

Gerison Lansdown

**Promoting,
respecting and
protecting the
evolving capacities
of young children**

14:45-15:30 in the Robertson Conference Suite



Evolving capacities and the exercise of rights Implication for babies and young children

Starcatchers
Conference

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Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, **in a manner consistent with the evolving capacities of the child**, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

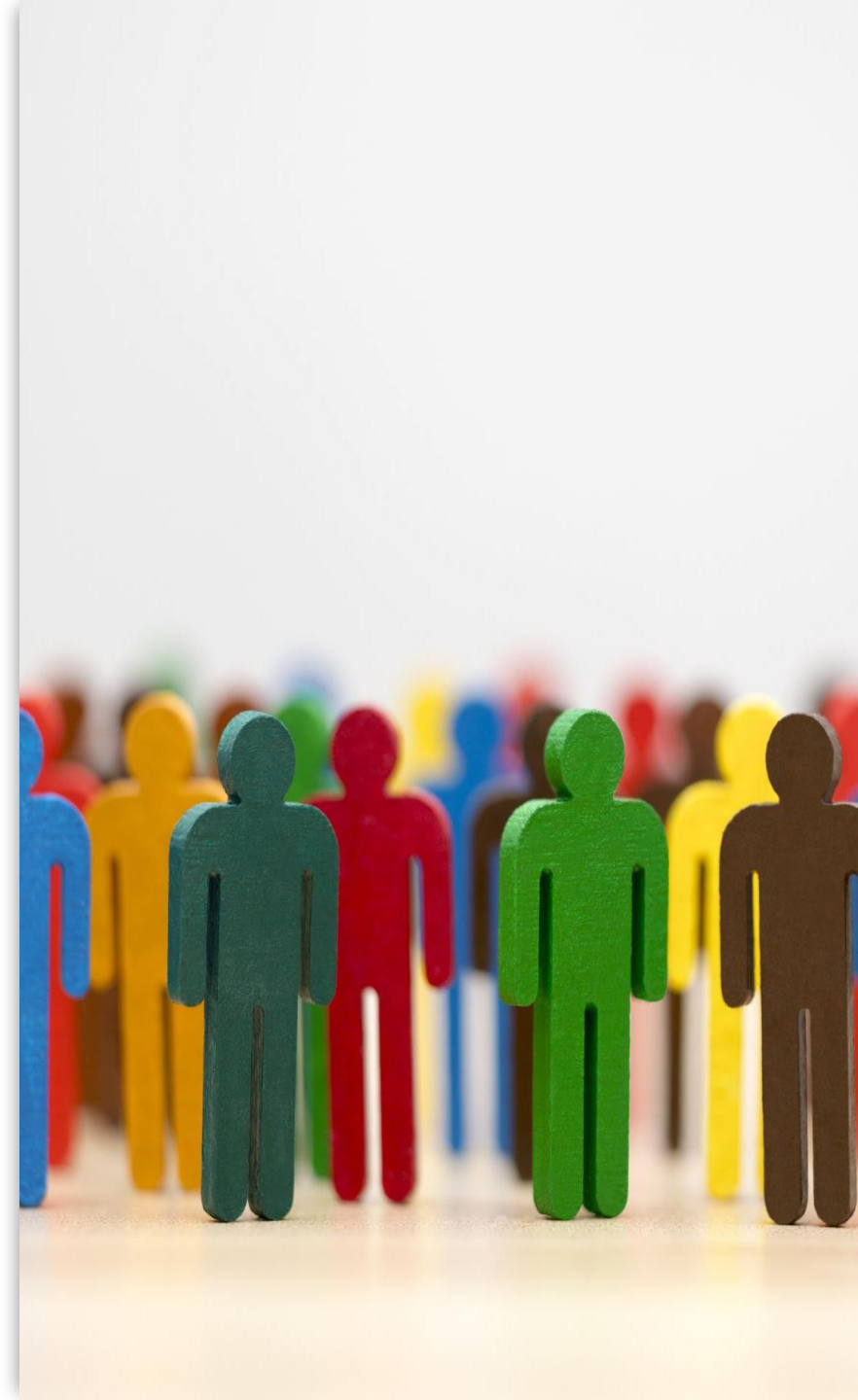
Rationale for inclusion of Article 5

Children's lack of autonomy

- Presumption of autonomy in human rights law
- Children do not have autonomy
- Parent or guardians empowered to exercise rights on behalf of the child
- Imperative to introduce a framework for gradual acquisition of autonomy throughout childhood

Balancing parental and children's rights

- Importance placed on privacy of the family in human rights law
- Visibility of rights of children in the family
- Parental rights and duties
 - Appropriate
 - Directed to the exercise by the child of their rights
 - In line with the child's evolving capacities



In other words



Parents do not own children – children are not the property of parents



Parental rights only exist:

- to ensure the realisation of children's rights
- until children can exercise rights for themselves



Exercise of parental rights must be:

- Appropriate
- Consistent with the evolving capacities of the child

Addressing risks from lack of autonomy

- Lack of autonomy risks undermining children's rights – scope for paternalism
- Children dependent on adult decision making
- Need for additional guardrails if decisions and actions are to be consistent with rights
- In addition to Article 5, two other articles specifically address lack of autonomy

Article 12 – right to be heard

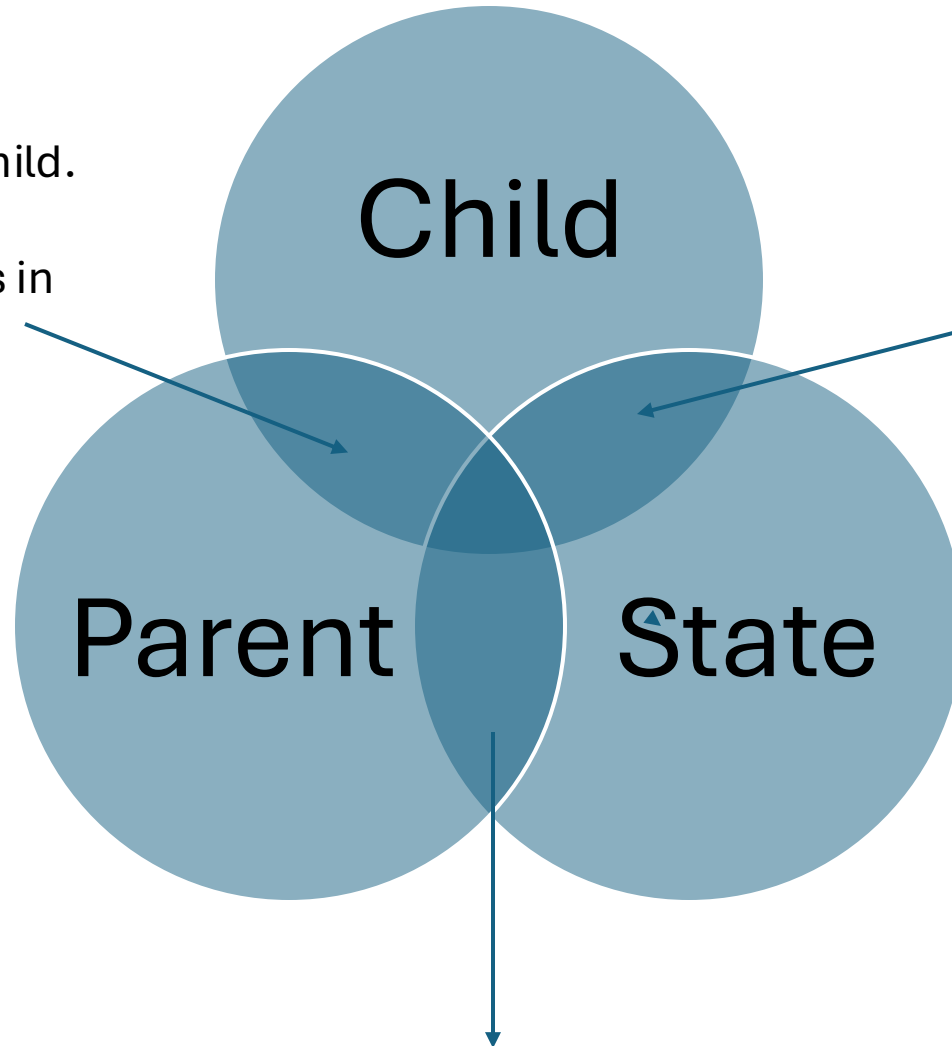
- Applies to children individually and collectively
- In all decisions affecting them
- All issues and all ages
- Must be taken seriously

Article 3 - Best interests

- Must be a primary consideration
- Must be directed to the realisation of children's rights
- Must take account of the views of children

Triangular relationship: child, parent, State

Primary relationship for the child.
Assumption that parent will promote child's best interests in the realisation of their rights



State only intervenes directly with the child when the child is at risk of violation of their rights or parents unable to provide care

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Role of the State to provide support and services to strengthen parental capacity to ensure the rights of the child

However, CRC places a priority on the importance of parents

Preamble: Recognizing that the child.....should grow up in a family environment.....

Obligations to respect

- Article 7 – right to care for children
- Article 9 - no unwarranted interference to remove children
- Article 29 – education to develop respect for child’s parents

Obligations to protect

- Article 8 – preservation of family relations
- Article 10 - family reunification and maintenance of contact when living in a different state
- Article 11 – measures to return children illegally taken abroad
- Article 22 – measures to trace parents of child refugees

Obligations to fulfil

- Article 18 – institutions, facilities and services for care of children to support parents
- Article 27 – measures to enable parents to provide an adequate standard of living for children’s development, and material assistance with nutrition, clothing and housing

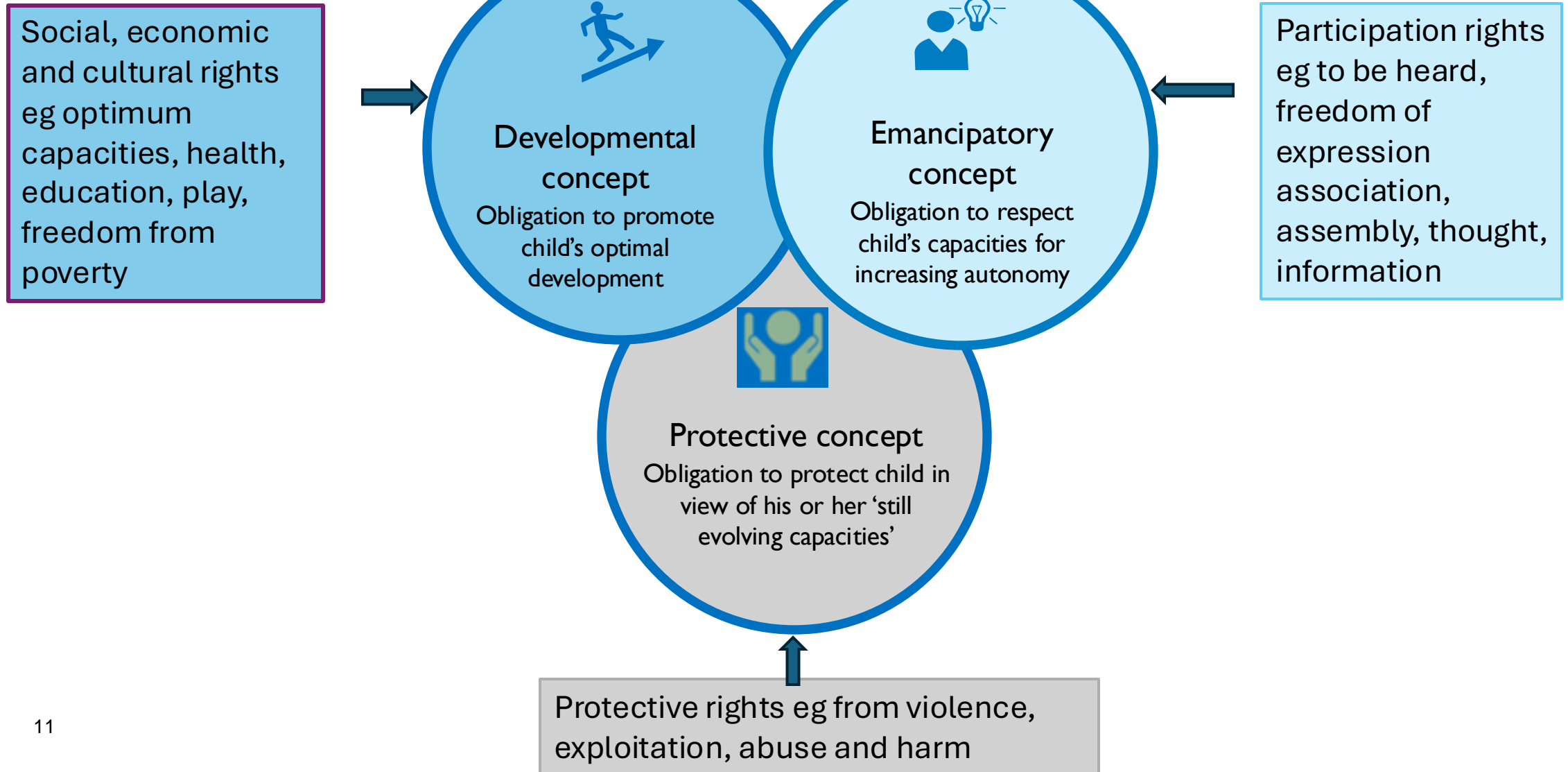
But what does 'capacities' mean?

- Capacity relates to what a child can do or achieve
- Capacities encompass all aspects of children's development
 - Cognitive
 - Physical
 - Emotional
 - Social or relational
 - Moral or ethical

CRC Committee and Article 5

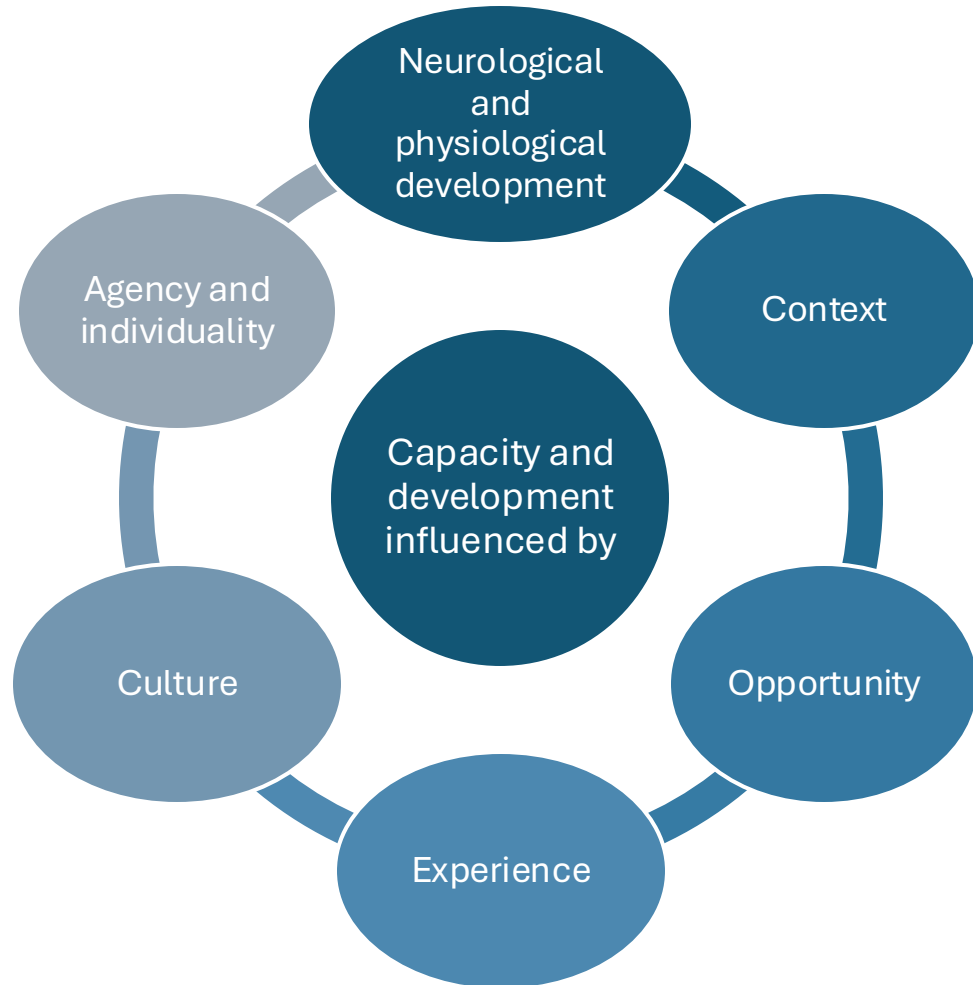
- Identified 4 rights as underlying principles – non-discrimination, best interests, optimum development and right to be heard
- Article 5 not included but Committee has argued it is an ‘enabling principle’, referring to:
 - ‘processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding, including acquiring understanding about their rights and about how they can best be realized’.*
- Parents needs to adjust levels of support and guidance continually to take account of:
 - Children’s interests and wishes
 - Capacities for independent decision-making
 - Understanding of implications and risk
- Evolving capacities a positive process – not excuse for authoritarian practices

Conceptual framework: evolving capacities in respect of rights

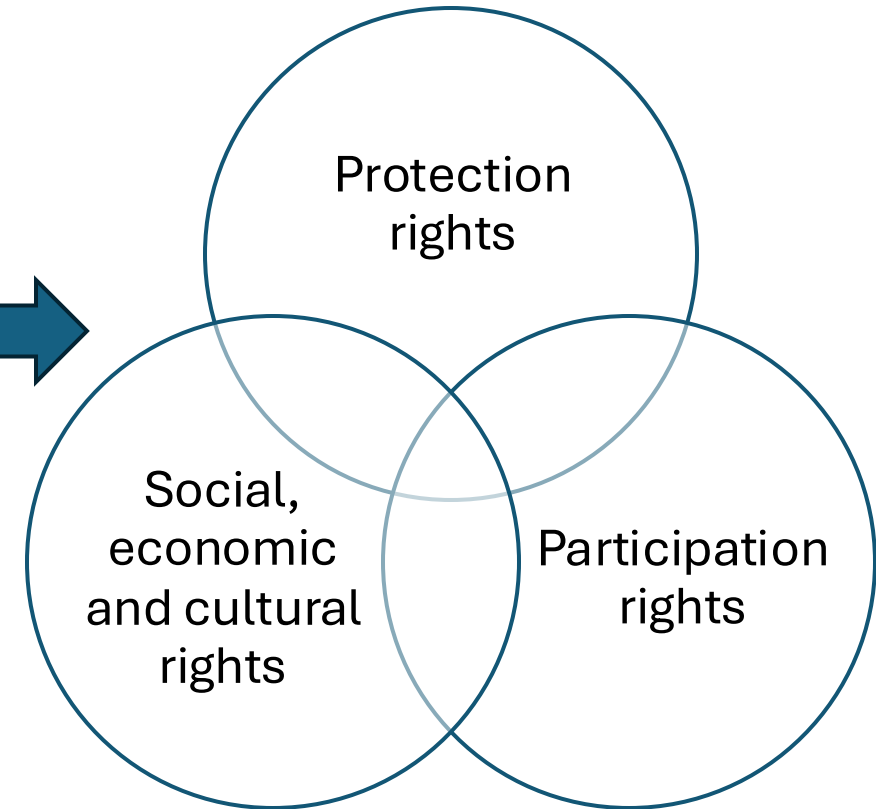


Implications for realization of children's rights

Factors impacting children's capacities



Interdependence of rights



Developmental implications to explore

Development from babyhood

- Significance of first 1000 days
- Extreme plasticity – potential both for growth and for harm

Child's needs

- Brain must be able to learn from the external environment;
- Stimulus is provided by those caring for the child;
- Child experiences affection and acceptance.
- Recognition of agency

Positive factors include

- Supportive family
- Early years education
- Play
- Opportunities for participation

Harmful factors include

- Poverty
- Conflict and stress
- Discrimination



Emancipatory implications to explore

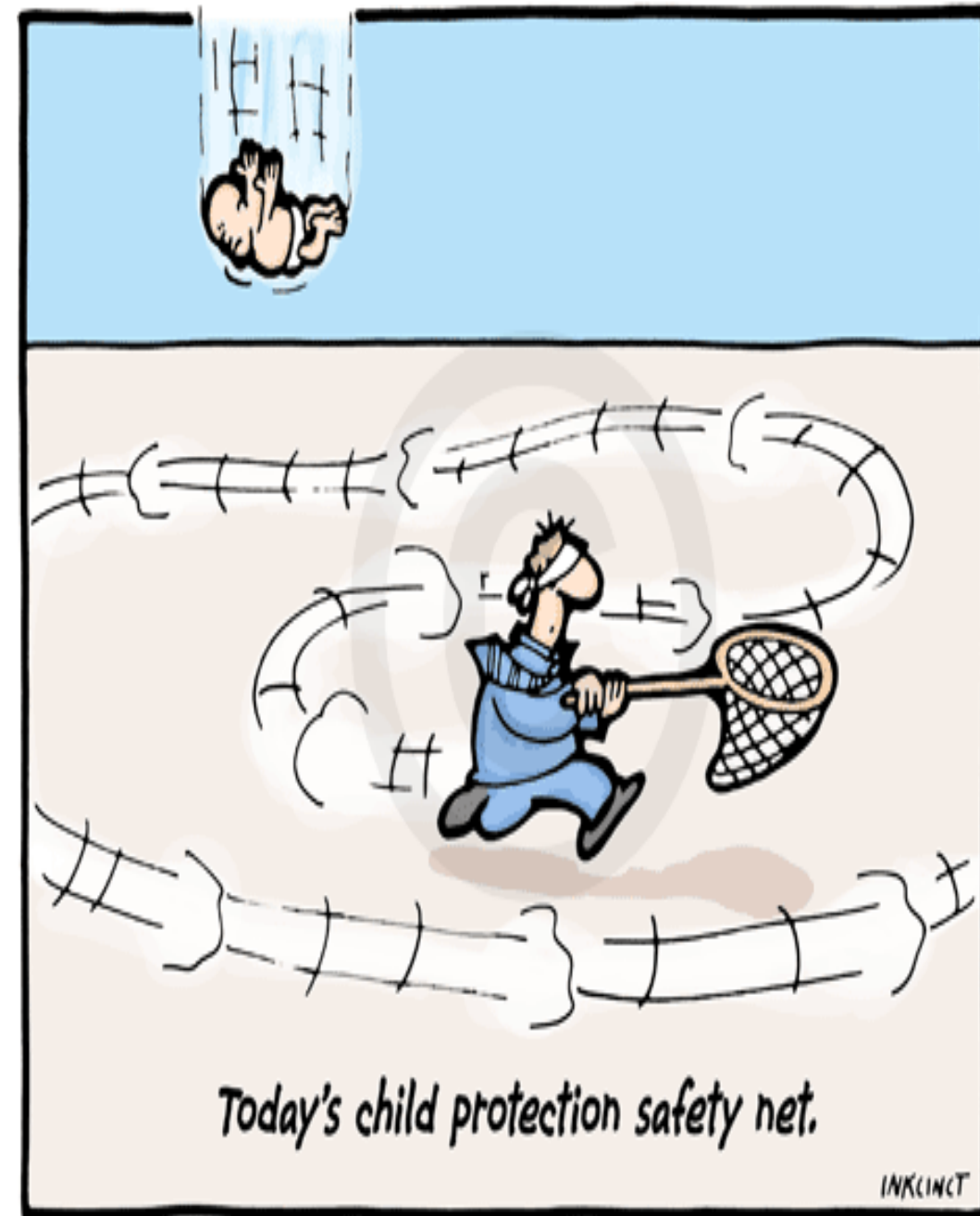


"That's a LOVELY drawing, Sophie.
Now let's do another one with Mummy's
head like a great big round balloon"

- Parental role in exercising rights on behalf of child greater in early years
- Babies and young children can exercise agency and influence their worlds
- **All** children can express their wishes and feelings – onus on adults to create spaces and find ways to listen
- In responding to child's wishes, need to consider:
 - Respecting dignity of child
 - Benefit of acquiring agency
 - Age and level of understanding
 - Best interests
 - Appropriate protection

Protective implications to explore

- CRC embodies a stronger emphasis on protection in view of children's greater vulnerability
- Nature and level of protection different for babies and young children
- Right to be heard and to consideration of best interests must also be recognised as relevant to ensuring protection
- Nature of harm and risk depends on context
- Important to consider under-protection as well as over-protection
- Children's role in their own protection



In conclusion.....

- ❑ Nature of capacity - social, cognitive, physical, emotional, ethical or moral
- ❑ Capacities not linear or consistent - combination of brain development, culture, individual experience, expectations, support, opportunity and motivation
- ❑ Important to promote, protect and respect children's evolving capacities at all ages
- ❑ Age not a proxy for capacity
- ❑ Babies and small children lack capacity to exercise autonomy but have the right to be heard
- ❑ Babies exercise agency and influence the world around them
- ❑ Onus on adults to create environments where young children are heard

