



In your best interest

A study of how children have experienced being heard in child welfare services and how the Capabilities Approach could strengthen the understanding of the child's best interests.

Monica Strømmland

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Monica Strømland

February 2024

Summary

Background:

Over the last couple of years, the Norwegian Child Welfare Services (CWS) has been subject to considerable criticism, both domestic and international. Norway has been accused of “stealing” children from their parents with the intent of forming children’s upbringing in a way the state finds appropriate, with little respect for cultural and/or individual differences related to parental practice. The essential question has been and is how Norway might secure the right and the principle of the child’s best interests, at the same time respecting parents’ rights to respect for private and family life, also understood as the biological principle. Norway has been convicted by the European Court of Human Rights (ECtHR) in over 20 cases related to CWS from 1996 to February 2024 – all except two cases in the last five years. Norway has received particular criticism for its scarce resort to individual adaptation for contact between child and parents in several cases in which CWS has decided on a care order.

Aim:

The overall aim of this doctoral work is to explore analyse and discuss if and in what way the capabilities, as developed in the Capabilities Approach (CA) of the philosopher Martha C. Nussbaum, can supplement a best-interest evaluation of the child with the child’s right to be heard held as essential. This includes if and in what way(s) children and young people have experienced being heard and participating in decisions concerning themselves in their encounters with public authorities in a national and international child welfare context.

Methods:

The Ph.D. work as a whole is rooted in critical hermeneutical theory. Three different qualitative research methods have been used to address the overall aim: a systematic review, individual qualitative interviews and text analysis of two cases described in books, media, and Norwegian and international courts. The first study is a systematic literature review to identify and systematize scientific articles based on qualitative research methods on children’s experiences of being heard in a child welfare context on their best interests. A search string was developed and used to search for articles in eight scientific databases. In the second study, we conducted qualitative in-depth interviews with nine young

people who had been or were in contact with child welfare services on their experiences of being heard and participating in decisions made on their behalf. In the third study two cases were used as a data material, reported in the Norwegian public media, one of them brought to the European Court of Human Rights in Strasbourg, and texts describing the Capabilities Approach. This choice was made to explore, analyse and discuss the complexity involved in deciding on the child's best interests, when this right and principle is weighed against the parents' right to private and family life (the biological principle).

Findings:

The findings of the first study indicate that there might be a challenge related to the operationalization of children's right to be heard in a child welfare context. At the same time, these findings should be interpreted with caution, given the wide age range of children and young people who participated in the studies included in the systematic review. Without the child's own voice, a significant part of a concrete and individual assessment of the child's best interests is missing. This challenge exists at both an organizational and individual level, with limited guidelines on how to facilitate participation, limited resources for social workers to help young people in difficult life situations and limited knowledge of the rights perspective pointed to as hindering participation. Social workers' communication skills of being acknowledging and capable of developing trustful relationships were found to facilitate participation. The right to be heard and participation are two different things, and the right to be heard is not necessarily followed by opportunities to participate. We found that children and young people with a history of being exposed to severe violence, neglect and/or abuse seem to have reduced opportunities to participate.

These findings were present in all the reviewed articles for the first study and in all three studies included in this doctoral work. In the second study, the interviewees emphasized the importance of being heard in decisions concerning themselves, despite their vulnerability. When interviewed on experiences of being heard in the Norwegian child welfare services, six of nine interviewees gave descriptions of not being heard. In this study we suggest a combination of Nussbaum's CA and the procedure of participation developed by Skivenes and Strandbu to obtain an inside perspective of the child's best interests. The third study suggests the Capabilities Approach to supplement an evaluation and assessment of the child's best interests in a child welfare context, offering

elements for what to evaluate for a comprehensive decision on the child's best interests.

Conclusions:

The overall conclusion is that the Capabilities Approach (CA) might be able to supplement an assessment of the child's best interests in child welfare service cases, in assessing a child's best interests, from the child's own perspective in a comprehensive way. Although a thorough translation and contextualisation of the CA into a Norwegian child welfare services context would be needed, before a possible implementation.

Sammendrag

Bakgrunn:

Den siste tiden har norsk barnevern fått mye kritikk, både nasjonalt og internasjonalt. Norge blir beskyldt for å 'stjele' barn fra foreldrene, og for å prøve å strømlinjeforme oppdragelsesformene i én bestemt homogen retning med lite eller ingen forståelse for kulturelle og individuelle forskjeller med hensyn til hvordan foreldre velger å utøve foreldreomsorg for sitt barn. Den store utfordringen er hvordan offentlig forvaltning kan ta riktige beslutninger overfor barn og unge i en sårbar livssituasjon. I denne sammenheng er muligheten til å medvirke helt sentral for barna beslutningene berører. Så langt har Norge blitt dømt i over 20 saker, knyttet til norsk barnevern i tidsrommet 1996 til 2024, i Den europeiske menneskerettighetsdomstolen i Strasbourg. Et gjennomgående tema for kritikk og domfellelse mot Norge har vært manglende tilrettelegging for, og manglende individuell vurdering av samværsfrekvens mellom foreldre og barn, i saker hvor barnevernet har overtatt den daglige omsorgen. Barn fratras muligheten til å utvikle en relasjon til sine foreldre, og barn sin rett til familieliv krenkes. Den vanskelige avveiningen er å avgjøre hvor mye samvær som er til barnets beste, og samtidig vurdere, og legge til rette for eventuell gjenforening.

Hensikt:

Denne avhandlingen utforsker hvordan kapabilitetstilnærmingen, slik den er utviklet av filosofen Martha C. Nussbaum, kan supplere barnevernet sine vurderinger av barnets beste, hvor barnets rett til å bli hørt er en sentral del av denne vurderingen. Det arbeidet inkluderer om og eventuelt på hvilken måte barn og ungdom har opplevd å bli hørt i møte med offentlig forvaltning nasjonalt og internasjonalt i en barnevernfaglig kontekst.

Metoder:

Avhandlingen tar utgangspunkt i kritisk hermeneutisk teori. Det ble brukt tre ulike kvalitative forskningsmetoder for å besvare avhandlingens overordnede spørsmål. Systematiske litteraturstudier, individuelle kvalitative intervju, samt tekst analyser av to ulike saker som begge er rikelig omtalt i ulike, offentlig tilgjengelig, dokumenter i Norge, og kapabilitetstilnærmingen.

Den første studien er en systematisk litteraturstudie hvor hensikten var å frambringe og systematisere vitenskapelige forskningsartikler hvor det ble brukt

kvalitative metoder for å undersøke barn og unge sine opplevelser av å bli hørt i beslutninger tatt i en barnevernfaglig kontekst. Det ble utviklet søkeord og søkestreng til bruk i åtte ulike vitenskapelige databaser. Systematisk tekstkondensering inspirert av kritisk hermeneutisk teori ble brukt for å utforske, analysere, og diskutere funn i de inkluderte artiklene. Den andre studien bygger på kvalitative dybdeintervjuer av ni ungdommer som har vært eller var tilknyttet norsk barnevern om deres opplevelser av å ha blitt hørt i beslutninger tatt på deres vegne. Datamaterialet ble analysert ved hjelp av tekstkondensering for å utvikle kategorier og meningsenheter som lå så nært opp til datamaterialet som mulig for å forstå deler og helhet av de erfaringene ungdommene beskrev. I den tredje studien brukte vi to utvalgte saker som er offentlig omtalt i Norge, den ene har vært til vurdering i den europeiske menneskerettighetsdomstolen i Strasbourg (EMD), og tekster som beskriver kapabilitetstilnærmingen. Valget ble tatt for å utforske, analysere og diskutere kompleksiteten i saker hvor man skal ta avgjørelser som er til barnet beste, hvor denne retten og prinsippet skal vurderes opp mot foreldre sin rett til privat- og familieliv forstått som det biologiske prinsipp.

Funn:

Funnene i den første studien indikerer at barnevernet i har utfordringer når det kommer til operasjonalisering av barn og unge sin rett til å bli hørt. Samtidig bør disse funnene tolkes med forsiktighet, med tanke på den store aldersvariasjonen blant de barna og ungdommene som har deltatt som informanter i studiene, beskrevet i de inkluderte artiklene. Vi fant utfordringer både på organisatorisk og individuelt nivå. Manglende eller mangelfulle retningslinjer for hvordan operasjonalisere barns rett til å bli hørt var gjennomgående. Begrensede ressurser for sosialarbeidere til å hjelpe barn og unge i vanskelige livssituasjoner, samt manglende kunnskap om rettighetsperspektivet, var noe av det studiene viste til som noe av årsakene til manglende og/eller mangelfull deltakelse for barn og unge i kontakt med barnevern. På individ-nivå ble noen karaktertrekk hos sosialarbeidere trukket fram av ungdommene som fremmede for medbestemmelse i saker som angikk dem. Disse karaktertrekkene ble beskrevet som det å være empatisk, anerkjennende og flink til å etablere tillitsfulle relasjoner. Retten til å bli hørt og medbestemmelse er to ulike begrep, hvor retten til å bli hørt ikke nødvendigvis følges opp med muligheter til medbestemmelse. Funnene fra studie 1 indikerer at barn og ungdom sine muligheter til å bli hørt i

møte med barnevern muligens kan være ekstra utfordrende i tilfeller hvor sosialarbeidere antar at de bør skjermes fra relevant informasjon om deres egen sak. Det kan se ut som om lav alder på barnet og spesielt alvorlige opplevelser med omsorgssvikt, vold og overgrep er situasjoner hvor barn og ungdom, og på grunn av deres sårbarheter knyttet til disse erfaringene, møter utfordringer med å bli lyttet til og å delta i beslutninger som angår dem. Dette tyder til å være gjennomgående i de inkluderte artiklene som ble inkludert i studie 1, og også i de andre to studiene som er inkludert i avhandlingen. Ungdommene som ble intervjuet for studie 2, beskrev at det hadde positiv og avgjørende betydning å bli hørt og å medbestemme i avgjørelser barnevernet tok i saker som angikk dem. Av de totalt ni som ble intervjuet, beskrev seks ungdommer erfaringer med ikke å ha blitt hørt. I denne studien (2) foreslår vi en kombinasjon av kapabilitetstilnærmingen og prosedyren for medbestemmelse som er utviklet av Skivenes og Strandbu, for å få et innenfra perspektiv over hva barn og ungdom i møte med barnevernet tenker og mener om deres eget beste. I den siste studien (3) blir kapabilitetstilnærmingen utviklet av Martha C. Nussbaum foreslått som et supplement til gjeldende lovverk for å utfylle evaluering og vurdering av barnets beste i en barnevernfaglig kontekst, hvor tilnærmingen angir områder av barn og unge sin livssituasjon som kan evalueres i en helhetlig barnets beste vurdering.

Konklusjon:

Den overordnede konklusjonen er at kapabilitetstilnærmingen muligens kan supplere en vurdering av barnets beste i barnevernssaker, ved at den kan bidra til en helhetlig vurdering av barnets beste sett fra barnets perspektiv. Før en eventuell anvendelse av kapabilitetstilnærmingen i en barnevernfaglig kontekst kan vurderes, vil det være nødvendig å utføre et omfattende arbeid med å oversette tilnærmingen til norsk språk og en barnevernfaglig kontekst.

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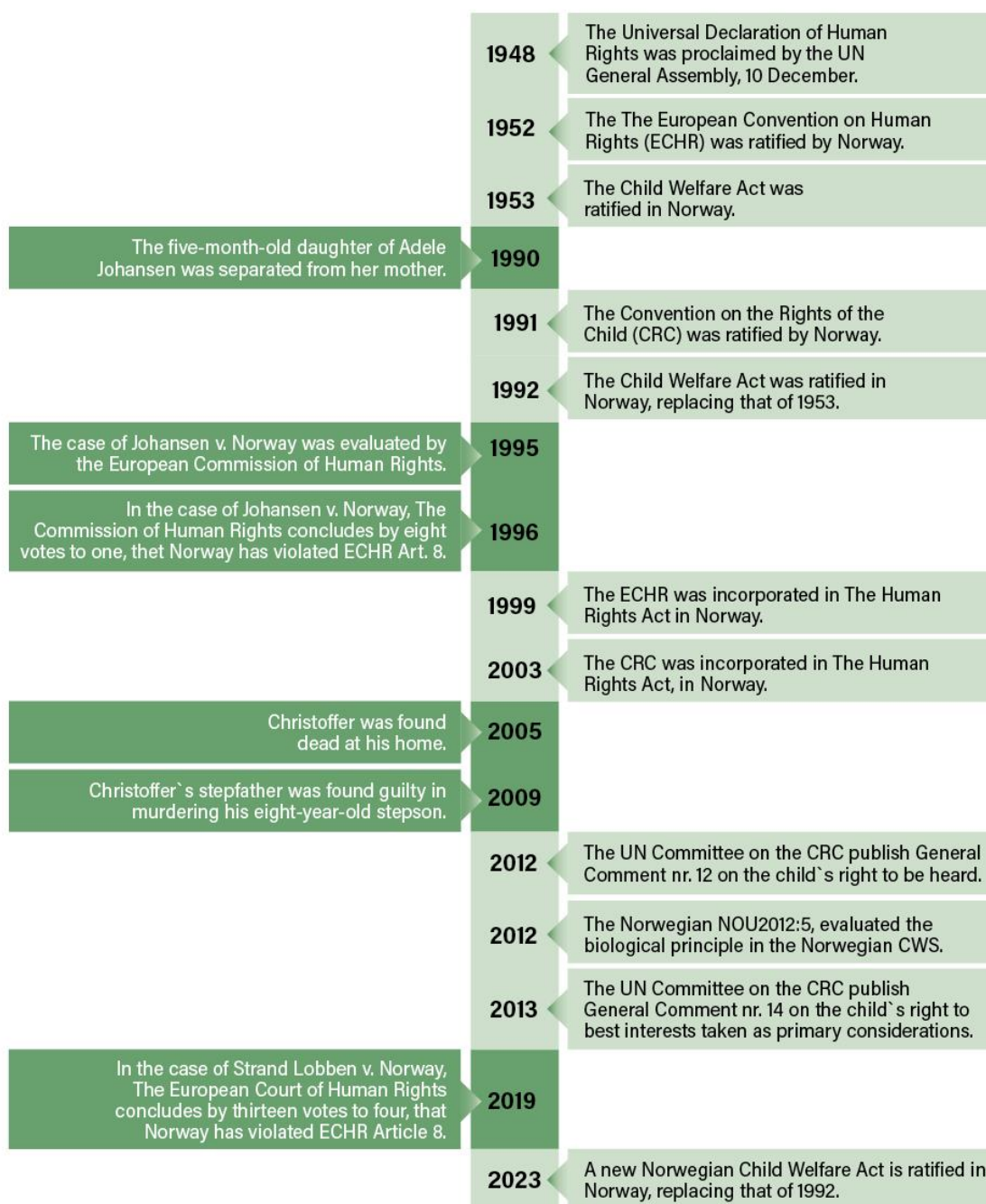
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1. Strømmland, M., Bahus, M. K., Andersen, A. J. W. (2022): Too vulnerable to participate? A systematic literature review of the gap between a right to participate and participation, in welfare services. *Journal of Human Rights Practice*, 2022, 1–21. Doi.org/10.1093/jhuman/huab061
2. Strømmland, M., Bahus, M. K., Andersen, A. J. W. (2023): “What’s the purpose of having a say if I cannot participate?” A qualitative study of young people’s experiences of being heard and to participate in decision-making processes in Norwegian child welfare services. *The International Journal of Children’s Rights*. 31(3), 729-755. Doi.org/10.1163/15718182-31030007
3. Strømmland, M., Andersen, A. J. W., Johansen, V. F., Bahus, M. K. (2019): In your best interest. A discussion of how Capability Approach could be used as a guideline to strengthen and supplement the principle of the child’s best interests. *The International Journal of Children’s Rights*, 27(3), 517–544. Doi.org/10.1163/15718182-02703009

Abbreviations

CA	Capabilities Approach
CRC	Convention on the Rights of the Child
CSWB	Child Welfare Tribunal
CWS	Child welfare services
EBM	Evidence-based Medicine
EBP	Evidence-based Practice
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
NIM	Norges institusjon for menneskerettigheter (Norwegian National Human Rights Institution)
NOU	Norges offentlige utredninger (Norwegian White Paper)
NRK	Norwegian Broadcasting Corporation
SDG	Sustainable Development Goals
UN	United Nations

Timeline of events relevant for this doctoral work¹



¹ The timeline includes, on the left side, the cases of Johansen, Christoffer, and Strand Lobben. The case of Christoffer was neither a CWS case nor a case for the ECtHR. On the right side are the essential laws and documents relevant for assessing the child's best interests and the child's right to be heard. Incorporated conventions to *The Human Rights Act* take precedence in the event of conflict(s) to national law (Strand & Larsen, 2021, p. 112).

1. Introduction

Over the last couple of years, the Norwegian Child welfare services (CWS) has been subject to considerable criticism, both domestic and international (Læret & Skivenes, 2023, Bendiksen & Haugli, 2021; Andersland, 2019; Whewell, 2018;). Some critics in the public media have even accused Norway of ‘stealing’ children from their parents with the intent of forming children’s upbringing in a way the state finds appropriate, with little respect for cultural and/or individual differences related to parental practices (Whewell, 2018; Hassan & Riaz, 2023; Skoglund, 2017; Slettholm, 2019). This critique has evolved despite the preamble of the child welfare act (2021) in Norway, underscoring the importance of CWS work:

“The Act shall ensure that children and young people living in conditions that may harm their health and development receive the necessary help, care and protection at the right time. The law shall ensure that children and young people are met with safety, love and understanding. The Act shall contribute to ensuring children and young people good and safe conditions for growing up”² (Child welfare act, 2021, § 1-1)

Læret and Skivenes (2023, p. 40) highlights that in addition to CWS critique expressed in public media, the basis of this critique is expressed in research and from supervisory bodies as the Office of the Auditor General of Norway, the Norwegian Board of Health Supervision, and the County Governors. This was some of the background from which the Norwegian White Paper (NOU), named The Expert Committee’s Report: Safe childhood, Secure future (NOU 2023:7), was given a mandate by the Government in 2021, “(...) to assess how to improve the rule of law for children and families involved in child protection cases.” (Barnevernsutvalget, 2023). In the report the expert committee calls for further research on child welfare services, and points to deficiencies in the theoretical and empirical framework of understanding and in perceptions explaining the state of the field (NOU 2023:7, p. 439).

Decisions made by the child welfare can, according to Christiansen and Kojan (2023, p. 15), change the lives of children and their families today, as well

² The author’s translation from Norwegian.

as their future. The support to children and their families, provided by the Norwegian child welfare services, can be understood as a social investment in their lives (Kojan & Christiansen, 2023, p. 20).

The central position and importance of the family to care and protect for children is an implicit assumption in national Norwegian legislation (see for example the child welfare act (§ 1-5), the children act (1981, § 30) and *The Constitution* (§ 104)). According to Köhler-Olsen (2019a, pp. 100-101), the rights and obligations of parents and children deduced from the family's position should be interpreted in light of the state's obligations and responsibilities described in the Convention on the Rights of the Child (CRC) Article 6, which states that children have an inherent right to life and development. Some of the policy instruments in Norway, developed to enhance parents' opportunities to fulfil their commitments towards their children are: child benefit, tax reductions for single parents, subsidised day-care for children and cash benefits for families who choose to care for children aged one to two at home (Bendiksen & Haugli, 2021, p. 178).

However, in addition to the state's responsibility to support families through subsidies and legislation, the state also has the power to interfere and reorganize families, and ultimately to separate families by removing children from the care of their biological parents (Bendiksen & Haugli, 2021). If and when a child is to be separated from the parents, the separation must be judicially proven necessary for protecting the child's best interest and the decision must comply with the terms and conditions set by the law (Andersland, 2019, p. 262; Bendiksen & Haugli, 2021, p. 189). In such cases, the care for the children is transferred from the parents to the state, and laws on child protection regulate the public authorities' subsidiary responsibility for the children (Bendiksen & Haugli, 2021, p. 187).

Of particular interest in this context is critique made by the European Court of Human Rights (ECtHR), targeting how and in what ways Norway balances the principle of the child's best interest (CRC Article 3) vis-a-vis the parents' right to respect for family life (European Convention of Human Rights (ECHR) Article 8) (Stang et al., 2023, p. 43), also known as the 'biological principle' (Andersland, 2019; Bendiksen & Haugli, 2021, pp. 189-190; NOU 2012:5, 2012, p. 41). The Supreme Court of Norway has described the relative importance of the biological principle as follows: "Thus, the starting point is the family ties – often referred to as the biological principle – both for the parents

and for the child”³ (2020, HR-2020-661-S, section 82.). The European Court of Human Rights (ECtHR) also describes the importance of maintaining family ties: “Generally, the best interests of the child dictate, on the one hand, that the child’s ties with its family must be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots” (2019d, Case of Strand Lobben v. Norway, section 207.).

According to the Norwegian National Human Rights Institution⁴ (NIM), Norway has been convicted for violating parents’ rights to family life (ECHR Art. 8), in 25⁵ cases related to CWS from 1996 to 2023 (NIM, 2023). This is according to them, a severe and repeated human rights challenge in Norway (NIM, 2023). A crucial point in the legal argument against Norway is related to children’s opportunities to maintain and develop a relationship with their families when in out-of-home care (NIM, 2020a). The point of appeal concerns the Norwegian CWS’s policy of limited or no contact between children and their parents after out-of-home placement, which is considered to leave the prospects of continuing and/or improving parenting skills and relationship-building non-existent or severely limited (NIM, 2022). The case of *Strand Lobben and others v. Norway* (ECtHR, 2019d) is one of the 25 cases in which the ECtHR has found Norway in violation of Article 8 of the ECHR, in this case ruling by thirteen to four votes that Norway had violated the article in respect of the applicants, Ms Strand Lobben and her child X. Sandberg (2020) underscores the critique found throughout the ECtHR’s evaluation of the Norwegian CWS cases, that the authorities gave up on the goal of reunification too soon and without a thorough evaluation and consideration of the consequences, thus neglecting the authorities’ positive obligation to facilitate reunification in accordance with the child welfare act (Sandberg, 2020, p. 153). On this point, Norway was also found guilty by the ECtHR in 2019 in the case of *K.O. and V.M. v. Norway*, and in 1996 in the case of *Adele Johansen v. Norway* (ECtHR, 1996; 2019d, section 124.). In the case of *K.O. and V.M. v. Norway*, the child was reunited with her parents before the case was brought to the European Court of Human Rights.

³ The author’s translation from Norwegian.

⁴ Translated by the author from ‘Norges institusjon for menneskerettigheter’

⁵ An overview of cases is included in appendix 11, with references to these included in the reference list. This appendix was updated September 2023.

The story of Adele Johansen might be especially interesting in this regard, considering the timing and development of subsequent Norwegian child welfare services practices. Although Norway was convicted of violating ECHR Article 8. by the ECtHR in 1996, it seems as if the verdict did not lead to obvious changes in policy. On the contrary, Norwegian CWS practices are generating the same type of convictions and critique today, nearly 30 years later. These cases brought up for the ECtHR during these years, relates to critique on contact rights between children and their parents after the Norwegian CWS has separated the child to protect the best interests of the child according to CRC Article 3. The next chapter will introduce some of the critique made in public media, related to the Norwegian CWS's faults in providing adequate care for children after the care order, and a case where the Norwegian CWS did not interfere to protect the child's best interests based on lack of relevant information and/or insufficient evaluation of the child's situation.

In this doctoral work, the Convention on the Rights of the Child is not subject to critical analysis. Instead, it functions as an absolute norm to illuminate the legal situation for children in contact with child welfare services in Norway.

1.1 Media reports on child welfare service challenges in Norway

Stories in the national media in Norway draw a picture of major challenges in providing children in out-of-home care the necessary and adequate protection and care (Andersland, 2019; Ergo, 2016; Hansen & Jarlsbo, 2018). The two journalists Jarlsbo and Hansen (2018), at the time both working for the Norwegian newspaper *Dagbladet*, refer to the stories of three young girls who, while living in a child welfare institution, were introduced to prostitution, and developed severe drug abuse, with the staff being aware of the situation. In 2017, two of the girls died under child welfare services' care in Bergen: Marie was 17 years old at the time of her death and Hanne was 18. The journalists named them, 'the angels of child welfare'⁶ (Hansen & Jarlsbo, 2019; Jarlsbo & Hansen, 2018). Hansen and Jarlsbo (2019) report experiencing reluctance on the part of the child welfare services to give them access to the girls' case documents, despite having the required permissions from the girls' parents. They describe their reading of

⁶ Translated into English from 'Barnevernets engler'.

the cases, once they finally obtained access to them, as three young girls with major challenges related to drugs, mental health difficulties, criminal behaviour and prostitution. Three young girls with broken lives: two dead and one left on her own upon turning 18 (Hansen & Jarlsbo, 2019).

In 2022, the *NRK*⁷ reported that the Norwegian Bureau for the Investigation of Police Affairs had opened a criminal investigation after the death of another teenage girl on the run from a CWS institution in Bergen. The County Governor has opened an investigation of whether the public authorities can be held responsible (Helgheim, 2022; Ntb, 2022a, 2022b).

In January 2023, the public media became aware of a similar story of three teenage girls. The *NRK* reported that two girls, twins aged 16, had been found dead at a private residence, presumably from an overdose. A third girl aged under 18 survived and was taken to hospital for medical help from what also seems to have been an overdose. It was confirmed to the media that the two dead girls had received help from the child welfare services (CWS) and were reported missing from a local treatment centre for substance abuse in Spydeberg, in the east of Norway. Two men in their twenties were charged for leaving the girls in a helpless state (Carlsen, 2023; Undheim et al., 2023).

While the Norwegian CWS in the aforementioned cases has been criticized in public media for not being able to provide children in out-of-home care adequate help, the next case represents situations where the CWS has been criticized for intervening too late.

In December 2022, the Norwegian newspaper *Aftenposten* published a story of a teenage boy, whom the paper refers to as Mathias, in Bergen. He was discovered by the police and the child welfare services in January 2022. The medical report later presented to the court concludes that the boy was life-threateningly malnourished, his clothes were dirty, holed and too small, his lips were swollen, cracked and dry, and the hair on the whole back of his head was matted. Mathias had not seen a doctor since he was a baby and had never been to school (Røren et al., 2022). Fortunately for Mathias, the neighbour who called the CWS was determined to have them realize the severity of the boy's situation. Mathias is now living at a CWS institution and has according to an employee made positive developments (Røren et al., 2022).

⁷ Norwegian Broadcasting Corporation.

1.2 An obligation towards children

States who have ratified the Convention on the Rights of the Child have an obligation to make decisions in the best interests of the child (Article 3.) while respecting the rights to private and family life (ECHR Article 8., CRC Article 16). Kojan and Christiansen (2023, p. 21) describes decision-making in the CWS as complex and particularly challenging⁸. In care-orders the long-term consequences might appear to be clear, but this could also, according to them, be said about decisions to close a CWS case (Kojan & Christiansen, 2023, p. 21). Decisions of this type often constitute a deep intrusion into private life, both at the time being, and on an ongoing basis. Kojan and Christiansen (2023, p. 21-22) accounts for complexity involving a number of conditions, including, but not limited to, and to some degree overlapping each other; the scientific, the normative, the human, and the system-related.

People working with or for children, for public authorities, have an independent obligation to report cases in which they have reason to believe that a child is exposed to severe neglect and/or abuse (Child welfare act, 2021, § 13-2). The obligation to provide information covers all public authorities, a number of professionals with a professional duty of confidentiality, as well as organizations and private individuals who carry out tasks for the state, county council or municipality (Child welfare act, 2021, § 13-2). The Proposition 169 L (2016–2017) further specifies that this obligation includes professionals, organizations and private individuals working according to the health personnel act, mental health care act, health and care services act, act on family care/welfare centre, the education act, and independent schools act (Ministry of Children and Equality, 2017, pp. 146-150). The child welfare services has a mandate to evaluate the information they receive and decide on necessary actions according to what they find (Child welfare act, 2021, chapter 2 and 3). The actions they decide on must be in accordance with the principle of least intervention (Child welfare act, 2021, § 1-5, second paragraph). According to Christiansen et al. (2023, p. 143), the principle of least interventions implies that minimal interference in family life should be made by the CWS, even in the presence of serious deficiencies in parenting practices.

⁸Author`s translation from Norwegian `særlig utfordrende` (Kojan & Christensen, 2023, p. 21).

Accordingly, this doctoral work aims to develop insights which might strengthen assessments in the child welfare services of what is in a child's best interests, with a particular focus on how the child can be heard and enabled to participate with respect to human rights. To accomplish this, what is known as the Capabilities Approach (CA) as developed by Martha C. Nussbaum (2000, 2006, 2011), has been explored. According to Robeyns, "The basic claim of the capability approach is that, when asking normative questions, we should ask what people are able to do and what lives they are able to lead." (Robeyns, 2017, p. 7). These questions do, according to Nussbaum, form the basis of the CA (2006, p. 70). The present work explores the relevance of the Capabilities Approach in a child welfare services context and discusses in what ways the CA might contribute insight into the child's situation from the child's perspective.

1.3 Historical development of the Norwegian Child welfare services

The life of children and young people exposed to neglect, maltreatment and/or violence has historically been left to be handled within the family's private sphere, with the head of the family – usually the father – ruling as the 'long arm' of the State (NOU 2012:5, p. 26). Starting with Christian V's law of 1687, the state was obliged to protect parents against their unruly children, primarily by means of straight punishments (NOU 2012:5, p. 26). To use physical punishment as part of children's upbringing was protected by law, but this possibility was withdrawn in 1972. This withdrawal could, according to Kojan and Christiansen (2023, p. 26), be understood as establishing by law the norm that violence against children is harmful for their development. This norm has according to Pinheiro, leading the United Nation's Study on Violence Against Children, gained further acknowledgement worldwide, with a deepened understanding of the impact of neglect, maltreatment and violence on children's wellbeing and development (United Nations, 2006, p. 5).

The earliest form of statutory child protection in Norway can be found in the 12th century and was made national in the 13th with Magnus the Lawmender's national law (Sveri, 1957, p. 12). The 'legd' arrangement, as expressed in this national law, was a longstanding tradition in Norwegian society. It entailed an unwritten right for children and disadvantaged individuals who were unable to provide for themselves, to receive shelter and a minimum necessary amount of

food. This provision was carried out through a system where farms took turns in providing this support (NOU 2004:23, p. 19; Sveri, 1957, pp. 11-12).

During the 18th and 19th centuries the ‘legd’ arrangement was replaced with municipal responsibility delegated by the government, ratified as the guardian council act⁹ (Vergerådsloven) in 1900, to become the world’s first child welfare act (Bufdir, 2023). The guardian council act was agreed on in the same year, 1900, as the Swedish educationalist Ellen Key claimed that the twentieth century should be ‘The Century of the Child’ (Pedersen, 2019, p. 17). The Guardian Council, with a mandate to decide according to the act, was located in each municipality and consisted of the county sheriff, the vicar and five elected members, including one woman and one medical doctor (Sveri, 1957, p. 25). The issues they were mandated to decide on related to investigating whether a child under the age of 16 had committed criminal acts as a consequence of being morally corrupt or was exposed to severe maltreatment by their legal guardian(s).

The council also had the mandate to intervene the family, if parents had failed in their responsibility to nurture and provide for their children (Bufdir, 2023). Based on what the council decided, the child could be placed in out-of-home care with a foster family or in an orphanage or brought up in a boarding school (Sveri, 1957, p. 25). Despite presumed good intentions of the Guardian Councils, there are countless reports of children and young people experiencing maltreatment and violence during their time in Norwegian boarding schools as Bastøy, Lindøy and Ulfsnesøy (Andersland, 2019, p. 275). Reflecting on these stories one should have in mind the historical context of these institutions as penitentiary houses with the intention of using punishment to improve children’s unwanted (criminal or antisocial) behaviour (Andersland, 2019; Sveri, 1957; Aas & Vestgården, 2014).

In 1915, the Castberg child law (Castbergske barnelover) was agreed on by the Norwegian Parliament, named the Storting. These laws, which were radical at both a national and international level, gave the child an independent right to inherit from one’s father regardless of whether the parents were married. By these acts, Norway positioned itself as a state leading the way in the early years of ‘The Century of the Child’ (Pedersen, 2019, p. 18). In 1953, the Storting decided on the child protection act (Lov om barnevern, 1953). This law came

⁹ English translation from “Lov om Behandling av vanvyrkede og forsømte Børn”

into force in 1954 and declared an emphasis on, and a wider range of relief measures within the child's family. It also specified that the role of the child welfare services should be subsidiary to that of the parents, and that all decisions should be made with the best interests of the child in mind (Bufdir, 2023).

The child protection act was revised in 1992 as the child welfare act (Lov om barneverntjenester), which came into force in 1993 (Child welfare act, 1992). This act made it possible for the child welfare services to decide on and implement relief measures in families at an earlier stage (Bufdir, 2023). Norway, and other countries, has experienced an ongoing process of knowledge development and shifted from what the expert committee of the NOU 2012:5 (Better protection of children's development. The expert committee's report on the biological principle in child welfare services¹⁰), describes as 'the family state' to the present welfare state with an emphasis and recognition of the child and of the importance of experiencing a good childhood (NOU 2012:5, p. 26). This shift has, among other scholars, been described by Hennem (2014, p.441) as 'child-centred'. Describing child-centred societies to "(...) value children's rights, needs and voice *in situ*, giving children a claim on the state to protect their interests and to provide them with what is usually named "a good or decent childhood" or "well-being". (Hennem, 2014, 441-442).

In 2014, the Norwegian Government started working on a revision of the child welfare act from 1992. This work resulted in a white paper¹¹, NOU 2016:16 named 'the new child welfare act'¹² (2016). Based on NOU 2016:16, a Proposition (Prop. 133 L (2020–2021)) for the Storting, was put forward by the Ministry of Children and Family Affairs on April 9th, 2021. These documents contributed to the draft of the new child welfare act (Norwegian Government, 2022). The overarching aims of the new act are, according to the Ministry of Children and Family Affairs (2021), to make the language more accessible to people so as to make complicated decision processes in the CWS more transparent. Further, to strengthen the rule of law in application to children and parents, to have a focus on prevention, and contribute to early intervention. The new child welfare act was put into force on January 1st, 2023.

¹⁰ Author's translation from 'Bedre beskyttelse av barns utvikling. Ekspertutvalgets utredning om det biologiske prinsipp i barnevernet.

¹¹ Author's translation from «Norges Offentlige Utredninger»

¹² Author's translation from «Ny barnevernslov»

1.4 Mandate and organization of the Child Welfare Services in Norway

One way to understand the child welfare services today might be to think of it in two levels; the state level and the municipal level where social workers interact with families in their municipalities (Schröder, 2021, p. 11). At the same time, the Norwegian child welfare services is described by Kojan and Christiansen (2023, p. 31), as complex, including the municipal, the regional, the state, as well as voluntary and private actors. Mandate, organization, and responsibilities of municipal and state CWS in Norway are regulated in the child welfare act (2021) chapter 15 and 16. Out of the workers in the municipal CWS, 65% have a bachelor's degree in child welfare or social work. The remaining employees include teachers, nurses, and psychologists. In 2018, 7 % of the employees in municipal CWS had a master's degree (Beyrer & Hjemås, 2020). Competence of Child Welfare Services (CWS) workers is crucial to fulfil the CWS's mandate, as highlighted in white papers written over the past decade (NOU 2009:8, p. 8; Meld. St. 13 (2011-2012), p. 28, 29; Prop. 73 L (2016-2017), p. 30; Competence strategy for municipal CWS¹³ (2018-2024), p. 19; NOU 2023:7, p. 153). The Expert Committee who authored the white paper NOU 2023:7, acknowledge the work to increase competence within the CWS field (NOU 2023:7, p. 457). At the same time the Expert Committee highlights a need to increased knowledge on best interests' assessment of children in contact with child welfare services, based on an employee survey in the CWS conducted by the Bufdir¹⁴ (NOU 2023:7, p. 153). In the child welfare act, which came into force from January 1st, 2023, CWS workers' formal competence has now been concretized in § 15-6, giving workers qualification requirements for conducting certain tasks and functions in and on behalf of the CWS. The qualification requirement applies to tasks regulated by the Child Welfare Act § 15-3 third paragraph and will come into force from January 1st, 2031 (Child Welfare Act, § 15-6, first paragraph).

The municipal CWS have a responsibility to provide "... help, care and protection when necessary due to the child's care situation or behaviour. The responsibility, delegated by the municipality, includes measures aimed at the child's care situation or behaviour."¹⁵ (Child Welfare Act, 2021, § 15-3, first and

¹³ Translated by the author from 'Kompetansestrategi for det kommunale barnevernet 2018-2024'.

¹⁴ Bufdir is short for The Norwegian Directorate for Children, Youth and Family Affairs.

¹⁵ Translated from Norwegian by the author.

second paragraph). In their work, the municipal CWS are dependent on both professionals and private citizens to report cases and provide information when there is concern about a child's well-being. The municipal CWS have a right and a duty to initiate investigations "If there is reasonable reason to assume that conditions exist that may provide a basis for taking measures in accordance with the law, the child welfare services shall investigate the situation." (Child Welfare Act, 2021, § 2-2, first paragraph).

The Office for Children, Youth and Family Affairs (Bufetat) is regional in five different parts of Norway, under the central authority of the Directorate for Children, Youth and Family Affairs (Bufdir). Bufetat being responsible for assisting the municipal CWS in cases of out-of-home care, recruitment, training and guidance of foster homes. In addition, the Bufetat is responsible for establishment and administration of CWS childcare institutions, and for approval of private and municipal institutions used under the child welfare act (2021) (Norwegian Government, 2023). Bufdir being responsible for leading Bufetat, as well as being a competence centre for the entire Norwegian CWS (Norwegian Government, 2023).

The Child Welfare Tribunal (CWT)¹⁶ is an independent and impartial body, with decision-making authority in certain cases concerning coercive measures under the child welfare act (2021), as well as certain cases regulated by the health and care services act and the communicable diseases control (Child Welfare Act, 2021, § 14-1). In Norway, there are ten CWTs. In the CWTs, each case is led by a lawyer, an expert person¹⁷, and an ordinary tribunal member. Decisions made by the CWT can be presented in district court (Tingrett) (Child Welfare Act, 2021, § 14-25).

The County Governor¹⁸ supervises the municipal CWS in each municipality in Norway (Child Welfare Act, 2021, § 17-3). This means that the Governor ensures that the municipalities carry out their tasks under the child welfare act chapter 1 to 15 (2021), and that the municipalities receive advice and guidance necessary for these tasks. In addition, the Governor is the appeal body for individual decisions made under the Child Welfare Act (2021), as well as

¹⁶ English translation from 'Barneverns- og helsenemnda' (Child welfare tribunal, 2023)

¹⁷ The Central Office for Child Welfare Tribunal has a delegated authority to appoint expert persons with specialist expertise on case-relevant information. For example, the perspectives and opinions from psychiatrists/psychologist and/or child welfare experts (Prop. 76 (2005-2006), p. 27 (5.4.2)).

¹⁸ English translation from 'Statsforvalteren'.

supervising child welfare institutions and other governmental services and measures. The Norwegian Board of Health Supervision has the overall professional responsibility practiced by the Governor (Child Welfare Act, 2021, chapter 17).

The Ministry of Children and Families has the overall state administrative responsibility for the child welfare services in Norway, regulated in the child welfare act (2021, §16-2). The Office for Children and Family Affairs and the county governors are led by the Ministry of Children and Family Affairs (Child Welfare Act, 2021, §16-1). Some of the main tasks of this Ministry are to develop politics, administration of law, and develop guidelines signaling how child welfare services should be carried out in Norway (Child Welfare Act, 2021, §16-2).

1.5 Evidence-based practice

Social work is according to Finne and Malmberg-Heimonen (2023, p. 2), historically rooted in voluntary work and an ambition to help individuals and families in need of support. Since social work gained professional status in the 1930s, social work practice has gradually evolved towards implementation and use of practises with scientific support (Finne & Malmberg-Heimonen, 2023, p. 2). Despite criticism of this development saying that evidence-based practice (EBP) could undermine traditional practises and values in social work, such as empathy and collaboration, EBP is gaining foothold in the CWS and social work sector (Finne & Malmberg-Heimonen, 2023, p. 2).

Evidence-based practice (EBP) is an expansion of the enterprise known as evidence-based medicine (EBM), initiated by Cochrane and colleagues at Oxford University in the early 1990s. In the field of medical treatment, this resulted in the establishing of the Cochrane Collaboration in 1993, which is an international, not-for-profit organization that aims to prepare, maintain and promote the accessibility of systematic reviews of the effects of healthcare interventions (Ekeland et al., 2019). The most cited definition of Evidence-based medicine is that provided by Sackett and colleagues (1996), who described it as medicine based on the combination of the “best external evidence with individual clinical expertise and patients’ choice” (Sackett et al., 1996, p. 71). The authors underscore that EBM cannot and should not be understood as a “blueprint” for best practice, because all patients, cases and clinicians are unique. In this way,

EBM can inform but never replace individual clinical judgement and decision-making (Sackett et al., 1996). Since this inception, the idea of EBM has been given wide attention and been described as one of the most important milestones in the context of medical treatments. From its beginning in clinical medicine, the ethos of EBM has spread to several other areas of public services, including EBP in social work (Ekeland et al., 2019, p. 612; Finne & Malmberg-Heimonen, 2023). Despite criticism of the biomedical underpinnings and instrumental logic of EBP, the general rule has been to embrace, include and promote practice in line with this idea in social services (Ekeland et al., 2019, p. 612).

Gambrill (2008) highlighted the role of the client in evidence-based practice, in reference to the original idea of evidence-based medicine, in which the values and preferences of the client should inform the decision made by the professional. This includes considering and evaluating research findings relevant for the client's case together with the client before a decision is made (Gambrill, 2008, p. 425). The idea is to develop and perform practices that involve the client as an informed and respected participant in their own life (Gambrill, 2008; Topor, 2001). The American and the Norwegian Psychological Association (APA, NPF) defines evidence-based practice in psychology (EBPP) as "(...) the integration of the best available research with clinical expertise in the context of patient characteristics, culture, and preferences." (APA, 2021; NPF, 2007). Ekeland et al. (2019) refers to Gambrill's point in arguing that EBP offers the potential to develop practice in a sustainable manner that can include ethical considerations, enhance social and economic justice and empower clients in decision-making.

As an example of how EBP has gained prominence in the discourse about Norwegian social services, in the Competence strategy for municipal CWS (2018-2024) developed by the Ministry of Children and Families (2017), the Minister calls for preventive and knowledge-based work in municipal CWS (2017, p. 5). The strategy is developed to upgrade skills in municipal CWS work. For this task, the Ministry demands research, on children's needs, and knowledge on effective help. Together with a collaboration between different welfare sectors, individual child adjusted actions, and child participation, these represents the Ministry's main areas of concern to enhance the quality of municipal CWS (Ministry of Children and Families, 2017, p. 9).

At the same time, research points to challenges experienced by social workers, such as time management, accessibility of research, and misperceptions

of the role of evidence in decision making processes (Scurlock-Evans & Upton, 2015). Finne (2020), found, based on qualitative interviews with 30 Norwegian social workers¹⁹, that they were generally positive towards EBP in the way that research can provide important information to make informed decisions in practice, and that theories and research can provide help in developing general guidelines when making decisions in a specific client case (Finne, 2020, p. 158-159). At the same time, social workers participating in Finne's study (2020) had some concerns related to EBP having a negative impact on the relation between social worker and client, EBP being time consuming, and a top-down implementation approach of EBP. Restrictions on social workers' autonomy in decision-making processes, and EBP research models not always being appropriate for the client/family's needs (Finne, 2020, p. 158). Finne (2020) continues by pointing out how his informants were confused about what EBP is, and in what ways EBP might be implemented in meetings with clients (Finne, 2020, p. 158-159). In Finne's article from 2023, he accounts for two approaches of EBP; 'the critical appraisal approach' and 'the guideline approach'. Where the critical appraisal approach places the responsibility on the social worker to critical evaluate and implement relevant research in their meeting with the client, the guideline approach emphasize the value of experts developing general guidelines, based on research and expert knowledge (Finne, 2023, p. 8).

Munro and Hardie (2019) refer to the definition of EBP made by Sackett and Gambrill and points to;

“(...) a growing trend to define ‘evidence-based practise’ as practice that uses an evaluated method of intervention instead of its original meaning in evidence-based medicine and evidence based social work where it referred to a practitioner drawing upon the best evidence from research as well as their clinical expertise and the user's preferences in deciding what to do, namely making an expert judgement.” (Munro and Hardie, 2019, p. 412-413).

In this article, the authors discuss the perspectives of objectivity and subjectivity for social workers when in contact with people in need of their help. Arguing that objectivity, which traditionally has been understood as something to aspire towards, has acquired so many meanings that it obscures more than it illuminates

¹⁹ From which 16 were social workers from CWS.

the essence of what is at stake in a child welfare case. On the one hand, objectivity is the preferred position of social workers to have, especially when writing up their work to be potentially considered by an independent body such as a court. In such documents, the social worker is expected to be objective and to remove all traces of the worker's subjective interpretations and observations of the family (Munro & Hardie, 2019, p. 412). On the other hand, social workers are expected to be empathic and use their imagination to place themselves in the situation of the child, the parents, and the wider family. Being able to do so plays an important part in developing the necessary understanding for further decision-making in CWS cases, which is also the situation in CWS practice as studies have reported (Munro & Hardie, 2019, p. 412).

The ideal of removing all subjective elements of practice suggests that these are seen as inferior to or interfering with objective knowledge. According to Munro and Hardie (2019), in policy reforms and practice guidelines for professionals, there has been a trend towards reducing the autonomy of social workers to minimize the impact of subjective opinion and reasoning (Munro & Hardie, 2019, p. 412). A possible motivation for this trend is to increase the transparency and consistency of reasoning in complex CWS decisions (Munro & Hardie, 2019, p. 416). Munro and Hardie (2019) points to three possible challenges: using empirical research as the only source of evidence; the problem of dissent; and the role of the personal (Munro & Hardie, 2019). First, research in both natural and social sciences extracts few, absolute truths applicable to all human beings, and in every situation. The complexity rather than universal laws seems to be the case for both disciplines. By referring to research one could say that arguments without research reasoning – are unreasonable (Munro & Harie, 2019, p. 419). Witch could be problematic in CWS cases where the context of the case and/or other relevant information about the service user implicates that one should act contrary to what research, assessment lists, or reforms indicates. According to Munro and Hardie (2019, p. 415), it is common that social workers and service users disagree when it comes to child parenting. In Norway, some scholars point to disagreement between social workers and service users related amongst others to the perception of the child's situation, different understanding of the child's best interest, and thereby the decisions made by the CWS (Storhaug et al. 2020, p. 14, 173; Berg et al. 2017, p. 93-94, 116; Aarset & Bredal, 2018, p. 77-78, 150, 178). Munro and Hardie (2019) warns against a situation where helping professions are reduced to a set of rules (2019, p. 421).

They do so by discussing the example of timescales for completing assessments in CWS, where they underscore that for one child, the timescale might be too long because of the safety of the child while for another child, the complexity of the case calls for longer time to make a satisfactory assessment. In these and other situations in the CWS, a judgement is needed when deciding on how to apply the principle of timeliness.

Munro and Hardie (2019) and Pedersen and Nortvedt (2020, p. 42) highlights that analytical skills might improve our understanding, but these skills cannot replace personal skills as showing empathy by for example exercising moral sensitivity. Nor can analytical skills replace an intuition of what is at stake for the person in need of professional help. Nortvedt (2021, p. 93) defines ‘moral sensitivity’ as the capacity to perceive and recognize morally relevant elements of a situation or an event²⁰. According to Nortvedt (2021, p. 94) being morally sensitive is a complex skill including cognitive, experience-based, and emotional elements, and skill human beings are more or less predisposed to have based on personal life-experiences and character traits. Magelssen and Pedersen (2020, p. 23) highlights how showing that you care for others and provide care for people close to you might not only contribute to personal growth, but also to develop the skill of being morally sensitive and empathic. Although these texts are written within the discipline of health science, the thoughts and insights might also have relevance for social sciences.

²⁰ The author’s translation from Norwegian.

1.6 United Nations' Sustainable Development Goals

Figure 1. Study context for the development of Evidence-based practice in child welfare services, with reference to the United Nations' Sustainable Development Goals



According to Engebretsen et al. (2019), sustainability, in the form of the United Nations' (UN) 17 Sustainable Development Goals (SDG), is rarely considered when developing best practices in health services, even though the SDGs give all parties an obligation to develop society in a way that is economically, socially and environmentally sustainable (Engebretsen et al., 2019; United Nations General Assembly, 2015). Because of this obligation, Engebretsen et al. (2019) argue that the SDGs should be included as a fourth dimension when developing guidelines for best practice in the context and evidence-based practice.

In child welfare, Hämäläinen et al. (2020) argues that developments within a child and family welfare services context have not been prioritised from a sustainability perspective. In their article, they provide a framework for making sustainable decisions in these services, leaning on the concept of children's rights and state commitment to promote all children's wellbeing (Hämäläinen et al, 2020). They highlight that a definition of the concept sustainability seems to have no clear consensus (Hämäläinen et al., 2020), which is supported by Hofstad and

Bergsli (2017, p. 35). Yet, the concept might include, according to Hämäläinen et al., (2020, p. 2), promoting participation, prevention of poverty, inclusion, cultural identity, institutional stability, and social cohesion. Goals achievable, they argue, in a society by means of social policy and operationalization of human rights. Hofstad and Bergsli (2017), defines sustainability as to have basic human needs met, being able to reach our fullest human potential, equal access to goods and resources, social cohesion, place belonging, participation, and health-promoting functional local communities (Hofstad & Bergsli, 2017, p. 35). The definitions used by these scholars lean on the Brundtland Commission, who commissioned by the United Nations, wrote the report *Our Common Future* (1987). This Commission introduced the concept of sustainability for the first time in 1987 (Hofstad & Bergsli, 2017, p. 6). According to the Brundtland Commission, “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (United Nations, 1987, p. 54). Pointing out two essential concepts – ‘needs’ and ‘the idea of limitations imposed by the state on the environment’s ability to meet present and future needs’ (United Nations, 1987, p. 54). The commission’s focus areas are: the environment, economy, and social conditions, and how these shape and influence human development today and in the future (United Nations, 1987). The UN goals for sustainability has coherence in Nussbaum’s Capabilities Approach, in the way that the CA might be promising in justifying state commitments to the SDGs (Nussbaum, 2000, 2006; Dixon & Nussbaum, 2012; Robeyns, 2017, p. 9, 17, 159).

1.7 Aim of this doctoral work

The overall aim of the doctoral work presented in this synopsis is to explore, analyse and discuss if and in what way Nussbaum’s capabilities, as developed as a part of the Capabilities Approach (Nussbaum, 2000, 2006, 2011), can supplement a child’s best-interest evaluation in which the child’s right to be heard is considered essential. It is a study of how the Capabilities Approach can strengthen the understanding of the child’s best interests, in which the child’s right to be heard has been studied empirically. The focus is on cases where the Norwegian child welfare services (CWS) have considered that children and young people are in need of CWS help, where their right to be heard is a central part of their best interest assessment. In this work the EBP, have been used both

as a frame to underscore the importance of child participation to gain insight in the child's characteristics and preferences. In addition, the EBP being a part of Norwegian CWS practice, the findings from this Ph.D. work, might inform practices on this regard after thorough translation into a Norwegian CWS context.

This includes if and in what way(s) children and young people have experienced being heard and participating in decisions concerning their own well-being in their encounters with public authorities in the national and international child welfare context.

The aims of the three articles, with an ambition to answer the overall aim of this Ph.D. work, were as follows:

1. The first article had a clear research question due to the method used: What are the experiences of children and youth in contact with CWS with respect to being heard and to participating in decisions concerning their own well-being? The aim of this article was to synthesise existing research on children and young people's experiences of being heard in a CWS context.
2. The second article had three main aims: (1) to describe young people's experiences of being heard and participating in CWS cases affecting them; (2) to explore how these experiences affected their lives; and (3) to reflect upon their experiences in light of Nussbaum's CA (Nussbaum, 2000, 2006, 2011) and theories of child participation (Hart, 1992; Skivenes & Strandbu, 2006).
3. The third article presents a discussion aimed at how the CA could be used as a guideline to supplement already acknowledged sources of law to provide a more comprehensive basis for decision-making on what a child's best interests imply in the child's life situation.

1.8 An interdisciplinary doctoral work of child welfare services practice.

This work is theoretically anchored within the discipline of political science and empirically within the disciplines of health and law. These disciplines interact as the ways we choose to structure society within the frames of democracy are determinants of people's lives, people's health and their opportunities to experience well-being in both the private and public spheres. As such, the study bears traces of neo-Aristotelian thinking. Aristotle is known for his empirical approach and his emphasis on the study of nature, ethics, and politics. His work *Politics* explores various forms of government and the conditions for a well-ordered society, discussing the ties between governance, public policy, and the promotion of human flourishing (Nussbaum, 2001, pp. 336-337, 346-349). Further, it is a study of how a selected political theory by Nussbaum can supplement law, and not a study of sources of law, which has implications for the thoroughness of the legal discussions contained within.

Necessarily, laws change over time as knowledge and the available resources for redistribution change. In Norway, the development of laws connected to welfare legislation after the Second World War might be seen as a result of both changes in what is considered to facilitate human flourishing, development of good health, and increased gross domestic product.

As mentioned earlier, the theoretical frame for this work is the CA, as developed and presented by Nussbaum (1997, 2000, 2006, 2011) and Rosalind Dixon and Nussbaum (Dixon & Nussbaum, 2012). The CA has been linked to the notion of universal human rights by Nussbaum (1997), who asks for the approach to be seen as the equivalent to rights and as a response to governmental claims to promote and protect human dignity and human flourishing (Nussbaum, 1997, p. 293; 2006, p. 182). In this way, the CA might inform knowledge-based practice and the UN's 17 SDGs. The ten capabilities are closely linked to human rights and the SDGs, in their focus on and combination of economic development, environmental sustainability and social inclusion (Biggeri et al. 2019, p. 630; Hirai et al. 2021). A conceptual theorization of human rights for children might, according to Dixon and Nussbaum (2012), provide a fuller justification of such rights (2012, p. 549).

Implementing the capabilities approach in the context of Norwegian child welfare would require a significant amount of work. This would involve

translating the ten capabilities developed by Nussbaum (2000, 2006, 2011) into Norwegian and contextualizing the CA to fit the Norwegian child welfare system.

2. Children's Human Rights

The draft of the Convention on the Rights of the Child was completed at the UN in 1989. The convention has since received much attention worldwide and has been signed and ratified by all UN member states except for the United States, who have only signed but not ratified it (Bendiksen & Haugli, 2021, p. 43; Freeman, 2017, p. 151; United Nations, 2023, Treaty Collection, Chapter IV, sect. 11). According to Köhler-Olsen (2019b, p. 36) and NIM (2020b, p. 8), there exists nine 'core conventions' within human rights:

- The International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- The International Covenant on Economic, Social and Cultural Rights (1966)
- The International Covenant on Civil and Political Rights (1966)
- The Convention on the Elimination of All Forms of Discrimination against Women (1979)
- The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- The Convention on the Rights of the Child (1989)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families²¹ (1990)
- The Convention on the Rights of Persons with Disabilities (2006)
- The Convention for the Protection of All Persons from Enforced Disappearance (2006)

The CRC applies for children only, giving them a legal claim of being independent rightsholders (Høstmælingen et al. 2016). In Norway the claim to have human rights respected is protected by *The Constitution* (1814/2014, § 92). A claim which for children is further protected in *The Constitution* § 104. In cases of conflict with other formal laws, the CRC has precedence (The Human Rights Act, 1999, §3 and §2). According to Aasen (2015), the constitutional amendment of §104 strengthened children's position as independent legal subjects such that in addition to having a legal claim for protection against all

²¹ As of January 8th 2024, Norway is not party to this convention.

forms of maltreatment, they are considered individuals with legal rights on their own.

Pedersen (2019, p. 22) refers to Eglantyne Jebb²² and her first draft of the declaration of children`s rights in 1922, as the first of its kind. This draft, according to Kerber-Ganse (2015, p. 272), evolved due to the experiences she had on establishing and leading the organisation Save the Children International Union in 1920. According to Kerber-Ganse (2015, p. 277) Jebb found that charity is not enough to ensure safety and necessary welfare for all children and came to the conclusion that a strong state is necessary so that no child is left behind. The five-point *Declaration of Geneva on the Rights of the Child* was agreed upon by the League of Nations in 1924, who in the preface declares “(...) that mankind owes to the child the best it has to give, (...)” (Pedersen, 2019, p. 23; Kerber-Ganse, 2015, p. 277). This declaration yielded, according to Pedersen (2019, p. 24) two main principles; *welfare* for children as access to food-, materiel- and spiritual help and necessary aid to children who were sick and living on their own. The other principle was *protection*, in cases of emergency and from all forms of exploitation. The understanding and development of a new and third principle, where children enter the subject role in rights took time (Pedersen, 2019, p. 24). This third principle could be linked to Janusz Korczak (1878-1942) and his work on giving children the right to participation and co-determination evolved during the 1930s, until he ended his life in the concentration camp Treblinka in 1942, together with children living at the orphanage he was leading (Pedersen, 2019, p. 27). Korczak`s writings became publicly available in English translation in 1967, and formed according to Pedersen (2019, p. 28) an important base for Poland`s revised proposal of the CRC in 1979, in article seven. Pedersen (2019, p. 27-33) refers to some of the issues the working group discussed, where some of the members argued that a person above the age of 15 should be considered an adult, others were of the opinion that 18 should be the age limit. He also mentions particularly long-lasting discussions related to the right to be heard and the right to freedom of speech (Article 12 and 13 of the CRC).

²² Eglantyne Jebb (1876-1928) was the founder of Save the Children International Union in 1920 (Kerber-Ganse, 2015, p. 272).

2.1 The concept of ‘child’

The working group of the Convention on the Rights of the Child had disagreements regarding when a person should be considered an adult. However, they came to agree that the CRC applies to a person under the age of 18 years (Pedersen, 2019, 30). Despite the CRC’s classification of a person under the age of 18 as a child, the social norms forming and guiding people’s understanding of children and childhood differs across cultures (Nilsen, 2021, p. 189). Central in an understanding of childhood as a sociological process, is that the child gradually, based on internalization of societal norms and values, becomes capable of taking an autonomous and independent role in society (Nilsen, 2021, p. 189). Nilsen (2021, p. 190), points to the latest turn in the debate on children’s role in society, as focusing on the child’s competence and agency. A role which implicates an understanding of children as not only ‘human becomings’ but also ‘human beings’. This turn in the debate was elaborated on by Pösö et al. (2014, p. 485), as they point out that child-oriented policy programs approach children both as present children and future adults. Pösö et al. (2014, p. 485) finds the distinction important as it gives the state somewhat different normative and moral implications for policy practice, addressing children’s needs directly towards them, and not as earlier, indirectly through their parents.

Schrøder (2021, p. 85) elaborates on the concept child, childhood, and youth, building on an understanding of these as socially constructed. She problematizes the idea that there exist clear shifts in understandings of child, childhood and youth, as different understandings exist at the same time (Schrøder, p. 85). According to Schrøder (2021, p. 85), youth are in some contexts understood differently from children as the years of youth can be limited by time to a specific period in human life. According to Sigurdson (2019, p. 32), being a child involves fundamental changes – from the time of birth with complete dependency on adults to the age of 18 being considered an independent and self-sufficient person. Schrøder (2021, p. 98) argues that youth understood as a specific and limited time in life has expanded due to societal changes in for example education, work, and family functioning. At the same time, Nielsen (2021, p. 192), points to that childhood today has been shortened as the time of adolescence starts earlier due to children’s educational career.

Nilsen (2021, p. 189) highlights that children form a relatively powerful group in Norway, often listened to and respected in policymaking. Children, she

says, “(...) can easily be distinguished from adults based on criteria such as physical appearance and behaviour.” (Nilsen, 2021, p. 189).

2.2 A child-centred society

Norway is, according to Nilsen (2021, p. 188), often presented as a ‘particularly child-friendly country’. As one of the Nordic welfare states, policy includes comprehensive and universal welfare benefits, with generous public care services towards children and families (Nielsen, 2021, p. 192). According to Skivenes (2011, p. 171), a child-centric society could be understood as focusing on three different aspects; children’s rights and organizational procedures; recognition of children as individuals with specific need and interests in meetings with adults; and including the perspective of children when interpreting the world on their behalf. Pösö et al. (2014), describes a child-centric orientation in countries as “(...) valuing children`s needs, rights and voice (...). (2014, p. 487). Hennem (2014, p. 442), building on Skivenes’ description of child-centric, says that it is “(...) giving children a claim on the state to protect their interests and to provide them with what is usually named “a good or decent childhood” or “well-being”. Further, she argues that even though no states today qualify as being fully child-centred, a majority pursue social policies favouring children. These policies, might be characterized as to emphasise individual rights and scientific knowledge, contributing to an improvement of the living conditions of many children (Hennem, 2014, p. 442). Examining some of the downsides of a child-centred praxis in Norway, Hennem (2014, p. 442) discuss possible pitfalls which might occur. One²³ of the possible pitfalls she points to is related to what she defines as an ‘instrumentalization of parents’ whose only purpose towards their children is to provide for them a good childhood (2014, p. 452). Hennem (2014, p. 450) links her argument on this pitfall to professionals setting the standards of what is to be considered a ‘good childhood’, especially as expert- and scientifically based knowledge on children’s legal rights and developmental

²³ Other pitfalls pointed out by Hennem (2014) are related to; (2) professional’s ‘use’ of children in their career as well as constructing and producing a certain kind of knowledge on children; (3) narrowing and building reality based on one type of understanding on children, excluding others; and (4) making children responsible of their own case as providers of knowledge about themselves and their parents, and by that giving them, as Hennem (2014, p. 453) describes, “a moral burden of moral communication”.

psychology is a powerful tool in dialogues between parents and the social worker.

Hennum and Amodt (2023), examined this further, looking into the idea of ‘transforming children into productive citizens’ and hence the responsibilities and role of the parents’ and of the state, in contributing to this transformation. Hennum and Aamodt (2023) argue that the practice of communicating and regulating parents’ total responsibility towards their children by the use of law, is double-edged. On the one hand parental responsibility towards their children is comprehensive, on the other hand Hennum and Aamodt (2023, p. 12) argues that parental responsibility within the neoliberal state and its institutions is limited. Limitations framed by what state institutions finds adequate and appropriate. The most powerful institution in this regard, is according to Hennum and Aamodt (2023, p. 12) represented by child welfare services.

2.2 The Convention on the rights of the Child in Norway

Ratifying states have an obligation to provide periodic reports to the Committee on the Rights of the Child every five years on their implementation and operationalization of the CRC (Smith, 2020, p. 24). In pre-sessions, the Committee holds closed meetings with non-governmental organizations, institutions and delegations, such as UNICEF, the UN High Commissioner for Refugees and volunteer organizations together with a children’s delegation, the Children’s Ombudsperson and national institutions for human rights (if such institutions are established). In this pre-session these parties share their views on children’s situation in the relevant state. Based on the information given in these meetings and the reports sent in by the state, the Committee (consisting of 18 expert members) initiates an official dialogue with the state, whereupon the Committee gives concluding comments (Smith, 2020, p. 24). According to Smith (2020, p. 25), the purpose of the Committee is to contribute to a constructive and productive dialogue with ratifying states on how to improve the situation for children in the state by operationalizing the articles of the CRC. In Norway, the Ombudsperson for Children (Barneombudet) has a special obligation to provide information on the CRC and ensure that legal and public administration proceeds in accordance with Norway’s responsibilities according to the CRC (The Ombudsperson for Children Act, 1981).

The last time the Committee on the Rights of the Child observed and analysed the situation of children in Norway in light of the CRC was in 2018. Based on their findings, they made recommendations in several areas. Given the aims of this doctoral work, I focus here on the Committee's recommendations regarding the best interests of the child and the child's right to be heard.

On the best interests of the child, Norway was recommended to

- a) Establish clear criteria regarding the best interests of the child for all authorities that take decisions affecting children;
- b) Ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions, as well as in all policies, programmes, projects and international cooperation relevant to and having an impact on children.

(Committee on the Rights of the Child, 2018, sect. 13)

Recommendation (a) points to the importance of establishing criteria for evaluating a child's best interests.

With respect to the views of the child, Norway was recommended to

- a) Increase its efforts to strengthen compliance in practice with the child's right to be heard, in particular with regard to children who are more vulnerable to exclusion in this regard, such as children with disabilities, children of a younger age and migrants, asylum-seeking and refugee children;
- b) Ensure that relevant professionals are regularly trained on implementing an age-appropriate, meaningful and empowered participation of children in decisions affecting their lives and sensitizing parents to the positive impact of respecting the views of their children;
- c) Strengthen the implementation of the child's right to be heard in asylum and expulsion procedures affecting children, particularly with respect to younger children, and ensure that children are given possibilities to be heard individually in all instances and in all cases affecting them;

- d) Ensure that children are informed about the possibility of participating in mediation process in the context of their parents' separation;
- e) Increase its efforts to ensure the meaningful participation of children in youth councils or other forms accessible to all children in all municipalities, address disparities in this regard and consider requiring each municipality to make participation in such forms or other types of participative bodies available to children.

(Committee on the Rights of the Child, 2018, sect. 13)

These recommendations should, according to the Committee on the rights of the Child (2018, section E) be seen in relation to the Committee's remarks on children who are separated from their families by child welfare services, on which the Committee (2018) observed that out-of-home placement may not have always been in the best interests of the child.

On the principle of the right to be heard, the Committee expressed the opinion that Norway's practice is to a large extent in line with the principle articulated in the CRC Art. 12. This being said, they recommended that necessary procedures be put in place to strengthen this right for children who have disabilities or are very young and for migrant, asylum-seeking and refugee children (Committee on the Rights of the Child, 2018, sect. 14).

When considering children's human rights, it is relevant to ask what legal procedural rights they have if and when they experience a violation of their rights. On this point the Committee recommended that Norway ratifies the Optional Protocol to the CRC, covering a communication procedure (Committee on the Rights of the Child, 2018, sect. I.). As of January 8th 2024, Norway had not signed or ratified this optional protocol (United Nations, 2024, Treaty Collection, Chapter IV, sect. 11.d). This is, according to Bendiksen and Haugli (2021), unfortunate when considering the possible improvement such a ratification could have in strengthening children's legal protection when they experience a violation of their human rights by the state.

2.3 The best interests of the child

2.3.1 The meaning of “best interests” in the Convention on the Rights of the Child

The concept of ‘the child’s best interests’ lies at the core of the Convention on the Rights of the Child. This is a concept that has been subject to debate, not least when it comes to negotiating the relationship between parents’ and the state’s responsibilities and obligations (Hennum & Aamodt, 2023; Churchill, 2011). By the act of signing and ratifying the CRC, parties of the convention recognize that all children have a right to life, development and care (Bendiksen & Haugli, 2021, p. 187).

The state’s obligation to act ‘in the best interests of the child’ is formulated in the CRC, Art. 3, and reads as follows²⁴;

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties²⁵ undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

²⁴ This English translation is available at Lovdata Pro, where this text is taken from.

²⁵ The concept ‘State Parties’, in this context, refers to the states who have committed themselves to the convention.

In *The Constitution*²⁶ (1814/2014) of Norway, ‘the best interests of the child’ is formulated in § 104, paragraph 2, and reads as follows:

For actions and decisions that affect children, the best interests of the child shall be a fundamental consideration.²⁷

In the child welfare act (2021), ‘the best interests of the child’ is formulated in § 1–3, saying that:

In the case of actions and decisions affecting children, the child’s best interest must be a fundamental consideration. The Child Welfare Services’ measures shall be in the interests of the child. What is in the child’s best interests must be decided after a concrete assessment. The child’s opinion is a central factor in the assessment of the child’s best interests²⁸.

The responsibility for parents to act ‘in the best interests of the child’ is formulated in the *Children Act* (1981), § 30 paragraph 1, last section, and reads as follows:

Parental responsibility shall be exercised on the basis of the child’s interests and needs.^{29, 30}

When the Committee made its General Comment on “the right of the child to have his or her best interests taken as a primary consideration”, they made it clear that the concept has three aspects: a material right, a principle of interpretation and a procedural rule (Sandberg, 2016, p. 57; Committee on the Rights of the Child no 14 Art. 3, 2013, chap. 6). The UN Committee on the Rights of the Child emphasizes that the principle of the child’s best interests constitutes the convention, meaning that all other articles are to be interpreted with this in mind

²⁶ The representative government in Norway is based on the Parliament’s power being anchored in the *Constitution*. The *Constitution* is based on Charles Montesquieu (1689-1755) and his principle of separation of power, saying that legislative-, executive-, and judicial power should not be given to one person or organ (Thorsvik, 2021, p. 31).

²⁷ This translation into English is available at Lovdata Pro.

²⁸ The author’s translation from Norwegian.

²⁹ The author’s translation from Norwegian.

³⁰ These are the acts and conventions that are most relevant for this doctoral work. The best interests of the child is also mentioned in the *Education Act* (under revision) (1998), the *Patient and User Rights Act* (1999) and the *Health Personnel Act* (1999), among others.

(Committee on the Rights of the Child no 14 Art. 3, 2013). According to Bahus (2021, p. 35), legal practice in Norway indicates that General Comments made by the Committee on the Rights of the Child to the CRC are to have considerable weight when interpreting CRC articles (Bahus, 2021, p. 35).

Table 1, shows the Committee on the Rights of the Child’s General Comment on seven elements to evaluate for CRC Art. 3, related to the best interests of the child (2013, pp. 12-15). The seven elements mentioned by the Committee on the Rights of the Child in 2013 are listed in a non-exhaustive and non-hierarchical way (2013).

Table 1. Committee on the Rights of the Child’s General Comment 14 (2013, pp. 12–15) on seven elements to evaluate for CRC Art. 3

The child’s views (sect. 53–54)	<p>Children are to express their views in all decisions affecting them.</p> <p>The fact that the child is very young or vulnerable is not an argument for this right to be deprived.</p>
The child’s identity (sect. 55–57)	<p>As children and young people have different needs and expressions, diversity must be respected and accounted for in best-interest assessments.</p> <p>In cases of, for example, foster homes or adoption, desirability for continuity of up-bringing, ethnicity, religion, language and culture, information about their biological family and other related issues must be given attention and consideration; that is, where the practices and traditions are not contrary to the CRC.</p>
Preservation of the family environment and maintaining relations (sect. 58–70)	<p>The Committee acknowledge that the elements of this list are also rights to be carried out for the child’s best interests.</p> <p>The concept of family should be interpreted in a broad sense, including biological family, foster or adoptive family, and the extended family.</p> <p>Preventing family separation and preserving the family is an important task for society up to the point where this is no longer in the child’s best interests.</p> <p>Less intrusive measures than separation should be tried before separation where, based on qualified assessment, separation is considered to be in the child’s best interests.</p> <p>Separation cannot be justified by economic reasons or poverty</p> <p>The alternative care for the child must be delivered respecting the rights of the child and the child’s best interests.</p> <p>Disability of either the child or parents is no reason for separation, unless necessary assistance is not effective enough to avoid neglect, abandonment or leaves the child’s safety in danger.</p>

	<p>Personal and strong relations of the child to the family or friends must be given opportunities to continue, unless it is contrary to the child's best interests.</p> <p>In cases of migration or reunification, preservation of the family should be considered when deciding on the child's best interests.</p> <p>Although shared parental responsibility is generally to be preferred, the only criterion shall be what is in the child's best interests.</p> <p>In cases where a parent or caregiver commits an offence, alternatives to detention should be made available on a case-by-case basis, considering the likely impacts of sentences on the best interests of the affected child.</p> <p>The preservation of the extended family environment applies to grandparents and uncles/aunts but also to friends, school and the wider environment.</p>
Care, protection and safety of the child (sect. 71– 74)	<p>When considering care, protection and safety, the Committee refers to the well-being and development of the child or children in general and in a broad sense, including their basic material, physical, educational and emotional needs as well as their needs for affection and safety.</p> <p>Emotional care is an important and basic need for children, especially in the very early years of life. If secure and stable attachment is not provided for the child during these years, necessary action must be taken to provide this.</p> <p>Deciding on and assessing the child's best interests must include an evaluation of safety. This includes protection from all forms of physical and mental violence, injury or abuse, sexual harassment, peer pressure, bullying and degrading treatment. It also includes protection against sexual, economic and other types of exploitation, drugs, labour and armed conflict.</p> <p>The assessment of best interests applies first to the present situation of the child but is not to exclude future consequences and risks for the child's safety, under the precautionary principle.</p>
Situation of vulnerability (sect. 75–76)	<p>A child's situation of vulnerability can arise from disability, being a victim of abuse, belonging to a minority group or being a refugee or asylum seeker. When assessing the best interests of vulnerable children, other human rights norms and conventions supplement the CRC, such as the Convention on the Rights of Persons with Disabilities and the Convention Relating to the Status of Refugees.</p> <p>There are different kinds and degrees of vulnerabilities. As each child is unique, so all children should be treated according to their uniqueness and not assumed to have the same difficulties as other children in a similar vulnerable situation.</p>
The child's right to health (sect. 77–78)	<p>The child's right to health and the child's health condition are important factors to consider when assessing best interests, for which there should be a weighting of possible outcomes, risks, side effects and alternative treatments. Based on the child's maturity, the child should be given adequate and appropriate information to form an opinion on and, to the extent possible, give informed consent to, medical treatment.</p> <p>The state has an obligation to provide for adolescents adequate information on such health issues as the use and abuse of tobacco and other drugs, diet, sexual and reproductive information, and transmittable diseases. Adolescents with a psycho-social disorder have the</p>

	right to be treated and cared for in the community to the extent possible. If hospitalization or residential institutionalization is considered necessary, a best-interest assessment must be first made with respect to the child or adolescent's views.
The child's right to education (sect. 79)	To ensure and provide children with quality education is in their best interests and is an investment in their future and opportunities for joyful activities, participation and the fulfilment of ambitions.

The elements could, according to the Committee (2013, section 50.), be useful in a best-interest assessment. Each of the elements that the Committee mentions is further described by them in their comment to CRC Art. 3 (2013, pp. 12-15). The Committee emphasizes that a national guiding list for best-interest assessment and determination should provide concrete guidance based on the mentioned recommendations, while still offering flexibility to the child's unique situation and the practice of professional discretion (2013, section 51.).

2.3.2 Best-interest assessments in Norway

In 2015 the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) initiated and published a public tender for a research project on child welfare investigations (Vis et al., 2020). A collaboration of four different research groups, led by Svein A. ³¹Vis, was awarded the tender. Their work, with the title *Child Welfare Investigation Work – From Concern to Decision*, was presented in five sub studies, including one providing an overall summary and recommendations (Vis et al., 2020). The task was to obtain scientific insight and knowledge of how the child welfare services make evaluations and decisions in child welfare cases. The purpose of the public tender was to contribute to a qualitative improvement of child welfare work, both nationally and internationally (Vis et al., 2020). This included an evaluation of the Kvello assessment framework, as this is the framework most commonly used by Norwegian CWS workers (with 58% reported to use parts or all of it; (Lauritzen, Vis, Havnen, & Fossum, 2017; Vis et al., 2020, p. 15).

Unlike many other countries as Denmark, Sweden, UK, Australia, US Norway has not implemented a national assessment framework to be used in child welfare cases (Havnen et al., 2021; Kane, 2016; Samsonsen, 2016; Samsonsen & Turney, 2017). According to Kane, (2016), not having a national assessment framework might increase the room for professional discretion and decreases the room for the operation of the principle of equal treatment. This argument is supported by Bendiksen and Haugli (2021, p. 56), and Samsonsen and Turney (2017, p. 113). Graver (2019, p. 120), argues that the principle of equality is strong in public administrative law in Norway, anchored at an

³¹ The author's translation into English from 'Barnevernets undersøkelsesarbeid – fra bekymring til beslutning'.

overarching level in *The Constitution* §98. Bendiksen and Haugli (2021, p. 56) support this argumentation saying that the principle of equality applies both to children and parents in the way that they are equal before the law.

Establishing clear criteria for child's best-interest assessments to be used by all authorities that take decisions affecting children, was recommended by the Committee on the Rights of the Child in 2018 (Committee on Children's Rights Art. 3, 2013; Committee on the Rights of the Child, 2018, sect. B. 13. a; Committee on the Rights of the Child no. 12 Art. 12, 2009).

2.4 The rights to be heard and to participate

2.4.1 Children's right to be heard

The right to free speech and to express one's opinion is an essential aspect of democracy (Thorsvik, 2021, pp. 268-270). The concept of children's right to be heard exists in both national and international legislation. In the Convention on the Rights of the Child it is formulated in Article 12:

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 law³².

In *The Constitution* (1814), the child's right to be heard is formulated in the first paragraph of § 104:

Children have the right to respect for their human dignity. They have the right to be heard in questions that concern them, and due weight shall be attached to their views in accordance with their age and development³³.

³² This English translation is available at Lovdata Pro, where this text is taken from.

³³ This English translation is available at Lovdata Pro, where this text is taken from

In the child welfare act (2021), the right of the child to participation is formulated in § 1-4:

A child who is capable of forming opinions has the right to participate in all matters concerning the child, regulated by this law. Children have the right to communicate with the child welfare services regardless of their parents' consent and without the parents being informed about the conversations in advance. The child must receive adequate and age-appropriate information and has the right to express opinions freely. The child must be listened to and the child's opinion shall be given due weight according to the child's age and maturity.

Children must be informed about what the information they give can be used for and who can access this information. The child has the right to speak before it is decided that the information is to be shared, and the child's opinion shall be given due weight according to the child's age and maturity.

A child can be given the opportunity to bring a person in meetings with the child welfare services, in whom the child has particular trust. The trusted person may be subject to a duty of confidentiality.

The Ministry can issue regulations on participation and on the trustee's duties and function.³⁴

Parents or other legal guardian(s) of the child is obliged, according to the children act (1981) § 31, to respect the child's right to co-determination³⁵ in decisions as follows:

As and when the child becomes able to form its own point of view on matters that concern it, the parents shall consider the child's opinion before making a decision on the child's personal situation. Importance shall be attached to the opinion of the child according to his or her age and maturity. The same applies to other persons with custody of the child or who are involved with the child.

A child who has reached the age of seven and younger children who are able to form their own points of view must be provided with information and opportunities to express their opinions before decisions are taken concerning personal matters affecting the child, including parental responsibility, custody and access. The opinions of the child shall be given

³⁴ Author's translation from Norwegian.

³⁵ This concept is used in the English version of the Child Act (1981, § 31).

weight according to his or her age and maturity. When the child has reached the age of 12, the child's opinion shall carry significant weight.

In the previous child welfare act (1992, § 6-3), children above the age of 7, and younger children capable of forming a view, had an unconditional procedural right to information, enabling them to form a view and to express this view freely in cases affecting them. The new law regulating this issue, has abandoned the age limit of 7 years and points out and repeats the obligation for child welfare service decisions to inform what the child's views are and how these views are weighted (Child Welfare Act, 2021, § 12-5). According to Bendiksen and Haugli (2021, p. 218) this might improve children's procedural rights in Norwegian CWS, at the same time they warn against a situation in practice where the child is left with responsibility for the decision. Despite the legal responsibility and obligation of the decision being on the public authorities to make the decision (Child Welfare Act, 2021, §§15-1, 15-2).

In 2009, the Committee on the Rights of the Child made a General Comment on "the right of the child to be heard" (2009). In this comment, they make it clear that the right to be heard is a right for every child to freely express their view in all matters affecting them. At the same time, the child has no obligation to exercise this right (2009, p. 5). In the General Comment, the Committee (2009, pp. 8-9) lists and explains five steps for the effective realization of the right to be heard. In Table 2, the relevant comments from the Committee with the same textual content and amount is listed.

According to the Committee, the right to be heard is inextricably linked to CRC Art. 3 on the child's best interests, such that the child's views are essential when assessing the best interests of a child (Committee on the Rights of the Child no. 14, Art. 3, 2013, sect. 43).

Table 2. General Comments on five steps for the effective realization of CRC Art. 12

Preparation (sect. 41)	<p>The child must be informed on children's right to express their views, and on the impact the views will have on the decision to be made.</p> <p>The child must be given information on the opportunity to give their views themselves or through a representative, including information on possible consequences of this choice.</p> <p>On the hearing, the child must be given relevant information on how, when and where the session will take place, and who will be present, and the child's views on these accounts must be considered (2009, p. 8).</p>
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The hearing (sect. 42–43.)	<p>The context of where the child is to give their views on matters affecting them is not irrelevant. The situation must be encouraging, enabling the child to share information.</p> <p>Experience indicates that the hearing should take the form of a confidential conversation rather than a one-way examination (2009, p. 8).</p>
Assessment of the capacity of the child (sect. 44)	<p>The Committee recommends that good ways of assessing the child’s capacity are developed. At the same time, if the child’s views are expressed in a reasonable and independent manner, these views should be considered as significant factors in determining a decision (2009, p. 8).</p>
Information about the weight given to the views of the child (feedback) (sect. 45)	<p>Due to children’s right to give their view, the child must be given information on the decision made, and how these views were considered. This feedback should act as a guarantee for the views to be taken seriously. Disagreement with the decision leads to the next point – the opportunity to appeal or file a complaint (2009, p. 8).</p>
Complaints, remedies and redress (sect. 46–47.)	<p>Legislation is needed to give the child access to procedures and remedies for complaints in cases where they disagree with a decision made on their behalf. For this purpose, the child should be able to contact an Ombudsman, or a person in a similar position, for help and guidance, in all children’s institutions, including day-care centres and schools, to voice their complaint. Children should be given information on who these persons are and how to contact them. In the case of family conflict and consideration of the child’s views, the child should be able to contact a person in the community for guidance (2009, pp. 8-9).</p> <p>If the child’s rights to express a view is violated in administrative or judicial proceedings, the child must have access to relevant remedies for complaint. These procedures must ensure for the child that there will be no risk of punishment or violence when or from filing a complaint (2009, p. 9).</p>

2.4.2 Children’s participation

Eide (2013) and Humerfelt (2005) points to a generally increased emphasis in society on service user participation in public services over the last decades. In the case of children, Skivenes and Strandbu (2006) explains this emphasis and seeking to promote children’s participation in public services delivered to promote child welfare, to the “new view” of the child as entitled to rights on their own, including a right to participate and to make justified contributions to decisions affecting their own well-being. All children in contact with the child welfare services have a right to participation in all matters affecting them, as regulated by the child welfare act (2021, § 1-4). A condition for children’s participation to be facilitated is that they receive relevant and age-adjusted

information (Child Welfare Act, 2021, § 1-4; Regulation on children`s participation in child welfare services³⁶, 2023, § 4).

Age-adjusted information is a central element here, as children, using the definition of a child as a person under the age of 18, differ in terms of abilities to participate in decisions concerning themselves. Generally speaking, a child being 12 years might have better chance of being heard in a child welfare context as they might be able to formulate their opinion in a better way than for example a child being five years old, having possible implications for weighting this opinion in the decision to be made.

In Hart`s work from 1992, he starts by giving a broad definition of participation saying that “(...) `participation` in society begins from the moment a child enters the world and discovers the extent to which she is able to influence events by cries or movements.” (Hart, 1992, p. 4). Furthermore, his eight-step ladder describes different levels of participation, defining steps 1-3 (named 1. Manipulation, 2. Decoration, and 3. Tokenism) as non-participation, and steps 4-8 (named 4. Assigned but informed, 5. Consulted and informed, 6. Adult-initiated, shared decision, 7. Child-initiated and directed, and 8. Child-initiated, shared decisions with adults) as degrees of participation (Hart, 1992, p. 8). The models of participation, like those developed by Vis and Thomas (2009) and Shier (2001), focus on participation as a process from an adult perspective, more than outlining a model for facilitating child participation.

Duncan (2019, p. 72) identified three forms of child participation in child interventions: congenial participation, sceptical participation, and disaffected participation.

Congenial participation might be described as cooperative, stemming from a mutually beneficial relationship between the child and the authorities, based on a mutual understanding and agreement regarding the child`s needs and priorities (Duncan (2019, 72).

Sceptical participation, as described by Duncan (2019, p. 73), might be characterized by the child`s reluctance or avoidance in participating, due to fear or scepticism regarding the potential consequences.

³⁶ The author`s translation into English from ‘Forskrift om barns medvirking i barnevernet (FOR-2023-10-121631).

Disaffected participation might be described as non-relational, characterized by the child's withdrawal or avoidance of participation due to past disappointment and/or a lack of trust in child welfare services.

Each of these not excluding the other, open to change over time (Duncan, 2019, p. 73).

Križ and Skivenes (2015/2017, p. 12) focus on what children's right to be heard entitles them to have a claim on and in what way. Participation includes, they say, opportunities for the child to form an opinion, opportunities to express these freely, and assigning due weight to their opinion in accordance with their maturity (Križ & Skivenes, 2015/2017, p. 13). According to Kojan and Christiansen (2023, p. 21-30), decision-making in a CWS context might require complex evaluations of people involved, including reflections related to scientific-, normative-, human-, and system complexity.

In the research report *Child Welfare Investigation Work*, initiated by Bufdir, on the assessment of best interests, aiming to gain insight into how children and their parents have experienced being heard when in contact with CWS (Havnen et al., 2020). Their data covering 1,123 Norwegian CWS investigation cases from 2015 to 2017, Havnen et al. (2020) found that 40% of children in these cases (aged between 0 and 17 years) had not held a conversation with the CWS in relation to the investigation. Just under a third of the children who had held a conversation with the CWS (about 225 of the 1,123 children and young people) were spoken to with the purpose of having them give their opinions or views (Havnen et al., 2020). Interviews with parents in contact with CWS revealed that they did not know what type of information the CWS could collect or the purpose of home visits, leaving the parents as observers more than active participants. The parents also pointed to the two-fold mandate of the CWS in Norway, as both helper and intervener (Havnen et al., 2020, p. 142).

Duncan (2019, p. 144) refers to two forms of child participation: consultative and collaborative, both adults led and initiated. To enhance child participation within child welfare services, she says, we would have to work with the paternalistic values and attitudes constituting child protection interventions. As of today she says, the child's autonomy, participation and agency are constrained by these (2019, p. 173).

2.5 Autonomy

Children are, according to Schoch et al. (2020), the main concern in the work provided by child welfare services, together with their parents. Hence, they should be considered as active social actors with agency, in complex decision-making processes within the contexts they encounter (Schoch, 2020, 221). According to Duncan (2019, p. 122) agency at its most basic level can be referred to as an ability to do something. In the context of child protection interventions, she describes children's agency as "(...) their capacity to act with autonomy and independence" (Duncan, 2019, p. 121).

Anderson and Honneth (2005, p. 127) are of the opinion that safeguarding autonomy is one of liberalism's core commitments towards individuals. Building on an understanding of autonomy as "(...) an acquired set of capacities to lead one's own life, (...)", they argue that liberal societies have a commitment to be especially concerned about vulnerabilities of individuals regarding development and maintenance of their autonomy (Anderson & Honneth, 2005, p. 127). These authors pinpoint a shift in the understanding of autonomy – from a classic individualistic understanding, towards an understanding of individual autonomy as part of a "recognitional infrastructure" protected by welfare-rights (2005, p. 128, 145).

According to Sigurdson (2019, p. 19) autonomy is normally considered to be an adult privilege. The concept autonomy, she says, is linked to rationality where one's ability to adapt and use relevant information when making decisions for oneself is an adult skill (Sigurdson, 2019, p. 28). For children this skill is developing during childhood. At the same time, even small children have opinions on personal matters (Sigurdson, 2019, p. 28). According to Nylund (2019, p. 219), increasing age of the child suggests increased autonomy and self-determination. Facilitating for children to exercise self-determination during childhood, is according to Nylund (2019, p. 202), an important aspect in developing this capacity in an adequate way.

Michael Freeman, founder and editor from 1992 to 2017 of the peer-reviewed *International Journal of Children's Rights*, explains autonomy in this way: "... we should all have the freedom to make our own decisions to the extent possible" (Freeman in Daly, 2018). Freedom might be taken for granted among adults living in democratic societies, where personal freedom is limited by this

same freedom of others: my right to make my own choices is limited by the same right held by others.

Decisions made by parents, are according to Inwald (2008), on a daily life basis not evaluated by authorities as to whether they are in the child's best interests or support the healthy development of the child. The assumption is made, as pointed to by Bendiksen and Haugli (2021, p. 187), based on an idea that decisions made by parents are in the child's best interests and that parents want the best for their children. In Norway, parents have a right and a duty to make decisions in the child's best interests (Children Act, 1981, § 30, first paragraph). If and when authorities are to assume otherwise, Berrick et al. (2015) says that this must be justified by law. This statement derives from Immanuel Kant's principle of political right, which underpins "A constitution allowing the greatest possible human freedom in accordance with laws which ensure that the freedom of each can coexist with the freedom of all the others" (Kant & Reiss, 1970, p. 23). In a modern society, protecting freedom and autonomy has both a moral and a juridical dimension, by which all people should be able to pursue their goals in the way they prefer; to the point, that is, where the goals and the means of one person do not conflict with the same freedom and autonomy of others and respect for the legal domain of non-interference (Eriksen, 2003, p. 365). Eriksen (2003, p. 365) refers to Habermas, saying that this might be facilitated in a society if and when the discourse principle is applied to the form of law by holding that "Just those action norms³⁷ are valid to which all possibly affected persons could agree as participants in rational discourses" (Habermas & Rehg, 1996, p. 107).

According to Kant (1970), a state is a union of people under laws, where the laws and constitution should facilitate the greatest freedom possible for each individual living within the state, following the positive general principle of "what is not prohibited, is allowed" (Eriksen, 2003, p. 365; Kant & Reiss, 1970, p. 24). Following Kant (1970) and Habermas (1996), limitations on personal autonomy in a state are only legitimate if found to be rational by those possibly affected by the law. The work of Habermas is within the political tradition of liberalism, which he describes as "the right to equal individual liberties backed by authorized coercion" (Habermas & Rehg, 1996, p. 100). In Shklar's (1989, p.

³⁷ Understood as laws (Habermas & Rehg, 1996, p. 107).

21) writings on personal freedom she says that the only aim and only defensible meaning of liberalism is to secure the political conditions necessary to exercise personal freedom. Shklar does distinguish between children and adults, writing that “Every adult should be able to make as many effective decisions without fear or favour about as many aspects of her or his life as is compatible with the like freedom of every adult” (1989, p. 21). According to her, formal and informal freedom is to a large extent regulated by governments by the use of fear and/or favour, leaving sources of social oppression untouched as they do not have the unique legal means of power and/or persuasion that workers in a modern state possess (Shklar, 1989, p. 21).

An analytical division of autonomy was made by Daly (2018, p. 9), who underlined the difference between (1) autonomy as a capacity to do something one desires, including the legal right to take the necessary decisions (for example, a capacity to consent to health treatment); and (2) autonomy as an ideal under which we all should have personal autonomy to the extent possible. Daly (2018) argues for the latter version, for two reasons: first, this formulation strives to reach the highest degree of autonomy regardless of other people’s evaluation of one’s capacity for autonomy, which might be considered important for human dignity; second, setting up this ideal might constitute mutual respect in human relations. To be in a position in which one’s capacity to carry out autonomous (and reasonable) actions is under scrutiny by others is a vulnerable situation, according to Daly (2018) and one should strive to let people decide on their own best interests³⁸.

As Daly (2018, p. 9) pinpoints, we are all subject to various constraints, be they financial, genetic, the family we are born into, to mention some. The point is not to have one’s will every time, but rather to be recognized as a fellow human being with equal value. Cecilia Dinardi (2016) points to children’s legal position as independent rights holders as a turning point of their legal status. Daly’s “principle of children’s autonomy” is as follows:

In legal decisions in which the best interest of the child is the primary consideration, children should get to choose – if they wish – how they are involved [process autonomy]

³⁸ This argument might also be relevant for people with disabilities and corresponds with the Committee on the Rights of Persons with Disabilities (CRPD) and their General Comment no. 5 (2017, sect. 16. a), as well as the NOU 2021:11 Self-Governed is Well-Governed (Selvstyrt er velstyrt) (2021, pp. 87-88).

and the outcome [outcome autonomy] unless it is likely that significant harm will arise from their wishes.

(Daly, 2018, p. 10)

The studies included in the first article of this work indicate that we have much to gain by operationalizing the child's right to participation on all areas affecting the child. First, we have the potential to make sustainable and reflective decisions in the best interests of the child. Second, the costs connected to the operationalization of child participation are low when considering the long-term individual and societal costs connected to decisions made on scarce or wrongful information.

3. Theory

The theory that initially inspired the idea for this doctoral work was the Capabilities Approach, as described by the philosopher Martha C. Nussbaum (2000, 2006, 2011). The Capabilities Approach is grounded in the concept of human dignity and involves assessing quality of life based on what people can actually do or become, taking into account the resources they have access to. This approach emphasizes that it is not enough to simply provide people with resources; what is crucial is whether individuals have the freedom and ability to utilize these resources to achieve functionings that they value.

This approach places the individual's agency and inherent potential to cope at the centre of the Human Condition. The approach has been influential, not least in the fields of human development and social policy. In the context of child welfare work, starting from an assumption of capabilities does not represent a radically different entry point to questions of the child's best interest than the ideal of participation. However, it could possibly add to this ideal by emphasizing the importance of attending to the conditions of freedom for 'participation' to have real value.

3.1 The Capabilities Approach

Nussbaum is one of the most influential thinkers of recent times in relation to human dignity (Turner, 2021). Her version of the Capabilities Approach gives content to what it is to be a human being, living a life with a minimum of human dignity (Nussbaum, 1997, p. 279; 2006, p. 78; 2011, p. 186). According to Robeyns (2017) constitutes a version of a theory of human rights, given that "The capability approach purports that freedom to achieve well-being is a matter of what people are able to do and to be, and thus the kind of life they are effectively able to lead" (Robeyns, 2017, p. 24).

3.1.2 The concept of Capabilities

The concept 'capability' in terms of the Capabilities Approach is described by Nussbaum and Sen (1993, p. 3) as:

"The capability of a person refers to the various alternative combinations of functionings, any one of which (any combination, that is) the person

can choose to have. In this sense, the capability of a person corresponds to the *freedom* that a person has to lead one kind of life or another.”

Sen (1993), reflects on his choice of the word ‘capabilities’, when exploring “(...) a particular approach to well-being and advantage in terms of a person’s ability to do valuable acts or reach valuable states of being.” (1993, p. 30). The concept should represent the idea that a person’s well-being depends on a variety of functionings, valuable for that person. In the CA, a ‘functioning’ refers to the various things a person may value doing or being, such as being healthy, having good social relationships, and being safe (Sen, 2005). A functioning does not simply refer to what a person has a potential for, but rather to the actual achievements of the person. Sen’s approach introduced the idea of measuring a nation’s wealth by assessing every person’s access to capabilities instead of by gross domestic product (Sen, 1982). For the idea on the capabilities approach, Sen received a Nobel Prize in Economic Science in 1998. His work challenges the idea that the degree of human freedom is linked to increases in national income, as the challenge in facing starvation or poverty is not that there is too little food or money in the world; the problem is linked to the possibility of an individual accessing these goods. Access to these and other goods can be facilitated or limited by the society to which a person belongs (Sen, 2009).

Cohen (1993) discusses Sen’s idea of capabilities in relation to Rawls’ theory of justice. He points to Sen’s argument using capabilities to measure a person’s wealth, replacing theories of distribution of goods, as powerful (1993, p. 16). Sen’s idea on capabilities makes sense, according to Cohen (1993), because the amount of goods, necessary for human functionings differ between individuals. Sen (1993) uses the example of nourishment to exemplify a capability. It is a common valuable functioning to be adequately nourished. People may, however, differ when it comes to having access to adequate nourishment. Another example is access to knowledge, living in a family that limits one’s desire to education might leave a person in a situation of intellectual poverty and facing possible present and/or long-term negative consequences, because it limits that person’s access and freedom to pursue education as a tool to live a desired life (Sen, 2009). Human capabilities, he says, should be understood as an important part of individual freedom, as freedom as a concept goes beyond the capabilities (Sen, 1993, p. 33).

3.1.3 Nussbaum`s version of the capabilities approach

After a fruitful cooperation between Sen and Nussbaum during the late 1980s and early 1990s on the development of the Capabilities Approach as an approach to measure human quality of life, they chose to take the CA in different philosophical directions (Nussbaum, 2011, p. 18). Whereas Sen leaves room in terms of the form and content of the capabilities open for reflection and as a subject for democratic evaluation and agreement, Nussbaum underlines the need for a list of capabilities to secure for all people a bare threshold of human dignity (Nussbaum, 1997, p. 279; 2006, p. 70; Robeyns, 2005, p. 106; Sen, 2004, p. 78). This distinction of specifying certain areas of actual opportunities links Nussbaum to rights discourse and theories of social justice. In her book *Frontiers of Justice. Disability. Nationality. Species Membership* (Nussbaum, 2006), she describes her version of the CA as built on the ideas of the philosopher John Rawls, and his thinking on justice (Rawls, 1999b). Nussbaum`s critique of Rawls is that his theory is too abstract in three specific areas: first, it is not responsive to claims for justice for people with physical and mental impairments; second, it is unable to solve the challenge of providing all people in the world access to a minimum of social justice due to the implications that place of birth have for human development; and third, it does not address the need to solve issues of justice related to how we treat nonhuman animals (Nussbaum, 2006, pp. 1-3). To address these areas, she calls for a front linked to the capabilities in the form of laws and procedures to protect the rights corresponding to the challenges that each of these abovementioned groups face in society (Dixon & Nussbaum, 2012, p. 593; Nussbaum, 2006, pp. 14-22). Later, Dixon and Nussbaum proposed a “fourth frontier”, this time for children (Dixon & Nussbaum, 2012). The concern, according to Nussbaum (2006), is that when decisions are made by those in a position of making decisions on behalf of people with reduced or no opportunity to participate, the latter are likely to have their basic needs devaluated. One might argue that Nussbaum`s approach supplements Rawls` theory of justice on the point of what equal access to freedom should entail. On this point Rawls (1999b) is vague, despite putting forward two principles of justice, as follows:

First principle is, each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties of others.

Second, social and economic inequalities are to be arranged so that they are both

- (a) reasonably expected to be to everyone's advantage, and
- (b) attached to positions open to all.

(Rawls, 1999b, p. 53)

Rawls (1999b) does not give an account of the content of an “equal right” but takes this principle as based on an assumption that the rights are agreed on behind a “veil of ignorance”, such that the parties forming a social contract are ignorant of certain facts on their own situation. The parties should be ignorant on these certain facts because an awareness of such conditions as social status, generation, physical and mental capacity, conception of the good and plan for life would be likely to lead the parties to decide in a way that favours their own situation (Rawls, 1999b, pp. 118-119).

This is the point on which Nussbaum (2006) criticizes Rawls for being overly abstract, as a veil of ignorance does not give an account of the possible contingencies of the parties deciding on the content of a social contract (Nussbaum, 2006, ch. 1). Just as theories of social justice should be abstract but also responsive to time, the terms related to the protection of human dignity should be set (Nussbaum, 2006).

There is some disagreement among scholars on how to describe the CA and over whether it is an approach or a theory. The answer of Robeyns, who wrote her dissertation on Amartya Sen's CA, is that there is one Capabilities Approach but many capability theories (Robeyns, 2017, p. 30). Whereas the CA can be described as a normative framework for approaching a field or topic at a general level, Robeyns (2017) argues that a theory should be able to give answers where it is applied. Nussbaum's version of the CA as described in her work *Frontiers of Justice* is the version that according to Robeyns (2017, p. 30) comes closest to a theory, as it constitutes the basis for a list of capabilities. Nonetheless, this list, Nussbaum (2000, 2011) does not give a full account of what social justice is or how it should be applied in a society. Nussbaum has acknowledged that it does not address questions of how to redistribute goods (as rights) to the extent necessary to make use of the ten listed capabilities (Dixon & Nussbaum, 2012; Nussbaum, 2006, p. 71; Robeyns, 2017, p. 22). On this point, Rawls' theory (1999b) gives an answer in the form of the above-quoted second principle of justice, under which inequalities are to be accepted as just if they are

“reasonably expected to be to everyone’s advantage” and “attached to positions open to all” (Rawls, 1999b, p. 53).

Table 3 provides a list of the capabilities as they are described by Nussbaum, to inform the reader about the content and idea of Nussbaum’s approach to human dignity.

Table 3. Nussbaum’s list of capabilities (Nussbaum, 2006, pp. 76-78; 2011, pp. 33-34; Strømland et al., 2019)

No.	Capability	Description
1	<i>Life</i>	Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living.
2	<i>Bodily Health</i>	Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
3	<i>Bodily Integrity</i>	Being able to move freely from place to place; to be secure against violent assault, including sexual assaults and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4	<i>Senses, Imagination and Thought</i>	Being able to use the senses, to imagine, think, and reason – and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one’s own choice, religious, literary, musical, and so forth. Being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid nonbeneficial pain.
5	<i>Emotions</i>	Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one’s emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown crucial in their development.)
6	<i>Practical Reason</i>	Being able to form a conception of the good and to engage in critical reflection about the planning of one’s life. (This entails protection for the liberty of conscience and religious observance.)
7	<i>Affiliation</i>	(A) Being able to live with and towards others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.) (B) Having the social bases of self-respect and nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.
8	<i>Other Species</i>	Being able to live with concern for and in relation to animals, plants, and the world of nature.
9	<i>Play</i>	Being able to laugh, to play, to enjoy recreational activities.
10	<i>Control over One’s Environment</i>	<i>Political.</i> Being able to participate effectively in political choices that govern one’s life; having the right of political participation, protections of free speech and association. <i>Material.</i> Being able to hold property (both land and movable goods) and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

Nussbaum's version of the approach gives content to what rights should be protected in a just society, as an answer to the questions "What are people actually able to do and to be? What real opportunities are available to them?" (Nussbaum, 2003, p. 33; 2006, p. 70; 2011, p. x). The normative basis of the approach rests on the principle of "each person as an end", giving each person equal value and worth as human beings (Nussbaum, 2011, p. 35). The capabilities, Nussbaum says, are to be complementary to, and not in any regards replacements for, human rights (Nussbaum, 1997). They are to give insights for reflections on what dignity is and how it could be upheld in human relations protected by the use of rights (Nussbaum, 2006; 2011, p. 23). According to *The Constitution* §104 (first paragraph), children have a right to respect for their human dignity. To reach this overall goal and principle of each person as an end, Nussbaum calls for a new way of thinking about political liberalism – a thinking that includes the complexity of human interactions, free from hierarchy between sexes in the family and in society between people based on physical and/or mental functioning (Nussbaum, 2006, p. 221).

3.2 Children and the Capabilities Approach

The work of Dixon and Nussbaum on capabilities in relation to children describes the UN Convention on the Rights of the Child as "a fourth frontier of justice" (2012, p. 593). They justify a fourth frontier by children's vulnerability (the vulnerability principle) and the possible long-term individual and societal costs that a destructive childhood might have for a person (Dixon & Nussbaum, 2012).

As mentioned above, the idea of capabilities applies to every human being (Nussbaum, 2011) who acts as an agent on their own behalf unfolding capabilities for pursuing their own interests (Dixon & Nussbaum, 2012, p. 559). Nussbaum's CA thus offers a theoretical justification for recognizing children as independent rights holders and not merely as members of their family (Biggeri & Santi, 2012). Nonetheless, because young children are at a stage of developing full emotional and choice-making maturity, Dixon and Nussbaum (2012) are of the opinion that it makes sense to give parents broad decisional rights: "Doing so simply reflects the importance of adult choice-capacities, which children are expected to develop later in time" (Dixon & Nussbaum, 2012, p. 576). Giving children agency in their own lives implies that we as adults should strive to

facilitate for them a maximum of decisional freedom in accordance with their maturity, rationality and capacity for judgement (Dixon & Nussbaum, 2012, pp. 559-560). This is largely consistent with Daly's autonomy principle for children, although Daly goes a little further by limiting children's autonomy only in cases where it is "... likely that significant harm will arise from their wishes" (Daly, 2018, p. 10).

According to Bonvin and Stoecklin (2014, p. 1), it is important to keep in mind that the rights in CRC apply to all children while the CA provides a basis for reflection upon these rights. Biggeri et al. (2011) and Biggeri et al. (2012, p. 387) suggest that we divide our reflection upon capabilities into three categories:

a-capabilities – abilities to something, as in internal skills of critical thinking and human functions.

o-capabilities – opportunities to do something, which one might not have the skills to do.

p-capabilities – potentialities for someone to evolve a potential skill and/or opportunity.³⁹

³⁹ Further information on the CA in relation to children is provided in Studies 2 and 3 of this Ph.D. work.

4. Method

This chapter starts with an account of the research design. Thereafter, details of the scientific approach of critical hermeneutical theory, the specific methods adopted for each study, the methodological limitations, research ethics considerations and preconceptions follow.

4.1 Research design

The overall aim of this work is to explore analyse and discuss if and in what way the capabilities, as developed by Martha C. Nussbaum as part of the CA (Nussbaum, 2000, 2006, 2011), can supplement a best-interest evaluation of the child. Acknowledging the child's right to be heard as essential in assessing and deciding on the child's best interests, this aspect has been given special attention. This includes the investigation of whether and to what extent children and young people have experience of being heard and of participating in decisions concerning their own well-being in their encounters with public authorities in a national and international child welfare context. Interviews have also been conducted with a selected group of young people in contact with Norwegian CWS, giving detailed descriptions of their experiences of being heard.

Accordingly, three related studies were designed and carried out with the following respective research questions and aims:

1. What are the experiences of children and young people in contact with CWS with respect to being heard and participating in decisions concerning their own well-being?
2. How do a selected group of young people describe their experiences of being heard and participating in CWS cases concerning them? How do they describe the meaning of these experiences? How can these experiences be understood in light of the CA and theories of participation?
3. A discussion of how the CA can be used as a guideline to supplement acknowledged areas to provide a more comprehensive basis for decision-making on what the child's best interests imply in the child's life situation.

The analysis of the collected data has been inspired by critical hermeneutical theory and phenomenology. In the following section, these

approaches are presented including a discussion of some of their strengths and weaknesses.

4.2 Scientific point of view in this doctoral work

Children and young people have inherent value as human beings, and society has special obligations towards them both as human beings and as the next generation of adults. According to Rawls (1999b, p. 118), we have an obligation to protect children and distribute social, economic and natural resources, nationally and globally, in a way that is fair and just, placing children and future generations in no worse of a position than we are in today. According to Nussbaum, 2006 (pp. 190, 278) states have an obligation to facilitate for human flourishing. Nussbaum's work has the strength of being applicable to the sustainable development of the environment with the inclusion of the protection and facilitation of human development for all human beings, suggesting interaction between states based on mutual respect for humanity and protection regardless of species membership for human coexistence with the environment (Nussbaum, 2006, 2012).

The subject of this doctoral work, child welfare, is placed within social science through critical hermeneutical theory. Thinkers central to this tradition are social scientists associated directly or indirectly with the Frankfurt School, such as Adorno and Habermas, among others (Alvesson & Sköldbberg, 2009, p. 144). The scientific disciplines involved in the knowledge development within this tradition include sociology, psychoanalysis, philosophy, economics and aesthetics, forming a unique environment for social science research (Alvesson & Sköldbberg, 2009, p. 145). Habermas' writings on communication and democracy form the theoretical grounds of Skivenes and Strandbu's (2006, p. 16) procedural approach to child participation. Critical hermeneutical theory has inspired the initial idea, development of the included studies, analysis of the data material and theories used to discuss the results in this work. This has been done to provide a critical look at how we as a society meet the challenge of protecting and facilitating the child's best interests and child participation in a CWS context.

4.3 Critical hermeneutical theory

Critical hermeneutical theory tries to reveal hidden power structures in society. In this respect, Thagaard refers to Alvesson and Sköldbberg's description of

critical research as a way of doing a triple hermeneutics. On this account, simple hermeneutics is an individual's self-understanding in a given context, double hermeneutics is the scholar's interpretation of the same situation, and triple hermeneutics integrates a critical evaluation of the societal conditions influencing both the participant and the person conducting the study (Alvesson & Sköldbberg, 2009, p. 271; Thagaard, 2013, p. 43).

Critical hermeneutical theory has been used in trying to reveal hidden societal structures and ideologies influencing the decisions made by professionals on behalf of children in a vulnerable life situation. Within the tradition of critical hermeneutical theory is an emphasis on a critical disputation of social reality. The knowledge developed by this disputation aims at emancipatory interests on an individual level, inspired by such theorists as Marx, Weber, Kant, Hegel and Freud (Alvesson & Sköldbberg, 2009, pp. 144,146). Nonetheless, alongside this liberating element of releasing the individual from repressive institutions, critical hermeneutical theory can also be constructive in the way that it might give individuals renewed hope in shaping their own lives instead of being victims of dominant social logics (Alvesson & Sköldbberg, 2009, p. 148). Habermas is, according to Alvesson and Sköldbberg (2009, p. 151), the most prominent thinker in the critical hermeneutical tradition, who has emphasized how communication is a crucial element in human interactions. Habermas has tried to theorize an ideal situation for communication, in which intelligible, true, legitimate and sincere statements are evaluated on the basis of how good and well-formulated the argument is. Habermas (2012, p. 149) constructed his scientific view logically with the claim that a statement has validity (*Geltung*) if it is accepted as reasonable by a general public. This connection between knowledge, reason, and the public emerged as a result of the declining support for world religions among people (Habermas, 2012, p. 149). In his article from 2012, Habermas further distinguished truth and justification, with the former evidenced by reality but the latter – justification – requiring verification in social conditions and through human interactions as generally acceptable by all affected parties (Habermas, 2012, p. 160).

Within critical hermeneutical theory, it might be argued that the emancipatory element in revealing hidden, unjustified power structures is the most prominent feature, as an awareness of these structures might be used by those exposed to them as cause for revolt. Habermas' (2012) focus on interhuman understanding might be argued to be a strength of critical

hermeneutics, and possibly even more relevant in a world of globalization and diverse interests (Alvesson & Sköldbberg, 2009, p. 155) in which communication designed to facilitate trust and justice across boundaries might be increasingly important (O'Neill, 2002, 2016).

A general critique of critical hermeneutical theory, according to Alvesson and Sköldbberg (2009, p. 135), is that all science includes some kind of understanding and interpretation. What becomes important in hermeneutics, then, is the understanding that it is possible to find a transparent understanding of meaning, and that this meaning is a part of a whole. At the same time, it might be possible to understand meaning in light of both a part and the whole.

4.4 Study 1

4.4.1 Systematic literature review

The method of conducting a systematic literature review is described as a thorough and transparent documentation of every step in finding peer reviewed knowledge on a chosen subject (Haraldstad, 2004, p. 117). The increase in the production and development of knowledge and technology over recent decades has contributed to a situation in which we have an almost unlimited access to research and information. This situation has generated a need for finding ways for the critical evaluation, comparison and collection of valuable knowledge as a basis for solid and legitimate public decision-making (Bettany-Saltikov, 2016, p. 5; Booth, Sutton, & Papaioannou, 2016, pp. 11, 12, 16).

In Study 1, a systematic literature review has been conducted inspired by Booth, Sutton and Papaioannou (2016). A protocol was designed, defining what to search for to protect against bias and prevent deviating from the chosen method (Booth, 2012).⁴⁰ Following this protocol, search terms was determined to be used in eight relevant databases: Academic Search Complete, CINAHL, Social Work Abstracts, SocINDEX, MEDLINE, Norart, Scopus and SveMed+. Norart and SveMed+ were chosen with the purpose of finding articles published in Scandinavian languages, in case these were not available in the other databases included.

⁴⁰ The protocol is unpublished.

4.4.2 Text analysis

The analyse of the included studies, were inspired by the method of text analysis as described by Ricoeur (1976, 1984) and Alvesson and Sköldberg (2009), while being mindful of the life situation of the interviewees contributing to the studies. In conducting a literature review, scholars are in a position of interpreting material that has already been interpreted by other scholars. This position has been described as triple hermeneutics by Alvesson and Sköldberg (2009, p. 175). The findings of the included articles were explored, analysed and discussed with a critical perspective on how child participation was described.

4.5 Study 2

4.5.1 Qualitative interviews

In discussions prior to the collection of the data for Study 2, it was agreed that individual semi-structured interviews might give insight into the complexity of experiences of being heard in the context of child welfare services' decisions made in the child's best interests (Strømmland et al., 2023). Other forms of interview could have been used, such as holding one or more focus group(s). Individual interviews were chosen because of challenges related to focus group interviews in circumstances connected to the life situation of the young people, age differences (16–23) and a concern over not obtaining sufficient insight in the complexity of the experiences of being heard and participating (Thagaard, 2013, p. 99). When preparing for the interviews, one might expect that it would be especially challenging to gain knowledge of the young people's overall experience of being heard and to explore how they perceived these experiences had affected their present life situation, given the differences in ages and time elapsed since the experience(s) took place. Countering to these presumptions, all participants in the study described a clear understanding of when, how and if they had been heard (Strømmland et al., 2023). However, in retrospect, some questions might have been asked in a leading manner during the interviews, and the mere topic itself might have led the interviewees to take an either/or position on whether they had experience of being heard in CWS, with possible implications for the study's findings.

4.5.2 Critical hermeneutical analysis

In analysing the data for Study 2, three levels of hermeneutic description was considered: (1) a simple first-order description of the participants' understandings and meanings of what they had experienced; (2) a second-order recognition of the role scholars have in interpreting what the participants described; and (3) a third-order of meaning-making through a critical interpretation of the interplay of power and perceptions in child welfare decision-making (Alvesson & Sköldberg, 2009, p. 175). The data was explored, analysed and discussed in light of the CA, the CRC Article 3. and 12. and the theories of participation developed by Hart (1992) and Skivenes and Strandbu (2006).

Other theories could have been used as a theoretical perspective for analysis, such as Honneth's theory of recognition (Anderson & Honneth, 2005). Lysaker (2020, p. 81) elaborated on and analysed the situation of child migrants subjected to prolonged waiting. He explores the concept vulnerability both as a human condition and as a "universal capacity to suffer", using theories developed by Fineman, Arendt, Nussbaum and Honneth, amongst others (2020, p. 85). Lysaker points to how we as human beings are autonomous, and at the same time dependent on others. He concludes that child refugees, given they are in an especially vulnerable situation as to have their basic needs taken care of and having their childhood put on hold. Further, Lysaker (2020, p. 97) argues that Nussbaum's principle of vulnerability could be used to justify and support the argument that child refugees should not be exposed to prolonged waiting to conclude on residence permission.

According to Anderson and Honneth (2005, p. 131), personal autonomy is vulnerable to disruptions we might experience in our relationships with others. To be able to develop and use our autonomy then, we are dependent on others for support and recognition. A possible interpretation of Anderson and Honneth (2005, p. 131), might be that social environments and being able to develop trustful relationships is essential for practising autonomy.

4.6 Study 3

4.6.1 Text analysis

The theoretical frames of the study were decided on before the empirical data were collected. In this way, Study 3 is deductive as it has the CA as a theoretical

basis. However, the study is also inductive as the data guided the analysis and discussion, supplementing the concept of the child's best interest and expanding the practical usefulness of the CA (Alvesson & Sköldbberg, 2009; Strømmland et al., 2019, p. 4). In the analysis of the data material for study 3, the CA was explored, analysed and discussed in relation to the CRC Article 3 on the child's best interests.

The empirical data were chosen with the intention to exemplify two cases in which the principle of the child's best interests and the principle of biology had been discussed by Norwegian public authorities, with different aspects of these cases contextualized. The use of case studies in research refers to exploring one or more cases representing a considerable amount of information on a topic (Thagaard, 2013, pp. 56-57). For this study the cases of Christoffer Kihle Gjerstad and Adele Johansen were chosen. This choice was made because, they might be understood as representative of the dilemma of making decisions in the child's best interests (CRC Article 3), while at the same time respecting the biological principle (ECHR Art. 8). The cases represent two sides of this dilemma. In Christoffer's case, it seems obvious that neither the school nor public health services made an adequate evaluation of the boy's best interests. In Adele's case, the public services were too eager to protect the daughter from her mother's care, at the expense of the daughter's right to develop a relationship with her. The choice of these two cases was made to give the reader an opportunity to comprehend the complexity involved in this type of decision, with what Creswell and Poth described as a "collective case study" (2018, p. 99).

The selected cases had been evaluated by the legal system: in the case of Christoffer this took the form of a criminal case, and in the case of Adele it took the form of a CWS case. Both cases were given wide attention in public media (Brodin, 2009; Dagbladet, 2013; NRK, 2021) and details of the cases are available to the general public for insight and interpretation in the form of books (Gangdal, 2010; Johansen & Brodin, 1991) and legal documents (Agder Lagmannsrett, 2008, LA-2008-179127 ; ECtHR, 1996; The Supreme Court of Norway, 1991, HR-1991-122-K)⁴¹. The child's best interest was not adequately protected by the Norwegian welfare system in the case of Christoffer, who died

⁴¹ These documents were selected for study 3, and for this synopsis. Other documents describing the case of Christoffer and that of Adele could have been used.

as a consequence of being exposed to violence committed by his stepfather (Agder Lagmannsrett, 2008, LA-2008-179127; Dagbladet, 2013). According to the ECtHR, the Norwegian welfare system failed in its duty to facilitate and support the development of a relationship between Adele and her new-born daughter.

4.6.2 Analysis

In conducting the analysis for Study 3, we explored and analysed whether and in what way the Capabilities Approach can supplement the Convention on the Rights of the Child Article 3 on the child's best interests. For this purpose, we analysed and discussed the CRC Committee's General Comment no. 14 (2013) on 'the right of the child to have his or her best interests taken as a primary consideration' (Article 3, paragraph 1). In commenting on Article 3 of the CRC, the Committee stated that there are inextricable links between (a) the child's right to have their best interests as a primary consideration in all actions taken by public and/or private authorities concerning children and (b) the child's right to be heard (Art. 12) (Committee on the Rights of the Child no 14 Art 3, 2013, sect. 43).

4.7 Methodological limitations

This project has limitations necessary to express and reflect upon. There are challenges related to the use of qualitative methods, due to interpretation and generalization, which implies that scholars should specify and clarify the type of processes followed, from thematizing the research question, through reporting the results. Kvale and Brinkmann (2015, p. 278) define these processes in a seven-step procedure: (1) *Thematizing* the research question; (2) *Planning* how to account for ethical obligations; (3) *Interviewing* using a method with constant validation of the answers in the form of clarifying follow-up questions to evaluate interviewees' trustworthiness; (4) *Transcription* in a way that accounts for the transformation from what has been said to what is written in text; (5) *Analysing* in a way that accounts for developing reasonable questions to the data and allows for reasonable interpretations; (6) *Validating* and reflection on which forms of validation are relevant for a specific study and deciding on which forum is most appropriate to discuss the validity of the results; (7) *Reporting* in a way that gives a thorough and valid description of the main findings of the study,

including the readers' role in validating the results. These are the processes defining the study's internal validity (Kvale & Brinkmann, 2015, p. 278; Thagaard, 2013, p. 205). External validity, or whether the results could be transferable to similar context, is related to whether the results find approval among readers familiar with the phenomenon under study (Thagaard, 2013, pp. 194,205).

The aim of this work was to explore, analyse and discuss whether and in what way the capabilities, as developed by Nussbaum as a part of the CA (Nussbaum, 2000, 2006, 2011), can supplement a best-interest evaluation of the child in which the child's right to be heard is essential. My assumption was that the CA might in some way be fruitful. This assumption was inspired by Dixon and Nussbaum's theoretical article of 2012, "Children's Rights and a Capabilities Approach: The Question of Special Priority", which aimed at anchoring the CRC theoretically. This article, together with the CA, inspired the idea of this doctoral work. To use the words of Braun & Clarke (2021, p. 332), this approach was the 'lens through which the data were coded and interpreted'. This process of analysing data has been described by Braun and Clark (2021) as reflexive thematic analysis. As mentioned above, other theories of evaluating a child's best interests could have been used for this purpose. The choice of using the CA is based on the close link between this approach and human rights.

Assessment frameworks developed within medicine could also have been chosen, such as those introduced by Malek (2009), Buchanan and Brock (1989), Brazelton and Greenspan (2009), and Kopelman (1997). Common to these approaches is that they have been developed in a context of providing medical help. Malek (2009) analysed and compared Nussbaum's ten capabilities (2000), Brazelton and Greenspan's theory (2009) and the articles of the CRC (United Nations, 1989) to develop her own list of 13 elements to evaluate when working as a physician making decisions in a child's best interests. The list, provided in Table 4, has strong similarities to Nussbaum's (2011) list of capabilities.

Table 4. Malek’s list of elements for assessing a child’s best interests in a health context

No.	<i>Element</i>	Description
1.	<i>Life</i>	To live and to anticipate a life of normal human length.
2.	<i>Health and health care</i>	To have good health and protection from pain, injury, and illness. To have access to medical care.
3.	<i>Basic needs</i>	To have an adequate standard of living, especially to be adequately nourished and sheltered.
4.	<i>Protection from neglect and abuse</i>	To be protected from physical or mental abuse, neglect, exploitation, and exposure to dangerous environments. To be secure that they will be safe and cared for.
5.	<i>Emotional development</i>	To experience emotion and have appropriate emotional development.
6.	<i>Play and pleasure</i>	To play, rest, and enjoy recreational activities. To have pleasurable experiences.
7.	<i>Education and cognitive development</i>	To have an education that includes information from diverse sources. To have the ability to learn, think, imagine, and reason.
8.	<i>Expression and communication</i>	To have the ability to express themselves and to communicate thoughts and feelings.
9.	<i>Interaction</i>	To interact with and care for others and the world around them.
10.	<i>Parental relationship</i>	To know and interact with their parents.
11.	<i>Identity</i>	To have an identity and connection to their culture. To be protected from discrimination.
12.	<i>Sense of self</i>	To have a sense of self, self-worth, and self-respect.
13.	<i>Autonomy</i>	To have the ability to influence the course of their lives. To act intentionally and with self-discipline. To reflect on the direction and meaning of their lives.

Source: Malek (2009, p. 780).

Malek does not aspire to give a full account of “best interest” but claims that “a list of children’s interests based on the combined conclusions of three sources is likely to be closer to a complete list than one created from one individual’s perspective” (Malek, 2009, p. 179).

Bester (2019) aimed to make an evaluation of the best-interest standard in medical care for children by comparing the standards developed by Kopelman (1997) and Buchanan and Brock (1989). The basis of Bester’s evaluation was the list of Malek (Bester, 2019, p. 3), as described above. Bester (2019) criticized Buchanan and Brock for not providing a list or a concretization of best interests, although he did give credit to their description of a best-interest principle as comprising “... those things that are necessary for a child’s well-being; withholding these would impinge on a child’s well-being” (Bester, 2019, pp. 3-4). Bester’s reading of Kopelman (1997) is that the best-interest standard is an umbrella concept to be used in three different ways: to justify state intervention in cases of child protection, to identify what is *prima facie* owed to a child, and as a standard of reasonableness (Bester, 2019, p. 4). Bester concludes that a best-interest standard should be open for interpretation, just as the principles of justice, beneficence, autonomy and non-maleficence are (Beauchamp & Childress, 2019; Bester, 2019, p. 5). The latter principles have been lectured on by Beauchamp and Childress from the mid-1970s and published in book form in 1977, with this book regularly updated with new editions (Beauchamp & Childress, 2019, pp. vii, 13). It is however important to underline differences in the contexts of health services and CWS, related to, for example, national health assessment criteria, the availability of medical help and the national guidelines set for health personnel (Bahus, 2022, p. 378).

4.8 Research ethics

4.8.1 Ethical considerations

Study 2 was first developed with the purpose of interviewing children between 13 and 18 years old. As described in the article, the wish to include children in foster care aged between 13 and 16 faced a number of challenges related to their status as vulnerable informants and to the right of third parties to inspect, correct and delete data connected to them. These challenges were evaluated by

Norwegian Data Protection Services, and the data protection authority gave their final approval on 5 September 2019. A choice was made to proceed with interviewees aged between 16 and 23, due to the progress of the study (Strømmland et al., 2023). These interviewees had been or were in contact with the CWS at the time of the interviews. The upper age limit of 23 years was set because of § 1–3 in the then current child welfare act (1992); this age limit has later been extended to 25 years (Child Welfare Act, 2021, § 1-2).

When preparing for the interviews two municipal CWS offices were contacted with the purpose of getting in contact with possible interviewees meeting the inclusion criteria of having had contact with the CWS and being aged between 16 and 23. One of the CWS offices put the author of this synopsis in direct contact with possible informants after they had introduced the study to them at a local meeting. The informants had prior to this given their consent to the CWS office, for them to share their contact information. The other CWS office gave the author of this synopsis contact information of the young people's legal guardian(s) so that information about the study could be shared to possible interviewees. After the legal guardian had communicated the purpose of the study to the young person, and if they wanted to participate, contact information was exchanged to arrange an interview.

All interviewees were asked to choose a place for the interview. A calm and trustful atmosphere was attempted to be established, saying that the interview at any point of time could stop or paused recording, they could at any time withdraw their consent and if they felt bad in any way, the interview could be interrupted, or if needed after the interview, help could be provided for them to get in touch with a psychologist or a psychiatrist.

The interview guide was semi-structured, thematically anchored in Nussbaum's list of ten capabilities with an overall focus on the interviewees' experience of being heard in their meetings with the CWS. Some of the young people described experiences of being exposed to severe maltreatment and/or violence prior to the CWS care order (Brinkmann & Kvale, 2015, p. 49). The severity of the experiences described influenced the progress of the interview emotionally and thematically. For this reason, questions related to Capability 4 (senses, imagination and thought) and 8 (other species) were not paid equal attention throughout all interviews. In retrospect, this should have been reflected on prior to the interviews.

4.8.2 Preconceptions

During my first year as a student in political science, I was introduced to Rawls' *Theory of Justice* (1999b). His writings, placing justice in a historical, political, and economic context as affecting human lives, has influenced me both intellectually and personally. Later, and still a student in political science, my reading of Nussbaum's *Frontiers of Justice* (2006, 2012) had a strong impact on my understanding of how we could organize society for sustainable human development, meaning that as members of a democratic state we have an obligation and opportunity to facilitate the development and existence of present and future human generations. The message in Kirkengen's book *How Abused Children Become Unhealthy Adults* (2015, 2021) urges this task forward by showing that being exposed to violations has negative long-term effects on every cell in the human body, resulting in a higher propensity for disease and early death (Kirkengen & Næss, 2021, p. 47).⁴²

My reading of these thinkers has influenced the way I approach research, teaching and writing in numerous ways. Especially, it has made me more humble and more sensitive to how childhood, environments, local communities, national and international guidelines and more affect who we are and the lives we live. The lived experiences described in articles, books, law documents, media and by the young people in contact with child welfare services I interviewed have had an emotional impact. It has been and is difficult to accept that some children and young people are not given opportunities to participate in decisions concerning themselves, although what is in 'their own best interests' is impossible to determine without their active participation, at least when seen from a capabilities point of view. Still, in Norway, there is no official guideline for all to read and evaluate when evaluating a child's best interests. Which might be considered to be a democratic and legal challenge for children and parents in contact with the CWS. Democratic, because openness and transparency according to O'Neill (2002) are core values in democratic societies. Legally because, as O'Neill (2016, p. 193) argues, not specifying which claims and whose obligation it is to provide what a right entitles a person to have a claim to, is of little practical value for a person in need of the help. "If there are to be

⁴² I am not trained in medical science, and so the reader should look into Kirkengen and Ness's writings to get a better understanding of these conclusions. See for example Kirkengen and Næss part I, pp. 23–52.

rights to goods or services, those goods and services must be provided, and more specifically provided *by someone* – for example, by the farmer and the physician.” (O’Neill, 2016, p. 193-194).

The preconceptions I had, before starting this project has influenced how this project was developed. First, using the Capabilities Approach as a lens to reflect on the overall results of this project, it is not surprising that the conclusion supports using the CA in a child welfare context. Considering that the mandate of child welfare services, is to protect and promote children’s development. I was surprised, however, to find that state obligations due to the Convention on the Rights of the Child, were not explicitly outlined as official guidelines for children and youth in contact with Norwegian Child Welfare Services.

A clear limitation of this doctoral work is related to the semi-structured interview guide, inspired by Nussbaum’s ten capabilities, used in study 2 which I interviewed young people in contact with the CWS (Strømmland et al. 2023). Limitations stems, first from me asking questions inspired by the capabilities, which may have influenced participants to respond in ways that fit with the Capabilities Approach. As the interviews progressed, it became clear that a re-evaluation of how the questions based on Nussbaum’s list was formulated was needed. This adjustment was implemented not only to enhance the interviewees’ comprehension of the capabilities but also to clarify my role as a researcher in prioritizing the perspectives of the interviewees rather than evaluating CWS practices specific to each individual case.

Being educated within the tradition of political science, I am influenced by this tradition’s inclination towards a critical view of societies’ development and structuring of power. Some documents and texts forming my preconceptions are linked to this education and range from various Norwegian Official Reports (NOU, Norges offentlige utredninger) investigating conditions in Norwegian society, especially NOU 2003:19 *Power and Democracy Investigation* (2003), NOU 2012:5 *Better Protection of Children’s Development. The Expert Committee’s Report on the Biological Principle in Child Protection* (2012), NOU 2017:12 *Failure and Betrayal. Review of Cases where Children have been Exposed to Violence, Sexual Abuse and Neglect*⁴³ (2017), through texts written

⁴³ The names of the reports are translated by the author.

by philosophers as; Aristotle (Malnes & Midgaard, 2009), Rawls (1999b) and Nussbaum (2006).

My education has shaped my belief that in a democratic society, it would be preferable to have official guidelines for complex decision-making rather than relying solely on individual professional discretion. An argument supporting this understanding would be that official guidelines might contribute to transparency regarding what the CWS evaluate in child welfare cases, and by which means. According to O'Neill (2002, p. 64), the question of whether to trust others or to refuse that, "(...) we need information and we need the means to judge that information". By this, O'Neill (2002, p. 67) indicates that implementation of official guidelines might be in line with public values as openness and transparency. These to values, she says might be seen as contributing to an 'open government'⁴⁴ (O'Neill, 2002, p. 67). A possible argument for implementation of the CA in a CWS context might be connected to Nussbaum (1997), saying that the CA is closely linked to human rights although some of the capabilities goes further than the Convention on the Rights of the Child. Especially capabilities; 4. on *senses, imagination, and thought*, 5. on *Emotions*; and 8. on *other species*. At the same time, Capability 4. might be interpreted in terms of the CRC's Article 14. regarding the child's right to freedom of thought, conscience and religion, Article 28 regarding the child's right to education, and according to Article 29. directed towards the child's achieving its fullest potential. According to Redmond (2014, p. 618), "Children's development to their fullest potential is linked explicitly to their right to a standard of living adequate for their development (Article 27)". Although this might be challenging if and when translating the CA into a Norwegian CWS context, as education of children lies beyond the mandate of the Norwegian CWS.

On the other hand, there are counterarguments to the implementation of official guidelines to be used in a CWS context. One of these are linked to the diversity of challenges children and their parents in contact with Norwegian CWS experience. These challenges might be difficult to evaluate by the use of any guideline. Which might imply that professional discretion is required to

⁴⁴ According to O'Neill (2002, p. 67), employees in UK public offices are required to conform to what she refers to as 'the seven Nolan principles', demanding selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

make thorough evaluations and decisions outside the scope of official guidelines, as pointed to by Munro and Hardie (2019).

According to Hennum (2014), a focus on rights might reduce the role of parents, as merely contributing their child being a productive citizen. By developing guidelines to be used in a child welfare services context might contribute to this perspective, not being able to meet the complexity of what being human entails.

Still, laws and conventions regulate, according to O'Neill (2016), claims and obligations in a society. Giving, amongst other claims, children a right to have their best interests protected. Developing guidelines to be used in a child welfare context which are closely linked to human rights, might in this aspect be favourable in terms of specifying which claims children are entitled to, and whose obligations it is to provide those claims. Although, as pointed to by Redmond (2014, p. 618), the obligations and claims derived from the Convention on the Right of the Child expose a tension between the rights of the child, the obligations of parents towards their children, and the obligations of the state. For a state to facilitate for children to reach their fullest potential, child welfare services work would require more than merely investigations of neglect and/or exposure to violence. Amongst others it might require collaboration between governmental institutions related to health, education, and child welfare services, and law. Thomson (2021) discussing the Capabilities Approach in the context of law and the courts, indicate that the CA has relevance beyond this context into other areas.

5. Findings

The overall aim of the research presented in this synopsis is to explore, analyse and discuss if and in what way Nussbaum's capabilities, as developed as a part of the Capabilities Approach (Nussbaum, 2000, 2006, 2011), can supplement a child's best-interest evaluation in which the child's right to be heard is considered essential.

To answer this overall aim three studies were conducted to (1) synthesise existing research literature on children and young people's experiences of being heard in a child welfare services context, (2) by using the method of face-to-face interviews, describe young people's experiences of being heard and to participate in CWS decisions on their best interests, and to explore how these experiences affected their lives, and reflect upon their experiences in light of Nussbaum's CA (Nussbaum, 2006, 2011) and theories of child participation (Hart, 1992; Skivenes & Strandbu, 2006), (3) discuss whether the CA could be used as a guideline to supplement already acknowledged sources on law and child development, to provide a more comprehensive basis for conceptualizing on what a child's best interests imply in the child's life situation.

The findings from these three studies are presented in the published scientific articles that are attached to this synopsis (appendix 1-3), which provide detailed descriptions of the research outcomes. This chapter will provide a brief presentation of the main findings from the three studies. Additionally, I will conclude this chapter by proposing three overarching themes that serve as a framework for discussing the overall aim of this doctoral thesis.

5.1 Findings from study 1

The aim of the first study was to synthesize existing research on children and young people's experiences of being heard in a child welfare services context. A systematic literature review of articles was conducted in eight different scientific databases featuring peer-reviewed articles providing this type of knowledge. Including the experiences described by children and youth as part of the inclusion criteria proved to be challenging primarily because of the scarcity of studies that explicitly featured children and/or youth as informants (Strømmland et al. 2022).

The studies included, to a more or less extent, discuss whether this might be connected to an assumption that children in contact with child welfare services should be protected against questions related to circumstances and events specific for their child welfare case, for the purpose of research (Cossar et al. 2016, p. 105; Dillon et al. 2016, p. 73; Fitzgerald & Graham, 2011, p. 491; Paulsen, 2016, p. 5). The systematic literature review included both Norwegian and international articles using qualitative methods to explore the subject. The study suggests that, based on the literature reviewed, it seems that children who are assessed to be particularly vulnerable are given fewer opportunities to participate and to be heard in child welfare services decision-making process than do children described as more resilient (Strømmland et al., 2022). Especially vulnerable in this context refers to children who are very young, and/or have been exposed to severe maltreatment and/or neglect, and/or are in a particular vulnerable situation (Sandberg, 2015; Križ & Roundtree-Swain, 2017). Resilient in this context refers to children who were perceived by the social worker as: capable of understanding the situation they were in, able to ‘advocate for themselves’, and a ‘competent child’ (Križ & Roundtree-Swain, 2017; Fylkesnes et al. 2018; Husby et al., 2018).

The included articles include interviewees aged from four to 26 years (Strømmland et al., 2022). Children and young people interviewed for this purpose are not comparable in terms of maturity or in level of reflection regarding their experiences. According to Nylund (2019, p. 219) increasing age and maturity suggests increasing opportunities for children to participate in child welfare services. Following this, the interviewees in these studies might be expected to have experienced this in their meeting(s) with their local CWS, in the country which they lived. The age difference of the interviewees is considerable, which has consequences for the interpretation of the results in the included articles, and for synthesizing results on children`s experiences of being heard in child welfare services. Given the limitations of the data for study 1, it is important to approach overall conclusions regarding children and youth`s experiences of being heard in a child welfare context with caution and keep these limitations in mind.

However, a systematic literature review, might uncover various challenges that indicate where children in contact with child welfare services face an increased risk of not having their voices heard.

Based on the articles included in the systematic literature review, study 1 concludes that there seems to be challenges at an organizational and individual

level in child welfare services as for children and young people to be heard and participate in decisions affecting them. Organizational, where there seems to be a lack of full acknowledgement and implementation of children's right to be heard in a sufficient manner. Individual, where there seems to be a need to enhance communication opportunities that foster trusting relationships between child welfare social workers and children in need (Strømmland et al. 2022).

A systematic review of systematic reviews was conducted by McCafferty and Garcia (2023), including 14 review articles on children's experiences of being heard in a child protection system context. The findings in this article echoes the two findings of study 1, at the same time including a third "Children's voice is not taken seriously" (McCafferty & Garcia, 2023, p. 12-13). This third finding indicates that children's voice is not taken seriously in the child protection system (McCafferty & Garcia, 2023, p. 12-13). The authors suggests that this relates to child participation being diminished in child protection system practice. Further, McCafferty and Garcia (2023, p. 12) found that in residential settings, child maltreatment, and in mental health services, children's voices in particular are being diminished in practice.

5.2 Findings from study 2

The aim of the second study was threefold (1) to describe young people's experiences of being heard and participating in child welfare service cases affecting them, (2) to explore how these experiences affected their lives, and (3) to reflect upon their experiences in light of Nussbaum's Capability Approach (Nussbaum, 2006, 2011) and theories of child participation (Hart, 1992; Skivenes & Strandbu, 2006).

The analysis of the data material, which consists of nine transcribed interviews, indicates that youths in contact with child welfare services was inclined to describe their experiences in overall terms – being either overall positive or overall negative (Strømmland et al. 2023). When describing their experiences of participation, the youth in this study referred to participation in their decision on out-of-home-placement. This might not be surprising, considering the long-term consequences they described to have experienced from this decision. Of the nine interviewees to this study, six described an overall negative experience of being heard, in form of not having been listened to. Two

of these, described experiencing this to change when they reached age 16 and 18 years, as they after this aged experienced to ‘have a say’ (Strømmland et al. 2023, p. 740).

The interviewees described to have experienced the decisions made by the child welfare service on out-of-home-placement to have been ‘life changing’ for them. One of the interviewees, Henry⁴⁵ being 21 at the time, describing overall positive experiences of being heard, expressed himself in this way:

“They [the foster family] saved my life” (Henry, 21) (Strømmland, 2023, p. 741).

Three out of the four interviewees describing consisting and overall negative experiences of being heard, voluntarily expressed, without being prompted, that they had seriously considered or attempted suicide (Strømmland et al., p. 741).

The article concludes by suggesting that the Capabilities Approach, developed by Nussbaum (2006, 2011), might offer child welfare workers a promising practical frame for gaining insight into children’s perspectives when making judgements concerning what is in their best interests (Strømmland et al. 2023, p. 751). However, this conclusion should be interpreted with caution due to the methodological limitations of the study. As a small-scale study, the transferability of the results to similar contexts is limited. The extent of transferability relies on whether the findings resonate with readers who possess familiarity with the phenomenon being studied (Thagaard, 2013, pp. 194, 205). In retrospect, some of the interviewees might have described their experiences of being heard differently, as some of the youth interviewed were in the middle of complex CWS decision-making processes concerning themselves. In addition, using the Capabilities Approach as a guide to the questions asked during the interviews has clear limitations related to translating the list of capabilities into a Norwegian CWS context, and a fear of framing the questions in a way that indicated a ‘right’ answer.

Some of the findings of this study suggests how social workers might conduct their work to facilitate for child participation. These findings reflect what the interviewees described as experiences of facilitating or hindering participation. In retrospect, a clearer focus when analysing the data material on

⁴⁵ All names are anonymized.

the interviewees' experiences of being heard in a child welfare context, might have given these experiences more value. Instead, the article reflects both, the interviewees' *experiences* of being heard when in contact with Norwegian child welfare services, and their *opinion* on how participation might be operationalized in a meaningful way. At the same time, the interviewees' opinions are based on their experiences from participation when in contact with Norwegian child welfare services.

5.3 Findings from study 3

The aim of the third study was to discuss whether the Capabilities Approach could be used as a potential guideline to supplement already acknowledged sources of law and child development, to provide a more comprehensive basis for decision-making on what a child's best interests imply in the child's life situation.

The conclusion regarding the overall aim has limitations due to the significant work that needs to be conducted before the CA potentially can be implemented as a guideline in a child's best interests' evaluations and assessments. Some of this work would need to include an interpretation of the ten capabilities into the Norwegian language, and an interpretation of the Capabilities Approach into a child welfare context.

The findings in this study were interpreted in light of the Capabilities Approach in relation to the principle of the child's best interests and the biological principle⁴⁶. The biological principle refers to the belief that children should be raised by their biological parents whenever possible, prioritizing their biological connections in decisions about their care (Bendiksen & Haugli, 2021, p. 189-190). To exemplify some of the complexity that can occur when the principle of the child's best interests and the biological principle pull in different directions, two cases from Norwegian courts were used. In the seven elements listed by the UN Committee on the Rights of the Child as a basis for best interests' evaluations and assessment, the child's family situation is mentioned, among other things. After a comprehensive assessment, the best interests of the child may indicate a solution that is not in line with the biological principle.

⁴⁶ This principle is further explained in the introduction of this synopsis.

The two cases chosen are the case of Christoffer Kihle Gjerstad, an eight-year-old boy who were found beaten to death in his own bedroom February 2nd, 2005. The second case is the case of Adele Johansen who were separated from her daughter in 1996, leaving both mother and daughter incapable of building or maintaining a relationship. Not given opportunities to develop a relationship, made the option of future reunification impossible (Strømmland et al. 2019). Other and more recent cases could have been chosen to shed light on dilemmas connected to the principle of best interests of the child, and the biological principle. These cases were chosen because they are both publicly known via books authored by Christoffer`s grandmother together with Gangdal (2010), and the cases of Adele through her book authored together with Brodin (1991). These cases are known via Norwegian public media (NRK Radio, 2021, Brodin, 2009). In addition, the cases are available through published law documents from the decisions made in the case of Christoffer by Agder Court of Appeal (2008, LA-2008-179127), and the European Court of Human Rights (1996). Additionally, the time-span from the case of Adele to the case of Christoffer, enables reflections on how children`s agency was perceived by authorities making decisions in the best interests of the child. The information available in these cases invites to transparency about the analysis and conclusions made in study 3.

In this study, the conclusion suggested regarding inadequate evaluations of best interests is based on the information gathered from the analysis of the two cases studied. This conclusion has limitations due to when the events took place. The case of Adele took place from 1989 (ECtHR, 1996), being the year when the convention on the rights of the child was agreed on by its working group. The case of Christoffer took place from his stepfather moved in with his mother in 2004 (Agder Lagmannsrett, 2008, LA-2008-179127). This was one year after the Convention on the Rights of the Child was incorporated to The Human Rights Act in 2003 (Smith, 2020, p. 29). According to Strand and Larsen (2021, p. 112) incorporated conventions to this act take precedence in the event of conflict(s) to national law.

The findings from the analysis of the case of Christoffer and the case of Adele were interpreted in light of the Capabilities Approach, concluding that the CA might be useful as a supplement to law regulations when evaluating and assessing the child`s best interests. However, when discussing possible synergies between the Capabilities Approach and the Convention on the Rights of the Child it is important to emphasize some differences. While the CA forms a basis

for reflection upon children's rights, rights deduced from the CRC forms a basis for children's claims (Strømmland et al. 2019, p. 532).

In the article based on study 3 (Strømmland et al. 2019, p. 532), we refer to Biggeri et al. (2011) and Biggeri and Santi (2012, p. 387), saying that capabilities can be divided in three categories;

a-capability – abilities to do something, such as in intellectual skill to critical thinking and functionings.

o-capabilities – opportunities to do something, which one might not have the skills to do.

p-capabilities – potentialities for someone to evolve a potential skill and/or opportunity.

Further, we express to agree with Ballet et al. (2011, p. 27), that p-capabilities applies in particular to children as they are 'by virtue' bearers of potentialities (Strømmland et al. (2019, p. 532). For the purpose of supplementing evaluations and assessments of the best interests of the child we introduce the ten capabilities described by Nussbaum (2006, 2011). The ten capabilities constitute a suggestion of areas where children and youth in contact with child welfare services could express their opinion (Strømmland et al. 2019). A possible implementation of the CA might (1) strengthen the child's right to be heard as each capability forms a basis for reflection, (2) strengthen the child's position as an independent rights holder because of a close link between the CA and the CRC, and (3) secure children's legal protection as the CA forms a basis for state obligations towards children (Strømmland et al. 2019, p. 539).

5.4 Summary of findings

Comparing and reflecting on the included studies, three overarching themes have emerged from this doctoral work: (1) not all children and young people in contact with child welfare services are given equal opportunity to participate in the decision process; (2) when this is the case, evaluations of what is in the child's best interests in child welfare services cases must be deemed lacking and inadequate. This is because under the Convention on the Rights of the Child (CRC), children have the right to be heard in all matters affecting them. Not involving them in decisions infringes on this right and fails to respect their agency.; and (3) the Capabilities Approach could provide a fruitful tool for

facilitating the inclusion of a child's actual or real perspective with respect to their own child welfare case.

In the following these findings are discussed in light of presented theory in this synopsis on child participation, evaluating and assessing the child's best interests, the Capabilities Approach, and relevant research on these themes, in a child welfare services context.

6. Discussion

The overall aim of this doctoral work is to explore, analyse and discuss if and in what way the capabilities, as developed by Martha C. Nussbaum, can be a useful framework for professionals in child welfare services when assessing a child's best interests in complex cases. In particular, I am interested in discussing whether the capabilities can be seen as an operationalization of what a 'best interest' might be, to guide professionals when ensuring that children are given opportunity to express their opinions in such cases. This includes if and in what way(s) children and young people have experienced being heard and participating in decisions concerning their own well-being in their encounters with public authorities in a national and international child welfare context.

Hence, three areas of interest have evolved from the three studies included. (1) The first theme discusses children's participation in decisions on their own best interests. (2) The second theme elaborates on the rationale behind implementing publicly available guidelines within child welfare services to evaluate and assess the best interests of the child. (3) The third theme explores the suggestion of using the Capabilities Approach as a potential supplement to law when deciding on the child's best interests to include the child's actual or real perspective with respect to their own child welfare case.

These themes will be reflected on and discussed in this chapter.

6.1 Children's participation in decisions on their best interests

The findings based on the three studies indicate that despite the child's right to be heard, there are challenges related to a practical operationalization of this right. Taken together, the three studies conducted suggests that this might be due to organizational structures and individual skills of communicating with children. These findings correspond with the findings from a meta⁴⁷ study conducted by McCafferty and Garcia (2023), examining child participation in child welfare, although their findings also indicates that "children's voice is not taken seriously".

⁴⁷ 'meta' in this context refers to this being a systematic literature review of other systematic literature reviews.

Skivenes and Strandbu (2006) argues that the emphasis on child participation that characterizes present-day discourses about childhood might be seen as related to the “new view” of the child. A view advocating the child as a competent rights-bearer, capable of participating and making contributions to decisions affecting the child’s own well-being. According to Pösö et al. (2014, p. 485), there has been an increased focus on acknowledging children as independent subjects in child protection systems. Highlighting that this focus represents a trend in child protection policy and in family policy in Finland, Denmark and Norway, where the new position for children might challenge a family preservation perspective Pösö et al. (2014). Family-related legislation characterized, according to Bernardi and Mortelmans (2021) Western countries up to the mid-1990s. The view of the child as an independent legal subject has been described as a paradigm shift by Dinardi (2016), replacing a view of the child as a possession of their parents. Skivenes and Strandbu (2006) explains child participation as an element of cultural and political modernization of democracies. According to Skivenes (2011, p. 171), focusing on children’s legal rights is one of the aspects within the concept of a child-centric society. As described in chapter 2, Hennem (2014, p. 452) points to possible challenges of a child-centric society, discussing how a possible pitfall might contribute to give children and youth the moral burden of moral communication. Federle (1994) warned against defining rights as a set of interests based on children’s needs and focusing on their protection, as this would only promote their powerlessness. She describes a right as “(...) power held by the powerless”, with the capacity to alter hierarchy (Federle, 1994, p. 345).

As the UN Committee on the Rights of the Child (2013) emphasize, there are inextricable links in the Convention on the Rights of the Child between the child’s best interests (Article 3) and the child’s right to be heard (Article 12). Therefore, to determine the child’s best interests, one must give the child opportunities, but not force them, to put their perspective forward and opportunities to participate in decision-making (Sandberg, 2016). Children exposed to maltreatment and/or violence are especially vulnerable as their basic needs have not been provided for or have been violated by adults upon whom they should have been able to rely on (Dixon & Nussbaum, 2012). Under what we might call ‘normal’ circumstances in general developmental psychological terms, the responsibility for ensuring that children’s right to be heard and participate lies primarily with a child’s parents. Hence, children exposed to

maltreatment and/or violence are especially vulnerable in this respect, since their basic needs have not been provided for by their parents. However, as Sandberg (2015) observes, classifying a certain group of children as especially vulnerable, may not only lead to inclusion and support, but may also paradoxically cause further victimization through making the group the focus of institutionalized care.

Skivenes and Strandbu (2006, p. 16) suggests a four-step procedure when facilitating for child participation in a child welfare services (CWS) context, regardless of type of vulnerability and/or age. These steps are similar to the suggestions on this issue described in the General Comment, provided by the Committee on the Rights of the Child (Committee on the Rights of the Child no. 12 Article 12, 2009). The steps suggested by Skivenes and Strandbu are (2006, p. 16):

- Giving the child access to information.
- Facilitating opportunities for the child to express views in various forms and channels.
- Making an equal evaluation of arguments put forward by all members in a decision-making process.
- Information on the decision made, and opportunities for the child to appeal to an independent body.

In the Child Welfare Act entering into force from January 1st, 2023, child participation for children in contact with Norwegian child welfare services is specified in a regulation entering into force from January 1st, 2024. This regulation specifies amongst others how to facilitate for child participation in decision-making processes, and how to document this (Regulation on children's participation in child welfare services⁴⁸, 2023). The specifications on how to facilitate and operationalize child participation in child welfare services, include some of the steps described by Skivenes and Strandbu (2006). When comparing the procedure outlined by them with the Regulation on children's participation in child welfare services (2023), both similarities and differences appear.

⁴⁸ The author's translation into English from 'Forskrift om barns medvirking i barnevernet (FOR-2023-10-121631).

Step 1. of Skivenes and Strandbu (2006) accounted for above, is described in § 4. of the regulation giving the child welfare services a duty to provide the child adequate and age adjusted information before a decision on the child's behalf is made; step 2. is described in § 3. giving children capable of forming an opinion a right to participate in all matters affecting the child regardless of age, means of communication, the child welfare services shall take into account the child's ethnic, cultural, linguistic, and religious background when the child participates; Step 4., on children's right to appeal to an independent body, is however not included in the regulation⁴⁹. Although, the child's opportunity to appeal is regulated in the Child Welfare Act (2021, § 10-14), regarding child welfare institutions. According to Stang (2023), the Ministry of Children and Family Affairs emphasize that children have an opportunity to contact the child welfare services in Norway and the County Governor for making a complaint. Additionally, Stang (2023) points to, a separate complaint mechanism for children has been established at the Parliamentary Ombud.

Nylund (2019) argues that the right of the child to be heard is widely recognized in Norwegian legislation. Despite this, she says, the voices of children are sometimes absent or treated superficially in decisions concerning them (Nylund (2019, p. 201). As Dixon and Nussbaum (2012), Nylund (2021) argues that children should be respected as 'human beings' and not only as 'human becomings'. Recognizing children as human beings, Nylund (2021, p. 202) says that it; (...) requires us to reposition our view of children's participation in decision-making". Which is important, in teaching children's skills of self-determination (Nylund, 2019). The interviewees in study 2, emphasized that listening to them was not enough. As Lisa (19) said, "What's the purpose of having a say, if I cannot participate?", indicating that having a say implies more than being listened to and is not enough, if what they said was not given due weight in later decisions. Lisa described her overall experience of not being heard by recounting situations where she lacked trust in her social worker to advocate for her when in meetings with her foster parents as well as repeated instances of being let down and not having her voice heard. These experiences

⁴⁹ This is not a full account of the regulation of the child welfare services act § 1-4 on the child's right to participate (2021), for this purpose see FOR-2023-10-121631 (2023).

might be reflected on in terms characterized by Duncan (2019, p. 73) as disaffected participation.

Nussbaum declares that autonomy is the very idea constituting her list of capabilities (Nussbaum, 1990, 2006, 2011). Nonetheless, Dixon and Nussbaum (2012) observed that children are in a different position than adults, which justifies adults making choices on their behalf until they reach full choice-related maturity (Dixon & Nussbaum, 2012, p. 576). The ability to choose is also, according to Nussbaum (1990), essential in the Aristotelian thinking of capabilities. Acknowledging this, Dixon and Nussbaum (2012) prefer a more neutral word than autonomy, as they point to the historical meaning of autonomy as a “law onto oneself”. Further, they point out that the emphasis on agency in the Capabilities Approach “... means that children should be afforded the maximum scope for decisional, freedom consistent with their actual – or potential – capacity for rational and reasoned forms of choice, or judgement” (Dixon & Nussbaum, 2012, pp. 559-560). Compared with Daly’s principle of autonomy, there might be a difference between her writings on participation and that of Dixon and Nussbaum (2012).

In legal decisions in which the best interest of the child is the primary consideration, children should get to choose – if they wish – how they are involved [process autonomy] and the outcome [outcome autonomy] unless it is likely that significant harm will arise from their wishes.

(Daly, 2018, p. 10)

Where Daly (2018, p. 10) stress the importance of giving children options to participate both in the process and in the outcome, it seems as if Dixon and Nussbaum (2012) do not make that distinction. The reservation related to whether a child’s wishes are likely to cause significant harm if they are followed is described in Article 12. of the Convention on the Rights of the Child. This reservation reduces children’s autonomy and placing the responsibility for the decision on those with a legal obligation to care for the child. At the same time, it might limit one of the possible pitfalls in child-centric societies described by Hennem (2014, p. 453) related to making children bear ‘the moral burden of moral communication’.

In 2019, the Supreme Court of Norway made a judgement related to a child’s right to be heard (2019, HR-2019-2301-A). In this case, a young boy

living with his foster parents experienced anxiety and unrest when confronted with his biological parents' repeated appeals for increased contact with their son. The court-appointed expert and the Court agreed that there was an imminent danger of him losing bodily functions if confronted with this issue again. Consequently, the court stated that in special cases such as this, it is not advisable to ask for the child's opinion (The Supreme Court of Norway, 2019, HR-2019-2301-A, section 92.). In the article we state our agreement with Haugli (2020) that this decision made too wide an exception from the right to be heard, which was potentially harmful for children in contact with child welfare services. Furthermore, it was not a necessary step in justifying the decision, as the boy expressed his opinion several times to his foster parents, which was supported by the court-appointed expert (Haugli, 2020; Strømmland et al., 2023).

According to the Expert Committee delivering the white paper on the situation of the Norwegian child welfare services in 2023, few authorities with responsibility to protect and facilitate children's participation and legal protection are in a position of developing trustful relationships with the child (NOU 2023: 7, p. 97). Further, they point to high turnover and frequent changes of contact person for children in contact with Norwegian child welfare services, which might limit the opportunities for social workers to develop trustful and lasting relationships with children (NOU 2023: 7, p. 98).

In Habermas' writings he assumes that all participants in dialogues regulating society are rational adult individuals, willing to comply with action norms (laws) developed through rational discourses (Habermas & Rehg, 1996). Duncan (2019) pointed to an important element here in stating that Habermas is not concerned about a critical evaluation of the norms and social rules communicated. For Duncan (2019), the concern is the advantages and disadvantages of the norms and social rules being communicated on. According to her, interactions between children or young people and their social worker in a child welfare services context differ from situations in which both parties are equal when it comes to opportunities to express advantages and disadvantages, and decision-making authority. Social workers in a CWS context have the power to judge what a child or young person says (Duncan, 2019, p. 147). The fault in communication is not connected to personal circumstances but rather to the circumstances of the institution/organization. For communication within the frames of CWS to take the form of a dialogue, Duncan (2019, p. 147) suggests

more equal conditions to be implemented, such as equal rights to ask and answer questions.

Sandberg's (2015) approach to child participation in a child welfare services context is that it might reduce vulnerability and improve a feeling of control over one's life. This is in line with the comment of the Committee on the Rights of the Child that one cannot know anything about a child's best interests without insight into the child's perspective (2013, 43.). Sandberg's (2015) argument corresponds with the finding in study 2. Analysis of data material from the interviews describing overall positive experience of being heard, indicates that youth who were given opportunities to participate in decisions on their best interests experienced hope for their future, trust in other people, as well as personal recognition and acceptance. At the same time, Duncan (2019, p. 152) warns against an uncritical acceptance of findings indicating child participation in child welfare services as children who are perceived to make rational choices in their best interests, corresponding to the social worker's responsibilities for protection are likely to experience congenial participation.

6.2 Towards a concretization of the child's best interests

Melinder et al. (2021), exploring the Norwegian child protective system and possible challenges which might have contributed to the recent criticism from the European Court of Human Rights. The authors criticize the ECtHR, arguing that they have had too little attention on the child's view and situation when making a judgement on Norwegian child welfare services. The child's need for stability in terms of not having to change the family situation once more, may in some cases prevail a goal of reunification with biological parents. With the purpose of documenting the child's views, and transparency in the evaluations made by the CWS and/or the courts, Melinder et al. (2021, p. 213), argues that "A more frequent use of interviews with the child should be expected and carried out according to evidence-based protocols that guarantees reliable and transparent reports". The three challenges discussed in the article of Melinder et al. (2021) are related to (1) balancing the rights of the child and those of the parents, (2) a psychological focus on assessments of the child's best interests, with a possible too narrow focus, and (3) missing links in the Norwegian child protective system, some of these related to multidisciplinary collaboration, organization, and competency (Melinder et al., 2021). Melinder et al. (2021, p. 226), concludes and

suggests abandoning the idea that parents have an ownership to their children, since ‘a tug of war’, is not beneficial, and certainly not for children (Melinder, p. 226).

The suggestion presented by Melinder et al. (2021) might be reflected on in relation to possible pitfalls in child-centric societies, described by Hennum (2014). One of these challenges is narrowing and instrumentalizing the role of the parents (Hennum, 2014, p. 445). As Skivenes (2011, p. 172) points to, a child-centric society could be described as focusing on children`s legal rights primarily through organizational procedures. Additionally, Skivenes (2011) reflects on whether a child-centric perspective on children as individual subjects will replace the traditionally family-centred perspective of children as part of a family system. She highlights that the child-centric approach is gradually evolving in the Nordic Countries, alongside the traditional family-centred approach. Skivenes (2011, p. 172), suggesting that identification of a child-centric approach is not clear as this approach exists side-by-side to the long tradition family-centred approach within Norwegian child welfare services (CWS). “The outcome of an eventual conflict between these approaches is not yet clear, and the child-centric perspective might be abandoned” (Skivenes, 2011, p. 172). Reflecting on the case of Christoffer, discussed in study 3, a potential conflict might be related to protecting the best interests of the child in accordance with the CRC Article 3, at the same time respecting the rights of the biological parents to have their family life respected in accordance with ECHR Article 8. In retrospect, a child-centric approach might have contributed to earlier intervention in the case of Christoffer.

The General Comment on Article 3 made by the Committee on the Rights of the Child in 2013, include elements which, should be considered when assessing a child`s best interests (Sandberg, 2016; Bahus, 2021; Mørk et al. 2022). At the same time, the Committee emphasize that the list developed by them is not exhaustive (Committee on the Rights of the Child no 14 Art. 3, 2013, sect. 50). This General Comment of the Committee on CRC Article 3 is according to Bahus (2021, pp. 38-39) and Sandberg (2016, pp. 69-71) an exemplification of a concrete and individualized best-interest evaluation. Smith (2020, p. 28) underscores that the European Convention on Human Rights (ECHR) and the CRC are living instruments, open to a dynamic interpretation. According to Smith (2020, p. 28), this is essential to interpret the right in the context of societal development. Smith (2020, p. 27) highlights that national

operationalization of the articles in the CRC might involve challenges related to interpretations of the article's content. On this point the Committee on the Rights of the Child provides general comments on some of the articles and some issues considered by the Committee especially important (Smith, 2020, p. 27). Most of these comments are, according to Smith (2020, p. 28), developed based on a collaboration including UNICEF⁵⁰, other organizations, and after a very extensive consultation process.

Lauritzen et al. (2017) and Vis et al. (2020) found that the Kvello assessment framework was the most often used (58%) in Norwegian child welfare services to evaluate a child's situation. These scholars concluded that a central weakness in this framework is related to missing or incomplete manuals that provides a thorough description of its content and use (Lauritzen et al., 2017; Vis et al., 2020). According to Lauritzen et al. (2017), the course manual developed by Visma does not fully address the need for a description of a step-by-step methodology to follow in a child protection investigation using this framework. To understand the framework, one must become familiar with the IT system Familia and unpublished texts by Kvello, and/or Kvello's book⁵¹ *Children at Risk: Harmful Care Situations* from 2015. Lauritzen et al. (2017, p. 127) highlight this as a challenge in terms of determining what kind of information should be requested and how it should be collected.

The data material of this doctoral work indicates that evaluations and assessments made by child welfare services on children and youth's best interests need to be strengthened. In terms of study 1, this conclusion is based on the findings of the systematic literature review (Strømland, 2022). In this study we searched for scientific articles on children and youth's experiences of being heard when in contact with child welfare services. For this study we included articles from; Australia, United Kingdom, Norway, Canada and USA (Strømland et al., 2022). A limitation discussed in this study is that child welfare services in these countries, is organized differently. Common to several of the cases brought to the European Court of Human Rights is that the court considered the interventions as justified and as being in the child's best interests, thus supporting the decisions made by the Norwegian child welfare services and national courts. The point on

⁵⁰ United Nations Children's Fund.

⁵¹ The author's translation from 'Barn i risiko: skadelige omsorgssituasjoner'

which the ECtHR has often disagreed with Norway is according to Sandberg (2020, p. 149), and Stang et al. (2023, p. 57), related to the decision on contact between the child and the biological family, which it claims is nonproportional and puts too little weight on family ties. The concept of the child's best interests is both a material right, a principle of interpretation and a procedural rule (Committee on Children's Rights Art. 3, 2013; Sandberg, 2016). However, according to Samsonsen and Turney (2017) it might be challenging to define what the material right entitles children to claim, partly because it is the best interests of an individual child that must be evaluated but also because child welfare cases are often complex.

The conclusions and recommendations brought back to Bufdir by the group of scientists led by Vis, conducting the public tender called *Child Welfare Investigation Work – From Concern to Decision*⁵², were to implement a socio-ecological model for gathering information on the child's developmental needs. The model is amongst others focusing on parenting capacity as well as family and environmental factors. The model they suggest is based on the Assessment Framework (AF) developed in the United Kingdom in 2000 (Department of Health, UK., 2000, p. 1), adapted and implemented in child welfare services in Sweden and Denmark, and the Kvello framework (Lauritzen et al., 2017). Lauritzen et al. (2017, p. 125) recommended a combination of these two frameworks (the AF and Kvello) to fully account for the importance of family and environmental factors, such as community resources, the extended family, and the family's social integration, family history and family functioning. The use of the Kvello framework alone was found by the group led by Vis, to not take full account of these factors.

The concept of the child's best interests has according to Stang and Baugerud (2018), content even without specifying what it does include. At the same time, the understanding of what is considered to be in the best interests of children in general undergoes changes as our knowledge and understanding of this concept continuously evolves (Stang & Baugerud, 2018, p. 60). Accounting for the possible pitfalls reflected on by Hennem (2014), standardizing and specifying parents' obligations towards their children might contribute to instrumentalizing the role parents have toward their children. When the UN

⁵² Author's translation from 'Barnevernets undersøkelsesarbeid – fra bekymring til beslutning'

Committee developed and specified some central elements that could be included in a child's best interests' assessment, this was done to guide ratifying states on what they could consider evaluating (Stang & Baugerud, 2018, p. 60). The view of the child is an essential element when evaluating the child's best interests, according to the Child Welfare Act, (2021, § 1-3). Bahus (2021, s. 34-35) points out that when the content of the General Comment provides a clear interpretation of the CRC, which is well-grounded in the text of the CRC, the Supreme Court of Norway has established that the General Comments created by the Committee should be given significant weight. Stang and Baugerud (2018, p. 174) suggest that public authorities should have access to a comprehensive legislative history and/or guide to assist them in regulating and making decisions regarding the establishment and/or development of children's relationship with their parents. However, they also recognize the challenge of having a rigid list that may not be adaptable enough to evaluate individual cases effectively.

Stang (2023, p. 40), specifies that the criticism from the ECtHR, has primarily focused on the processing of cases and the decision-making basis by the child welfare services, the County Social Welfare Boards⁵³, and the courts. Norway has been criticized by the ECtHR for placing too little emphasis on family bonds when making evaluations on this subject (Sandberg, 2020, p. 149). The type, number and length of visits and opportunities on this issue depends on an individual and concrete evaluation of the unique child's best interests (Stang et al., 2023, p. 57). As pointed to by the Committee on Children's Rights in their general comment to the Convention on the Rights of the Child Article (2013), when assessing the best interests of the child, listening to what the child has to say on their best interests is essential.

Stang et al. (2023), specifies four overall main themes which can be extracted from the European Court of Human Rights (ECtHR) decisions in cases where Norway has been found to have violated the European Convention on Human Rights (ECHR) Article 8.

⁵³ After the new child welfare act was out into force January 1st, 2024, the County Social Welfare Boards are replaced with the Child Welfare Tribunals. The mandate of these tribunals is described in section 1 of this synopsis.

- Documentation that the CWS has tried to facilitate for contact and visitations for the purpose of reunification, if this is considered to be in the best interests of the child.
- If the child's health and development indicate little or no visitation, this must be due to specifically and individually assessments, and not generally assumed. It is necessary to have a comprehensive and up-to-date decision-making basis.
- The child should not be exposed to unreasonable burden. Parents cannot claim protection under Article 8 of the ECHR that can harm the child's health and development.
- The child welfare services are criticized for facilitating permanent placements at an early stage, which consequently cuts off or strongly limits visitation right from the beginning of the placement. This is in contradiction with the goal of reunification because time itself will work against a possibility of reunification⁵⁴.

(Stang et al. 2023, p. 40)

These points have importance when deciding on contact opportunities between the child and the child's biological parents, when the CWS has decided on a care order (Stang et al., 2023, p. 40). Sandberg (2016), emphasize that once we acknowledge the child's best interests as a material right, our moral obligation goes beyond the possibilities and limitations an assessment framework can offer in terms of evaluating a specific child's life situation in a thorough way.

Leaning on Rawls and his understanding of the role that human rights have in national legislation, intervention that restricts personal autonomy can only be justified if it is in accordance with human rights (Rawls, 1999a, pp. 79-80; Rawls & Evang, 2006, p. 87). Rawls perspective might be relevant for both children and parent(s) who are in contact with the child welfare services. According to Graver (2019, p. 137), Aall (2015, p. 77), and Aasen and Bahus, (2022, p. 382), state intervention based on human rights require thorough documentation and argumentation showing that the intervention is necessary and proportional.

⁵⁴ These four points are translated from Norwegian, inspired from 'UiO Chat' (2024). 'UiO Chat' is an artificial intelligence (AI) based tool for proofreading and linguistic improvement of text. This was made to improve the translation.

At the same time, protecting and promoting a child's best interests is more than assessing risks; it also includes facilitating healthy development and opportunities for children to live the life they prefer, today and in the future (Ballet et al., 2011; Biggeri & Santi, 2012, Redmond, 2014).

6.3 The Capabilities Approach as a guide to contextualizing the child's perspective

Respecting human rights has been and remains important in all societies to facilitate human dignity and justice (Rawls, 1999a, pp. 79-80; Rawls & Evang, 2006, pp. 87-88). According to Rawls, human rights regulate interaction between states, state interventions towards individuals, and democratic decision-making between majority and minority groups in society (Rawls, 1999a; Rawls & Evang, 2006). In this context, Rawls mentions slavery, political and/or religious persecution, mass murder and genocide, as examples of human actions that human rights are designed to prevent, as these grave injustices violates human dignity, equality, and freedom (Rawls & Evang, 2006). The role of human rights, to regulate state intervention towards people living in a state is, according to O'Neill (2016), fragile when it comes to operationalization of human rights. O'Neill (2016) highlights that each article constituting human rights needs to be specified and concretized to clarify which claims people have and who has obligations to operationalize those claims. In other words, for human rights to be operationalized in a state, the claims that derives from human rights need to be concretizes, and corresponding obligations needs to be specified. If not, rights have little practical value for human beings. O'Neill (2016) describes the challenge of concretizing claims and obligations as the dark side of human rights (2016).

According to O'Neill (2016), one of the philosophical arguments for human rights is that they legitimize state intervention and state obligations towards citizens living in states who have ratified these conventions. According to Rawls (1999a), this has implications for freedom and opportunities for interactions between ratifying states and for the individual freedom and opportunities of people living in these states (Rawls, 1999a, p. 79; Rawls & Evang, 2006; Simpson, 2019). Eriksen (2003, p. 357), argues that human rights in the form of ratified conventions indicates limits to established and confined

democracy. This is challenging, he says, according to the political principle of Kant allowing all citizens the maximum of equal freedom in accordance with the law (1970, p. 23) and Habermas' principle of rational discourse to agree on laws (1996, p. 107), because it limits popular sovereignty (Eriksen, 2003, p. 357).

Eriksen (2003) points to a significant development of rights and law enforcement extending beyond the nation state, with human rights forming an important part and contributing to a situation in which "naked power is tamed by law" (Eriksen, 2003, p. 352). The concept of autonomy, linked in this synopsis to Kant's writings on the concept (1991) and Habermas' procedure of rational discourse (1996) to secure the maximum personal autonomy of every adult living in a state, has limitations. Shklar's (1989) critique is that liberalism leaves it to governmental willingness to secure autonomy for all adults living in a state, with unlimited legal power to support or reject personal preferences and/or decision-making. According to Eriksen (2003, p. 352), human rights could contribute to secure citizens' autonomy. Provided the state chooses to comply to the human rights convention relevant to the specific situation (Eriksen, 2003).

Human rights appeal to humanity and human dignity regardless of constitutional power. According to Rawls (1999a), human rights limit state authority on different levels: when it is legitimate for a state to go to war against other states and when it is legitimate to intervene in a person's autonomy and freedom; furthermore, human rights limits democratic decision-making between majority and minority groups ("peoples") living in a state (Rawls, 1999a, pp. 79-80; Rawls & Evang, 2006, pp. 87-88). Theoretically, children could be a majority in a state but whether they are in position for decision-making depends on their voting rights granted in local and national elections. Rawls (1999b) does indirectly account for children as a group. He does so by including information about which generation one belongs to, as one of the many facts people should be ignorant about being behind the veil of ignorance when making decisions, forming a society (Rawls, 1999b, pp. 118-119). Interpreting Rawls (1999b), maltreatment and violence against children should be forbidden by law, but to some extent one has to trust adult family members' affection and benevolence towards their children (Rawls, 1999a, p. 160; Rawls & Evang, 2006, p. 170).

Nussbaum (2006) and Dixon and Nussbaum (2012), building on Rawls' (1999b) theory of justice, argues that there are four unsolved problems of social justice. These 'problems', might be understood as areas which needs extra attention and/or special legal protection because of being dependent on decisions

made in democratic decision-making. These 'areas' are related to (1) disability, (2) nationality, (3) species membership (Nussbaum, 2006), and (4) children (Dixon & Nussbaum, 2012). With the purpose of trying to solve problems related to the mentioned areas, Nussbaum (2006) and Dixon and Nussbaum (2012) suggests 'frontiers of justice', in form of special law regulations. By law regulations social justice on these important areas, according to Nussbaum (2006) and Dixon and Nussbaum (2012), might be protected even without the support of a democratic majority. Dixon and Nussbaum (2012), argues that a fourth front for children is necessary to protect and promote children`s well-being and children`s capabilities. They justify the necessity of special rights for children in form of a front, due to the principle of vulnerability and the principle of cost-effectiveness (Dixon & Nussbaum, 2012).

According to Nussbaum (2003, p. 55), societies should strive to achieve social justice for all people. In advocating for this political objective, she argues that a list of central human capabilities would be necessary to secure a minimum of human dignity for all human beings, and that this list might be understood as a form of political liberalism close to Rawls'. According to Nussbaum (2003, p. 35), the intention of distributing resources with the goal of achieving equality often falls short because individuals have varying needs for resources in order to develop and function a capability.

In *Creating Capabilities. The Human Development Approach* (2011) Nussbaum describes how she arrived at her list of capabilities by building on classical Greek philosophy, namely Socrates' demonstrations of critical thinking through dialogue with others and Aristotle's work on what political planners need to understand about what is required for human flourishing (2011, p. 125). According to her, the purpose of a list is to provide a theoretical framework that mandates states to actively implement and promote human flourishing. This notion, as proposed by Nussbaum (2006, p. 1-8), emphasizes the importance of creating conditions that enable individuals to lead flourishing lives. It also highlights that human flourishing does not happen only from 'the inside out'; it needs a level of shared communal responsibility to secure the necessary conditions for it to take place.

The CA recognize the potential for different types of rights to come into conflict with each other. For example, in cases of protecting children`s right to have their best interests protected under the Convention on the Rights of the Child (CRC, Article 3), and of parents right to have their private life respected

under the European Convention on Human Rights (ECHR, Article 8). Where a possible conflict might be exemplified by the case of Adele. In this case, a newborn girl was placed in foster care, contrary to the mother's wish. This decision was supported by the ECtHR, because, at the time, Adele was not able to care for her child due to health-related issues (ECtHR, 1996). Dixon and Nussbaum (2012, p. 554) justifies limitations on parental rights and freedoms, as these might be necessary to protect the future right and capabilities of children. Further justifying that protection of children's rights today are cost-effective when considering these in a lifetime perspective (Dixon & Nussbaum, 2012, pp. 581-584).

Reflecting on Sandberg's writings on 'the child's best interests as a right'⁵⁵ (2016), as well as the moral implications deduced from it, drawing on the insights provided by the Capabilities Approach might be fruitful for a practical operationalization of the best interests of the child. Such reflections are made in the work of Biggeri and Santi (2012, p. 387), Biggeri et al. (2011) and Bellanca et al. (2011), building on the ideas of others such as Gasper (2002). These scholars argues that we need to go beyond Nussbaum and Sen's initial idea of capabilities, claiming that we need to think of capabilities in categories corresponding to a person's *ability*, *availability*, and *potentiality*. Bellanca et al. (2011, p. 170) and Biggeri and Santi (2012), describes these as: *a-capabilities*, as an ability (for example in the form of individual skills to do something); *o-capabilities*, as actual, assessable and/or available opportunities to improve well-being; and *p-capabilities*, as potentialities to construct, develop or improve capabilities today and/or in the future. On this point Bellanca et al. (2011) might be right to follow Rawls (1999b, 70. and 71.) in observing that our individual and institutional expectations about other people can shape the potentialities of ourselves, children and others.

For the purpose of concretizing the child's best interests, Nussbaum's list of capabilities is suggested as an alternative to elements for insight into the child's opinion on the child's perspective (Strømmland et al., 2019). A version of this list and/or the elements listed in the Committee's General Comment (2013), incorporated in for example statutory legislation, might concretize a minimum of

⁵⁵ Author's translation of 'barnets beste som rettighet' (Sandberg, 2016).

elements for public authorities to evaluate without compromising the complexity involved in child welfare service cases.

At the same time, one of the possible challenges in a child-centric society described by Hennem (2014, p. 452), indicates that instructions made by professionals on how to raise their children, might instrumentalize parenting. Implementing official guidelines in child welfare services might contribute to this challenge. On the other hand, both Sen (1993) and Nussbaum (2011) emphasise that the Capabilities Approach corresponds to peoples' actual opportunities to live the life they value. According to Sen (1993, p. 33), "The freedom to lead different types of life is reflected in the person's capability set". Nussbaum (2006, 2011) argues that the Capabilities Approach aims to provide an ethical guideline for states on how to protect and promote human flourishing in the way and by the means valuable for that person.

Evans (2017, p. 26) introduced the Capabilities Approach to a social welfare practice audience, concluding with an invitation to social welfare workers to consider the theory as a normative framework for further application, by starting from each capability listed by Nussbaum. Thomson (2021) concludes similarly to Evans (2017), exploring the CA's practical and operational function in a child law context, that the Capabilities Approach might give best interests assessments much needed normative content (Thomson, 2021, p. 293). He discusses the intention of assessing best interests of children by pointing out that this might be influenced by values, or the opposite, it might be value-free. Neither would, according to Thomson (2021), be preferable when deciding on the assessment, as it gives the expert or the parent(s) room for personal prejudice, rather than focusing on the child's human well-being and flourishing. Thomson (2021, p. 280-281) agrees with Daly (2018, p. 8-9) saying that the principle of the child's best interests is 'drastically failing children'.

Thomson (2021) refers to Herring and Foster (2012, p. 482) who argues that behind assessments and judicial determinations of best interests, there lies an Aristotelian idea of what 'a good life' implies (2021, p. 281). Herring and Foster (2012, p. 493) warn against using a philosophical explicit protocol in deciding on a person's best interests, as it would quickly become tyrannous in setting out a normative standard for a good life. Thomson (2021) responds to this argument by saying that the judiciary (and others) are influenced by values, which should lead us to examine what these values might be. To avoid a situation of assessments being made based on prejudice and discriminatory values, it would be better he

says “(...) to be explicit about the values informing calculations, and to work with an evidence-base, even at the risk of this becoming tyrannous.” (Thomson, 2021, p. 282). Building on this argument, Thomson (2021) suggest the Capability Approach, arguing that “The approach can respond to the need for a robust theoretical framework underpinned by an evidence-base to inform our understanding of the ‘good life’ and human flourishing.” (Thomson, 2021, p. 282). When evaluating and assessing a child`s best interest, Thomson (2021, p. 281) suggests that this assessment owes less to scientific evidence than to understandings of the welfare of children. Saying this, Thomson (2021) indicates that the answer to a child`s wellbeing might not always be found in scientific literature. The evidence-base Thomson (2021) points to is not the one introduced by Gambrill et al. (2008), suggesting that one might find ‘scientific evidence’ for how to flourish and develop as human beings, what Thomson suggests is a philosophical understanding of what might facilitate human flourishing and ‘a good life’. According to Nussbaum (2011, p. 123-124) philosophers who have inspired Sen`s development of the Capabilities Approach are amongst others, Rabindranath Tagore and Mahatma Gandhi. The most important philosopher for Nussbaum`s version of the approach is, according to her, Aristotle. “Aristotle believed that political planners need to understand what human beings require for a flourishing life” (Nussbaum, 2011, p. 125). In addition to Aristotle, Nussbaum has been inspired by other philosophers as Kant, Mill, Marx and Rawls - in trying to answer the questions: “What are people actually able to do and to be? What real opportunities are available to them?” (Nussbaum, 2011, p. 124). Taking this into consideration, it could be suggested that the Capabilities Approach might not rely on traditional forms of understanding ‘evidence-based’, as described by Gambrill (2008; see also chapter 1.5 above). Instead, Nussbaum`s version of the Capabilities Approach is based on evidence derived from philosophical ideas on human flourishing, which according to her (2011, p. 125) started by Socrates` critical thinking through dialogue. Nussbaum built her ideas and thoughts of the Capabilities Approach inspired by philosophers exploring what it is to be a human being and what it takes for humans to thrive and develop together with one another and the ecosystem at large.

Redmond (2014), discuss, evaluate and compare three different approaches on child development – for them to reach their fullest potential under the protection of the Convention on the Rights of the Child Article 27. For this purpose, Redmond (2014) discuss the material welfare approach, which suggests

that a child's access to material welfare might correlate with the child's development (Redmond, p. 624). The social exclusion approach, the second of the three, suggests that relationships and being socially included in society enhances a child's degree of development (Redmond, p. 624). The third approach he discusses is the Capabilities Approach, concluding that it (...) offers the greatest potential as a framework for defining living standards that are adequate for children's development to their fullest potential." (Redmond, p. 620). As the Capabilities Approach, according to Nussbaum (1997), is closely linked to Human Rights, a use of this approach might be fruitful in a child welfare services context to understand the child's perspective on the child's life situation. The close link between the CA and human rights might provide a basis for justification of the capabilities, as human rights are widely recognized and agreed upon by the majority of states worldwide, constituting a common framework for states in protecting a minimum of human dignity. Based on the findings from this project related to challenges of operationalizing the child's right to be heard and assessing the child's best interests, the CA provides a promising alternative to existing practices. However, this needs further examining.

7. Possible implications of the study

Based on the results from this doctoral work, this chapter presents some recommendations and suggestions for child welfare services practice and for national and international law development in three areas:

1. Strengthening child participation in child welfare services work.
2. Concretization of elements in individual child best-interest evaluations.
3. Further exploring the opportunities of implementing the Capabilities Approach in child welfare services to evaluate and assess the child's best interests.

7.1 Strengthening child participation in child welfare services work

The descriptions made by the young people interviewed for study 2, regarding their encounters with Norwegian child welfare services, varied due to the fact that they are unique individuals facing various life situations. However, the overall experiences of the nine young individuals interviewed might be categorized into three distinct groups. Firstly, three out of the nine interviewees felt that they were genuinely listened to and heard by the child welfare services. Secondly, four out of the nine participants expressed dissatisfaction as they felt that their voices were not adequately considered or valued. Lastly, two participants had a mixed experience, feeling initially unheard but later acknowledged and listened to once they reached the ages of 16 and 18.

The young individuals who had a generally positive experience felt that their opinions were not only heard by the child welfare services but also validated and acknowledged in the decision-making process. They described being in contact with social worker who they experienced to be skilled in developing trustful relationships as essential for them to be heard and to obtain adequate help from the CWS. As Nakia (aged 20) told us when she spoke of the social worker at the school she was attending: "We agreed that she should speak on my behalf when we met my parents to confront them with their behaviour towards me, at my school" (Strømmland et al., 2023). The youth who reported an overall negative experience of being heard when in contact with child welfare services described deficiencies related to their right to participate. Although the young individuals were provided with opportunities to express their opinions,

they often felt that their views were not valued or considered in the decisions made by the CWS. Furthermore, they were not provided with any explanation as to why their opinions were disregarded. In their opinion, they were not given adequate information about decisions affecting their lives, the CWS did not facilitate opportunities for them to express their opinion in various forms and channels, and they were not given adequate information about their right to appeal the decision.

The findings from study 2 align with the participation categories⁵⁶ described by Duncan (2019, p. 72-73), as the young individuals who felt unheard in their interactions with Norwegian CWS might be classified as experiencing ‘disaffected participation’. The young individuals expressed a lack of trust in the CWS due to previous decisions made by them, challenges in contacting them outside of office hours, and a perception that the CWS did not show concern for their well-being. The youth who had an experience of being heard, might be classified as experiencing ‘congenial participation’. Their descriptions of their social worker within the CWS indicated a mutually beneficial relationship, and they perceived the decisions made by the CWS to be in their best interests. At the same time, all interviewees expressed to have been in the category described by Duncan (2019), as ‘sceptical participation’, due to fear of what their participation might lead to for them and their parents and/or foster family. The findings from the small-scale study 2, indicate that when the child’s opinion is contrary to that of the CWS, the child is more likely to not be heard. These findings are consistent with the findings from study 1, the systematic meta-review conducted by McCafferty and Garcia (2023), as well as the research conducted by Duncan (2019, p. 152).

The child welfare act (2021, § 1-4), along with the associated regulation (FOR-2023-10-12-1631), has the potential to secure the right to be heard for all children in contact with the Child Welfare Services (CWS). The Committee on the Rights of the Child has specifically addressed the need for Norway to improve the protection of the rights to be heard for children with disabilities, very young children, as well as migrant, asylum-seeking, and refugee children, especially concerning the right to be heard (2018, sect. 14. (a)). Additionally, the Committee highlights the importance of providing regular training for

⁵⁶ See chapter 2.4.2, of this synopsis.

professionals and parents in order to cultivate their ability to listen attentively to children and involve them in decisions that impact their lives (2018, sect. 14. (b)). This training should aim to developing a comprehensive understanding of the child's perspective on what is in their best interests.

The list of capabilities developed by Nussbaum (2011) might be used as a supplement to national law when evaluating a child's best interests in child welfare services, possibly in the form of asking questions or engaging in other forms of information-seeking on each capability – understood as a-, o-, and p-capabilities (Bellanca et al., 2011; Biggeri & Santi, 2012; Strømmland et al., 2019). At the same time, it is important to highlight that lists and assessment frameworks of any form are no guarantee of the operationalization of rights or best practice, as these amongst others depend on human interaction and are therefore vulnerable to lack of knowledge, misunderstandings, misjudgement, and contextual factors, like lack of time and resources, as pointed to by Finne (2020) and Scurlock-Evans and Upton (2015). Furthermore Kane (2016) and Samsonsen and Turney (2017) emphasize that lists and/or frameworks should not be misused by treating them as able to account for the complexity of child welfare service cases.

Stang et al. (2023) found in their research report on visitation practice after child welfare service care orders that what had seemed to have become a standardized norm in CWS and court decisions of 1–4 visits per year after CWS care orders now seems to have increased to 8–12 visits per year (2023, p. 57). Stang et al. (2023) assume that this increase in visiting hours for children and their biological parent(s) is linked to the ECtHR's critique of Norwegian public administration for not doing enough to conform to ECHR Article 8 and CRC Article 16 after a CWS care order. However, a mere increase in a standardized norm might possibly still be contrary to the obligation in the CRC Art. 3 to make decisions in the best interests of each individual child (Committee on Children's Rights art 3, 2013, 22.). Therefore Stang et al. (2023) highlights the importance for scholars to observe the practice of the CWS and the courts in this area for whether a new standard of visiting hours had developed. The Expert Committee of the NOU:2023, *Safe Childhood, Secured Future*, concluded on many failures in municipal CWS related to ensuring fair and legal processes and providing adequate help to children and families in difficult life situations (NOU 2023: 7, p. 365). The prevailing conditions of high turnover, a lack of necessary competence in law and psychology, and challenging cooperation with the Office for Children,

Youth and Family Affairs (Bufetat) have made it difficult for the municipal CWS to carry on their work in line with best practices (NOU 2023: 7, pp. 365, 363). These challenges have great consequences when considering the implications of decisions made by the CWS that interfere with children and families in vulnerable life situations (NOU 2023: 7, p. 365). The Committee recommends that state authorities assist and support municipalities in relevant cases, according to municipal needs and demands (NOU 2023: 7, p. 371).

The findings from this doctoral work suggests an operationalization of the child's right to be heard when in contact child welfare services, possibly by the means of the procedure described by Skivenes and Strandbu (2006). The findings from both study 1 and 2 indicates a need of giving special attention to operationalization of child participation in cases where the child's viewpoint conflicts that of the social worker. For decisions made under such circumstances it seems crucial to ensure proper documentation of the child's opinion and how the decision was justified by the child welfare services.

7.2 Concretization of elements in individual child best-interests' evaluations

The findings of this doctoral work indicate a need for strengthened procedures on how to operationalize the child's best interests, to ensure that national and international law related to children's rights is complied with. The findings suggest using the Capability Approach as a supplement for concretizing the content of best-interest assessments and evaluations. The capabilities offer elements to evaluate and/or assess when getting the child's perspective and opinion on whether and in what way relevant capabilities are facilitated and/or protected in their life situation (Strømmland et al., 2019). Using the CA as proposed here might contribute to:

1. Strengthen the child's right to be heard;
2. Strengthen the child's position as an independent right holder; and
3. Secure children's legal position.

(Strømmland et al., 2019, p. 537)

As mentioned, the Committee on the Rights of the Child recommended developing clear criteria for evaluating a child's best interests (Committee on the Rights of the Child, 2018, sect. 13. (a)). The Committee on the Rights of the Child's comment to Convention on the Rights of the Child Article 3 mentions seven elements to be considered when evaluating a child's best interest (section 52–79), while also recommending that parties develop a list of non-hierarchical and non-exhaustive criteria for what could be used in a best-interest assessment (section 50). In the use of the term “could be included”, the Committee refers to the need for flexibility in assessing other relevant elements, which according to Bahu (2021, p. 36) and Jerkø (2018) is in line with the obligation to make an individual assessment of the child concerned and acknowledges that there are situations in which not all elements would be relevant.

The Capability Approach might be fruitful as a basis of reflection on what the state should provide for children and youth in out-of-home care, under the Convention on the Rights of the Child Article 3.

Kogstad (2021) asserts that the costs associated with challenging life experiences must be addressed both at an individual and societal level, recognized by the need for collective responsibility. At the individual level, there is a need for a collective understanding of how social conditions affect a person's well-being, with implications for the help offered by public authorities today. At the societal level, in order to foster sustainable societies, it is essential to eradicate all forms of poverty, recognize well-being as a shared benefit, and actively work towards reducing social risk factors (Kogstad, 2021, p. 13). This type of argumentation has also been fronted by Kirkengen and Næss (2021), Hämäläinen et al. (2020), Hofstad and Bergsli (2017), the United Nations' sustainable development goals (United Nations, 2022), and Nussbaum's argument for the Capabilities Approach (2011).

7.3 Further exploring the opportunities of implementing the Capabilities Approach in child welfare services to evaluate and assess the child's best interests

Given the findings from this doctoral work, it would be interesting to further explore the potential relevance of the Capabilities Approach in the context of child welfare services. Given the substantial impact that social conditions have on individuals' well-being, exploring how the CA can be integrated into child

welfare services might lead to a deeper understanding of promoting positive outcomes for children. This exploration might possibly shed light on the role of child welfare services in shaping children's capabilities and their overall well-being both as 'human beings' and as 'human becomings'. Research on operationalizing the CA in a child welfare services context, assessing and evaluating the child's best interests might be conducted as 'action research' (Bradbury, 2015). One of the intentions of using this method is to change an existing situation by giving some of the information gathered from interviews and/or observations back to those contributing to the study (Kvale & Brinkmann, 2015, pp. 222, 326).

In addition, it would be interesting to explore and analyse in what ways the child welfare act (2021) affects CWS work in their meetings with children, young people and their families.

According to Stang et al. (2023) one of the main critiques towards Norway made by the ECtHR is related to standardized visitation hours in child welfare services out-of-home placements. On this point Stang et al. (2023) concludes that follow-up studies are needed on both the CWS and national courts related to the rights of children and young people to have an individual, thorough and concrete evaluation of their situation before a decision is made on visiting hours between them and their biological parents (Stang et al., 2023, pp. 47, 53, 57, 200, 215). The decisions should be built on updated information and participation. Recognizing the significance of contact between a child in out-of-home care and their biological parents, as emphasized by the European Court of Human Rights (ECtHR), it is important to note that this emphasis may not fully capture the essence of the child's opinion in cases brought before the ECtHR. Instead, it is possible that this emphasis on contact can be attributed to the ease of operationalizing and quantifying the hours of visitation. The themes and perspectives on human development and human dignity put forth by the Capabilities Approach might offer a valuable framework for assessing and evaluating each unique child's best interests within the context of child welfare services. By embracing this approach, not only does it provide a language for discussions on individual well-being and development, but it might also contribute to for meaningful reflection on how to foster the child's development for children who are involved with child welfare services. However, the suggestion to implement the Capabilities Approach as a framework for assessing and evaluating the child's best interests from the child's perspective would

require translation and contextualization of the approach into a Norwegian child welfare services context.

A systematic literature review on suicidality among children and young people in contact with Nordic child welfare services from 1993 to 2018, was conducted by Milde et al. (2021). They found significant evidence for an increased risk of suicide and suicide attempts among children and young people who had been in contact with CWS compared to those of the same age from the general population (Milde et al., 2021). In this systematic literature review, other systematic reviews, randomized controlled trials, cohort studies, case-controlled studies, cross-sectional studies and surveys in which children and young people from the general population were comparators, were included (2021, pp. 709-710). The participants in the included studies were aged 2–18 years, represented both genders, lived in Denmark, Sweden, Finland, Iceland or Norway, and all were formerly or currently in contact with CWS. Mixed samples included participants above the age of 18 (Milde et al., 2021, p. 709). Milde et al. (2021, p. 713) found that young people placed in residential schools had a seven times higher risk of suicide and suicide attempts than the general population. Furthermore, this systematic review found that all types of CWS interventions indicated a four- to fivefold risk of being taken to hospital for a suicide attempt compared to the general population. Children and young people who are and have been in contact with CWS should therefore be recognized as being at a heightened risk for suicide and suicide attempts (Milde et al., 2021, pp. 714, 716).

Reflecting on the findings from Milde et al. (2021), suicide was one of the themes the interviewees to study 2 with an overall experience of not being heard, had in common. The findings from Milde et al. (2021) might indicate that the help provided by the child welfare services might benefit from an approach with a long-time perspective on the child's human development and well-being. The insights gathered from face-to-face interviews conducted with nine young individuals, aged 16 to 23, involved with Norwegian child welfare services indicate the necessity of adopting a comprehensive approach to address their current and future development and well-being. This approach should recognize and appreciate their inherent value as 'human beings' while also acknowledging their potential for growth and transformation as 'human becomings'.

8. Central elements and conclusions

The overall aim of this doctoral work has been to explore, analyse and discuss if and in what way the capabilities, as developed by Nussbaum as a part of the Capabilities Approach (Nussbaum, 2000, 2006, 2011), might supplement a best-interest evaluation of the child in which the child's right to be heard is essential. This includes whether and in what way(s) children and young people have experienced being heard and participating in decisions concerning their own well-being in their encounters with public authorities in a national and international child welfare context. Alongside Nussbaum's developments of the Capabilities Approach, central to this work are human rights, child welfare services, the child's best interests and the assessments of these, the child's right to be heard, and to participate.

The three included studies indicate a need to develop new theories and practices for operationalizing children's right to be heard (Fylkesnes et al., 2018; Kosher & Ben-Arieh, 2020; Moosa-Mitha, 2005). On this point, study 3 suggests that the CA might offer a comprehensive alternative, building on the Committee on the Rights of the Child's General Comment on the CRC Article 3 (2013), as a basis for insight into the child's perspective on their own best interests. Furthermore, study 2 suggest combining the Capability Approach with the procedure of participation developed by Skivenes and Strandbu (2006) to improve and facilitate child participation in CWS. The themes and perspectives of the Capability Approach on human development and dignity might provide a valuable framework for evaluating and assessing the best interests of each child within child welfare services. By adopting this approach, it not only provides a language for discussing individual well-being and development, but also encourages meaningful reflection on supporting the development of children involved in child welfare services. However, a possible implementation of the Capabilities Approach would require a translation and contextualization of the approach into a Norwegian child welfare services context.

The overall results indicate absent or incomplete participation of children and young people in contact with the CWS, inadequate concretization of the child's best interests in child welfare services and suggests the Capabilities Approach as a guide to contextualize the child's perspective in child welfare service cases.

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Appendices

Appendices

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Article 1

Too Vulnerable to participate?

A Systematic Literature Review of the Gap between a Right to Participate and Participation, in Welfare Services

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Article

Too Vulnerable to Participate? A Systematic Literature Review of the Gap between a Right to Participate and Participation, in Welfare Services

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Abstract

There is a need to reconceptualize children as competent and reflective actors in their own lives, acknowledging their right to be heard and to participate in meaningful ways. This article explores and suggests the means to overcome the gap between the formal right to participate and meaningful participation in welfare services that involve evaluating a child's family environment. For this purpose, we conducted a systematic literature review to synthesize the qualitative literature on how children and young people who have been in contact with child welfare services experience participation in the making of decisions that affect their well-being. The articles collected from eight scientific databases indicate that despite a growing general emphasis on the importance of child participation over the past 25 years, the operationalization of children's right to be heard is challenging in child welfare services. There are challenges at both the organizational level, with the failure to fully acknowledge and operationalize children's right to be heard in a sufficient manner, and at the individual level, with a need to improve opportunities for communication that facilitate trustful relationships between child welfare social workers and children in need. Based on previous studies of participation in a child welfare context at different levels, we conclude that a legally clear framework in combination with the realization of Skivenes and Strandbu's definition of participation would increase the chances that children's interests and right to be heard are respected, protected, and implemented.

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Keywords: child participation; child protection; child welfare; children's rights

1. Introduction

This article's data material is based on the method of systematic literature review, searching for peer reviewed articles in eight scientific databases. We searched for studies that have used qualitative methods in accessing children's experiences of practicing their right to be heard and to participate in child welfare decisions in their own best interests made by social workers.¹ We discuss this body of research in light of participation theory and the child's right to participate according to Article 12 of the United Nations Convention on the Rights of the Child (UNCRC).

The articles for review were collected by conducting a systematic literature search and analysis based on the following research question: What are the experiences of children and young people in contact with child welfare services with respect to being heard and being able to participate in decisions concerning their own well-being? Our theoretical standpoint is inspired by social constructivism, and our argument is that participation can be facilitated using local guidelines inspired by participation theory and legal regulations.

One challenge when conducting research on children's right to be heard is the unclear definition of what obligation(s) this right implies for practitioners in its operationalization. We adopt a definition of participation that is strongly inspired by [Skivenes and Strandbu \(2006\)](#), although we emphasize opportunities to express views in various forms and channels. Skivenes and Strandbu's (2006) definition of participation entails the following step-by-step procedure:

1. Opportunities for children to form an opinion based on adequate information, appropriate to age.
2. Opportunities for children to express their viewpoints in a decision-making situation, either themselves or through a trusted person. The expression of opinion should not be limited to verbal expressions but rather should be open to a multitude of forms through which opinions can be expressed (e.g. body language and/or artistic expression).
3. Children's arguments must be taken seriously and evaluated on the same basis as adult arguments.
4. Children must be informed about decisions and have opportunities to appeal to an external body to minimize the misuse of power.

In the context of decision-making, children are among the social groups whose degree of participation depends to a great extent on adults' willingness to let them participate. This is to some degree understandable because children's capacity to make informed and well-considered decisions is still developing ([Ballet et al. 2011](#)). Consequently, paternalistic decision-making may seem justified to secure the child's best interests from a broader perspective. At the same time, children have an unconditional right to be heard and to participate according to Article 12 of the UNCRC (UNCRC 1989;² Committee on Children's

1 When referring to social workers in this article we refer to the context of the studies included in this study; this is further discussed in section 3.1 below.

2 Although this is a systematic literature review and not limited to Norwegian studies, we find it relevant to mention the UNCRC's status in Norway as it could affect our basis of reflection as

Rights, General Comment Art. 12. 2009³). The possible tension between children's right to participation and social workers' obligation to make decisions in the child's best interests needs to be overcome to fully implement and operationalize human rights for all children.

Over recent years, there has been an increased emphasis and an increasing amount of research on how children experience participation (van Bijleveld et al. 2015; Kriz and Skivenes 2017). The review by van Bijleveld et al. (2015) of 21 studies of children and social workers' experiences of child participation and Kriz and Skivenes' (2017) comparative study of child welfare workers' perceptions of child participation in England, Norway, and the USA show that social workers' socio-cultural image of children affects children's degree of participation. An image of children as especially vulnerable seems to reduce opportunities for participation (van Bijleveld et al. 2015;⁴ Kriz and Skivenes 2017; Sandberg 2015). Vis (2014) found that despite their right to be heard, the likelihood for children to be consulted in a decision affecting them depends on factors related to the individual social worker and the organization responsible for the decision. These findings, based on quantitative methods, call for a more detailed description of children's experience in the decision-making process (Vis 2014), justifying a systematic literature review of qualitative studies on this issue.

2. Method

To meet this study's aim of exploring the gap between children's right to participation and their meaningful participation in welfare institutions, we conducted a systematic search for articles describing children's experiences of being heard when in contact with child welfare institutions. This was done to give us guidance on how participation for this group is experienced from an inside perspective. We wanted to have a clear focus on children's own experiences without being modified or limited by the experiences of social workers.

In formulating the question of interest, we used the PICo (Population/Problem–Interest–Context) (Murdoch University 2018) tool for determining search strings and focusing the question of interest based on answers to 'who', 'what', and 'how' questions (Booth et al. 2016). For this review, we searched for qualitative studies due to the complexity of experiences of being heard and experiences of participation. Table 1 shows the process of framing the research question.

2.1 Inclusion and exclusion criteria

1. Qualitative studies were chosen because of participation in child welfare services being characterized by significant complexity arising from the obligation to ensure that the decisions made are in the best interests of the child while also respecting children's right

researchers. The principle of the child's best interests has substantial weight in Norwegian legislation in line with the Human Rights Act Section 2 and the priority given to the UNCRC over conflicting national legislation according to Section 3.

- 3 State Parties to the UNCRC are not committed to act according to the General Comments given by the Committee on the Rights of the Child. Nonetheless, these comments are the most authoritative interpretations of the UNCRC articles (Sandberg 2014: 20).
- 4 The study conducted by van Bijleveld et al. (2015) is relevant for this article as it provides information on barriers and factors facilitating child participation from a child and social worker perspective.

Table 1.PICO

P	children: children or youth in contact with child welfare/child protection services
Population	
I	experience and expressed participation in decision-making implemented by child welfare/child protection services
Interest	
Co	contexts in which child welfare/child protection services have an influence on children's life situation, such as out-of-home placements and child welfare institutions
Context	
Study design	qualitative studies

to be heard in making these decisions (Skivenes 2005; Skivenes and Strandbu 2006). Due to this complexity, the field of child welfare is interdisciplinary, as it relates to children's health, the quality of caregiving, and children's rights. In qualitative studies, a deeper understanding of children's experiences of participation can bring to light new knowledge on this subject and inform practice.

2. Studies were narrowed to those considering children and young people's experiences, thereby excluding studies in which children's family members or social workers were participants. This choice was made to maintain a clear focus on children's experiences of being heard and participating in decisions made by social welfare workers. We did not want to limit the studies by examining one specific age group of children or young people because of the formulation of Article 12 of the UNCRC, which states that all children who are capable of forming their own views shall be given an opportunity to be heard (UNCRC, Art. 12). The Convention defines a child as a human being below the age of 18 (UNCRC, Art. 1).
3. The idea of service user participation has received increased attention in the last 25 years. Since 1995, participation has been emphasized by public authorities as a priority for health and social services (Humerfelt 2005; Eide 2013; Skivenes 2005; Sæbjørnsen and Willumsen 2017). In 2015, van Bijleveld et al. published a state-of-the-art review on children's participation within child welfare and child protection services (2015). Due to their work on this issue, we concentrate on studies published from 2011 until June 2019. The searches performed by van Bijleveld et al. were conducted in 2011 and 2012, and we decided that our search would overlap these two years to include articles that may have been accepted but not published at the time.
4. Primary studies presented in peer-reviewed journal articles in English or Scandinavian (Norwegian, Danish, or Swedish) languages were included.

2.2 Search strategy

When planning this review, we developed a protocol to protect against bias and prevent deviation from the chosen method (Booth 2012).

The search terms, established in collaboration with a senior librarian, were as follows: children, youth and adolescents AND user involvement in decision making or participation AND child welfare services AND words for experiences, feelings, perceptions, or attitudes. The search was limited to research with a qualitative study design. The search terms

consisted of words from the database-controlled vocabularies (index terms), text words, or synonyms from the title or abstracts.

The searches were conducted in eight databases. For English articles, MEDLINE, Academic Search Complete, CINAHL, Social Work Abstracts and SocINDEX (through EBSCOhost), and SCOPUS were searched. The search terms used in these databases included the following words and terms; `child welfare`, `child protection`, `foster care`, `foster home`, `child and family welfare`, `out of home`, `decision making`, `involvement*`, `participat*`, `qualitative AND research* OR design* OR stud* OR method*`, `interview* OR phenomen* OR themes* OR thematic analys* OR narrative*`, `expericenc* OR attitude* OR perception* OR feeling OR opinion*`, `child* OR adolescen* OR young OR youth OR teenage* OR teen OR teens OR schoolchild* OR boy OR boys OR girl OR girls OR users OR user OR consum* AND involvement* OR participat*`.

For Scandinavian articles, the Norwegian and Nordic index to periodical articles Norart (Nasjonalbiblioteket 2019) and SveMed+ (Karolinska Institutet 2019) were searched. Search terms used in these databases were; `community participation`, `child welfare`, `foster home care`, `child protective services`, `social care` OR `child protec*` OR `foster home` OR `foster care`, `child and family services`, `medvirkning OR involvement OR participat*`, `patient participation`, `medbestemm* OR medvirkning* OR brukermedvirkning* OR participat* OR involvement AND barnevern* OR fosterhjem* OR barneomsorg* OR `child protection*`.

Single searches and a combination of the mentioned search terms were used in the searches conducted 28 and 29 May 2019.⁵

Table 2 gives an overview of the review process, using the PRISMA Flow Diagram (The Prisma Group 2009). As the table shows, there was some overlap between studies found through EPSCOhost and SCOPUS, which was expected.

Strömmland and Andersen read all the articles assessed for eligibility and critically evaluated the studies using the Critical Appraisal Skills Programme (CASP) (2018). After this step, we agreed on the final nine studies for inclusion.

2.3 Method of analysis

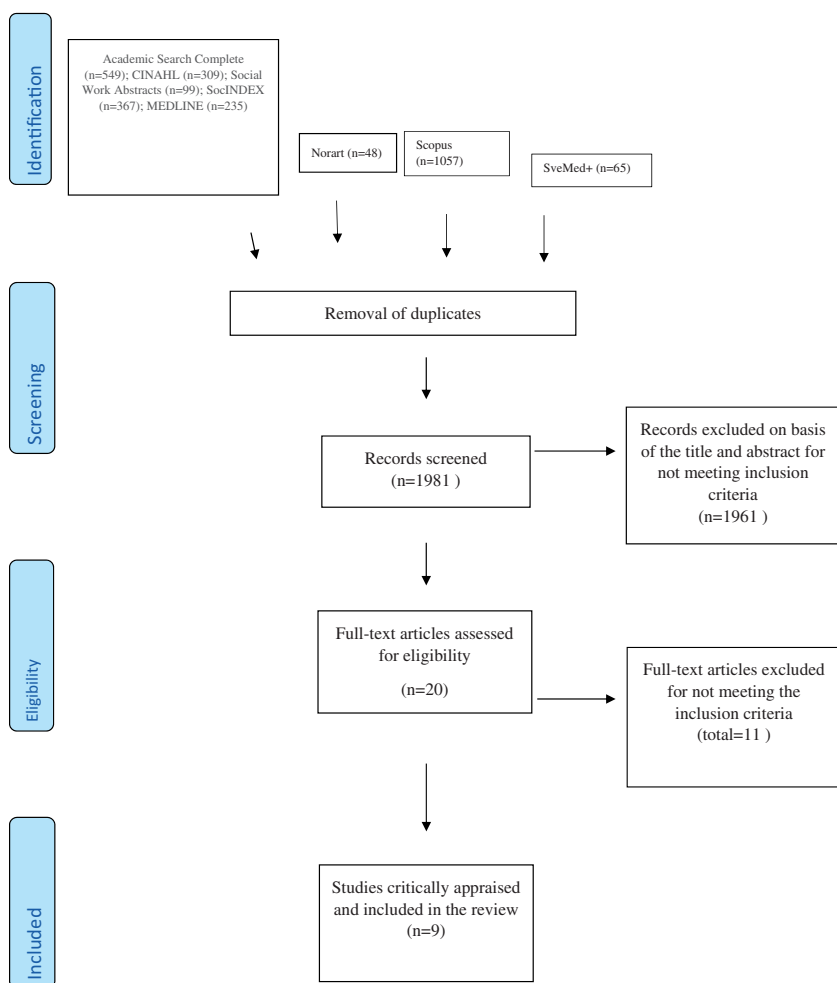
Thematic content analysis, inspired by critical theory, was used when conducting the analysis of the nine included studies (Alvesson and Sköldberg 2009). The themes discussed in the next section were derived from this analysis.

3. Results

Table 3 provides information on the studies included in this review, covering the author(s), year of the studies, the country they were conducted in, aims, method(s), context of child welfare, participants, and a short summary of their findings. Please refer to the appendix for an overview of the included studies.

5 For further information on the search strategy and/or information on search conducted May 28 and 29 2019, please contact the first author of this article.

Table 2. PRISMA Flow Diagram (The Prisma Group 2009)



3.1 Summary of included studies

As mentioned above, organizational and individual factors are essential when facilitating and operationalizing child participation, which opens a gap between what is provided for in Article 12 of the UNCRC and its operationalization. This could be due to an unclear definition of what children's right to be heard implies and the resulting lack of clarity over the basis for child participation. The included studies all pointed to this lack of clarity. The various definitions of participation adopted in the studies were as follows:

1. **Bessell (2011)** adopted a three-dimensional definition, under which children must be given sufficient and appropriate information, have an opportunity to express their views freely, and be able to affect the decision (p. 497).

Table 3. Overview of the included studies

Author (year) Country	Aims	Methods	Context of child welfare	Participants	Findings
1. Bessell (2011) Australia	Explore children and young people's experiences of participation in decision-making while in out-of-home care.	Focus groups, in-depth interviews, brief attitude surveys and sentence completion activities.	Participants who had been in out-of-home care.	Young people who had left the system and had been living independently for the last 12–36 months. N = 28	The participants felt they had little or no opportunity to participate in a meaningful way in decisions made about their lives. This had implications for their sense of dignity and self-worth.
2. Fitzgerald and Graham (2011) Australia	Study children's perspectives on their participation in decision-making processes when in supervised contact with parents.	Semi-structured, in-depth interviews including other activities to help the children reflect on what participation or 'having a say' is.	Being in supervised contact with parent(s).	Children aged 4–13. N = 13	Twelve of thirteen reported that a decision had been made without them being able to participate. Ten of thirteen reported that they thought all children should be able to participate or 'have a say'. The participants reported negative emotional responses when their views were not heard.
3. Cossar et al. (2016) United Kingdom	Study children and youths' views on the child protection process in England.	Qualitative, activity-based interviews.	Children subject to child protection processes and living at home.	Children and youth aged 6–17. N = 26	For the participating children to be able to voice their thoughts and feelings, a trusting relationship was regarded as important. Minimal contact between the children and social workers was reported. Younger children reported less contact on their own than older children, and the atmosphere in the meetings was described as too interrogative.

(continued)

Table . (continued)

Author (year) Country	Aims	Methods	Context of child welfare	Participants	Findings
4. Dillon et al. (2016) United Kingdom	Study children's experiences of participation in a child protection setting in England.	Qualitative, individual interviews.	Current or historical experience of contact with Children in Need or the Child Protection Services Plan.	Children and youth aged 12–17 N = 5	The study found that some of the participants reacted with anger and surprise when contacted by child welfare services, negatively affecting trust and communication with social workers. In addition, the children felt a need to communicate face-to-face with the social worker when necessary. All participants had experienced positive changes in their lives as a consequence of being heard.
5. Paulsen (2016) Norway	Study children and youths' experiences of participation when in contact with the Child Welfare Service in Norway (Barnevernet) and the factors influencing participation in this context.	Qualitative focus group and in-depth interviews.	All types of child welfare contexts, including experiences of living in an orphanage.	Children and youth from 16–26. N = 45	Children and youth experience a limited degree of participation, and participation depends on the relation between the child/youth and the service worker.

Youth aged 18–22

Table . (continued)

Author (year) Country	Aims	Methods	Context of child welfare	Participants	Findings
6. Kriz and Roundtree-Swain (2017) USA	Explore young people's feelings and experiences regarding participation in child welfare services.	Qualitative, in-depth interview methods implemented by a researcher with lived experience with the child protection system.	Participants previously in the care of child services. All had foster home experience.	N = 8 Youth aged 16–23 N = 10	Participants in this study had mixed experiences with participation, not entirely negative or positive. All reported lack of information as a critical point, noting that this was especially scary and confusing in the situation of being removed from their home.
7. Damiani-Taraba et al. (2018) Canada	Share youths' opinions on how child protection workers could improve children's experiences with listening and participation.	Qualitative, participatory methods.	Youths who had been in contact with child welfare services at some point in their lives (foster homes and group homes).		The results extracted from the stories told by the youth in this project revealed seven key themes. The first two were related to a lack of communication, where the youth felt the workers were prejudiced towards them and did not have their best interests at heart. The third theme highlighted the importance of being included in decision-making. The fourth and fifth themes focused on the importance of human connection and networks. The sixth theme focused on support with achieving individual goals and dreams and finding opportunities to contribute positively to others. The last theme focused on the way child welfare services is shaped where youth in care often feel that they have to fit the system, not acknowledging them and their individual needs.

(continued)

Table . (continued)

Author (year) Country	Aims	Methods	Context of child welfare	Participants	Findings
8. Fylkesnes et al. (2018) Norway	Study ethnic minority youths' experiences of participation in out-of-home placements.	Qualitative in-depth interviews.	Youth living in out-of-home placements.	Youth aged 16–23 N = 6	A key finding was that youth participation takes place in a complex interplay wherein those capable of communicating an image of themselves as 'a competent child' were more likely to participate in decisions made on their behalf. Opinions different from the majority norms in Norway had a tendency to be marginalized by the social workers.
9. Husby et al. (2018) Norway	Develop knowledge on interactions among professionals, children and parents to improve practice and teaching on child participation.	Qualitative explorative design.	Children and youth who had been child welfare service users and were burdened by social-emotional problems, various forms of neglect and violence.	Children and youth aged 9–17 N = 10	Most of the children were not involved nor given an opportunity to participate in multiple teamwork settings in which services were developed for them. The study also indicates the importance of a close relationship between professionals and children/youth to facilitate participation. In this process, children and youth called for various pedagogical modes of dialogue and interaction.

2. [Fitzgerald and Graham \(2011\)](#) defined participation as being heard or ‘having a say’ (p. 490).
3. [Cossar et al. \(2016\)](#) defined participation as something more than a procedure, as it depends on the quality of the relationship between the child and the professional (p. 110).
4. [Dillon et al. \(2016\)](#) gave no clear definition of participation and pointed to the blurriness of the concept. They concluded that children are fully capable of understanding when participation is appropriate and when it is not (p. 83).
5. [Paulsen \(2016\)](#) pointed to national government documents stating that children must be given opportunities and be encouraged to express their opinion(s) throughout the child welfare service decision-making process (p. 4).
6. [Križ and Roundtree-Swain \(2017\)](#) defined participation as giving children opportunities to express their opinion(s) and wishes about their care, and the ability to influence decisions (p. 32).
7. [Damiani-Taraba et al. \(2018\)](#) reported on a youth-led project in which the participants defined participation as the foundation upon which other rights are built. They emphasized that children and young people should be involved in what they experience participation to be: an ongoing and iterative process of decision-making on their behalf from investigation to deciding on out-of-home placement (p. 91).
8. [Fylkesnes et al. \(2018\)](#) defined participation by referring to a national document stating that participation is a process that must be carried out over the whole course of the child welfare case (p. 342).
9. [Husby et al. \(2018\)](#) defined the concept of participation as children’s legal right to be involved in decisions affecting them, emphasizing that child participation is a collaboration between children, their families, and the professionals involved (p. 443).

Several researchers, including in some of the studies analysed here, have pointed out that a lack of child participation could also be due to our cultural understanding of the child and individual skills of the professional in enabling a trustful relation ([Strømland et al. 2019](#); [Biggeri et al. 2011](#); [Cossar et al. 2016](#); [Dillon et al. 2016](#); [Fylkesnes et al. 2018](#)).

Considering the emphasis made by the Committee (2009) that a child’s right to be heard is intrinsically linked to the child’s right to have their best interests respected, we were surprised that there was little discussion of the child’s best interests in eight of the nine articles under review. These eight articles mentioned the child’s best interest between zero and four times. Only the article by [Damiani-Taraba et al. \(2018\)](#) describing a youth-led project mentioned the child’s best interests extensively (six times) and called for a change in practicing and balancing the child’s right to be heard with the right to have their best interests respected, especially for children under the age of 12 (p. 91).

The studies in this review involved participants from Western countries, namely Australia, Canada, Norway, the USA, and the United Kingdom. Despite these all being Western societies, the context and regulations related to child protection differ between countries and this presents a challenge in performing research on child welfare and child protection ([Gilbert et al. 2011](#)).

The overall findings indicate that listening to children and giving them opportunities to participate are challenging tasks for social workers working in a child protection and child welfare context. Social workers have different conditions and regulations depending on the

context and their place of work. The different contexts of closed institutions, health care provision, and the asylum process clearly have an impact on children's formal and practical possibilities for participation. Nonetheless, they have a common obligation to protect, promote, evaluate, and secure the child's best interests.

Based on their stated aims, the articles share a desire to give voice to children and young people's experiences of being heard in a way that could improve child participation in child welfare decision-making. There is a large age range in the included samples, from 4 to about 26 years. We decided to include studies with participants over the age of 18, for two reasons: (1) we could not tell to what degree age influenced the studies' conclusions or how many of the participants were in the over-18 age bracket, and (2) the Child Welfare Act in Norway includes a right for people under the age of 25 to the maintenance of services established before the age of 18, on their consent ([The Child Welfare Act \[1992\]](#) § 1–3). As described in the included studies, some of the participants older than 18 were still voluntarily in contact with child welfare services. Although the study of [Bessell \(2011\)](#) does not provide the ages of the participants, we chose to include it because most of the participants were reported to have left the child protection system within 12 to 36 months prior to the study, indicating that they were between 19 and 21 years old. Six of the studies had participants with experiences of out-of-home care, and three had participants with experiences of receiving help while living with their parents.

The children and young people sampled in the included studies did not experience thorough and consistent opportunities for participation or even opportunities to be heard when decisions were being made about their well-being. The authors explained this as being due to both organizational-level and individual-level factors.

The organizational-level factors identified in the reviewed studies were difficulties in operationalizing and recognizing the child's right to be heard. [Fylkesnes et al. \(2018\)](#) supported the claim made by [Moosa-Mitha \(2005\)](#) of a need to develop models for child participation to realize children's right to be heard. The challenges to realizing participation at the individual level were explained by pointing to social workers' skills in building trusting relationships with children in need of help. Practices for enabling participation are further discussed in the next section of this article.

4. Discussion: putting the right to be heard into practice

When children and young people come into contact with child welfare services they are in a particularly vulnerable situation, partly because their family environment is under scrutiny and also because of the position they are placed in as a 'source of evidence' ([Cossar et al. 2016](#)). In this position, they are dependent on adults to respect and enable their rights to be heard and to be protected ([Archard and Skivenes 2009](#)). This makes a child welfare and child protection context radically different from other situations in which children's right to be heard has been improved, such as in health or educational contexts.⁶ In the context of child welfare services, securing children's rights is especially important to reduce their vulnerability. When families are under scrutiny, paternalistic decision-making is sometimes necessary, and situations can arise in which, to protect the child's best interests, social

6 In Norway, children's right to be heard in these areas has improved, partly due to the implementation of the UNCRC and Section 104 of the Constitution but also as a consequence of the recognition of children as independent legal subjects in law ([SYSE, A. 2017](#)).

workers must make decisions that are contrary to the views of the child or their legal guardians. It is thus particularly important to develop procedures that respect the child's right to participate within the frame of the child's best interests. As we see it, the operationalization principles suggested by [Skivenes and Strandbu \(2006\)](#), which form the step-by-step procedure of participation introduced in the introduction to this article, could make it possible for children to practice meaningful participation even in cases when paternalistic decisions are necessary. The crucial step is the third, in which children's arguments must be taken seriously and evaluated on the same basis as those of others involved in the decision.

Article 12 gives all children capable of forming a view the right to express it in all matters affecting them. The Committee (2009) further states that age should not be seen as a limitation to seeking and listening to children's opinions and preferred choices,⁷ noting that even very small children are able to express themselves through play, body language, paintings, and facial expressions. This supports the call from the children participating in the study of [Husby et al. \(2018\)](#). Practical pedagogical support could give even very young children opportunities to communicate their feelings, visions, and thoughts ([Husby et al. 2018](#)). Using this type of support could strengthen young children's opportunities to protection by law, forming a wider basis of knowledge for professionals to evaluate children's best interests ([Strømmland et al. 2019](#)). In the following, we discuss how organizational and individual structures and assumptions can hinder the facilitation of vulnerable children and young people's participation in decision-making on their behalf. To fill the gap between the right to participate and actual participation, we point to Skivenes and Strandbu's (2006) four stages of operationalization.

4.1 Enabling participation at the organizational level

Addressing organizational factors emerges from the reviewed articles as crucial for enabling child participation in child welfare institutions. The most important organizational factors appear to be the limits on the time that professionals have to perform their work, limited legal knowledge regarding participation, and a lack of knowledge of how to operationalize meaningful participation.

A main theme in most of the included studies was children's lack of opportunities to participate in decisions made on their behalf ([Bessell 2011](#); [Cossar et al. 2016](#); [Paulsen 2016](#); [Damiani-Taraba et al. 2018](#); [Husby et al. 2018](#); [Križ and Roundtree-Swain 2017](#); [Dillon et al. 2016](#); [Fitzgerald and Graham 2011](#)). The same theme was identified by [van Bijleveld et al. \(2015\)](#) in their review of 21 studies examining child participation in the context of child welfare and child protection. This finding is echoed in a study conducted by [Vis and Fossum \(2015\)](#), who found that organizational culture had an even larger impact on social workers' decisions regarding whether to include children in the decision-making process than individual assumptions and beliefs.

The results reported in the included studies point to such organizational factors as insufficient time being scheduled for social workers to spend with children in need of help, a lack of organizational guidance for structuring meaningful participation, and limited knowledge regarding the rights perspective. These factors contributed to limited contact between social workers and children/young people ([Husby et al. 2018](#); [Cossar et al. 2016](#);

7 On the issue of age, the UNCRC Committee does not comment on ages above 18, as their definition of a child is 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier' (UNCRC, Article 1.)

Bessell 2011; Paulsen 2016; Fitzgerald and Graham 2011). As noted by Bessell (2011), Cossar et al. (2016), and Paulsen (2016), this is likely to be a consequence of organizational structures that are not fully developed to adequately operationalize children's right to be heard. When children and youth were listened to, this was due to the individual attitudes of social workers (Bessell 2011) or the child's capacity to project an image of themselves as 'a competent child' (Fylkesnes et al. 2018; Kriz and Roundtree-Swain 2017).

Many of the included studies reported that a paucity of meetings between social workers and children/young people reduced the opportunities for building trusting relationships (Paulsen 2016; Husby et al. 2018; Dillon et al. 2016; Cossar et al. 2016; Damiani-Taraba et al. 2018; Bessell 2011). Fitzgerald and Graham (2011) found that children who reported having been exposed to abuse had a stronger claim on the respect for their views than the other participants. When the researchers asked the children about what having a say felt like, the children immediately responded that they felt happy, whereas experiencing not having a say made them feel 'bad', 'angry', 'sad', 'left out', and 'upset'. This reinforces the importance of operationalizing children's right to have a say and to participate in all areas affecting the child, especially in child welfare organizations.

4.2 Enabling participation at the individual level

Individual factors or characteristics of the social worker, such as being empathic, giving the child recognition, and being skilled in establishing trustful relations, were mentioned by the participants as important for them to feel safe in giving information and wanting to participate in the decision-making process.

All of the studies included in this review reported on children and young people who had had some positive experiences of being heard when in contact with child welfare services. However, the right to be heard had not been operationalized in an adequate and sufficiently thorough manner. Six of the 26 participants in the study of Cossar et al. (2016) reported that they would not confide in their social worker at all. For them to do so, a relationship of trust would need to be established. The individual resources of the social worker, such as empathy and recognition of the child, were reported by the participants as fruitful for establishing a good relation and therefore constitute important factors at the individual level. These individual characteristics of the social workers were experienced by children as encouraging the free expression of feelings and thoughts and a desire to participate in decision-making (Husby et al. 2018; Bessell 2011). Distanced social workers who were committed to strictly following the book did not instil trust (Paulsen 2016), and the children and young people participating in the study of Cossar et al. (2016) reported that they felt interrogated and pressurized if they had the impression that they were only a source of evidence.

Kriz and Skivenes (2017) found that how social workers perceive participation affects the opportunities they provide for children to participate. This is interesting because opportunities to participate are a consequence of being heard. The study conducted by van Bijleveld et al. (2019) found that social workers' facilitation of child participation in decision-making is complex. On the one hand, social workers are aware of children's right to participate; on the other hand, their assumptions and beliefs that children are vulnerable and have limited resources to express themselves and reflect on their difficult life situations can result in paternalistic decision-making that excludes children from the process of

participation. To operationalize child participation, [van Bijleveld et al. \(2019\)](#) thus called for a cultural shift at both the individual and organizational levels.

The findings presented by [Damiani-Taraba et al. \(2018\)](#) from their project in Canada are especially interesting in terms of promoting participation, considering the youth-led procedure they adopted to determine what social workers could do to promote a feeling of being listened to and a desire to participate. The participants' responses were summarized into seven themes: 'listen to us and believe us', 'keep us informed and be honest', 'involve us in the decisions', 'support us', 'keep us connected', 'ignite our passions', and 'don't give up on us'. These same themes also emerge as essential for participants in the other studies included here and underline the importance of communication when deciding what is in the child's best interests.

4.3 Overcoming the gap between voice and participation

In overcoming the gap between voice and participation we suggest the procedure for the operationalization of participation put forward by [Skivenes and Strandbu \(2006\)](#). The strength of this procedure is that it acknowledges children as entitled to information and participation during the whole decision-making process. The procedure incorporates the right to be heard but also goes beyond this in facilitating opportunities for actual participation by inviting children into the decision-making discussion and providing them with opportunities to voice disagreement with the result. Important in this procedure are the opportunities for children to appeal a decision that is contrary to their view. This issue was not dealt with in any of the articles included in this review but is surely crucial for meaningful participation and to acknowledge children as competent rights bearers.

A weakness of Skivenes and Strandbu's (2006) procedure is that it gives no guarantee of actual child participation as it is realized in human interactions. Children's right to be heard is the most distinctive element of the Convention on the Rights of the Child ([Freeman 2017](#)), and it gives children the right to be heard in all matters affecting them. However, there is little purpose of being heard if one cannot participate in all stages of the decision-making process. Addressing this gap is essential for operationalizing rights in general and the right to be heard in particular. The studies included in this review identified many reasons for the failure to facilitate child participation, from systematic discrimination on the basis of not fitting the assumption of what 'a competent child' should be like ([Fylkesnes et al. 2018](#); [Križ and Roundtree-Swain 2017](#)) to excluding children on the basis that they are too vulnerable to participate ([Husby et al. 2018](#); [Fitzgerald and Graham 2011](#); [Cossar et al. 2016](#); [Damiani-Taraba et al. 2018](#); [Bessell 2011](#)). Considering the importance highlighted by [Fitzgerald and Graham \(2011\)](#) of being heard and having one's views respected and considered, especially for children exposed to abuse, it seems there is a great need to facilitate the paradigm shift pointed to by these authors to promote the dignity and self-worth of children in vulnerable situations ([Bessell 2011](#)).

[Vis et al. \(2011\)](#) explain children's negative experiences of participation in child welfare services as a consequence of the failure to make processes and communication between children and social workers 'child friendly'. It also appears that the children in our included studies were exposed to discrimination with regard to being given the opportunity to decide for themselves whether to participate in research studies on their experiences of contact with child welfare services ([Leeson 2007](#); [Fitzgerald and Graham 2011](#)). Two studies problematized this issue, pointing to the fear of silencing especially vulnerable children to the

point that they are no longer heard (Leeson 2007; Fitzgerald and Graham 2011). This point was also highlighted in the review conducted by van Bijleveld et al. (2015): ‘When a child is seen as vulnerable and in need of protection, the child’s opportunities to participate decreases’ (p. 135).

Our review indicates that very young children are especially vulnerable in terms of being given the right to be heard and to participate in child welfare decisions made on their behalf (Fitzgerald and Graham 2011; Križ and Roundtree-Swain 2017; Cossar et al. 2016; Paulsen 2016). Interestingly, most of even the youngest participants in this literature review—the children in the study conducted by Fitzgerald and Graham (2011)—had an understanding that having a say was not equal to getting what they wanted (9 of 13). Furthermore, 10 of the 13 participants in that study believed that all children should have a say, but only 1 of 13 had an experience of being involved in a decision made on their behalf. This suggests to us a need to rethink children’s capacity to participate in decision-making even at an early age.

Upon comparing the studies’ results, it was found that continuing to see children as especially vulnerable reduces their opportunities to participate (Bessell 2011; Križ and Roundtree-Swain 2017). This point was also made by Leeson (2007), in the review conducted by van Bijleveld et al. (2015), and in the comparative analysis conducted by Križ and Skivenes (2017) of social workers’ perceptions of child participation in Norway, England, and the USA (California). Securing opportunities for children and young people in vulnerable situations to participate in professional decision-making, which entails finding ways to implement children’s right to be heard and to participate at all levels in organizations working for child welfare, is essential to fully recognizing children’s justified claims to dignity and self-worth. To reach this point, Kosher and Ben-Arieh (2019) argues that ‘A new theory is needed’ (p. 7).

5. Limitations

For this review, we included articles that approached the following question: What are the experiences of children and young people in contact with child welfare services with respect to being heard and participating in decisions concerning their own well-being? Some of the participants of these articles were reflecting on their experiences in retrospect, allowing for reflections and understandings not necessarily present at the time of their contact with child welfare services. The findings should be interpreted with this in mind.

A common limitation when conducting research on child participation, especially children’s degree of participation, is that the concept has a multitude of definitions (Leeson 2007; Bessell 2011; Fitzgerald and Graham 2011; Paulsen 2016; Vis et al. 2011). Comparisons between studies can therefore be challenging. Another limitation of this study is that only qualitative studies were included, though the total number of children and young people participating in the included studies (151) was sufficient for the findings to reinforce the patterns identified across the studies. For stronger reinforcement, additional articles could have been included by searching additional databases or using additional search terms.

All included studies in this review were conducted in a Western context of child protection and child welfare, which is not necessarily comparable to or representative of that in other parts of the world.

6. Conclusion

Based on this systematic literature review of children's experiences of participation in child welfare decision-making, we recommend the operationalization of children's right to be heard and to participate on the basis of the participation theory developed by Skivenes and Strandbu (2006).⁸ In line with Skivenes and Strandbu and inspired by the Committee (2009), we define participation as a four-step procedure; (1) access to information, (2) opportunities to express views in various forms and channels, (3) equal evaluation of arguments, and (4) opportunities to appeal to an independent body.

Implementing this procedure would not act as a guarantee of participation, given that it unfolds in human interactions open to failures and misunderstandings. Nevertheless, following these steps could facilitate meaningful participation for children in contact with welfare institutions and help to overcome the organizational and individual factors hindering participation that were identified in this review. The organizational factors identified by the reviewed articles as hindering participation were limited time for social workers to perform their work, limited knowledge on rights issues, and limited guidance from the local institution on how to operationalize participation (Husby et al. 2018; Cossar et al. 2016; Bessell 2011; Paulsen 2016; Fitzgerald and Graham 2011). The individual factors and characteristics of social workers identified as facilitating child participation were empathy, a capacity to create trust, and giving recognition to the child (Cossar et al. 2016; Husby et al. 2018; Križ and Roundtree-Swain 2017; Fitzgerald and Graham 2011; Dillon et al. 2016; Paulsen 2016; Damiani-Taraba et al. 2018). In addition, perceived vulnerability of children in contact with child welfare services (Križ and Skivenes 2017) is an important issue to work with to overcome the gap between voice and participation (Sandberg 2015).

To genuinely improve children's chances of being heard and to participate, a thorough legal framework is required at local, national, and international levels,⁹ backed by a step-by-step procedure of participation. The importance of effectively operationalizing these rights is confirmed throughout the literature. As the participants in the youth-led project included in this study made clear, the right to be heard and to participation is 'the foundation upon which other rights are built' (Damiani-Taraba et al. 2018: 91).

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Supporting information

The appendix offers information on how the included studies were critically appraised using the Critical Appraisal Skills Programme (CASP) (2018).

8 Further described in the introduction.

9 We thank an anonymous reviewer for this most valuable remark.

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Appendix

Based on checklist evaluated by the Critical Appraisal Skills Programme (CASP) (2018)

Author (year) Country	Was there a clear statement of aims?	Is a qualitative Method(s) appropriate?	Research design appropriate to address the aims of the study?	Was the recruitment strategy appropriate to the aims of the study?	Was the data collected in a way that addressed the research issue?	Has the relationship between researcher and participants been adequately considered?	Have ethical issues been taken into consideration?	Was the data analysis sufficiently rigorous?	Is there a clear statement of findings?	How valuable is the research?
1. Bessell (2011) Australia	Yes	Yes	Yes	Yes	Yes	Can't tell	Yes	Can't tell	Yes	The study has value
2. Fitzgerald and Graham (2011) Australia	Yes	Yes	Yes	Yes	Can't tell	Can't tell	Yes	Can't tell	Yes	The study has value
3. Cossar et al. (2016) United Kingdom	Yes	Yes	Yes	Yes	Yes	Can't tell	Yes	Can't tell	Yes	The study has value
4. Dillon et al. (2016) United Kingdom	(yes)	Yes	Yes	Yes	Yes	Yes	Yes	Can't tell	(yes)	The study has value
5. Paulsen (2016) Norway	Yes	Yes	Yes	Yes	Can't tell	Can't tell	Yes	Can't tell	Yes	The study has value
6. Kriz and Roundtree-Swain (2017) USA	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	The study has value
7. Damiani-Taraba et al. (2018) Canada	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	The study has value
8. Fylkesnes et al. (2018) Norway	Yes	Yes	Yes	Yes	Yes	Can't tell	Yes	Can't tell	Yes	The study has value
6. Husby et al. (2018) Norway	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	The study has value

Article 2

‘What’s the purpose of having a say if I cannot participate?’

A qualitative study of young people`s experiences of being heard and to participate in decision-making processes in Norwegian child welfare services.

Strømmland, M., Bahus, M. K., Andersen, A. J. W. (2023). *The International Journal of Children’s Rights*. 31(3), 729-755.

Available behind a paywall at: <https://doi.org/10.1163/15718182-31030007>

Article 3

In Your Best Interest

A Discussion of How Capability Approach Could be Used as a Guideline to
Strengthen and Supplement the Principle of the Child's Best Interests

Strømmland, M., Andersen, A. J. W., Johansen, V. F., Bahus, M. K. (2019). *The International Journal of Children's Rights*, 27(3), 517–544.

Available behind a paywall at: https://brill.com/view/journals/chil/27/3/article-p517_517.xml

Appendix 1. PICO – for study 1

Appendix 1. PICo – for study 1

PICo

P (Population)	Children and young people in contact with child welfare/child protection services
I (Interest)	Experience of and expressed participation in decision-making implemented by child welfare/child protection services
Co (Context)	Contexts in which child welfare/child protection services have an influence on children's life situation, such as out-of-home placements and child welfare institutions
Study design	Qualitative studies

Appendix 2. Search Strategy for study 1

Appendix 2. Search Strategy for study 1

Search in: MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX (through EBSCOhost). Date of search: 28.5.2019.

#	Query	Limiters/Expanders	Last Run Via	Results
S1	"child welfare" OR "child protection*" OR "foster care" OR "foster home*" OR "Child and Family Welfare" OR "out of home"	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	123,213
S2	decision N2 making	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	589,306
S3	involvement* OR participat*	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database -	2,122,492

			MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	
S4	S1 AND S2 AND S3	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	961
S5	qualitative W1 (research* OR design* OR stud* OR method*)	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	333,829
S6	interview* OR phenom* OR themes* OR "thematic analys*" OR narrative*	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE;	2,870,311

			Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	
S7	expericenc* OR attitude* OR perception* OR feeling OR opinion*	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	2,686,220
S8	S5 OR S6 OR S7	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	5,211,162
S9	S1 AND S3 AND S8	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search	4,422

			Complete; CINAHL; Social Work Abstracts; SocINDEX	
S10	(child* or adolescen* or young or youth or teenage* or teen or teens or schoolchild* or boy OR boys OR girl OR girls OR users OR user OR consum*) N8 (involvement* OR participat*)	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	169,582
S11	S1 AND S8 AND S10	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	2,317
S12	S4 OR S11	Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete;	2,964

			CINAHL; Social Work Abstracts; SocINDEX	
S13	S4 OR S11	Limiters - Published Date: 19950101-20191231 Search modes - Boolean/Phrase	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	2,964 Limit: Language – English, Academic journals, total hits 2208
S14	S4 OR S11	Limiters – Published Date: 20110101–20191231 Search modes - Boolean/Phrase Published date – 20110101–20191231	Interface - EBSCOhost Research Databases Search Screen - Advanced Search Database - MEDLINE; Academic Search Complete; CINAHL; Social Work Abstracts; SocINDEX	1,237 Limit: Language – English, Academic Journals, Total hits from databases Academic Search Complete (549) SocINDEX (367) CINAHL (309) MEDLINE (235) Social Work Abstracts (99) Removal of exact duplicates –

				left with 849 hits
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Search in SCOPUS, date 28.5.2019.

#	Query	Limiters/Expanders	Last Run Via	Results
1	"child welfare" OR "child protection*" OR "foster care" OR "foster home*" OR "Child and Family Welfare" OR "out of home"	Article title, Abstract, Keywords	SCOPUS	44,536
2	Decision W/2 making	Article title, Abstract, Keywords	SCOPUS	742,378
3	involvement* OR participat*	Article title, Abstract, Keywords	SCOPUS	1,555,049
4	#1 AND #2 AND #3	Article title, Abstract, Keywords	SCOPUS	371
5	qualitative W/1 (research* OR design* OR stud* OR method*)	Article title, Abstract, Keywords	SCOPUS	189,360
6	interview* OR phenomen* OR themes* OR "thematic analys*" OR narrative*	Article title, Abstract, Keywords	SCOPUS	2,406,331
7	expericenc* OR attitude* OR perception* OR feeling OR opinion*	Article title, Abstract, Keywords	SCOPUS	1,833,958
8	#5 OR #6 OR #7	Article title, Abstract, Keywords	SCOPUS	4,047,835
9	#1 AND #3 AND #8	Article title, Abstract, Keywords	SCOPUS	1,510
10	(child* or adolescen* or young or youth or teenage* or teen or teens or schoolchild* or boy OR boys OR girl OR girls OR users OR user OR consum*) W/8 (involvement* OR participat*)	Article title, Abstract, Keywords	SCOPUS	113,548
11	#1 AND #8 AND #10	Article title, Abstract, Keywords	SCOPUS	788

12	#4 OR #11	Article title, Abstract, Keywords	SCOPUS	1,052
13	#4 OR #11	Article title, Abstract, Keywords	SCOPUS	1,052 Limit: Language -English and Journal articles, total hits 996 documents
14	#4 OR #11 (search rerun 12.6.2019)	Article title, Abstract, Keywords	SCOPUS	1,057 – total hits

Search in Svemed+, date 29.5.2019.

#	Query	Last run via	Results	
1	exp:"Community Participation"	Svemed+	906	2019-05-29 09:52:43
2	exp:"Child Welfare"	Svemed+	742	2019-05-29 09:55:45
3	exp:"Foster Home Care"	Svemed+	39	2019-05-29 09:56:21
4	exp:"Child Protective Services"	Svemed+	5	2019-05-29 09:56:52
5	"social care" OR "child welfare" OR "child protec*" OR "foster home" OR "foster care"	Svemed+	800	2019-05-29 09:58:24
6	exp:"Child and family services"	Svemed+	1648	2019-05-29 09:59:49
7	medbestemmelse OR medvirkning OR involvement OR participat*	Svemed+	1689	2019-05-29 10:00:50
8	exp:"Patient Participation"	Svemed+	777	2019-05-29 10:01:38
9	#7 OR #8	Svemed+	1689	2019-05-29 10:03:53
10	#2 OR #3 OR #4 OR #5 OR #6	Svemed+	2221	2019-05-29 10:08:01

11	#9 AND #10	Svemed+	65 – total hits	2019-05-29 10:09:23
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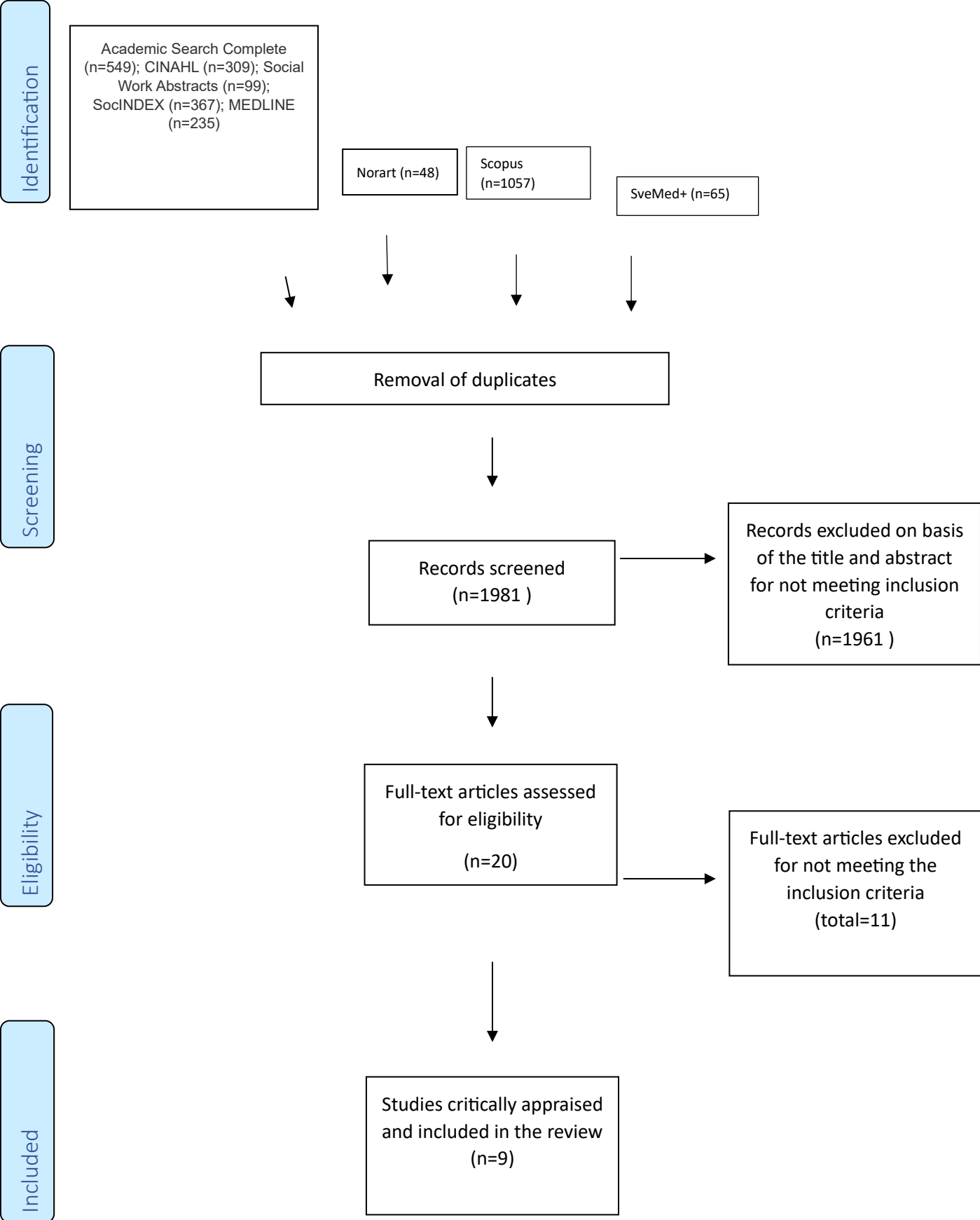
Search in Norwegian and Nordic index to periodical articles (Norart), date 29.5.2019

Search-string used: (medbestemm* OR medvirkning* OR brukermedvirkning* OR participat* OR involvement) AND (barnevern* OR fosterhjem* OR barneomsorg* OR “child welfare” OR “foster care” OR “foster home” OR “child protection*” OR “child and family services”) – total hits **48**

Appendix 3. PRISMA Flow Diagram – for study 1

Appendix 3. PRISMA Flow Diagram – for study 1

PRISMA Flow Diagram (The Prisma Group, 2009)



Appendix 4. Table of included studies in study 1

Appendix 4, Table of the included studies in study 1

Author (year) Country	Aims	Methods	Context of child welfare	Participants	Findings
1. Bessell (2011) Australia	Explore children and young people's experiences of participation in decision-making while in out-of-home care.	Focus groups, in-depth interviews, brief attitude surveys and sentence completion activities.	Participants who had been in out-of-home care.	Young people who had left the system and had been living independently for the last 12–36 months. N=28	The participants felt they had little or no opportunity to participate in a meaningful way in decisions made about their lives. This had implications for their sense of dignity and self-worth.
2. Fitzgerald & Graham (2011) Australia	Study children's perspectives on their participation in decision-making process when in supervised contact with parents.	Semi-structured in-depth interviews including other activities to help the children reflect on what participation or "having a say" is.	Being in supervised contact with parent(s).	Children aged 4-13. N=13	Twelve of 13 reported that a decision had been made without them being able to participate. Ten of 13 reported that they thought all children should be able to participate or "have a say". The participants reported negative emotional responses when their views were not heard.

3. Cossar et al. (2016) United Kingdom	Study the views of children and young people on the child protection process in England.	Qualitative activity-based interviews	Children subject to child protection processes and living at home.	Children and youth aged 6–17. N=26	For the participating children to be able to voice their thoughts and feelings, a trusting relationship was regarded as important. Minimal contact between the children and social workers was reported. Younger children reported less contact on their own than older children, and the atmosphere in the meetings was described as too interrogative.
4. Dillon et al. (2016) United Kingdom	Study children's experiences of participation in a child protection setting in England.	Qualitative, individual interviews.	Current or former experience of contact with Children in Need or the Child Protection Services Plan.	Children and youth aged 12–17. N=5	The study found that some of the participants reacted with anger and surprise when contacted by child welfare services, negatively affecting trust and communication with social workers. In addition, the children felt a need to communicate face-to-face with the social worker when necessary. All participants had experienced positive changes in their lives as a consequence of being heard.
5. Paulsen (2016) Norway	Study children and young people's experiences of participation when in contact with the Child	Qualitative focus group and in-depth interviews	All types of child welfare contexts, including	Children and young people aged 16–26. N=45	Children and young people experience a limited degree of participation, and participation depends on the relation

	Welfare Service in Norway (Barnevernet) and the factors influencing participation in this context.		experiences of living in an orphanage.		between the child/youth and the service worker.
6. Križ & Roundtree-Swain (2017) USA	Explore young people's feelings and experiences regarding participation in child welfare services	Qualitative in-depth interview methods implemented by a researcher with lived experience with the child protection system.	Participants previously in the care of child services. All had foster home experience.	Youth aged 18–22. N=8	Participants in this study had mixed experiences with participation, not entirely negative or positive. All reported lack of information as a critical point, noting that this was especially scary and confusing in the situation of being removed from their home.
7. Damiani-Taraba et al. (2018) Canada	Share young people's opinions on how child protection workers could improve children's experiences with listening and participation.	Qualitative, participatory methods.	Youths who had been in contact with child welfare services at some point in their lives (foster homes and group homes)	Youth aged 16–23. N=10	The results extracted from the stories told by the youth in this project revealed seven key themes. The first two were related to a lack of communication, where the youth felt the workers were prejudiced towards them and did not have their best interests at heart. The third theme highlighted the importance of being included in the decision making. The fourth and fifth themes focused on the importance of human connection and networks. The sixth

					<p>theme focused on support with achieving individual goals and dreams and finding opportunities to contribute positively to others. The last theme focused on the way child welfare services is shaped where youth in care often feel that they must fit the system, not acknowledging them and their individual needs.</p>
<p>8. Fylkesnes et al. (2018) Norway</p>	<p>Study ethnic minority youths' experiences of participation in out-of-home placements</p>	<p>Qualitative in-depth interviews</p>	<p>Young people living in out-of-home placements</p>	<p>Young people aged 16–23. N=6</p>	<p>A key finding was that youth participation takes place in a complex interplay wherein those capable of communicating an image of themselves as “a competent child” were more likely to participate in decisions made on their behalf. Opinions different from the majority norms in Norway had a tendency to be marginalized by the social workers.</p>
<p>9. Husby et al. (2018) Norway</p>	<p>Develop knowledge on interactions among professionals, children, and parents to improve practice</p>	<p>Qualitative explorative design</p>	<p>Children and young people who had been child welfare service users and were burdened by social-</p>	<p>Children and young people aged 9–17. N=10</p>	<p>Most of the children were neither involved nor given an opportunity to participate in multiple teamwork settings in which services were developed for them. The study also</p>

	and teaching on child participation.		emotional problems, various forms of neglect and violence.		indicates the importance of a close relationship between professionals and children/young people to facilitate participation. In this process, children and young people called for various pedagogical modes of dialogue and interaction.
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Appendix 5. Critical Appraisals Skills Programme – study 1

Appendix 5. Critical Appraisal Skills Programme – study 1

Based on checklist evaluated by the Critical Appraisal Skills Programme (CASP) (2018)

Author (year) Country	Was there a clear statement of the aims?	Is a qualitative Method(s) appropriate?	Research design appropriate to address the aims of the study?	Was the recruitment strategy appropriate to the aims of the study?	Was the data collected in a way that addressed the research issue?	Has the relationship between researcher and participants been adequate considered?	Have ethical issues been taken into consideration?	Was the data analysis sufficiently rigorous?	Is there a clear statement of findings?	How valuable is the research?
1. Bessell (2011) Australia	Yes	Yes	Yes	Yes	Yes	Can't tell	Yes	Can't tell	Yes	The study has value
2. Fitzgerald & Graham (2011) Australia	Yes	Yes	Yes	Yes	Can't tell	Can't tell	Yes	Can't tell	Yes	The study has value
3. Cossar et al. (2016) United Kingdom	Yes	Yes	Yes	Yes	Yes	Can't tell	Yes	Can't tell	Yes	The study has value
4. Dillon et al. (2016) United Kingdom	(yes)	Yes	Yes	Yes	Yes	Yes	Yes	Can't tell	(yes)	The study has value

Appendix 6. Ethical approval from FEK, study 2

Appendix 6. Ethical approval from FEK – study 2

25/02/2019 14:30:57 CET - Anne Valen-Sendstad Skisland Additional comments

Vi informerer om at din søknad er ferdig behandlet og godkjent.

Kommentar fra godkjenner:

FEK godkjenner prosjektet under forutsetninger av at NSDs skriv følges. FEK presiserer viktigheten av å være forberedt på det uventede i møte med informantene, ved .eks. å ha psykolog i beredskap dersom det framkommer reaksjoner eller vanskeligheter, etter intervjuene.

Vennligst benytt [Tjenesteportalen](#) for oppdateringer på din henvendelse/bestilling.

Med vennlig hilsen
Universitetet i Agder

Ref:MSG1837606

Appendix 7 – Approval from NSD/Sikt for study 2



[Meldeskjema](#) / [Min stemme! Hvordan opplevde ungdom mellom 16 og 23 år å bli ivar...](#) / Vurdering

Vurdering av behandling av personopplysninger

Referansenummer

120811

Vurderingstype

Standard

Dato

07.02.2019

Prosjekttittel

Min stemme! Hvordan opplevde ungdom mellom 16 og 23 år å bli ivaretatt i møte med barnevern?

Behandlingsansvarlig institusjon

Universitetet i Agder / Fakultet for helse- og idrettsvitenskap / Institutt for psykososial helse

Prosjektansvarlig

Monica Strømmand

Prosjektperiode

14.01.2019 - 30.06.2023

Kategorier personopplysninger

Alminnelige

Særlige

Lovlig grunnlag

Samtykke (Personvernforordningen art. 6 nr. 1 bokstav a)

Uttrykkelig samtykke (Personvernforordningen art. 9 nr. 2 bokstav a)

Behandlingen av personopplysningene er lovlig så fremt den gjennomføres som oppgitt i meldeskjemaet. Det lovlige grunnlaget gjelder til 30.06.2023.

[Meldeskjema](#)

Kommentar

Det er vår vurdering at behandlingen vil være i samsvar med personvernlovgivningen, så fremt den gjennomføres i tråd med det som er dokumentert i meldeskjemaet 07.02.2019 med vedlegg. Vi ber deg imidlertid oppgi dato for prosjektslutt/anonymisering i informasjonsskrivet til utvalget. Vi ber også om at du oppgir kontaktinformasjon til UiAs personvernombud. Behandlingen kan deretter starte.

MELD ENDRINGER

Dersom behandlingen av personopplysninger endrer seg, kan det være nødvendig å melde dette til NSD ved å oppdatere meldeskjemaet. På våre nettsider informerer vi om hvilke endringer som må meldes. Vent på svar før endringen gjennomføres.

TYPE OPPLYSNINGER OG VARIGHET

Prosjektet vil behandle særlige kategorier av personopplysninger om helse og alminnelige personopplysninger frem til 30.06.2023.

LOVLIG GRUNNLAG

Prosjektet vil innhente samtykke fra de registrerte til behandlingen av personopplysninger. Vår vurdering er at prosjektet legger opp til et samtykke i samsvar med kravene i art. 4 nr. 11 og art. 7, ved at det er en frivillig, spesifikk, informert og utvetydig bekreftelse, som kan dokumenteres, og som den registrerte kan trekke tilbake.

Lovlig grunnlag for behandlingen vil dermed være den registrertes uttrykkelige samtykke, jf. personvernforordningen art. 6 nr. 1 a), jf. art. 9 nr. 2 bokstav a, jf. personopplysningsloven § 10, jf. § 9 (2).

PERSONVERNPRINSIPPER

NSD vurderer at den planlagte behandlingen av personopplysninger vil følge prinsippene i personvernforordningen om:

- lovlighet, rettferdighet og åpenhet (art. 5.1 a), ved at de registrerte får tilfredsstillende informasjon om og samtykker til behandlingen
- formålsbegrensning (art. 5.1 b), ved at personopplysninger samles inn for spesifikke, uttrykkelig angitte og berettigede formål, og ikke viderebehandles til nye uforenlige formål
- dataminimering (art. 5.1 c), ved at det kun behandles opplysninger som er adekvate, relevante og nødvendige for formålet med prosjektet
- lagringsbegrensning (art. 5.1 e), ved at personopplysningene ikke lagres lengre enn nødvendig for å oppfylle formålet

DE REGISTRERTES RETTIGHETER

Så lenge de registrerte kan identifiseres i datamaterialet vil de ha følgende rettigheter: åpenhet (art. 12), informasjon (art. 13), innsyn (art. 15), retting (art. 16), sletting (art. 17), begrensning (art. 18), underretning (art. 19), dataportabilitet (art. 20).

NSD vurderer at informasjonen som de registrerte vil motta oppfyller lovens krav til form og innhold, jf. art. 12.1 og art. 13.

Vi minner om at hvis en registrert tar kontakt om sine rettigheter, har behandlingsansvarlig institusjon plikt til å svare innen en måned.

SÅRBAR GRUPPE

Slik vi forstår prosjektet, skal du behandle særlige kategorier av personopplysninger, delvis fra barn, og uansett fra personer i en sårbar posisjon. Det må tas høyde for at informantene kan befinne seg i en svært sårbar situasjon. Når man forsker på sårbare grupper, har man et særskilt ansvar for å ivareta informantenes interesser. Belastningen informantene utsettes for må stå i et rimelig forhold til den samfunnsmessige og vitenskapelige nytten av studien.

Vi vurderer informasjonssikkerheten som god slik den er dokumentert i meldeskjemaet, med relativt kort behandlingstid av identifiserende opplysninger. Dette er moment som gjør at prosjektet er gjennomførbart etter en alminnelig vurdering. Vi vurderer det også som positivt at prosjektet skal vurderes av Fakultetets Etikkomité ved Universitetet i Agder.

FØLG DIN INSTITUSJONS RETNINGSLINJER

NSD legger til grunn at behandlingen oppfylder kravene i personvernforordningen om riktighet (art. 5.1 d), integritet og konfidensialitet (art. 5.1. f) og sikkerhet (art. 32).

For å forsikre dere om at kravene oppfylles, må dere følge interne retningslinjer og eventuelt rådføre dere med behandlingsansvarlig institusjon.

OPPFØLGING AV PROSJEKTET

NSD vil følge opp underveis (hvert annet år) og ved planlagt avslutning for å avklare om behandlingen av personopplysningene er avsluttet/pågår i tråd med den behandlingen som er dokumentert.

Lykke til med prosjektet!

Kontaktperson hos NSD: Øivind Armando Reinertsen

Tlf. Personverntjenester: 55 58 21 17 (tast 1)

Appendix 8 – Information and consent-letter to interviewees for study 2



Min stemme!

Hvordan opplevde ungdom mellom 16 og 23 år å møte barnevern og/eller Statens Barnehus?

Jeg heter Monica Strømmland og undersøker hvordan de som arbeider for å hjelpe barn og unge kan beskytte retten til å bli hørt i avgjørelser som har stor betydning for deres liv.

For å undersøke dette, ønsker jeg å snakke med deg for å høre om dine erfaringer og opplevelser i møte med barnevernet og/eller Statens Barnehus.

Fordeler og ulemper

For noen kan det være nyttig å fortelle om hvordan det var å møte dem som skulle hjelpe, også fordi det kan hjelpe andre barn og unge som har opplevd det samme som dem.

For noen kan det å snakke om hvordan det var å møte barnevern og/eller Statens Barnehus gjøre at de husker på ting de kanskje helst vil glemme.

Deltakelse og informasjonen du gir meg

Et intervju varer rundt en time. Mens vi snakker sammen vil jeg skrive ned noe av det som blir sagt. Dersom du synes det er greit, vil jeg gjerne ta lydopptak av samtalen. Når jeg har skrevet opp det som ble sagt og denne jobben er ferdig, vil jeg slette lydopptakene. Det er også helt greit dersom du ikke vil at vi bruker lydopptak. Da kan jeg skrive ned det du sier etter hvert.

Du velger selv om du vil snakke med meg om det du har opplevd. Og dersom du finner ut mens du snakker med meg at dette vil du egentlig ikke, så kan du si det til meg og så avslutter vi samtalen. Du kan også si det etterpå, og da vil jeg ikke bruke det du har sagt.

Dine rettigheter

Så lenge du kan identifiseres i datamaterialet, har du rett til:

- innsyn i hvilke personopplysninger som er registrert om deg,
- å få rettet personopplysninger om deg,
- få slettet personopplysninger om deg,
- få utlevert en kopi av dine personopplysninger (dataportabilitet), og
- å sende klage til personvernombudet eller Datatilsynet om behandlingen av dine personopplysninger.

Hva gir oss rett til å behandle personopplysninger om deg?

Vi har lov til å samle inn opplysninger om deg fordi du har sagt ja (samtykket) til å delta i studien

På oppdrag fra Universitetet i Agder har NSD – Norsk senter for forskningsdata AS vurdert at behandlingen av personopplysninger i dette prosjektet er i samsvar med personvernregelverket.

Hvor kan jeg finne ut mer?

Hvis du har spørsmål til studien, eller ønsker å benytte deg av dine rettigheter, ta kontakt med:

- Universitetet i Agder ved Monica Strømmland på mail eller telefon: monica.stromland@uia.no eller 91565389 (Monica sin mobil)
- Vårt personvernombud: Ina Danielsen
- NSD – Norsk senter for forskningsdata AS, på epost (personverntjenester@nsd.no) eller telefon: 55 58 21 17.

Vil du snakke med meg om hvordan det var for deg å møte og snakke med barnevern og/eller Statens Barnehus? Da må du fylle ut og skrive under på neste side.

Vennlig hilsen Monica Strømmland

Jeg er villig til å delta i prosjektet Min Stemme!, slik det er beskrevet på forrige side

1. Fyll ut
2. Scan eller ta bilde med mobilen
3. Send til monica.stromland@uia.no eller mob. 91565389 (Monica sin mobil)

Sted og dato

Deltakers signatur

Deltakers navn med trykte bokstaver

Dere kan også skrive en vanlig mail eller SMS til mailadressen eller telefonnummeret som står ovenfor der dere skriver « jeg, _____ (navn), har fått og lest informasjon om undersøkelsen Min Stemme! og vil delta i denne undersøkelsen».

Appendix 9. Interview guide for study 2

Appendix 9. Interview Guide for study 2

Intervjuguide for studie hvor ungdom med erfaringer fra vold og overgrep, og som av den grunn har vært i kontakt med barnevern og/eller Statens Barnehus er informanter;

Det vi ønsker å finne ut av er;

- hvordan opplevde ungdommene at deres stemme ble hørt i møte med barnevern og/eller Statens Barnehus?
- hva ble de spurt om?

Spørsmålene knyttet til deres opplevelser av å bli hørt begrunner vi med barn og unges rett til å bli hørt i saker som angår dem.

Spørsmålene knyttet til hva de ble spurt om begrunner vi med prinsippet om barnets beste og ivaretagelse av verdighet.

Hva tenkte ungdommene om det å snakke med barnevern og /eller Statens Barnehus om hvordan de hadde det hjemme?

Fikk de en opplevelse av at det de sa ble lyttet til?

Følte de seg trygge nok i den situasjonen til at de turte å fortelle om det som var vanskelig?

Hvordan fikk de beskjed om avgjørelsen som ble tatt?

Ble de spurt om hva de ønsket at skulle bli gjort for dem?

Hva tenker de om den avgjørelsen nå?

Ble det sånn som de hadde tenkt?

Menneskerettighetene, barnekonvensjonen og norsk lovverk sier at det er noen grunnleggende behov som skal beskyttes overfor alle mennesker. Det er staten sin oppgave å passe på at dette skjer. Det vi skal undersøke, og som de kunne lese i brevet som de fikk av oss, er hvordan dette blir gjort. Derfor ønsker vi å stille noen spørsmål om hva de ble spurt om når de snakket med barnevernet og/eller Statens Barnehus.

Tematisk vil vi ta utgangspunkt i filosofen Martha Nussbaum sin kapabilitetsliste. Det valget har vi tatt med bakgrunn i et tydelig samsvar mellom menneskerettighetene/barnekonvensjonen og kapabilitetsteorien slik Nussbaum presenterer den. I tillegg til samsvar mellom punktene i teori og rettigheter, begrunnes og rettferdiggjøres både menneskerettighetene og kapabilitetsteorien med behovet for å ivareta et minimum av menneskelig verdighet.

Vi vil være oppmerksomme på at ikke spørsmålene er stilt på en måte som kan oppleves som at de må prestere noe, eller at det er noen svar som er «rette».

Den tematiske intervjuguiden;

1. liv –
 - spørsmål som er sentrert rundt temaet trygghet.
2. helse –
 - Spørsmål som er sentrert rundt temaet helse.
3. kroppslig integritet –
 - spørsmål knyttet til muligheter til å sette grenser i forhold til egen kropp.
4. sanser, fantasi og tanke –
 - spørsmål knyttet til muligheter for å bruke sansene, fantasien og tanke.
5. følelser –
 - spørsmål knyttet til relasjoner, det vil si muligheter for å beholde kontakt med mennesker eller ting som hadde og har betydning.
6. meningsdannelse –
 - spørsmål knyttet til muligheter til å snakke om, tenke over og utvikle synspunkter på bakgrunn av egen overbevisning. Ble ungdommene spurt om hvilke drømmer og tanker de hadde og har for framtiden deres?
7. tilhørighet –
 - spørsmål knyttet til en opplevelse av tilhørighet, og muligheter for å opprettholde relasjoner for tilhørighet.

8. andre arter –

- spørsmål knyttet til relasjon til dyr og natur. Ble ungdommene spurt om de hadde kjæledyr, og hvis så var tilfellet, fikk de mulighet til å opprettholde denne relasjonen?

9. lek –

- spørsmål knyttet til muligheter for lek.

10. kontroll over ens omgivelser –

- spørsmål knyttet til muligheter for å være med å ta avgjørelser som hadde betydning for dem.

- spørsmål knyttet til muligheter til å eie og bestemme over egne ting.

Eksempler på formulerte spørsmål til barn og unge:

«Kan du fortelle om/beskrive møtet ditt med barnevernet/Statens Barnehus?»

I beste fall forteller ungdommen i vei, og gir gode beskrivelser av hvordan møtet opplevdes for dem. Dersom samtalen stopper opp eller de har vanskelig for å finne ord for opplevelsen kan spørsmålene konkretiseres til for eksempel – «fortell meg litt om hvor dere hadde møtet og hva dere snakket om». Forhåpentligvis vil det komme fram ting her som kan følges opp, hvis ikke blir det nødvendig med ytterligere konkretisering.

Appendix 10 – Decision from Regionale komiteer for medisinsk og helsefaglig
forskning (REK) for study 2

Region:	Saksbehandler:	Telefon:	Vår dato:	Vår referanse:
REK sør-øst	Tor Even Marthinsen	22845521	27.06.2018	2018/1103/REK sør-øst C
			Deres dato:	Deres referanse:
			07.05.2018	

Vår referanse må oppgis ved alle henvendelser

Monica Strømmland
Sørlandet Sykehus

2018/1103 Barnekonvensjonen for verdige liv. Hvordan kan barn og unges rett til frihet og beskyttelse av menneskelige behov ivaretas i avgjørelser som gjelder deres livsvilkår?

Vi viser til søknad om forhåndsgodkjenning av ovennevnte forskningsprosjekt. Søknaden ble behandlet av Regional komité for medisinsk og helsefaglig forskningsetikk (REK sør-øst) i møtet 07.06.2018. Vurderingen er gjort med hjemmel i helseforskningsloven § 10.

Forskningsansvarlig: Universitetet i Agder
Prosjektleder: Monica Strømmland

Prosjektomtale (original):

Prosjektet skal undersøke hvilke faktorer som blir evaluert av profesjonelle hjelpeinstanser (barnevern og Statens Barnehus) i avgjørelser som gjelder barn og unges livsvilkår og livssituasjon. Første del av prosjektet er en teoretisk redegjørelse for kapabilitetsteori hvor vi undersøker om og eventuelt på hvilken måte denne kan fungere som et etisk supplement til Barnekonvensjonen og Den europeiske menneskerettskonvensjonen del 1. Andre del av studien er en systematisk litteraturstudie av kapabilitets-teori analysert i forhold til barnekonvensjonen. Tredje del er en kvalitativ studie hvor vi skal intervju fosterbarn mellom 13 og 18 år, som har erfaringer med vold og/eller omsorgssvikt i nære relasjoner. Studien vil ha fokus på hvordan de opplevde møtet med det offentlige hjelpeapparatet. I det fjerde studiet vil jeg intervju profesjonelle som tar avgjørelser overfor den nevnte gruppen.

Utdypende beskrivelse av prosjektets ulike deler

Som det også fremgår av prosjektbeskrivelsen, består dette doktorgradsprosjektet av fire ulike elementer, som alle er omtalt i søknaden.

Den første delstudien har til hensikt å utdype det teoretiske grunnlaget for kapabilitetsteorien sett i forhold til barn med utgangspunkt i følgende spørsmål: Hva er grunnlaget for kapabilitetstilnærmingen til Nussbaum og hvordan kan dette understøtte og utfordre prinsippene i barnekonvensjonen? På hvilke måter utfyller kapabilitetstilnærmingen rettighetstenkningen for barn? Og på hvilke måter kan kapabilitetstilnærmingen utfylle Barnekonvensjonen på en praktisk måte?

I den andre delstudien undersøkes hvordan og på hvilke måter kapabilitetstilnærmingen kan brukes til å tette gapet mellom barn og unges rettigheter og den faktiske tilgangen på rettighetene i barn og unges hverdag. Dette gjøres gjennom en systematisk litteraturgjennomgang av hvordan kapabilitetstilnærmingen forankres i barns rettigheter nasjonalt og internasjonalt.

I den tredje delstudien rettes oppmerksomheten mot barn og unge som har opplevd vold og overgrep. Studien vil bli gjennomført ved hjelp av kvalitative forskningsintervju. Kriteriene for å bli inkludert i studien

er at barna har hatt møte(r) med hjelpeinstansen(e) barnevernstjenesten og/eller Statens Barnehus, barnevernet har overtatt omsorgen og derav bosted i fosterhjem, alder mellom 13 og 18 år.

I denne siste delstudien flyttes oppmerksomheten over til yrkesutøverne og de som forvalter hensynet til barns beste. Målet er å undersøke hvordan yrkesgrupper som arbeider med utsatte barn og unge reflekterer over og tar avgjørelser ut fra tanken om barnets beste.

Den vedlagte protokollen skisserer opp de fire delstudiene på en svært klar måte.

Helseforskningslovens saklige virkeområde

Helseforskningslovens gjelder for medisinsk og helsefaglig forskning, forstått som virksomhet som utføres med vitenskapelig metodikk for å skaffe til veie ny kunnskap om helse og sykdom, jf. helseforskningslovens § 4.

En samlet komité mener at prosjektets delstudier 1, 2 og 4 klart faller utenfor lovens saklige virkeområde. I disse delstudiene kommer man i liten grad i berøring med helsemessige aspekter; det er forskning knyttet til menneskerettighetene og ivaretagelsen av disse som er det klare hovedformålet. I delstudie 1, 2 og 4 kan man komme over opplysninger som har med helse å gjøre – kanskje hovedsakelig i delstudie 4 – men å skaffe ny kunnskap om sykdom og helse er ikke siktemålet med disse delstudiene.

Når det gjelder hvorvidt delstudie 3 faller inn under helseforskningslovens virkeområde – og dermed er avhengig av en REK-godkjenning – har komiteen delt seg i et flertall og et mindretall.

Flertallets innstilling

Sju av komiteens åtte medlemmer mener også delstudie 3 faller utenfor helseforskningslovens virkeområde. At utvalget det dreier seg om er svært sårbare, barn og unge som har opplevd vold og overgrep, er ubestridelig. At man skal intervju disse barna og ungdommene om til dels svært vanskelige tema, er det heller ingen tvil om.

Uavhengig av hvorvidt studien faller innenfor helseforskningsloven eller ikke, fordrer både fremgangsmåte og behandling av tema stor aktsomhet. Komiteens flertall vil understreke dette aspektet.

Det stilles spørsmål som direkte berører helse i intervjuguiden som fulgte delstudie 3. Indirekte kan det dermed fremkomme nye helseopplysninger om den enkelte. Dette er i flertallets øyne ikke tilstrekkelig til at studien kan anses som medisinsk eller helsefaglig forskning. Det kan indirekte også muligens fremkomme nye opplysninger i intervjuene som skaffer ny, generell kunnskap om sykdom og helse. Flertallet mener det er lite sannsynlig at det vil skje, i alle fall ikke med slik bevissthet eller av et slikt omfang at det tilsier at delstudie 3 skal behandles etter helseforskningslovens bestemmelser.

I flertallets øyne er også delstudie tre å betrakte som et forskningsprosjekt om ivaretagelse av barn og unges menneskerettigheter, i en særskilt krevende livssituasjon.

Mindretallets innstilling

Mindretallet består av psykologirepresentant Mona Bekkhus.

I mindretallets øyne kan man ikke skille hensikten med de helsemessige spørsmålene i intervjuguiden, fra de faktiske svarene de kan frembringe. Mindretallet mener det er kunstig å anta at formålet med prosjektet alene vil være avgjørende for om prosjektet kan gi ny kunnskap om helse. Dersom et forskningsprosjekt har potensial til å frembringe slik kunnskap, skal det også behandles etter bestemmelsene i helseforskningsloven.

Komiteens mindretall peker på at man generelt ved tvil om fremleggingsplikten, bør velge å behandle et prosjekt etter helseforskningsloven. Dette gjelder spesielt dersom forskningsutvalget også består av sårbare grupper, noe det gjør i dette tilfellet.

Komiteens mindretall mener delstudie 3 faller inn under helseforskningslovens bestemmelser.

Vedtak

Prosjektet omfattes ikke av helseforskningslovens virkeområde, jf. helseforskningslovens § 2. Prosjektet er ikke fremleggelsespliktig, jf. helseforskningslovens § 4 annet ledd.

Komiteens vedtak er fattet med sju mot en stemme.

Komiteens vedtak kan påklages til Den nasjonale forskningsetiske komité for medisin og helsefag, jf. Forvaltningslovens § 28 flg. Eventuell klage sendes til REK Sør-Øst. Klagefristen er tre uker fra mottak av dette brevet.

Med vennlig hilsen

Britt Ingjerd Nesheim
professor dr. med.
leder REK sør-øst C

Tor Even Marthinsen
seniorrådgiver

Kopi til: veslemoy.rabe@uia.no

Appendix 11 - European Court of Human Right's decisions against Norway on violations of European Convention on Human Rights Article 8 in child welfare service cases from 1996 to September 2023

Appendix 11. European Court of Human Right’s decisions against Norway on violations of European Convention on Human Rights Article 8 in child welfare service cases from 1996 to September 2023 (ECtHR, 2023a, HUDOC; NIM, 2023)

Case	Date	Processed in	Relevant ECHR Articles	Result	Reference
<i>Johansen v. Norway</i>	07.08.1996	Chamber	Art. 8, 6	Violation; 8 to 1	ECtHR, 1996, sect. 110
<i>Sanchez Cardenas v. Norway</i>	04.10.2007	Court (First Section)	Art. 6, 8, 41	Violation; Unanimous	ECtHR, 2007, sect. C., 59. 1
<i>Jansen v. Norway</i>	06.09.2018	Court (Fifth Section)	Art. 8, 41	Violation; Unanimous	ECtHR, 2018, sect. B., 110. 2
<i>Strand Lobben v. Norway</i>	10.09.2019	Court (Grand Chamber)	Art. 8, 35, 41	Violation; 13 to 4	ECtHR, 2019d, C. 235. 2
<i>K.O and V.M. v. Norway</i>	19.11.2019	Court (Second Section)	Art. 8, 41	Violation; Unanimous	ECtHR, 2019c, sect. C., 79., 3
<i>Abdi Ibrahim v. Norway</i>	17.12.2019	Court (Second Section)	Art. 8	Violation; Unanimous	ECtHR, 2019b, sect. II., 69., 2
<i>A.S. v. Norway</i>	17.12.2019	Court (Second Section)	Art. 8	Violation; Unanimous	ECtHR, 2019a, sect. C. 78., 2
<i>Hernehult v. Norway</i>	10.03.2020	Court (Second Section)	Art. 8	Violation; Unanimous	ECtHR, 2020a, sect. B., 83., 2
<i>Pedersen and others v. Norway</i>	10.03.2020	Court (Second Section)	Art. 8	Violation; Unanimous	ECtHR, 2020c, sect. C., 80., 2
<i>M.L. v. Norway</i>	22.12.2020	Court (Fifth Section)	Art. 8	Violation; Unanimous	ECtHR, 2020b, sect. C., 108., 2
<i>F.Z. v. Norway</i>	01.07.2021	Court (Fifth Section Committee)	Art. 8	Violation; Unanimous	ECtHR, 2021c, sect. C., 67., 2
<i>R.O. v. Norway</i>	01.07.2021	Court (Fifth Section Committee)	Art. 8	Violation; Unanimous	ECtHR, 2021f, C., 42., 3

<i>K.E. v. Norway</i>	01.07.2021	Court (Fifth Section Committee)	Art. 8	Violation; Unanimous	ECtHR, 2021d, sect. C., 59., 3
<i>E.H. v. Norway</i>	25.11.2021	Court (Fifth Section Committee)	Art. 8	Violation; Unanimous	ECtHR, 2021b, sect. C., 51., 2
<i>M.F. v. Norway</i>	25.11.2021	Court (Fifth Section Committee)	Art. 8	Violation; Unanimous	ECtHR, 2021e, sect. 58., 3
<i>Abdi Ibrahim v. Norway</i>	10.12.2021	Court (Grand Chamber)	Art. 8, 9, 41	Violation; Unanimous	ECtHR, 2021a, sect. 185., 1
<i>A.L. and others v. Norway</i>	20.01.2022	Court (Fifth Section)	Art. 8, 35, 41	Violation; Unanimous	ECtHR, 2022, sect. C., 69., 2.)
<i>S.S and J.H v. Norway</i>	12.09.2023	Court (Second Section Committee)	Art. 8	Violation; Unanimous	ECtHR, 2023, 19.
<i>K.F and others V. Norway (six cases)</i>	12.09.2023	Court (Second Section Committee)	Art. 8	Violation; Unanimous	ECtHR, 2023, II, 14.
<i>D.R and others v. Norway (2 cases)</i>	12.09.2023	Court (Second Section Committee)	Art. 8	Violation; Unanimous	ECtHR, 2023, II, 13.

Note. The nineteen CWS cases involving Norway brought to the ECtHR in the same period (1996– September 2023) and in which the Court found no violation of Art. 8 are not included in this table. See NIM and ECtHR for further information on these cases (ECtHR, 2023a, HUDOC; NIM, 2023).