of forms of participation in the legal process should be allowed, and that the form of participation should be suited to the characteristics of the child, including his/her age, developing abilities, needs and wants.

C. The Model for Participation of Children Proposed by the CRC Legislative Committee.

1. Background – The Family Courts and the Welfare Units

In 1995, the Family Courts Law was enacted in Israel. The Family Courts are special civil courts, at the level of magistrate's courts, in which one judge presides over all matters relating to the family. The Ministry of Welfare and Social Services operates welfare units that are adjunct to the family courts. The welfare units are staffed by social workers and psychologists and their function is to assist the court in reaching decisions on matters involving family disputes, including assistance in clarifying expert opinions that were
submitted to the court and in referring parties to professional bodies within the community. Similarly, the unit provides counseling for parties, and it also holds mediation proceedings.\textsuperscript{36}

2. The \textit{Model for Child Participation Proposed by the Committee}

The CRC Legislative Committee formulated an interdisciplinary model that seeks to anchor the right of participation of children while ensuring the greatest degree of meaningful and effective involvement. According to the recommendations of the Subcommittee, a special section - the child participation section - will be established within family court welfare units. These child participation sections will be staffed by social workers and psychologists specializing in working with children and youth (hereinafter: participation workers or PWs).

The model for participation of children devised by the CRC Legislative Committee is as follows:

a. The court will invite the child to a meeting at the participation section by virtue of a judicial decision that will be transmitted to the parents through the participation worker, together with explanatory material intended for the parents and the children. If the parents have legal representation, the material will be sent through their lawyers;

b. At a preliminary meeting in the participation section, the child will be given an explanation, in terms appropriate to his/her age and level of maturity, about his or her right to be heard in the proceedings. The child will be offered the possibility of meeting directly with the judge who is hearing the case, or of relating his/her words to the court through a participation worker. At the meeting, the worker will explain to the child the purpose of the hearing, the manner in which it will be conducted, and the rules of confidentiality and disclosure that will apply to the meeting and to the hearing. It will also be explained to the child that he or she is entitled to waive his/her right to be heard.

\textsuperscript{36} The operation of the welfare units is regulated by the Family Courts (Establishment of Welfare Units, Modes of Operation and Working Arrangements) Order, 5756-1996.
c. If the child chooses to be heard by the judge, a meeting will be set in which the judge and the PW will be present.

d. If the child chooses to be heard by the PW, the PW will give the court a written record of what the child wished to convey to the court, together with a written review his/her impression of the child's behavior and situation at the time of the hearing.

e. The record of the PW and the court protocol will be kept in the court's safe and will be confidential vis-à-vis every person, expect for the court of appeal. A court that heard a child will not record the child's statements in its decision, but it may decide to disclose some or all of these statements if the child consented and the court found that the disclosure will advance the child's best interests.

f. Should the court be asked to ratify an agreement between the parents on matters that concern their child, the court secretariat will send the child's parents explanatory material on the importance of hearing the child on matters in the agreement that affect him or her, prior to submitting the agreement for ratification by the court.

g. When ratifying the agreement, the judge will clarify whether the child was heard by his/her parents, and if the judge finds that it is necessary to hear the child, the judge may refer the child's parents to the welfare unit, in order to provide the parents with information and guidance about hearing the child and the means for doing so.

h. If the child was heard by a judge or by a PW, the judge will explain to the child when issuing the decision or soon thereafter, directly or through the PW, the main points of the decision relevant to him or her, in a way appropriate to his or her age and level of maturity, unless the court decides that in the circumstances of the case, it is unnecessary to invite the child to hear the decision.
f. Following the meeting with the child, the PW is permitted to establish contact with the parents of the child and to inform them of the messages and the contents of the child's statements, with the consent of the child.

**D. Major Dilemmas in Constructing a Legislative Model for Child Participation**

In constructing the model for child participation, the CRC Legislative Committee faced several major dilemmas, including the following:

a. What is preferable: that the child is heard directly by the judge or through a mental health professional?

b. Should the child's statements be privileged?

c. From what age should participation be allowed?

d. Would the very invitation to the child to participate cause or exacerbate incitement of the child, and if so, to what extent?

**E. Application of the Pilot Project for the Implementation of the Recommendations of the CRC Legislative Committee**

In view of the complexity of the issues involved in devising an appropriate model for the participation of children, and in order to assist the Committee in resolving the dilemmas stated above, the legislative subcommittee recommended conducting a pilot project accompanied by a formative evaluation research. A public committee, was appointed by the Minister of Justice for the purpose of implementing the recommendations of the Subcommittee (hereinafter: the Implementation Committee). The Implementation

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37 The Public Committee for Implementation of the Pilot is chaired by Judge (ret.) Saviona Rotlevy; Committee members are Dr. Tamar Morag – Chair of the sub-committee; Judge Shlomo Elbaz; Anat Inbar – National Commissioner for Welfare Units in the ministry of Welfare and Social Services; Dr. Peretz Segal – Ministry of Justice; Adv. Moriah Bakshi – Ministry of Justice; Shachar Schumann – head of the Unit for
Committee was asked to provide guidelines on the implementation of the pilot. Special Family Court Regulations were enacted which provided for the implementation of the pilot in two family courts – Jerusalem and Haifa – for two years.\textsuperscript{38} Due to budgetary constraints, the pilot was confined to cases of custody, visitation rights, immigration and education, and did not include adoption and abduction cases. It was also decided that the pilot would include only children aged six and over. Nevertheless, in cases in which a child who was at least six years old had a younger sibling, the court was permitted, in accordance with the Regulations, to allow the younger sibling to be heard as well. The decision to confine the project to the age of six and over was indeed contrary to the original draft law, by virtue of which any age-based constraint was to be avoided, but it was designed to facilitate the operation of the pilot while preserving the fundamental commitment of the Committee to the participation of young children insofar as possible. The operation of the pilot was accompanied by formative research conducted by the Engleberg Center for Children and Youth at the Myers-JDC-Brookdale Institute. The members of the Implementation Committee worked in close conjunction and conducted on-going dialogue with the researchers.

The pilot was accompanied by a series of seminars and training sessions, including training sessions for workers of the participation sections and judges participating in the pilot. Seminars were also held for lawyers in the two regions in which the pilot operated.

\textbf{IV. The Formative Research}\textsuperscript{39}

\textsuperscript{38} Chap. 20.2 (Participation of Children) in the Civil Procedure Regulations 1984, KT 5744, 2220 (Isr.). [hereinafter Procedure Regulations] The Regulations appear in an appendix to this article.

\textsuperscript{39} The study was conducted on the initiative of Ashalim Association for Planning and Development of Services for Children and Youth at Risk and their Families and was funded by it.
The pilot operated from June 2006 until March 2009. The research was carried out in two stages. The first stage ran from June 2006 until March 2008. The preliminary findings on the operation of the pilot project were then presented. These findings led to the introduction of several changes in the format of the pilot. The second stage of the pilot ran from March 2008 until March 2009. With the completion of the pilot, all the data from the two stages was processed and analyzed. In the first part of the pilot, 203 children were invited to be heard, and in the second, 245 children were invited to be heard.

The formative research related to several aspects, including: the forms of participation of the children; factors encouraging or discouraging participation; the contribution of participation to the children in the eyes of all those involved in the pilot.

A. Research Population

1. Children

Documentation forms for the participation workers: Forms were completed by the PWs for every child who was invited to participate during the period of the research, i.e. 448 children aged 6 – 18 years (whether or not the child was actually heard).

Telephone interviews with children: Interviews were conducted with 99 of the 155 children aged 10-18 years who were invited to participate in court proceedings after July 2008. The interviews with the children were conducted during the second stage of the study. The children were approached only with the consent of both parents: thus, 47 (of 155) children were not interviewed due to the refusal of one or both parents. After obtaining parental consent to the interviews, the children were asked if they agreed to be interviewed. Nine children refused. Of those interviewed, 85 children actually participated in the pilot; 15 others were invited but did not appear at the meeting with the PW. Of the 99 interviewed by telephone, ten children, representing a range of positions with respect to the pilot, were
selected for in-depth, partially structured, interviews. Of those ten – five agreed to be interviewed.

2. Parents

*Telephone interviews with parents:* One hundred and three interviews were conducted with parents of children who had been invited to participate, out of 119 parents whose children were invited to participate after July 2008. Sixteen of the 119 parents approached refused to be interviewed. In all, interviews were conducted with 73 parents of children who participated in the court proceeding (i.e., who were heard) and 30 parents of children who were not heard.

*Semi-structured in-depth interviews with parents:* Of those interviewed by telephone, nine parents were selected for semi-structured in-depth interviews. Six of the parents agreed to be interviewed.

3. Professionals

*PWs:* Fourteen semi-structured in-depth interviews were conducted with workers of the participation section: eight interviews at the first stage, and six at the second stage. Similarly, at the first stage, two semi-structured in-depth interviews were conducted with the psychologists of the participation section, two with the directors of the welfare units at stage one and two at stage two (this sentence needs to be organized properly (according to stages).

*Judges:* Seven semi-structured in-depth interviews were conducted with family court judges within the pilot: two face-to-face interviews during Stage A of the pilot, and five telephone interviews during Stage B of the pilot.

*Lawyers:* Seven semi-structured in-depth telephone interviews were conducted with lawyers whose clients have cases in the courts in which the pilot was operating, i.e., Jerusalem and Haifa. The interviews were conducted during Stage B.
B. Principal Findings

1. Age of the Children

37% of the children were 10-13 years old, 31% were 14-18 years old and 29% were 6-9 years old. 3% were 3-5 years old.

2. Extent of Referral of Files to the Participation Section:

According to the Regulations the judge must refer all relevant cases to the participation section for the purpose of inviting the children to participate, unless he or she is convinced that participation would be more harmful to the child than non-participation. Under the Regulations, if a judge decides not to refer a particular case, he or she must explain their reasons in writing to the participation section. In practice, only 36% of the files were referred in Jerusalem and 45% in Haifa. From the in-depth interviews with the judges it was revealed that there was a significant difference in the extent of referral to the participation section on the part of different judges. The PWs thought that the difference derived from different perceptions of the judges about the importance of the participation of children in the legal process. In the course of the meetings of the Steering Committee with the judges, the question of the extent of judicial discretion regarding referral to the participation section arose. The position of the Steering Committee, as explained to the judges of the court, was that the judge has a clear obligation to refer each case to the participation section, and that non-referral is permissible in exceptional cases only, for reasons which must be recorded.

3. Rate of Actual Participation, Reactions of the Children and the Contents of the Participation

About half of the children who were invited to participate (48%) actually attended the meeting at the participation section. (The rate of participation will be discussed later).

One of the concerns raised by the Implementation Committee prior to beginning the pilot was that the children would not feel comfortable at the meetings, and would not react positively to
them. The PWs were asked to describe their impressions of the children's feelings at the time of the meeting. From their reports, it appears that most of the children felt comfortable. In their estimation, 70% of the children expressed themselves easily, 69% were relaxed, and 60% seemed self-assured. A smaller percentage of the children did not feel comfortable: 25% were tense, 23% expressed concern about their father's reaction, and 13% were concerned about their mother's reaction. One of the girls, who felt comfortable at the participation meeting, described her experience:

“I did not know in advance what I wanted to say and what they wanted me to say. They prepared many questions in advance. I felt good and comfortable about that. The conversation unfolded and I began to ‘spout’.”

Most of the children talked about different facts and thoughts about their lives: 91% described their regular routine/way of life and 85% talked about their leisure activities and hobbies. For example, one child told the PW that when he is at his mother's house, he is usually alone. He has no siblings on his mother's side, and she comes home late from work. He does not participate in extra-curricular classes and leisure activities, and he often feels lonely.

Most of the children also spoke about their views and preferences in relation to the various subjects of conflict: 87% talked about their preferences in relation to living arrangements and 83% about visitation arrangements. For example, two brothers told the PW that both in their mother's and their father's houses, they bear the burden of the daily housework and maintaining the home. Similarly, they take on the parental role in relation to their younger siblings. By virtue of a court decision, these children spend half their week in their mother's house and half the week in their father's house. At the meeting with the PW, the children expressed their wish to live only in the father's house, because, they said, the mother expects the older brothers to take care of her just as they take care of their younger siblings, and she
does not consider their emotional needs. The children told the PW that in fact, the father is away from the house for long hours, but when at home, he is more attentive to their needs.

Seventy-five percent of the children told the PW about their relationships with their siblings or step-siblings. The PWs reported that in most cases, the older siblings shared their thoughts, feelings, and views about the lives of their younger siblings with them, and did not speak only about themselves. For example, a 16-year-old youth said that his mother often talks to him and to his 8-year-old sister about her distress and suffering. The boy said that this places an emotional burden upon him, but he can handle it. He asked the PW to talk to his mother about not confiding in his little sister, because it is very distressing for her and she often cries as a result.

C. Feedback on Participation

1. The Contribution according to the Participation Workers

The PWs were asked, in relation to each child who participated in the pilot proceeding, about the extent to which, participation contributed to the child in general. Noticeable, the PWs estimated that participation contributed a great extent to 71% of the children; participation contributed a small extent to 17% of the children, and the extent of the contribution of participation could not be estimated for 12% of the children.

2. Parental Satisfaction with the Participation Process

In all, 77% of the parents of children who participated in the court process who were interviewed expressed satisfaction: 31% said they were extremely satisfied and 36% said they were satisfied. The parents were asked to specify what in particular they were satisfied with. There were parents who said that they were satisfied that the children were given the opportunity to say things that they had not previously confided to anyone, and they were satisfied with the support given to the children through the hearing. Parents who were not
satisfied with the participation were also asked why they were dissatisfied. Some parents felt that participation increased the child's involvement in the conflict and/or that participation gave children a false sense of power in making decisions concerning visitation and custody arrangements. One of the mothers said: "This process gave my daughters power which they misused. It made them think that they could already begin making decisions about their future, something too early for their age."

3. Contribution of Participation in the Eyes of the Children and their Level of Satisfaction

The children who participated in the legal process were asked whether they think it is a good idea to offer children the chance to express themselves on the subject of their parents' conflict. Ninety-three percent answered in the affirmative. One of the boys who thought it was a good idea to invite children to participate explained:

“parents generally think that it is a matter that concerns only them, but in some way it also affects the children. It is hard for the children not to be involved. It is very important for children to be present and to know what is happening.”

According to one teenage girl –

“In this way the children know that they are respected and that they, too, have rights. In the end, they are indeed an important part of divorce proceedings, and they deserve to say what they think.”

The children were asked whether they would recommend a friend to participate. Ninety-two percent said yes. To the question of whether the participation had helped them, 62% of the children responded that it had helped. The children who said that the participation had helped them were asked how it helped. The most frequent answers were that they felt that
they were being shown respect and consideration for their opinions and feelings, that the conversation helped them decide what they really wanted, and that the involvement with the PWs contributed to an improved relationship with one of the parents. The children who said that the participation did not help them were asked, why not. The most frequent response was that nothing changed following the participation, or that the participation did not sway the judicial decision in the direction in which they would have liked.

D. Types of Contribution and the Benefit of Participation

Two possible types of beneficial contributions to the children were examined: contribution to the judicial decision, and contribution on to the psychological health of the child and that of the family.

1. Contribution to the Judicial Decision.

It was beyond the scope and time frame of this study to examine in depth whether, and how, the participation of the children contributed to the judicial decision. The findings on this subject are preliminary, *inter alia* because many of the cases are still pending and no decision had been made at the time of the completion of the research. *The positions of the judges:*

Judges were asked in the feedback questionnaires about each of the children they met, whether the meeting with the child contributed to their understanding of the case or shed a different light upon it. The judges reported that in 54% of the cases in which they met the child, the meeting with the child indeed contributed to their understanding of the case or shed new light on it and contributed to the decision-making process: 6% responded that the meeting contributed “to a very great degree” and 48% responded that it contributed “to a great degree”.

While it was running decisions were made in relation to only a small percentage of the children (27%), and because recourse was not had to the methodology of analysis of the judgments and transcripts.
According to the judges, in certain cases the participation of the child is likely to be significant in the decision-making process.

According to one judge:

“In cases of profound disagreement, when the child expresses his authentic voice and wants a significant change, such as a change of custody and place of residence, it is extremely important to hear him.”

One judge described a case in which a child of eleven expressed her wish to be transferred from the custody of her mother to that of her father:

“Her voice was so authentic, and her wish – so clear and acute […] I underwent a process following the meeting with her. In the final analysis, I ruled that the custody of the child would be transferred to the father. Her wishes were accorded enormous weight in the decision.”

There were judges who mentioned the significant contribution of the child's participation in the decision-making process, and there were judges who thought the contribution was less. For example, one judge said: “The child's participation does not usually change my view of the case. In general, participation is more important to the children than to the court.”

According to the report of the PWs, in several cases the children’s participation caused a clear change in the legal process, such as a shortening of the process or even a withdrawal from the action. In one case, for example, a father sued for custody of his daughter, unaware that his daughter preferred that her mother retain custody because she did not feel comfortable telling him her true feelings herself. After hearing her position through the PW, the father withdrew the action. Similarly, according to the PWs, in a number of cases the participation
of the child encouraged the child to cooperate with the decisions made regarding visitation rights.

2. **Contributions to the Psychological Health of the Child and That of the Family**

According to the impressions of the PWs, many of the children with whom they met had no one to confide their feelings to about the conflict: their parents were not emotionally available for them and had difficulties coping with their children’s problems in the throes of the conflict. In the estimation of the PWs, 88% of the children benefited from the opportunity to express their feelings and for emotional containment. The children too, spoke of this contribution in their interviews: for example, “It was good to release those things that were weighing down on me, and not to keep everything inside. I felt good that it was with a professional.”

One of the important findings of the evaluation research was that the significance of the realization of the right of participation in decisions of custody, within the framework of the pilot, lies not only in the importance of the children’s views being brought before the judge but also the importance in having the children’s views heard by their parents. From the in-depth interviews with the PWs it emerged that oftentimes the parents are not aware of the wishes, emotional state, distress and needs of their children. One of the PWs reported:

“It is not rare that I surprise the parents with the things that their children say. The intensity of the children’s pain really shocks the parents, and there were some things that disturbed the children which the parents had not imagined.”

In accordance with the Regulations, the PWs are authorized to disclose what the child said to the parents with the child's consent, and also to invite the family – parents and children - to three or four short-term intervention sessions with them and/or the sectional psychologist
within the participation section. The reports of the PWs indicate that their impressions of the emotional state and the needs of the child were relayed to the parents regarding 63% of the children. In relation to 25% of the children, the PWs reported that, following the participation meeting, the conduct of one or both of the parents became more suited to the needs of the child. One 14 year-old boy said: “The participation meeting acts as a bridge between children and parents. Following the meeting, my conditions at home have improved”.

V. Changes Introduced to the Pilot Project over the Course of its Operation Following the Findings of the Formative Research.

The pilot project operated, as previously noted, for two years. It operated in two stages. After approximately fifteen months of the pilot's operations the data processing used to evaluate the pilot during this stage were presented to the pilot's Implementation Committee. The results of the evaluation were then utilized to introduce operational improvements to the model. Significant changes were made in two major areas:

1) The number of children who attended the meetings at the participation section relative to those who were invited: There was a significant change here between Stage A and Stage B of the pilot. An examination of the extent of participation of children conducted after Stage a revealed that only 35% of those children who were invited actually attended the meeting. The evaluating research team therefore examined the principal reasons for this low rate of attendance. It emerged that the main reason for the low rate of participation of children was opposition or concern on the part of their parents.

The Steering Committee decided on a number of steps aimed at increasing the rate of participation of children:
1. Comprehensive explanatory steps were taken by the PWs, aimed at explaining to every parent whose child was invited to participate in the pilot the aims and operating methods of the pilot.

2. The Steering Committee held a number of seminars for lawyers in the field of family law in the Jerusalem and Haifa areas, in which the pilot was operating. The purpose of these seminars was to explain the operating methods of the pilot, thus allaying concerns of the lawyers about the pilot.

3. The implementation Committee ordered a change in the language of the invitation to the participation process by the judges, from wording which said “The child is invited to the participation section” to “I order the child to come to the participation section”.

These steps led to a significant change in the rate of participation of children in the pilot: it rose from 35% in Stage A to 60% at Stage B.

2) The extent of requests of the child to meet with the judge: During Stage A of the pilot, only 15% of the children who were heard chose to meet with the judge. The Steering Committee regarded meetings with the judges as very important, and therefore instructed the PWs to invest greater effort in encouraging the children to take advantage of this option. The PWs did so, for example, by explaining the nature of the meeting, mentioning the possibility of a meeting with the judge several times to the child; they also showed the children photos of the court in order to reduce their anxiety about the place. These efforts were effective: during Stage B of the pilot, a higher percentage of children who participated in the legal process asked to meet with the judges (32%).

In-depth interviews with the PWs indicate that the said changes in the rate of participation of children in general, and the change in the extent of meetings with judges in particular, derived not only from the changes that were introduced to the format of the pilot, but also, and possibly primarily, from the continuing process of change in the positions of the PWs
themselves. As the pilot progressed, the PWs became more convinced of the importance and benefit of the pilot were therefore more successful in convincing the parents to allow their children to participate. Similarly, at the first stage of the pilot, the PWs expressed concern about direct meetings between the child and the judge, in view of the lack of suitable training of the judges. As the pilot progressed, these concerns abated and the PWs felt more confident about proposing to the children to meet directly with the judge; in certain cases, they even recommended it.

These changes are evident, *inter alia*, in the following statements of a PW: “We, too, changed our positions. Our voice became more confident. We are convinced of the importance of the pilot, and we have no doubt that we must continue with it. I presume that this comes through. The parents pick this up.”

There was also a noticeable increase in PWs estimation of the contribution of participation between the first and second stages of the pilot. At Stage A, the PWs estimated that participation contributed a great extent to 54% of the children; participation contributed a small extent to 24% of the children, and the extent of the contribution of participation could not be estimated for 24% of the children. During stage B, they estimated that the participation contributed to a great extent to 79% of the children, that the participation contributed to a small extent to 14% of the children and that the extent of contribution could not be estimated regarding 7% of the children

3) *Timing of the invitation to participate:*

The stage of the legal process at which children are invited to participate is very important. In some cases, the judges summoned the children prematurely, for example before the parents told the children that they were getting a divorce. Similarly, when the meeting with the child took place a long time before the decision in the case, the child's words were liable
to be irrelevant to their situation at the time that the decision was made. In the course of the pilot, and in light of the findings of the formative research, the attention of the judges was drawn to the timing of the invitation, and the judges applied greater discretion. The reports show that there was an improvement in the timing of the invitations: the number of children who were referred to the participation section at unsuitable times according the estimate of the PWs decreased from 47% at Stage A to 27% at Stage B.

VI. Implications of the Pilot for the Major Dilemmas Regarding the Regulation of Child Participation in Divorce Proceedings

As noted above, the decision to run the pilot prior to passing of legislation was based, inter alia, on questions of the Committee as to several central dilemmas. Below is a discussion of these dilemmas, and of the contribution of the formative research to the formulation of policy on these subjects.

A. Direct Hearing by the Judge or Hearing through a Mental Health Professional

One of the major issues with which the Steering Committee contended was whether direct hearing by a judge or indirect hearing through a therapist was preferable. In the pilot, it was decided not to set age-related or other parameters in relation to the forms of hearing, and to allow children to choose from amongst the two ways of participation. The purpose of this was, inter alia, to examine whether the definitive parameter criteria for participation should be age-related or whether other criteria should be formulated for the purposes of distinguishing between cases in which the child should or should not be heard directly.

The professional literature discusses several advantages to direct hearings by the judge: one of the main arguments supporting direct hearing by the judge is that it provides the child with the opportunity to impress upon the judge how strongly he or she feels and enhances the child's ability to influence the decision it provides the judge with a better sense for the, the
maturity level and independence of the child, and grants the child a sense of recognition. One of the most significant claims that is raised in this context is that the direct meeting between the judge and the child helps the court to see the child as a separate, distinct subject with his or her own characteristics, feelings and particular perspective. Another significant advantage raised in the literature is that a direct conversation is likely to help the child understand that the judge, and not the child, is responsible for the final decision that will be made. This is extremely important when the child feels a loyalty to both parents, a need to protect them, or when the parents try to manipulate the child's views.

Despite these advantages, the literature mentions significant advantages to hearing the child through the mediation of a mental health professional. These advantages include the training the professional has in communicating with and interviewing children, and in assessing whether the positions of the children have been dictated by others.

Several judges said in the in-depth interviews that meeting the child is preferable to receiving a report from the PW, since the meeting is direct and unmediated. Some even said that they are more comfortable making decisions about the lives of children whom they have met personally. For example, one judge said: “When you see with your own eyes the relevant people about whom you are making fateful decisions, it is different.”

Yet, from the interviews with judges and PWs it emerges that none of the professionals think that the court must hear all the children who were invited to participate. This view was based on the very heavy workload to which the court is subject and of the fact that in a significant proportion of cases, the children did not express a position which could have had a significant

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41 For a comprehensive discussion of the advantages and disadvantages of direct hearing, see Schuz, supra note 25; on direct hearing, see: Piper, Barriers to seeing and hearing children in Private law proceeding 29(6) FAM. LAW. 394 (1999). See also Cashmore and Parkinson, supra note 10.

42 Pauline Tapp, Judges Are Human Too: Conversation Between the Judge and a Child as a Means of Giving Effect to Section 6 of the Care of Children Act 2004, 39 NZ LAW REVIEW (2006).

effect on the decision in their case. Some PWs argue that it is not desirable for the children to meet directly with the judges in all cases, because some of the judges are not trained in how to communicate with children and, as a result, children may not experience the meeting in a positive way. However, both the PWs and the judges agreed that the meeting with the judge is important in particular cases, such as: cases where there is a deep-seated conflict, cases where there are exceptional circumstances that must be considered such as decisions on emigration, cases where the child has a strong and clear view which differs from the view of his/her parents, and cases in which the child has clearly indicated a wish to meet with the judge.

In the telephone interviews, the children who met with judges were asked why they chose to do so. They gave various reasons:

- They wanted the judge to know them directly. One girl said: “I wanted him to see me as a person and not as a piece of paper.”

- They wanted to meet the judge because of his role as the maker of decisions affecting their lives: according to one girl, “It was very important to me to meet him and form an impression of him, because he will make very important decisions for me.”

- They wanted to tell the judge what they were thinking or feeling, without the mediation of a PW. One girl said: "I felt that I could convey what I have to say to the judge better than the PW and also to tell him other things that I did not tell the PW.”

- They wanted to make sure that some of what they said would not be reported to their parents. One child said: "I wanted to explain to the judge what to tell my parents and what not to tell, and to know exactly what he was going to tell my parents in connection with what I told him.”
In the telephone interviews, the children who chose not to meet with the judge were asked to explain their choice. They gave various reasons:

- They did not feel comfortable, or they were scared of the judge. One boy said: "I felt that the judge is someone who is too official for such personal situations. He is not a social worker." One girl said: "I was embarrassed in front of the judge and I felt that I could not tell him everything."

- They rely on the PW to relay what they said accurately to the judge. For example, one girl said: "I felt that it was the same thing to talk with the PW, and I felt that she would be able to relay what I said instead of me."

- They did not trust the judge. One boy said: "I don't really believe in the legal system and in judges."

According to the report of the PWs who were present at the meetings between the children and the judges, a greater number of children expressed themselves more easily at the meeting with the judge than with them (87% and 70% respectively). Similarly, more children were relaxed at the meeting with the judge (71%) than with the PW (55%). Fewer children expressed difficulty in the meeting with the judge than in the participation meeting with the PW, 50% and 71% respectively. These figures are surprising in view of the concern of the professionals that meeting with a judge is liable to arouse fear in the children. It is important to note, however, that these figures refer to children who chose and wanted to meet with the judge, and not those who were afraid from the outset of such a meeting. Furthermore, the meeting between the children and the judges was the second participation meeting, such that the children already had some experience with this type of conversation.

1. *Implications of the Findings of the Research on the Appropriate Policy Relating to Hearing Children by the Court or by a Professional*
Some of the major findings arising from the operation of the pilot project and the evaluation study have larger implications for the most appropriate model for child participation in custody matters. On the one hand, the significant gap between the positions and the feelings of the children, and the perceptions of these feelings by their parents, is a finding which was not anticipated by the members of the Implementation Committee. The important role that the participation section therefore plays in enabling the voice of the children to be heard by their parents reinforces the importance of the need for a therapeutic professional in the process. From the interviews with the judges and the PWs it was evident that in addition to the wish of the child to be heard directly, the main criteria in deciding on direct hearing are the existence of an independent position on the issue at hand and the nature of the conflict. The age of the child was not found to be a central criterion in determining whether he or she should meet with the judge. In view of the above, it seems that the model outlined in the pilot's regulations should be retained, together with the development of clear guidelines for the PWs as to the characteristics of the cases in which a recommendation should be made to the child to meet directly with the judge. In developing these criteria, due weight should be given to cases in which the child expresses an independent, separate view that differs from that of his/her parents, and to cases in which decisions are being made on particularly complex issues. This was strengthened by views expressed by some of the judges that in cases of direct meetings with children who hold independent views, greater weight is usually given to those views than in cases in which the child is heard through a PW.

B. Confidentiality

On the matter of confidentiality, the Regulations state as follows:

“The record of the court or of the welfare unit worker, or what the child sought to tell the court, as relevant […] will be kept in the court’s safe and will be confidential vis-à-vis every person, except for the court of appeal. A court that heard a child will not report the child’s
statements in its decisions, but the court may decide to disclose all or some of them if the child agreed to the disclosure and the court found that the disclosure will advance the child’s best interests."

The interviews with the children show that 77% of the children sought to maintain full or partial confidentiality of their conversations *vis-à-vis* their parents: 50% asked that full confidentiality be maintained, and 27% wanted partial confidentiality. 23% asked to waive confidentiality *vis-à-vis* their parents and to fully share what they said with their parents.

The position of the UN Committee was that the words of children who are heard over the course of custody proceedings should be confidential. Section 43 of the General Comment relates to the forms of hearing children in legal proceedings, and states as follows:

“Experience indicates that the situation should have the format of a talk rather than a one-sided examination. Preferably, a child should not be heard in open court, but under conditions of confidentiality.”

Granting sweeping confidentiality to the position of the child is controversial, and has aroused opposition amongst some judges and lawyers. This is due to the adversarial nature of the Israeli legal system. Nevertheless, the findings of the research on this matter, and the importance attributed by children to retaining control of the use that will be made of what they say, significantly support the decision taken by the sub-committee to grant confidentiality to the child's views and to give the child control over the decision whether to waive this confidentiality wholly or in part.

**C. Age of the Children**

Whereas the fundamental position of the CRC Legislative Committee was that the right of participation, as such, applies at every age, the Committee - at the stage of implementing the pilot – took an operative decision that an age limit, even if relatively low, should be set. The

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44 Reg. 258(33)9 of the Regulations.
adoption of an age limit was thought to create consistency in the approach of the courts with respect to hearing young children and recognize the difficulty of adapting the legal process to younger children. It was therefore decided, as aforesaid, that the pilot would apply to children aged six and over.

The implications of including relatively young children in the pilot were examined, as well as the question of whether differences exist in the characteristics of participation between children aged 6-8 and those older, in order to formulate a decision on a minimum age threshold for child participation. From the report of the PWs it emerged that 20% of the children who were invited to participate were aged 6-8 years. Of these, 41% were heard by a PW or a judge. Of these children, the PWs were asked whether, in their opinion, if the children were sufficiently mature for the purposes of participation. The answer was affirmative with respect to about two-thirds (64%) of the children. In addition, age comparisons were drawn with respect to different aspects of the process of participation, such as: the content of what the children said; how the children expressed their feelings during the meeting; and whether the children expressed their own personal views or positions dictated to them by one of their parents. No significant differences were found between the age groups in most areas. The main area in which a difference was found between young children and older children was that of the influence of the parents on the views expressed by the children. The percentage of children aged 6-8 years who, according to the PWs, expressed dictated positions was more than twice that of the children aged nine and older: 42% as opposed to 19%.

In summary, it appears that most young children, beginning at age six, performed well during participation, and that in view of the fundamental position whereby we should strive to involve young children, the age threshold of six years should be preserved. At the same time, additional tools should be developed to enable the hearing of children younger than six,
efforts should also be made to develop tools aimed at reducing the influence of parents on the positions taken by younger children.

D. Incitement

One of the concerns raised by many professionals both before the pilot began and during the course of its operation was that participation might encourage incitement of the children by the parents. The PWs were asked to answer whether they believed the child expressed his/her own positions or the positions dictated by one of his/her parents.

The impression of the PWs was that most of the children who chose to participate in the court procedure expressed their own opinions (86%) and about one-fifth of the children expressed positions that one of the parents had dictated to them (19%). As we have noted, the number of children expressing the views of one of the parents was higher amongst the 6-8 age group than amongst the 9-18 year-olds: 42% as opposed to 14% respectively. There were no significant differences between age groups within the 9-18 age groups.

As for the desirability of hearing children who were clearly subject to incitement, the PWs expressed different positions. Some objected to involving these children. One PW said as follows:

“We see in front of us a child who is exploited, and we don't know how to help him. He doesn't reveal his "authentic self", and we don't know what he is really going through. Usually there is also no agreement to enter therapy, neither on the part of the child nor on the part of the parents. Such a meeting leaves us with a very difficult emotional experience, with a profound feeling of helplessness.”
Other PWs, on the other hand, expressed the view that hearing the children should not be avoided in cases of incitement. According to one PW: “A child who has been incited has been incited, and nothing can be done about it. He is exploited all along, and not just for this pilot. There are places in which there is no pilot, and the children who are incited go on a crusade in order to meet with the judge”.

At the in-depth interviews conducted with lawyers and judges, some of those interviewed talked about the benefits of participation meetings with children who expressed views dictated to them in advance. According to one judge “The very fact of locating the incitement and the depth of the incitement provides me with a great deal of information about the case. This is very important for making judicial decisions”. Another judge adopted a similar position: “In my view, meetings with the judge are very important in cases of incitement. In these cases, I release the children from responsibility and explain to them that the decision is mine.”

It would appear that the examination of the effect of the pilot in cases of incitement was too limited, in the framework of the evaluation research, to allow for clear conclusions to be drawn as to the appropriate policy on this subject. Nevertheless, the fact that in most cases, the impression of the PWs was that the children's positions had not been dictated to them, as well as the range of positions with respect to the effect of incitement on realization of the right to participation, reinforce the that concern about incitement of the child is not a valid reason to refrain from involving children in family court proceedings.

**Conclusion**

The pilot for the participation of children in family courts constituted a first attempt to structure a regulated system for the participation of children in family courts in Israel. Undoubtedly the most important breakthrough of the pilot is the recognition of child
participation in proceedings in the family courts as an independent right of the child. The findings of an evaluation study reaffirmed the findings of studies that had been conducted in other countries identifying the significant advantages of the realization of the right of participation of children in the family court proceedings, advantages that include providing the children with a sense of recognition, reinforcing positive relationships between parents and children, providing emotional support for children and helping to ensure that legal decisions are suited to the children they affect in accordance with each child’s particular characteristics and desires.

From the experience accumulated in the pilot and from the evaluation research, it emerged that the participation of children through the mediation of the participation sections had several clear benefits, including implementation of participation as a process involving preparation, participation and feedback - aspects which were very difficult to apply to the model in which the child met directly with the judge. An additional advantage of the model adopted by the pilot was the central role of the PWs in providing emotional support for the children, in identifying the children that required professional help, and in strengthening the bonds between parents and children. However, the relatively small number of cases in which the children chose to be heard by a judge raised the concern that an unintended consequence of adoption of the model could be mitigating children’s right to have a significant influence on the courts' decisions. There is room therefore to develop additional criteria with respect to the type of cases in which a recommendation should be made to the child to meet personally with the judge. Such criteria are likely to relate to particularly complex judicial decisions, such as decisions on migration or cases in which the child expresses a clear and independent position that differs from that of his or her parents or that of the professionals involved.

A major difficulty that arose from the pilot concerned the lack of consistency in the referral of cases to the participation section by the family court judges. This difficulty was
apparently largely due to the lack of full familiarization with of the regulations of the pilot amongst the family court judges. Hopefully, additional training sessions for family court judges will lead to a higher rate of case referrals and greater consistency in judicial policy in this area. Another difficulty confronted by the pilot was dealing with the opposition of parents to the participation of their children. The basic position adopted by the Steering Committee was that since this was a right of the child, action should be taken to involve children even in cases in which the parents objected. Nevertheless, it was decided at this stage not to force participation in cases of parental objection, since the participation of children in such cases is liable to cause the children harm. However, much effort was invested in persuading the parents to reconsider. These efforts were for the main part effective, and led to a marked increase in the rate of parental consent to the participation of children.

It appears that the on-going dialogue between the Steering Committee and the formative research team contributed significantly to the formulation of the model. It allowed for the introduction of substantial changes to the operational model while the pilot was running, and provided the Steering Committee with important tools for drawing conclusions about the ways in which to regulate the subject.

Despite the fact that the decisive majority of children reacted very positively to participation, some children experienced difficulties, such as a conflict between their desire to express their feelings and their desire to please their parents. At the time of the meeting, some of the children displayed unease and tension. Although this was the case in relation to only a minority of the children, it is nevertheless important to find ways to reduce such difficulties.

VI. A look ahead

Upon completion of the pilot project and the formative research, the Regulations were extended for a period of six months. The Israeli Ministry of Justice is currently preparing an
amended version of the Regulations which would include recommendations drawn from the pilot, and provide for its gradual implementation in additional regions in Israel. Upon completion, the amended version of the Regulations will be submitted for the approval of the Minister of Justice.

APPENDIX: PROJECT ON CHILD PARTICIPATION IN FAMILY COURTS

Chapter 20 (2): Children’s Participation

258(33)1. (a) “Welfare unit worker” in this chapter—a social worker or psychologist of the welfare unit adjacent to the family court, who was trained for children’s hearings in court.

(b) The provisions of ordinance 258a apply to this chapter as well.

258(33)2. A court dealing with a complaint on family matters as per Section 1(6)(c) of the law, bearing on children, will give the child an opportunity to express his feelings, views, and desires on the matter before it (henceforth—child participation) and give them suitable weight in its decision, according to the child’s age and level of maturity. The court, however, for special arguments that will be recorded, may decide that a child will not be heard if it is persuaded that implementing the child’s right to be heard will cause the child greater harm than the one that inflicted through the denial of this right.

258(33)3. (a) The child will be heard by the judge who deals with the matter or by the welfare unit worker, according to the provisions in these regulations.

(b) The court will hear a child who is at least six years old but, if it sees fit, is also allowed to hear a child who is not yet six if the child’s older siblings are invited to a hearing or for other reasons.

(c) The child will be heard without his parents or their representatives being present.

(d) As far as possible, a child will be heard separate from his siblings, and the court or the welfare unit worker are allowed, as pertinent, to decide to hear several siblings together.

258(33)4. (a) The decision to give the child an opportunity to have a hearing and about the stage the child will be heard will be issued at a preliminary stage, according to regulation 258(11) or at a later stage, as determined by the court. The court will explain to the parents the gist of the hearing proceedings and its aim.

(b) Without detracting from the provisions of regulation (a) above, the court is allowed to decide to hear the child again, at any stage of the proceedings.
258(33)5. If the court decides to hear the child, the welfare unit will send his parents an invitation to a preliminary meeting, together with an explanation to the child and an explanation to his parents on the child hearing proceedings and their aim. If the parents are represented by a lawyer, the invitation and the explanation will be sent to the lawyer, who will transfer it to the child’s parents.

258(33)6. (a) The preliminary meeting with the child will be arranged by the welfare unit worker and will take place with the child alone, insofar as possible.

(b) At the meeting, the welfare unit worker will explain to the child, in a way adapted to the child’s age and level of maturity, his right to be heard by the judge who is dealing with the case or by the welfare unit worker, as he chooses, the purpose of the hearing, its course, and the rules of confidentiality and disclosure that will apply to the meeting and the hearing, including according to regulation 258(33)9. The worker will also explain to the child that he is allowed to renounce his right to be heard, or choose to tell the judge in writing or in other ways, through the welfare unit worker.

258(33)7. Should the child choose to be heard before a judge, present at a hearing will be the judge and the welfare unit worker, and in the absence of the welfare unit worker—another employee of the court. The court will record the essence, of the child’s statements.

258(33)8. Should the child choose to be heard by a welfare unit worker, the worker will give the court a record of what the child asked to transmit to the court, together with the worker’s professional impression about the behavior and the situation of the child at the meeting.

258(33)9. The record of the court or of the welfare unit worker, or what the child sought to tell the court, as pertinent and as noted in regulations 258(33)7, 258(33)8 or 258(33)6(b), will be kept in the court’s safe and will be confidential, except for the court of appeal. A court that heard a child will not report the child’s statements in its decisions, but the court may decide to disclose all or some of them if the child agreed and the court found that the disclosure will advance the child’s best interests.

258(33)10. If the child was heard by a judge or by a welfare unit worker, the judge will explain to the child when issuing the decision or closely after, directly or through the welfare unit worker, the principles of the decision pertinent to him, in a way appropriate to his age and his level of maturity, unless the court decides it is unnecessary to invite the child to hear the decision in the circumstances of the case.

258(33)11. (a) Should the court be asked to ratify an agreement according to section 3(c) of the law on the matters discussed in regulation 258(33)2, the court will send the child’s parents explanations on the importance of hearing the child on issues pertinent to him, before bringing the agreement to the ratification of the court. If
the parents are represented by a lawyer, the explanations will be sent to the lawyer who will deliver them to the parents.

(b) At the ratification of the agreement, the court will establish whether the child has been heard. Should the court establish that the child should be heard, the court may direct the parents to the welfare unit so that the parents will be given information and guidance on the hearing of the child and on its implementation.

258(33)12. Should one of the spouses submit a request to settle the conflict according to section 258(20), the welfare unit may, with the parents’ consent, invite the child to a hearing at the unit on matters in the conflict that are pertinent to him. The child’s statements are covered by the rules of confidentiality that apply to what is said at the welfare unit, according to section 258(19)1(b) and according to section 3a of the decree of the family court (establishing the welfare unit, its actions and its arrangements), 5756-1996.

258(33)13. These regulations do not detract from the court’s authority to hear children in any hearing conducted before it, according to every law.