



CONSTITUTION AND CHILD RIGHTS COMMUNICATION NETWORK

CHILD RIGHTS IN THE CONSTITUTION

This document is prepared by the communication network united after the workshop on 'Monitoring by Civil Society of the Legislation on Child Rights and Child Rights in the Constitution' organized on 24-25 November 2011 with the cooperation of Union of Turkish Bar Associations and UNICEF with the participation of representatives of Bar Associations and NGOs.

The network's position paper, titled "Child Rights in Constitution" has been conveyed to TGNA Reconciliation Committee via its web site on behalf of 9 Bar Associations, 2 University Units, 15 NGOs and a network having 33 members. With additional comments on the paper, right now it has signatures of 9 Bar associations, 2 University units, 15 NGOs, two platforms having 33 and 8 members respectively, one platform composed of independent activist, academicians, university students and NGOs, and 1 international organization.

The aim of this union is to contribute in a "**united, effective and active**" manner to adapt an approach which respects, protects and improves the rights of the child and to ensure children to use their right to participate in the preparation process of the new constitution.

As of 11.04.2012, following organizations declared their approval for the paper. The paper is open for approval of other organizations. **Adana Bar Association, Agenda: Child Organization (Gündem Çocuk), Ankara Child Rights Platform (8 members), Association of Social Workers (SHUD), Blue Pencil Association, Bursa Bar Association, Edirne Bar Association, Cancer Association, Civil Society in the Penal System, Child Rights Summit and Development Association, Education Reform Initiative (ERG), International Child Center (ICC), İstanbul Bar Association Child Rights Center, İstanbul Bilgi University Center of Child Studies (ÇOÇA), Handicapped People's Association, Humanist Group Association for Right Based Policies, KAOS GL, Kocaeli Bar Association, Network on Struggle Against Commercial Exploitation of Children (33 Members), Sakarya Bar Association, Sakarya Orthopedic Handicapped People's Solidarity Foundation, Siirt Bar Association, Solidarity with Children Deprived of Their Liberty Organization (ÖZ-GE DER), Sulukule Platform, Supporting Tarlaşa Society Association, Şanlıurfa Bar Association, Trabzon Bar Association, Turkish Handicapped Federation Sakarya Branch, UNICEF Turkey, Young Life Association.**

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CHILD RIGHTS IN THE CONSTITUTION

I.

IMETHODS AND PRINCIPLES TO FOLLOW WHEN TREATING THE ISSUE OF CHILD RIGHTS IN THE CONSTITUTION

- **CHILD PARTICIPATION SHOULD BE ENSURED IN THE CONSTITUTION DRAFTING PROCESS.**

- In the drafting process, in the case of a provision regulating child rights, it should be kept in mind that children constitute app. 1/3 of the population and that implementing child rights is one of the most important steps towards implementing human rights.
- In this context, it is necessary to take the opinion and ensure participation of children who are the subjects of this right.
- Therefore, importance of the constitution and of including child rights in the constitution should be explained to all children in a child-friendly way, taking their age, maturity levels and their conditions (i.e. being under detention etc.) into consideration.
- In accordance with the active child participation principle, effective and suitable methods should be developed and implemented under all relevant organizations and institutions. (Ministries, public institutions, education institutions, NGOs, etc.)

- **'PLURALISM' AND 'TRANSPARENCY' SHOULD BE ADOPTED AS FUNDAMENTAL PRINCIPLES FOR PARTICIPATION IN THE CONSTITUTION MAKING PROCESS**

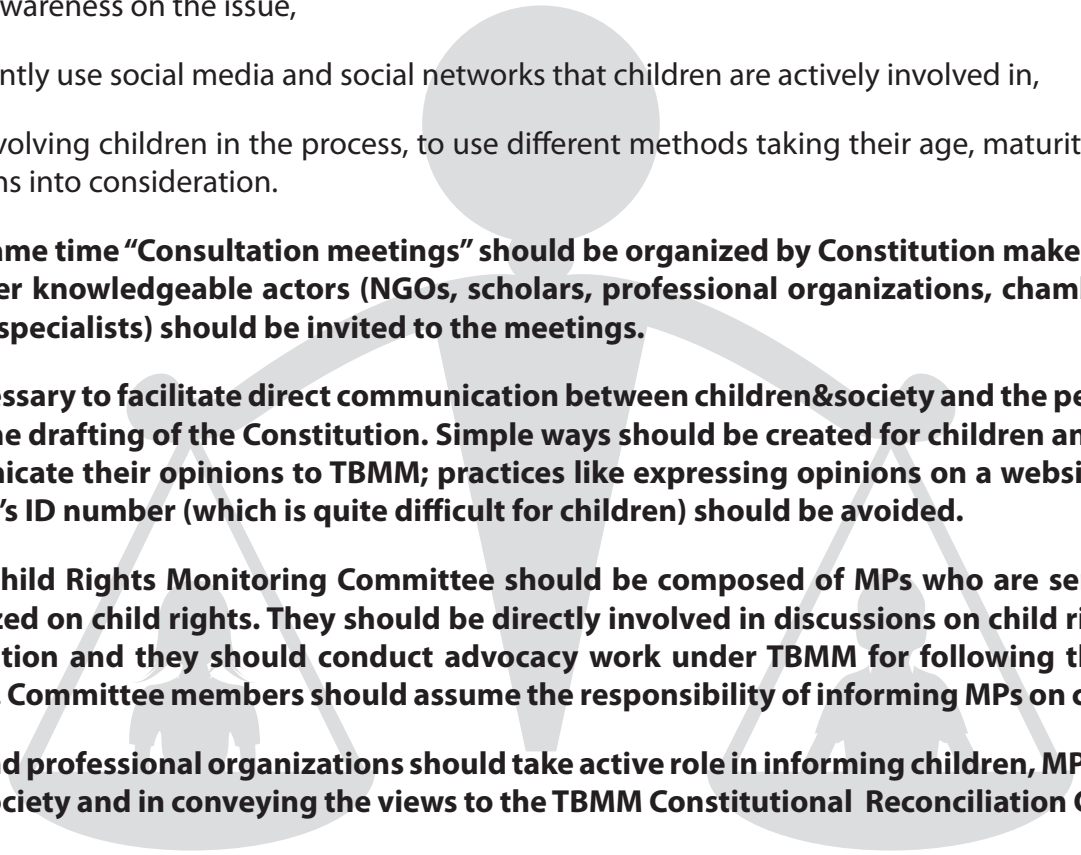
- A 'pluralist' approach should be pursued when taking opinions of children and adults concerning child rights in the Constitution; people from different parts of the society should be given equal opportunity to freely express their opinion.
- Knowledge accumulation in Turkey on current situation and practices in the area of child rights should be taken into consideration and participation of people from different organizations, with a good command of child rights issues should be ensured. (for instance from political parties, local administrations, NGOs, relevant professional organizations, relevant labor unions, universities and research centers etc.)
- Opinions, observations and suggestions of practitioners from all parts of the field should be definitely taken into consideration.
- In this process, besides pluralism taking the transparency principle into consideration, it should be ensured that "all parts of the society" and especially children can reach to different views about child rights.

- **INTERNATIONAL PRINCIPLES AND TRENDS SHOULD BE TAKEN INTO CONSIDERATION CONCERNING CHILD RIGHTS**

- International legal arrangements, new trends, views, reports and analysis of international organizations (regardless of Turkey's membership) in the field of child rights should be taken into consideration.
- Constitutional processes and arrangements in this area in different countries should be carefully analyzed. Recent studies on this field indicate that, modern constitutions are prepared on the basis of principles of UN Convention on the Rights of the Child and considering child as a right owner.

II.

METHODS THAT ARE SUGGESTED FOR PUTTING THE ABOVE MENTIONED PRINCIPLES INTO PRACTICE IN THE CONSTITUTION MAKING PROCESS:

- **Informing and taking opinions of children, other individuals in the society and all relevant institutions on “Child Rights in the Constitution” should be the primary goal. For this purpose it is necessary**
 - For public institutions to organize meetings for informing public and for taking their opinion at regional level and at service provision level (to understand different needs in different regions – for example at school level or at muhtar level) and to encourage organization of such meetings by public institutions or NGOs,
 - To cooperate with media organs, to inform media about the issue, to organize discussion programmes to raise awareness on the issue,
 - To efficiently use social media and social networks that children are actively involved in,
 - When involving children in the process, to use different methods taking their age, maturity levels and conditions into consideration.
 - **At the same time “Consultation meetings” should be organized by Constitution makers; children and other knowledgeable actors (NGOs, scholars, professional organizations, chambers, children and specialists) should be invited to the meetings.**
 - **It is necessary to facilitate direct communication between children&society and the people involved in the drafting of the Constitution. Simple ways should be created for children and adults to communicate their opinions to TBMM; practices like expressing opinions on a website by entering one’s ID number (which is quite difficult for children) should be avoided.**
 - **TBMM Child Rights Monitoring Committee should be composed of MPs who are sensitive and specialized on child rights. They should be directly involved in discussions on child rights in the Constitution and they should conduct advocacy work under TBMM for following the suitable method. Committee members should assume the responsibility of informing MPs on child rights.**
 - **NGOs and professional organizations should take active role in informing children, MPs and parts of the society and in conveying the views to the TBMM Constitutional Reconciliation Committee.**
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III.

SCOPE OF THE LEGAL ARRANGEMENTS ON CHILD RIGHTS IN THE NEW CONSTITUTION

- **CONSTITUTION SHOULD RECOGNIZE THE CHILD AS AN INDIVIDUAL WITH HIS/HER INHERENT RIGHTS**
 - The Constitution should be a “rights-based” legal document.
 - A definition should be adopted for the child in the Constitution and the definition should be based on the fact that the child is an individual, inside or independent from the family, with his/her own inherent rights and own self-development process.
 - Unlike the current provision, the new article on child rights should reflect child rights as a whole; it should not have a restrictive nature focusing only on limited aspects.
- **THE FOUR GUIDING PRINCIPLES (RIGHT TO LIFE AND DEVELOP, PROHIBITION OF DISCRIMINATION, BEST INTEREST AND PARTICIPATION) OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD SHOULD BE INCLUDED IN THE CONSTITUTION.**
 - The spirit and the principles of the UN Convention on the Rights of the Child should be reflected on the new Constitution.
 - The four guiding principles of the UN Convention on the Rights of the Child, Right to life, survival and development (art. 6), Best interests (art. 3), Non-discrimination (art. 2), Respect for the views of the child (art. 12) should be included in the Constitution and all provisions concerning children should be arranged in the light of these principles.
 - In line with this, no provision similar for instance to the one (being socially beneficial) in the Article 42/6 of the current Constitution or no criteria and/or provision (age, sex, religion, ethnic origin, disability, sexual orientation and identity, conditions (illness, being under detention, family status etc.) place or conditions of beirth / growth) leading to direct or indirect discrimination among children should be included in the Constitution.
 - It should be emphasized in the Constitution that “positive discrimination” can be made in favour of children to implement their rights.
- **IN EACH ARTICLE WHICH IS RELEVANT FOR CHILDREN, PROVISIONS SHOULD BE INCLUDED CONCERNING THE SPECIAL STATUS OF CHILDREN.**
 - Special provisions should be included for children in each article which due to its scope requires consideration of the special status of children (such as education, health, social security, employment, social welfare services)
 - Universal principles of child rights and provisions of international agreements should be taken as a reference for each of these articles.
- **IN THE LEGAL ARRANGEMENTS, STATE’S POSITIVE DUTIES AND INDEPENDENT MONITORING MECHANISMS SHOULD BE CLEARLY DEFINED.**
- **INDEPENDENT MONITORING MECHANISMS (OMBUDSPERSON, INDIVIDUAL COMPLAINT) SERVING TO IMPLEMENT CHILD RIGHTS SHOULD BE INCLUDED IN THE NEW CONSTITUTION.**
- **"THE NEW CONSTITUTION PROCESS SHOULD BE TAKEN AS AN OPPORTUNITY FOR THE CONSIDERATION OF UN COMMITTEE FOR CHILD RIGHT'S FOLLOWING CONCLUDING OBSERVATION FOR TURKEY "THE COMMITTEE ENCOURAGES STATE PARTY TO CONSIDER WITHDRAWING ITS RESERVATIONS TO ARTICLES 17,29 AND 30 OF THE CONVENTION"**
- **THE CONSTITUTION SHOULD DEFINE “YOUNG PEOPLE” AND SHOULD INCLUDE LEGAL ARRANGEMENTS ON THE RIGHTS OF YOUNG PEOPLE AS WELL. CHILD RIGHTS IN THE CONSTITUTION**