



5

Children's Participation and Perspectives in Family Disputes

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5.1 Introduction

Every year in Sweden, over 60,000 children experience parental separation or divorce.¹ That number is equivalent to almost 4% of the children who were living with both of their parents at the beginning of the year. It has also become more common in recent years that the child's parents have never lived together.² Currently, approximately 25% of children in Sweden have parents who live apart. In 2020, 21,000 children had parents that went through cooperation talks (*samarbetsamtal*)—a form of mediation—offered by local authority social services (*socialtjänsten*), to resolve conflicts regarding their children. Almost 7,000 children

¹ Statistics Sweden 2021 (Child and Family Statistics 2021) www.scb.se accessed 6 February 2023.

² Statistics Sweden 2013, 'Barn, föräldrar och separationer: Utvecklingen under 2000-talet' [Children, Parents and Separations Trends of the 21st Century], Demographic Reports 2013:1.

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were subject to a social services investigation in a legal dispute regarding custody, residence, or visitation.³ According to a previous estimate by the Swedish National Board of Health and Welfare (*Socialstyrelsen*), about 14% of children who experience parental separation become the subject of a legal dispute regarding custody, residence, or visitation.⁴

What do we know about the situation of children involved in such processes? How can agency interventions into the lives of children involved in family disputes become as child-centred and child-friendly as possible? This chapter is divided in two parts, focusing on child health matters in family disputes, and on children's participation and perspectives, respectively. The first part draws on the results from a study of multidisciplinary 'Collaboration Teams' developed to assist families in conflictual separations, and the results from a national evaluation study of children exposed to violence against their mothers. In this first part, the need for dissolving boundaries between family-law proceedings and child-welfare/child protection policy and practice is demonstrated. The second part of the chapter draws on previous academic debates on approaches to vulnerable children, and a study of children's views on child participation in family-law proceedings. A 'dual approach' to children in difficult life situations is outlined, wherein children are regarded as both in need of adult protection and care, and as competent actors with rights to participation. It is argued that it is vital to connect risk assessments and ways of communicating with children to the issue of children's participation. Implications for policy and practice are discussed throughout and in a concluding section.

³ Family Law and Parental Support Authority 2021, Statistics on Family Law 2020, www.mfof.se accessed 29 September 2021.

⁴ National Board of Health and Welfare 2011, *Familjerätten och barnet i vårdnads tvister: uppföljning av hur 2006 års vårdnadsreform slagit igenom i socialtjänstens arbete* [Social Services and Child in Custody Disputes: A Follow-up of the Effects of the 2006 Reform of the Children and Parents Code] 2011. Statistics from 2021 indicate the number of children who have become the subject of a legal dispute in more recent years; according to these statistics, 18% (12,612 children) of 66,000 experiencing parental separation were included in retrieval of information requests by the court in 2021, Family Law and Parental Support Authority 2021, Statistics on Family Law 2020, www.mfof.se and Statistics Sweden 2021, Child and family statistics 2021, www.scb.se both accessed 6 February 2023.

5.2 Children's Health Matters in Family Disputes

Like many other Western countries, Swedish policy and law assume shared parenting and a high degree of parental cooperation after separation or divorce. Since the 1970s, a string of changes to both family law (for example, the Swedish Children and Parent Code) and welfare law (like the Social Services Act) have aimed to reduce conflict between parents and encourage out-of-court agreements regarding visitation, custody, and children's residence. At the time of writing, it is possible for parents to use the municipal social services to make formal agreements with the same legal status as a court order, and the social services are obliged to offer cooperation talks—the Swedish version of mediation—to non-cohabiting parents who want help to resolve conflicts regarding their children.⁵ However, some parents still end up in court over disputes about visitation, custody, or residence. Previous research shows that conflicts between parents can have detrimental effects on children's health and wellbeing.⁶ However, not much is known about what agencies dealing with family disputes can do to secure the health and wellbeing of the children they encounter. The first step here is to explore the level of health issues and other problems among children in contact with such agencies.

⁵ On this notion, see further Anna Nylund, 'Nordic Family Mediation: Towards a System of Differentiated Services?' in Anna Kaldal, Agnes Hellner and Titti Mattsson (eds), *Children in Custody Disputes: Matching Legal Proceedings to Problems* (Palgrave 2023) and Anna Singer, 'Out-of-court Custody Dispute Resolution in Sweden—A Journey without destination' in Anna Kaldal, Agnes Hellner and Titti Mattsson (eds), *Children in Custody Disputes: Matching Legal Proceedings to Problems* (Palgrave 2023).

⁶ Brian D'Onofrio and Robert Emery, 'Parental Divorce or Separation and Children's Mental Health' (2019) 18(1) *World Psychiatry* 100–101. See also Anna Norlén, 'Children's Health Matters in Custody Conflicts—What Do We Know?' in Anna Kaldal, Agnes Hellner and Titti Mattsson(eds), *Children in Custody Disputes: Matching Legal Proceedings to Problems* (Palgrave 2023).

5.2.1 Problems Displayed by Children Involved With Early Intervention and Prevention Agencies

To improve services and prevent legal disputes between parents, the Swedish Ministry of Social Affairs tasked the Children's Welfare Foundation Sweden to discover whether a coordinated multidisciplinary 'Collaboration Team' could provide meaningful assistance to families in conflictual separations.⁷ Between 2014 and 2017, collaboration teams, designed to prevent or mitigate conflicts between parents and promote effective parental cooperation were formed in four medium-sized municipalities and one city in Sweden. The development work was evaluated by two research teams: one focusing on the collaboration process,⁸ and the other focusing on (a) the wellbeing of children and parents; (b) the experiences of children and parents in their contacts with the collaboration teams; and (c) the support that families received or were offered. The project also examined data about families in contact with the teams.⁹

Basic socio-economic data was gathered about 115 children and 118 parents from 69 families in contact with the teams, and about 454 children in a reference group, whose parents were seeking help through mediation from the respective local authority. Data about the children and parents in contact with the collaboration teams was also gathered through various other measures, including a self-assessment questionnaire from the structured risk detection model 'Family law detection

⁷ Maria Eriksson and Marianne Gabriellsson, 'Supporting Children and Parents in Sweden through Collaboration Teams' (2019) 57(3) *Family Court Review* 362–367.

⁸ Berth Danermark and Ulrika Englund 'Utvärdering av Allmänna Barnhusetsocialt Samverkansteam – stöd till barn med föräldrar i konflikt' [Evaluation of the Children's Welfare Foundation's Project Collaboration Team – Support for Children with Parents in Conflict] in *Slutrapport Samverkansteam – för stöd till barn och föräldrar i samband med separation* [Final Report Collaboration Team – for Support to Children and Parents in the Context of Separation] Children's Welfare Foundation Sweden (2018) 145–166; Berth Danermark and Ulrika Englund 'Samverkan – förutsättningar och utfall – en kompletterande och avslutande analys' [Collaboration – Prerequisites and Outcomes – A Complementary and Final Analysis] in *Final Report Collaboration Team – for Support to Children and Parents in the Context of Separation*, Children's Welfare Foundation Sweden] (2018) 36–51.

⁹ Maria Eriksson, Linnea Bruno, and Marie-Louise Klingstedt, 'Samverkansteam: Barns och föräldrars situation och upplevelser' [Co-operation teams: Children' and Parents' Situation and Experiences] in *Final report. Collaboration Team – to Support Children and Parents in the Context of Separation*, Children's Welfare Foundation Sweden (2018); Eriksson and Gabriellsson (n 7).

of overall risk screen' (FL-DOORS).¹⁰ This dataset contains 101 questionnaire responses from 58 mothers and 43 fathers. This screening and assessment tool was used to assess the children's and parents' situation and their need for support or protection. The tool, which focuses on risks from a broad perspective—including the risk of the child's development being damaged by everything from a lack of care to a risk of abduction, violence, suicide, and murder-suicide—is divided into 10 target areas based on research knowledge about the factors that may pose risks for families who are undergoing separation. In their first contact with the teams, parents reported signs of stress and worry displayed by their children during the previous six months (Tables 5.1 and 5.2).

Table 5.1 The number of indications of stress and worry displayed by children under six years during the last six months, reported by mothers and fathers (percent)

	Mother	Father
No problems	20	50
1 problem	27	22
2–3 problems	33	28
Total (n)	30	18

Table 5.2 The number of indications of stress and worry displayed by children seven years and older during the last six months, reported by mothers and fathers (percent)

	Mother	Father
No problems	7	24
1 problem	10	18
2–3 problems	32	36
4–5 problems	42	21
Missing (%)	10	0
Total (n)	41	33

¹⁰ Jennifer E McIntosh, Yvonne Well, and Jamie Lee 'The FL-DOORS Detection of Overall Risk Screen Framework', Attorney-General's Department (2012), Canberra, Australia 2012; Jennifer E McIntosh, Yvonne Well, and Jamie Lee, *The Family Law FL-DOORS Handbook*, Attorney General's Department (2012), Canberra, Australia 2012; Jennifer E McIntosh, Yvonne Well, and Jamie Lee 'Development and validation of the Family Law DOORS' in (2016) 28(11) *Psychological Assessment* 1516–1522.

A systemic difference between mothers and fathers was revealed: mothers tended to report indications of child stress and worry more than the fathers.

Data about the health of children and parents coming to the collaboration teams was also gathered from parents and children aged 11 and older through the Strengths and Difficulties Questionnaire (SDQ).¹¹ This was done at first contact with the teams, and again after approximately four months, and once more after 12 months. The assessment of children's strengths and difficulties indicated that some children had problems at first contact, for example, with emotional problems, behavioural problems, hyperactivity, or problems in peer relationships. This was especially the case for the group of children aged 4–17 years, in which about 40% of the children were reported as having problems (Table 5.3). In addition, in the SDQ, mothers tended to report more problems regarding the child than did fathers.

The follow-up after four months indicated that children's health and wellbeing had tended to improve, but the amount of positive change tended to be small, and for some children, the problems remained at the same level or increased during the period.¹² This pattern of limited improvement can also be interpreted in respect of the information about the services offered by the collaboration teams. In terms of interventions, the most common response was no intervention aimed directly at the child, and if the child did receive an intervention of some kind, the most common was one or two individual sessions. There was no clear link

Table 5.3 Children 4–17 years ($n = 86$), strengths and difficulties according to parents* at first contact with the team (*fathers: $n = 20$, mothers: $n = 66$)

	Number	Percent
Normal or slightly raised level of difficulties	51	59
High level in one area	13	15
Very high level in one area	5	6
Multiple areas with high or very high levels of difficulties	17	20
Total (n)	86	100

¹¹ See www.sdqinfo.com accessed 18 May 2017.

¹² Eriksson, Bruno and Klingstedt (n 9).

between the level of problems reported at first contact and the type or extent of intervention.

In summary, a significant proportion of children in contact with services aimed at early intervention and prevention of disputes displayed problems regarding health and wellbeing to such an extent that a need for more extensive interventions by social services and/or health services was indicated.

5.2.2 Problems Displayed by Children Involved With 'Cooperation' and Investigation Agencies

Another set of empirical results indicating a need to consider children's health and wellbeing when their parents are engaged in a family-law dispute, comes from a national evaluation study of services for children exposed to violence against their mother.¹³ In this study, children who had been exposed to intimate partner violence (IPV) and who had received services aimed at this target group ($n = 185$) were compared to children receiving 'standard' services within child welfare and child psychiatry ($n = 75$) after exposure to IPV, and to violence-exposed children in contact with a social services family-law unit (*socialtjänstens familjerättsenhet*) ($n = 55$). In the family-law group, the child's parents had participated in cooperation talks or an investigation by the social services family-law unit into the child's situation that was mandated by the court in a legal dispute between the parents.¹⁴

The children were followed for 12 months after inclusion in the study, and some important differences were seen between the family-law services study group and the other children in the study. Mothers in the social services family-law unit study group reported ongoing violence

¹³ Anders Broberg, Linnéa Almqvist, Ulf Axberg, Kjerstin Almqvist, Åsa K Cater and Maria Eriksson, *Stöd till barn som upplevt våld mot mamma. Resultat från en nationell utvärdering* [Support to Children Who Have Experienced Violence Against their Mothers. Results from a National Evaluation Study] (University of Gothenburg, Department of Psychology 2011).

¹⁴ As mentioned, 'cooperation talks' is a Swedish version of mediation. On this notion, see further Anna Singer, 'Out-of-court custody dispute resolution in Sweden—A Journey without destination' in Anna Kaldal, Agnes Hellner and Titti Mattsson (eds) *Children in Custody Disputes: Matching Legal Proceedings to Problems* (Palgrave 2023).

(76% of the mothers in this group) to a higher degree than mothers in the other groups. This itself is a cause for concern, and even more so with the fact that the children in the social services family-law unit group tended to be younger than those in the other groups. It is also noteworthy that children in the social services family-law unit study group were demonstrating clinical symptoms at the same level as children in contact with other services, including social services child-welfare units (*socialtjänstens enhet för social barnavård*) and child psychiatry.¹⁵ In the latter groups, children could be expected to display clinical levels of symptoms to a higher degree than within, for example, the social services family-law unit group, but that was not the case in this data set. Furthermore, unlike children in the other groups, children in the social services family-law unit study group did not improve over time (defined as a reduction in symptoms). Instead, their health and wellbeing tended to deteriorate (that is, symptoms increased) during the period when these children were followed in the study.

In summary, a significant proportion of the children in contact with the social services family-law unit showed levels of symptoms warranting interventions from child psychiatry. Furthermore, children's health and wellbeing deteriorated during and after the contact with the social services family-law unit that was providing cooperation talks or investigating the child's situation.

5.3 Care and Participation for Vulnerable Children

The empirical examples above demonstrate the need for dissolving boundaries between family-law proceedings and child welfare/child protection policy and practice. Furthermore, there is clearly a need for improving services for children in family disputes, both in terms of early intervention and prevention, and when a dispute has escalated to a court

¹⁵ Ibid.

case or interventions from social services. When trying to improve practice, I would argue that it is vital to connect risk assessments and ways of communicating with children to the matter of children's participation.

5.3.1 A 'Dual Approach' to Children

Since the late 1990s, a growing body of studies—not least in Nordic countries and the United Kingdom—of children and intimate partner violence have included children as informants and explored their views of both the violence and their own situation.¹⁶ This trend can broadly be linked to the influence from the 'new' sociology of childhood/social studies regarding children and childhood that has gained ground within all fields of research concerning children since the early 1990s.¹⁷ Here, children are conceptualized as social actors, and children's competence and participation in research as well as social life are highlighted. This conceptualization of children as social actors, of course, does not exclude the possibility that children might need protection and support from adults. Existing knowledge, for example, about possible consequences of childhood traumas, must be recognized in this context.

As pointed out by researchers involved in 'new' social studies on children and childhood, an ambiguity in current perspectives on children constructs them on the one hand as subjects and as objects on the other.¹⁸ Sometimes these different approaches to children can conflict,

¹⁶ Åsa Källström (Carter), 'Negotiating Normality and Deviation – Father's Violence against Mother from Children's Perspectives' (Örebro University 2004); Inkeri Eskonen, 'Violence in Children's Narration' (2005) 8(1) *The International Journal of Child & Family Welfare* 32–45; Caroline McGee, *Childhood experiences of domestic violence* (Jessica Kingsley 2000); Audrey Mullender *Children's Perspectives on Domestic Violence* (SAGE journals 2002); Katarina Weinehall "'Take my Father Away from Home': Children growing up in the proximity of violence' in Maria Eriksson, Marianne Hester and Suvi Keskinen (eds), *Tackling Men's Violence in Families. Nordic Issues and Dilemmas* (Policy Press 2005) 136–154.

¹⁷ See Allison James, Chris Jenks and Alan Prout, *Theorizing Childhood* (Polity Press 1998); Jens Qvortrup, Marjatta Bardy, Giovanni Sgritta, and Helmut Wintersberger (eds), *Childhood Matters. Social Theory, Practice and Politics* (Avebury 1994); Jens Qvortrup, William A Corsaro, and Michael-Sebastien Honig, *The Palgrave Handbook of Childhood Studies* (Palgrave Macmillan 2009).

¹⁸ Nicki Lee, 'The Challenge of Childhood. Distributions of Childhood's Ambiguity in Adult Institutions' in (1999) 6(4) *Childhood* (SAGE journals) 455–474; Ibid. Qvortrup and others (1994) (n 17).

but they do not necessarily have to. Instead, combining them can be the key to improved practice in relation to children, for example, in family disputes. Thus, a *care principle* based on a needs-oriented perspective on children's views, constructing children as objects of adults' care and control, can be combined with a competence-oriented perspective on children's views,¹⁹ expressed through *the principle of participation*—according to which, children are viewed as citizens and social actors.²⁰ Participation—for example, to be informed about what is going to happen next, consulted about which contact arrangements will feel sufficiently safe, and to take part in decisions regarding the future—can create possibilities for validation of children's traumatic experiences and thus support children's recovery after violence and abuse.²¹

5.3.2 Participation Enabling a Sense of Coherence

Another way of framing the importance of a dual approach to children in difficult life situations is to claim that a high degree of participation can contribute to children's sense of coherence.²² According to Antonovsky's framework, health is a movement on a continuum of ease and disease, and depends on a person's ability to comprehend the situation as well as her or his capacity to use available resources. This capacity is a combination of people's ability to assess and understand the situation they are in ('comprehensibility'), to find a meaning for moving in a health-promoting direction ('meaningfulness'), and the capacity to do so ('manageability'). This framework can be linked to the various aspects of

¹⁹ Anna Singer, *Föräldraskap i rättslig belysning [Parenthood According to the Law]* (Iustus 2000).

²⁰ Maria Eriksson and Elisabeth Näsman, 'Participation in Family Law Proceedings for Children whose Father is Violent to their Mother' (2008) 15(2) *Childhood* 259–275.

²¹ Halvard Leira, 'From Tabooed Trauma to Affirmation and Recognition – An Explanatory Model to Understand and Work With Children who have Experienced Violence in the family' in Maria Eriksson, Aili Nenola and Marika Muhonen Nilsen (eds), *Kön och våld i Norden: rapport från en konferens i Køge, Danmark, 23–24 november 2001* [Gender and Violence in the Nordic Countries: Report from a Conference in Køge, Denmark, 23–24 November 2001], Copenhagen (2002): Nordic Council of Ministers, TemaNord no 545 285–295.

²² Aaron Antonovsky, *Unraveling the Mystery of Health: How people manage stress and stay well* (1 edn, Jossey-Bass 1987).

participation outlined by Roger Hart in his work on the ladder of children's participation²³—getting *information*, being *consulted*, taking part in *decision-making*, and being able to take the *initiative*.²⁴ I would argue that, in encounters with professionals working with family disputes, child participation is central to the promotion of children's health and wellbeing. Obtaining information that allows you—the child—to:

- understand what will happen to you.
- express what you think, feel, and know.
- feel that adults (professionals) genuinely listen to what you have to say and how you see things.
- veto situations that frighten you and undermine your sense of security.
- bring issues into the conversations that adults (professionals) did not think to ask about.

All these opportunities can support your sense that the situation is comprehensible, manageable, and meaningful, that is, your sense of coherence.

5.3.3 The Dual Approach and Risk Assessment

The recognition of children's voices is important not only in relation to general knowledge about children and family disputes, but also for understanding the situation of individual children. Risk assessment can illustrate this point.²⁵ Some commentators have noted that more widely used risk assessment instruments or methods are adapted to, for example, violent perpetrators found in a criminal justice context rather than child

²³ Roger A. Hart, *Children's Participation: From Tokenism to Citizenship* in (1992) no 4 *Innocenti Essay*, International Child Development Centre, Florence.

²⁴ See Eriksson and Näsman (n 20).

²⁵ Maria Eriksson, 'Children's Voices, Children's agency, and the Development of Knowledge About Children Exposed to Intimate Partner Violence in Marita Husso, Tuija Virkki, Marianne Notko, Helena Hirvonen and Jari Eilola (eds), *Interpersonal Violence: Differences and Connections* (Routledge 2017) 140–152.

protection matters or family disputes.²⁶ The complexity of these cases, in which both adults and children are at risk, has led some experts to argue that we need step-by-step models for risk assessment—where case workers use a variety of instruments and methods to assess risk to partners and to children, and then integrate the results into an overall conclusion.²⁷

My argument is similar, though it brings the issue of children's agency and voices to the fore. Drawing on the dual approach outlined above, a risk assessment model combining the principle of care with the principle of participation would encompass at least four components²⁸:

- Immediate danger (including risk of physical and sexual violence against the child).
- The child's strategies to tackle violence.
- The child's perspective (especially the sense of security).
- Developmental/long-term risk and the child's needs in relation to recovery.²⁹

Although crucial and an important first step, a focus on, for example, the perpetrator of intimate partner violence, is not enough in a child-centred risk assessment model. Even when a previously violent parent is assessed as no longer posing a danger, the child might still *feel* afraid. In the case of trauma, contact that is experienced as unsafe may re-traumatize the child. Thus, we must also assess the child's sense of

²⁶ For example, Aron Shlonsky and Colleen Friend, 'Double Jeopardy: Risk Assessment in the Context of Child Maltreatment and Domestic Violence' (2007) 7(4) *Brief Treatment and Crisis Intervention* (Oxford University Press, Cary, NC) 253–274.

²⁷ Lorraine Radford, Neil Blacklock, and Kate Iwi, 'Domestic Abuse Risk Assessment and Safety Planning in Child Protection—Assessing Perpetrators' in Cathy Humphreys and Nicky Stanley (eds), *Domestic Violence and Child Protection. Directions for Good Practice* (Jessica Kingsley 2006).

²⁸ See Ulf Axberg, Anders Broberg, Maria Eriksson and Ole Hultmann, *Utveckling av bedömningsmetoder för barn som utsatts för våld i sin familj. Rapport från en fortsättningsstudie* [Development of Assessment Methods for Children Subjected to Violence in their Family. Report from a Continuation Study] (Department of Psychology, University of Gothenburg 2018); Eriksson (n 25).

²⁹ See also Anna Kaldal, *Parallella processer. En rättsvetenskaplig studie av riskbedömningar i vårdnads- och LVU-mål* [Parallel Processes. A study in Law on Risk Assessment in Custody Cases and Cases of Taking Children into Care] (Jure 2010).

security and needs in relation to recovery.³⁰ These aspects are key when attempting to be genuinely child-centred, and to ensure children's rights to protection. We must offer support and listen carefully to the child concerned. By including the perspectives and views of the child in the assessment, it can be regarded as both, following the care principle to ensure that the child is protected and supported; and the principle of participation according to which, children have a right to have a say about all matters that concern them. The fact that the situation might become complicated in cases where children do not want what adults think they need (for example, to interact with a parent whom other adults regard as unsafe; or *not* interact with a parent whom other adults regard as safe) does not justify not asking children or listening to what they have to say—especially when it comes to fear and perceived threats from a previously violent parent. Furthermore, research shows that children are not 'passive' victims of situations at home; indeed, they attempt to intervene and manage these situations, sometimes in ways that put them at risk of harm.³¹ Children's actions must also be considered just as much as the effects of violence and children's need of recovery. In terms of violence, as focused upon here, key issues to consider include how to avoid re-traumatization and how various care and contact arrangements can aid the child's recovery.

5.3.4 Evidence-Based Ways of Communicating With Children

How then, can we enable children's participation? In recent decades, research on methods to elicit reliable reports from children has increased dramatically and there is now a general agreement on a set of core,

³⁰ Ibid; Dagmar Lagerberg and Claes Sundelin, *Risk och prognos iocialt arbete med barn. Forskningsmetoder och resultat* [Risk and Prognosis in Social Work with Children. Research Methods and Results] (Gothia 2000).

³¹ For example, Jeffrey L Edleson, Amanda L Ellerton, Ellen A Seagren, Staci L Kirchberg, Sarah O Schmidt and Amirthini T Ambrose, 'Assessing Child Exposure to Adult Domestic Violence' 2007 29(7) *Children and Youth Services Review*, 961–971; Jeffrey L Edleson, Narae Shin and Katy K Johnson Armendariz, 'Measuring Childre's Exposure to Domestic Violence: The Development and Testing of the Child Exposure to Domestic Violence (CEDV) Scale' (2008) 30(5) *Children and Youth Services Review* 502–521.

evidence-based principles for interviewing children.³² These principles have been derived mainly from experimental research within the forensic field, focusing on cognitive factors related to memory and suggestibility. However, less attention has been paid to children's emotional reactions and the best ways to help them describe these reactions.³³ Within the forensic field, there is a lack of research into how the interviewer can relate to children's emotional experiences. There is a clear need for protocol development and more research investigating exactly how and when evaluative questions should be posed to children, and whether this differs depending on severity of experience as well as the children's ages.³⁴

As components derived from the research on forensic interview techniques are disseminated to other fields of practice—possibly including family disputes—protocol development is urgent. I also want to point out that existing research tends to focus more on children as sources of information (about their experiences, feelings, or perspectives), and less on children's rights to participation.³⁵ We may even ask to what extent there is an evidence base for enabling children's participation in decisions regarding their lives. Some efforts have been made to develop models intended to aid child-guided ways of communicating with children about their situation and views.³⁶ However, as far as I have been able to ascertain, such methods have not been documented or evaluated to any great extent. This, too, explains why protocol development to enhance child participation is urgently needed.

³² Karin Fängström, *'I don't even remember anything': Optimising the Choice of Method when Interviewing Preschoolers* (Uppsala University 2017); Clara Iversen, 'Beyond Accessing Information: Claiming to Understand in Child Social Welfare Interviews' (2019) 58(3) *British Journal of Social Psychology* 550–568.

³³ Fängström (n 32); Karin Fängström and Maria Eriksson 'The Feasibility of the In My Shoes Computer Assisted Interview for Eliciting evaluative Content in Interviews with Young Children' (2020) 119 *Children & Youth Services Review*.

³⁴ Karin Fängström, Anna Sarkadi, Steven Lucas, Rachel Calam, and Maria Eriksson, "'And they gave me a shot, it really hurt"—Evaluative Content in Investigative Interviews with Young Children' (2017) 82 *Children and Youth Services Review* 434–443.

³⁵ Cf Kaldal (n 29) on the legal distinction of children as witnesses and children forming an opinion/view.

³⁶ Maria Eriksson, *Användningen av BRA – Barns rätt som anhöriga* [The use of "BRA" – Children's Rights as Next of Kin] (Mälardalen University 2018).

5.3.5 Children's Views on Participation

What then, do children themselves say about participation? In a previous study in Sweden on vulnerable and victimized children in family-law proceedings,³⁷ children's views on child participation in family-law proceedings were explored in terms of their own participation as well as children's participation in general. The interviewed children in the sample (8–17 years old) tended to place less emphasis on shared decision-making compared to children in other studies³⁸ and stressed the right to decide 'for yourself'. This tendency can perhaps be linked to the experience of previous violence and/or oppression by parents and/or oppression by professionals, as some children in the sample described it.³⁹ A similar pattern of children emphasizing a right to make decisions has been described, for example, in a study from the United Kingdom on family life after divorce. The study did not focus on violence per se, but one of the conclusions was that children who had experienced 'neglect or disrespect' from a parent, strongly emphasized children's opportunities to choose where they should live and how contact should be organized.⁴⁰ One of the researchers in the team commented: 'In these contexts, specialist support, an independent voice and legal representation were seen as crucial to a child's wellbeing. Children will clearly assert their rights to self-determination where their family relationships are oppressive or abusive'.⁴¹

Another example comes from a study in Australia where Parkinson and colleagues interviewed children, parents, and judges about judges

³⁷ Maria Eriksson, 'Participation for Children Exposed to Domestic Violence? Social Workers' Approaches and Children's Strategies' (2012) 15 (2) *European Journal of Social Work* 205–221; Eriksson and Näsman (n 20).

³⁸ For example, Carol Smart, Bren Neale, and Amanda Wade, *The Changing Experience of Childhood. Families and Divorce* (Polity Press 2001).

³⁹ Eriksson and Näsman (n 20).

⁴⁰ Bren Neale, 'Dialogues with Children. Children, divorce and citizenship' (2002) 9 (4) *Childhood* (SAGE journals, London) 445–475.

⁴¹ Neale (n 40) 469.

speaking to children directly in family-law disputes.⁴² As with the case from the UK, children in Australia demonstrated different approaches to the issue of participation. Many children wanted to talk directly to their parents. However, one group of children said it would be best if children could talk to the judge directly instead of talking to their parents. Predominantly, the children in this group had experienced violence. The fact that the principle of participation was expressed quite strongly in the study from Sweden could perhaps be explained by the specificity of this sample, as the interviewees had experienced IPV (their father's violence against their mother) and in some cases also against themselves.

Another interpretation is that children's emphasis on a right to decide is an expression of a competent assessment of what will work, based upon the child's knowledge about (a lack of) parenting capabilities. The pattern emerging in the interviews also seems to be linked to a moral principle of fairness,⁴³ that is, the one who will have to live with the consequences of the decision—the child—should also have the right to decide:

Bill (11): It is as if you think that they [professionals] decide for me, they decide about my life. What I want and don't want [Interviewer: Mm].

Interviewer: And you want to be able to decide yourself?

Bill: Yes [Interviewer: Mm], not anyone else deciding for me [Interviewer: No].

Ali (10): I'm the one who is going to be there.

When it comes to the issue of violence, children's opportunities to talk about feelings and how conversations with professionals can be a source of help and emotional relief, was a recurring theme in the interviews. Furthermore, some child interviewees explicitly stressed the importance of professionals taking the history of violence and children's feelings of fear into account.⁴⁴ It should be noted that a child can deal with the

⁴² Patrick Parkinson, Judy Cashmore, and Judi Single, 'Parents' and Children's Views on Talking to Judges in Parenting Disputes in Australia' (2007) 21(1) *International Journal of Law, Policy and the Family* 84–107.

⁴³ Zlatana Knezevic, 'Amoral, Im/moral and Dis/loyal: Children's Moral Status in Child Welfare' (2017) 24(4) *Childhood* 470–484.

⁴⁴ Axberg and others (n 28); Kaldal (n 29); Lagerberg and Sundelin (n 30).

experience of further violence and oppression during or after the family dispute investigation process in quite different ways. The two children in the sample that most clearly described problematic professional practice were two boys, both approximately ten years old. Their views on participation, were almost diametrically opposite. While one drew exclusively upon the principle of participation, saying that 'otherwise it doesn't work', and insisted that he wanted to control his life himself (cf. above), the other boy tended to speak from a situation where children are dependent on adults who recognize their vulnerability and are prepared to intervene on their behalf if necessary. For example, when asked whether he thought that children should decide for themselves, such as where they should live and how much they should see the non-resident parent, he stated that 'it depends':

Interviewer: It depends, yes, and on what does it depend, how are you thinking?

Johan: If the father understands that he has not got the right to do this, and that, and when he goes to apologize and says that it is ok that you are with your mum for a little while so he can have a think about it [Interviewer: Mm], since of course the child could be afraid and start to cry and run away when the dad is coming to apologize and so.

Thus, children can deal with very similar experiences in quite different ways. One of the implications of this, of course, is that practitioners who encounter vulnerable children in family disputes should take as their point of departure that these children may need and want a high degree of participation and strong decision-making rights, while at the same time carefully exploring the views and wishes of the individual child.

5.4 Conclusions

As pointed out in the introductory chapter to this anthology, the twenty-first century represents a paradigm shift in terms of how the interests and perspectives of the child are conceptualized in society at large. The editors argue that this ideological transformation is reflected in the adoption of

the Convention on the Rights of the Child (CRC), granting children rights to participation as well as protection and provision. The research outlined above demonstrates that, to ensure children are granted rights in practice, and to enhance the health and wellbeing of children who experience a family dispute, there is a need to dissolve boundaries between family-law proceedings and child welfare—boundaries that are currently shaping both law and professional practice in many parts of the Western world.

In this chapter, I have also argued that to reach these objectives, the issue of children's participation must be connected to risk assessments and how to best communicate with children. Adopting a dual view of children entails regarding them both as in need of adult protection and care, and as competent actors with rights to participation. Furthermore, there is an urgent need for interview protocol development, for both children's experiences, and their right to participation, to improve practice in legal disputes concerning custody, contact, or residence.

Children's right to participation, the editors argue, constitutes a challenge with strengthening the child-rights perspective in the context of parental conflicts. In practice, professionals may recognize the views of a particular child only if those views correspond to the professionals' own, and/or with normative constructions of the child's best interests as being identical to contact with both parents.⁴⁵ Drawing on the views and experiences of children quoted in this chapter, it can be argued that both policymakers and practitioners must recognize children's own views on participation, including the fact that vulnerable and victimized children—to a greater degree than other children in family-law disputes—tend to emphasize a right to decide for themselves—because, after all, they are the ones 'who are going to be there'.

⁴⁵ Eriksson and Näsman (n 20).

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