



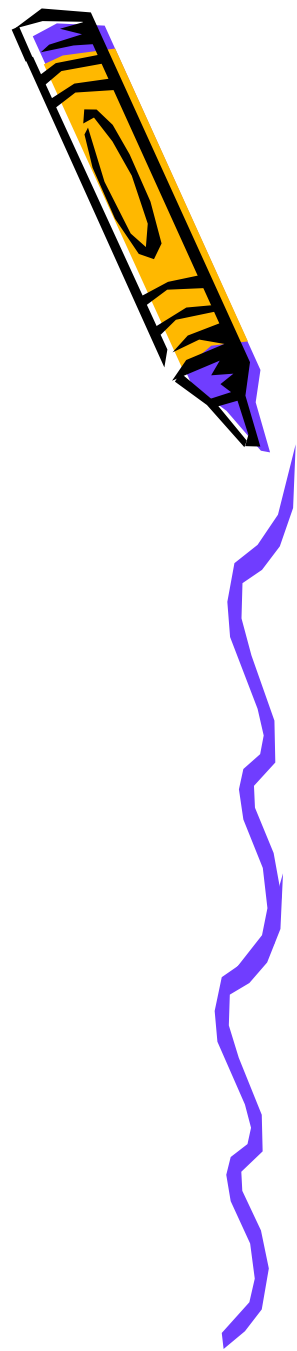


# A Children's Rights and Recognition Theory Perspective on Child Inclusive Practice in Family Dispute Resolution

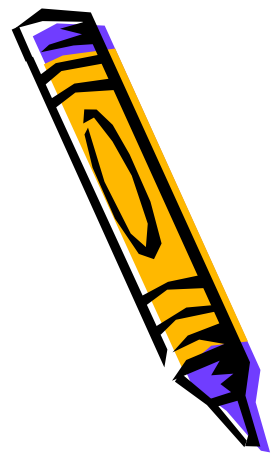
Dr Ann O'Kelly,  
Involving Children in ADR Procedures  
Conference, Brno, May 2018.



Dobré ráno,  
děkuji, že jste mě  
pozvali



# Presentation Overview

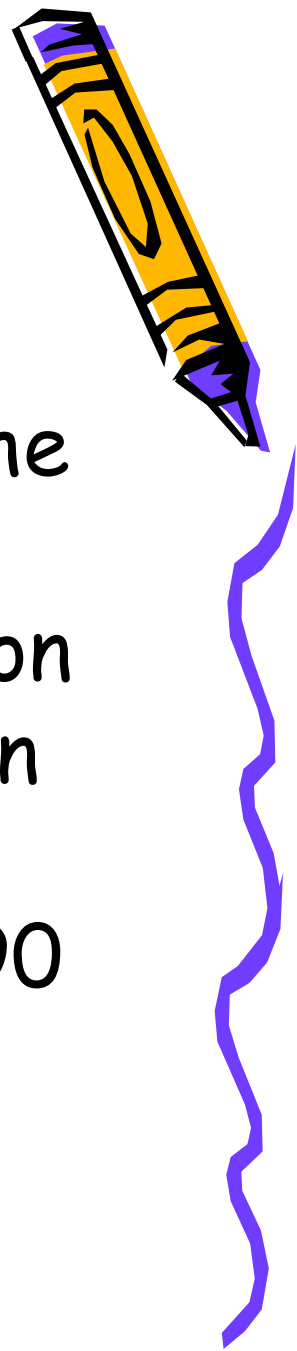


- The UN Convention on the Rights of the Child
- Significant Articles for Child Inclusive work - making the most of Article 12
- Honneth's (1995) Theory of Recognition - Love, Rights & Solidarity - significance for Child Inclusive work
- Linking the UNCRC with Recognition Theory



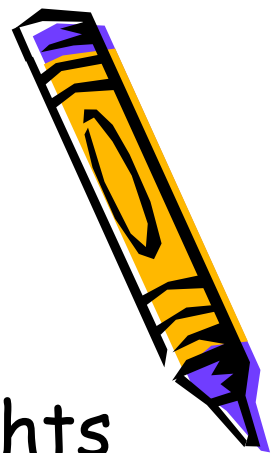
# The Convention

- The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by the General Assembly resolution 44/25 on November 20<sup>th</sup> 1989. It entered into force on 2<sup>nd</sup> Sept 1990 in accordance with article 49.



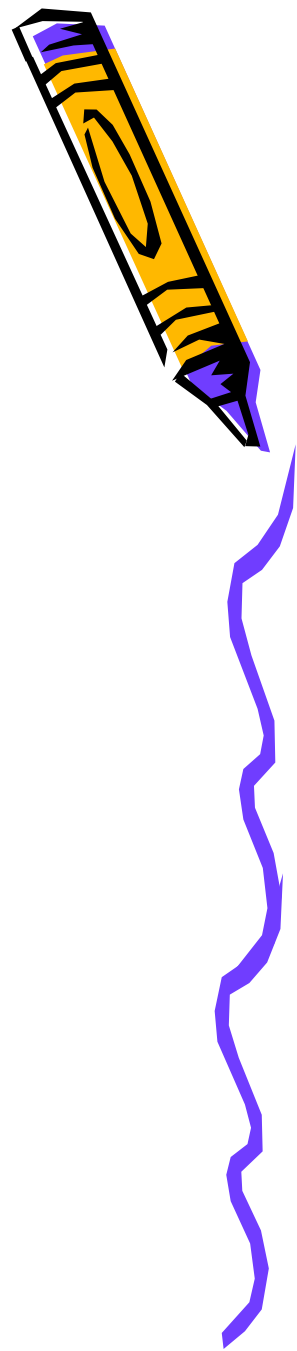
# The Convention

- The most universally ratified human rights instrument
- 193 State Parties have ratified the UNCRC: Ireland did so in 1992; the Czech Republic did so in 1993
- The United States is the only country who have not ratified it.
- A number of countries included some caveats



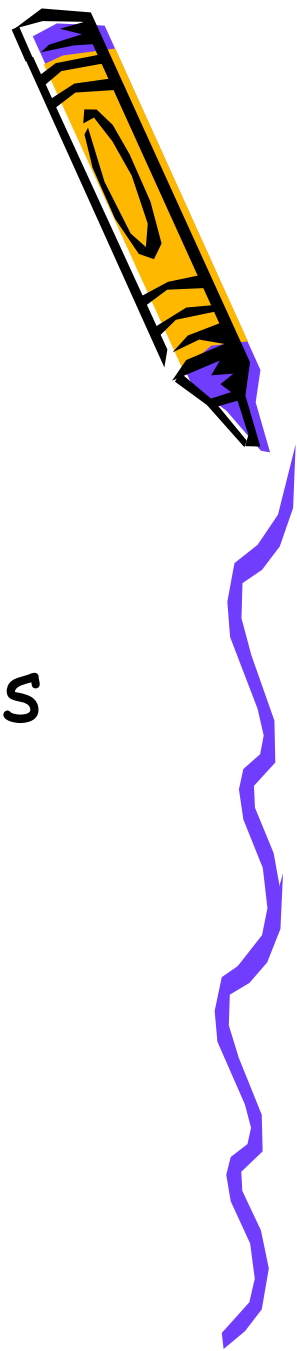
What the UNCRC does!

- It recognises children as bearers of rights

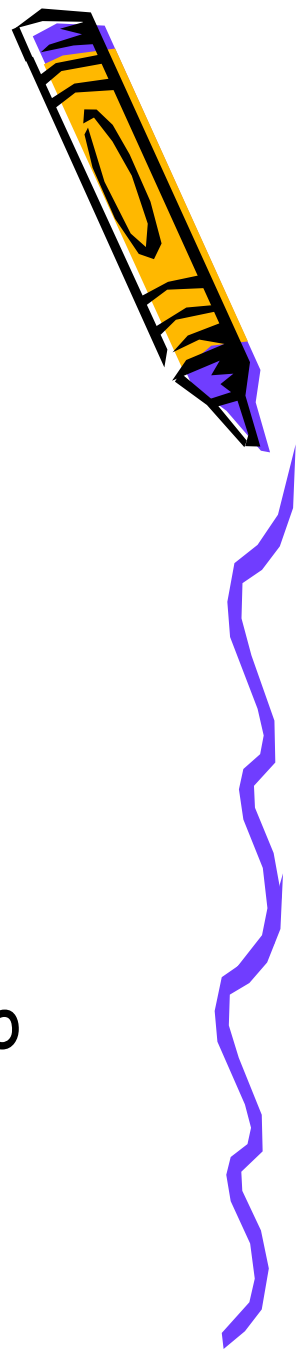


# The 4 General Principles

- Right to Life and Development
- Right to non-discrimination
- Primary consideration of the child's best interests
- Right to express views



# Relevant Articles for Child Focussed/Inclusive Work

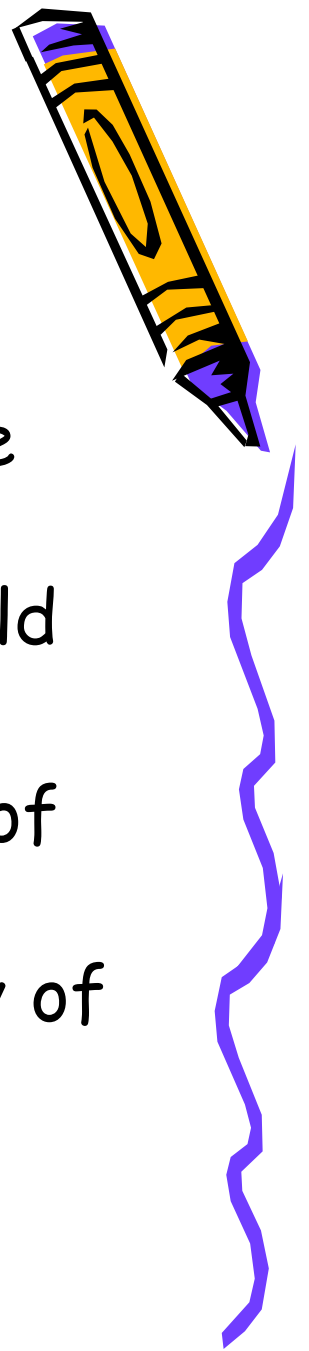


A child is defined in Article 1 as a person under 18 years, unless married

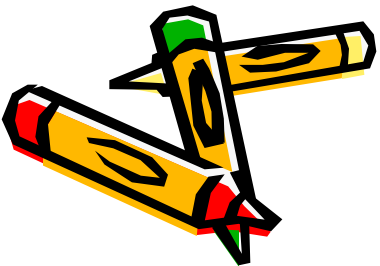
- Articles 3;5; 9; 12; 13;17 & 36 are important
- Article 12 most significant
- Articles 3, 5, 9, 13, 17, 36 &42 linked to Article 12

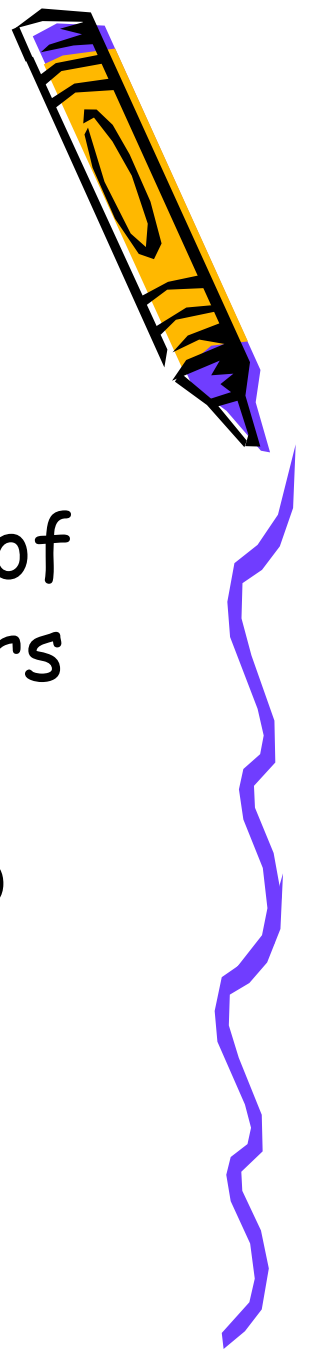






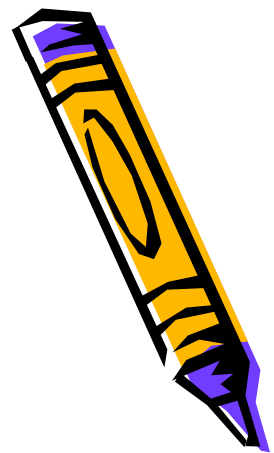
- Article 3:1 the best interests of the child will be of primary importance - established in consultation with the child
- Article 3:3 ..... Services and facilities responsible for the care or protection of children shall conform with established standards, ..... Health safety, suitability of staff and competent supervision





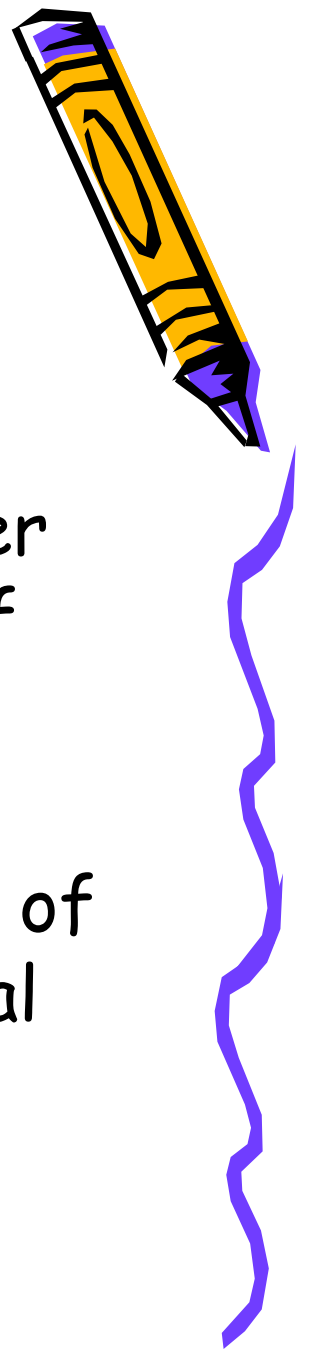
- Article 5: Respect for the responsibilities, rights and duties of parents, legal guardians or members of the extended family
- Provides children with the right to guidance from adults





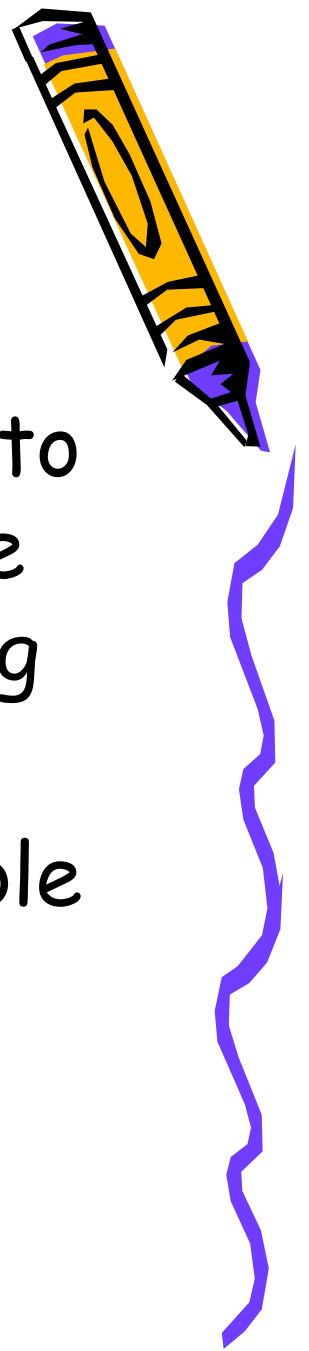
- Article 9.1 Separation from Parents
- Article 9.2 All interested parties will be given an opportunity to make their views known
- Article 9.3 ... respect the right of a child to maintain personal relations and direct contact with both parents... except if contrary to child's interests





- Article 13.1: The child shall have the right to freedom of expression.... Either orally, in writing or print, in the form of art or through any other media of the child's choice.....
- Article 13.2: Provided the reputations of others are respected, no risk to national security





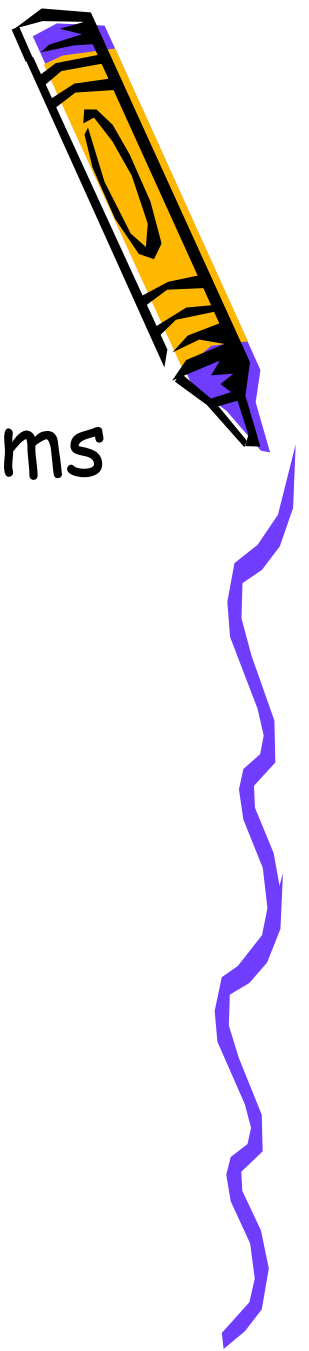
- Article 17: gives a right to access to information - a crucial prerequisite for the effective exercise of being heard
- Such information should be available in formats appropriate to a child's age





- Article 18.2: State parties (governments) should provide appropriate assistance to parents in the performance of their child rearing responsibilities
- Article 19: Children have a right to safety

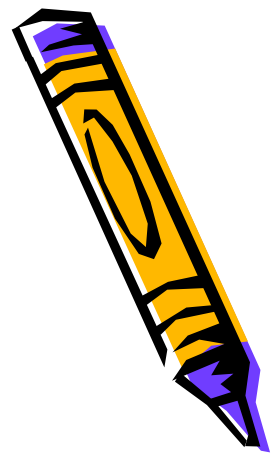




- Article 36: Protection from all forms of exploitation prejudicial to any aspects of the child's welfare
- Article 42: Right to be informed about the UNCRC



# Article 12



- State Parties shall assure the child who is capable of forming his or her 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.
- For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.



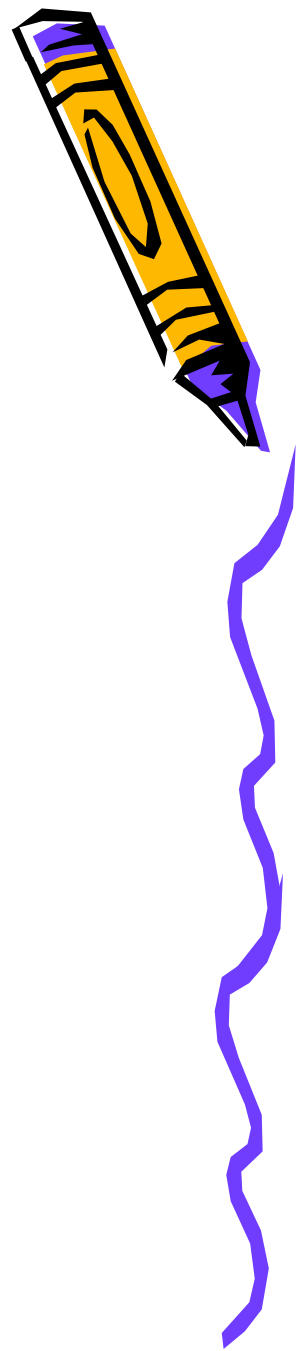
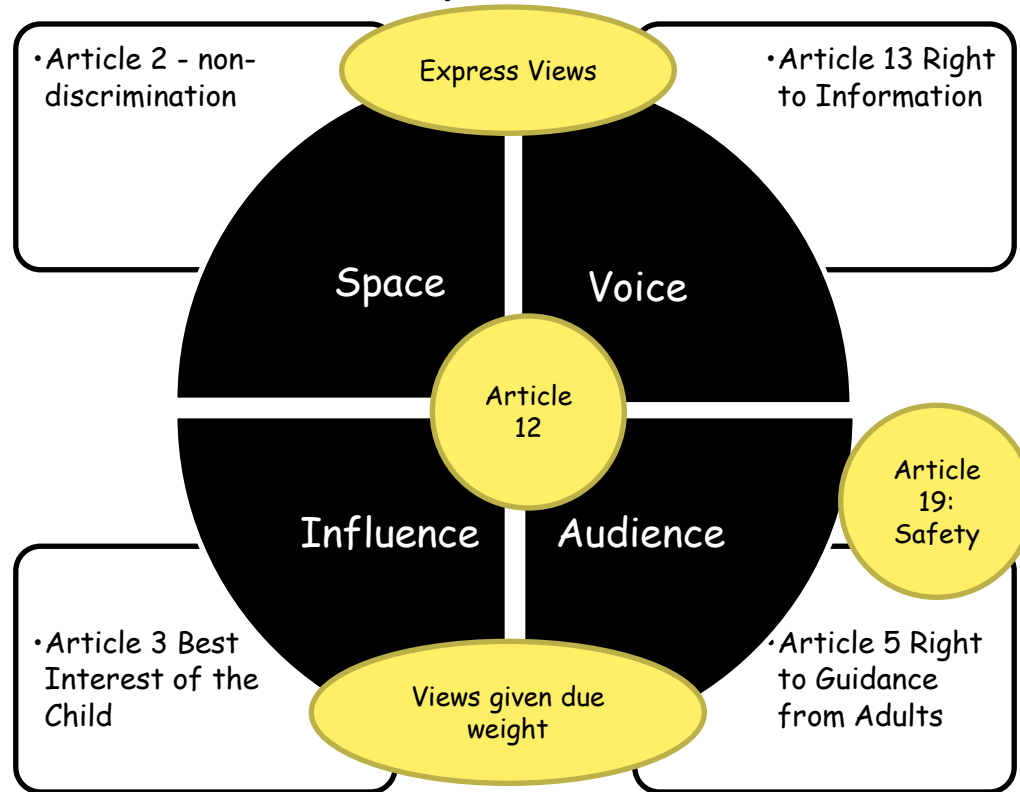


# Article 12

- A unique provision in a HR Treaty
- Addresses the legal and social status of children - provides for right to participate in matters affecting children's and young people's lives
- Children lack the full autonomy of adults, but are rights bearers
- One of the 4 General Principles of the Convention



# Lundy's (2007) Conceptualisation of Article 12 for Children's Participation



# Article 12

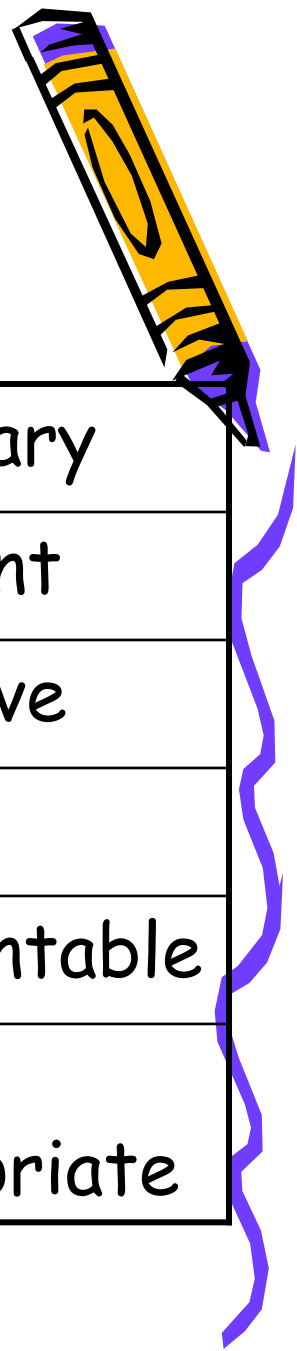
- Most significant in relation to Child Consultation/Participation
- The UN Committee identified a number of core requirements for its implementation



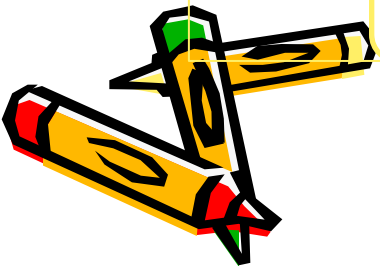
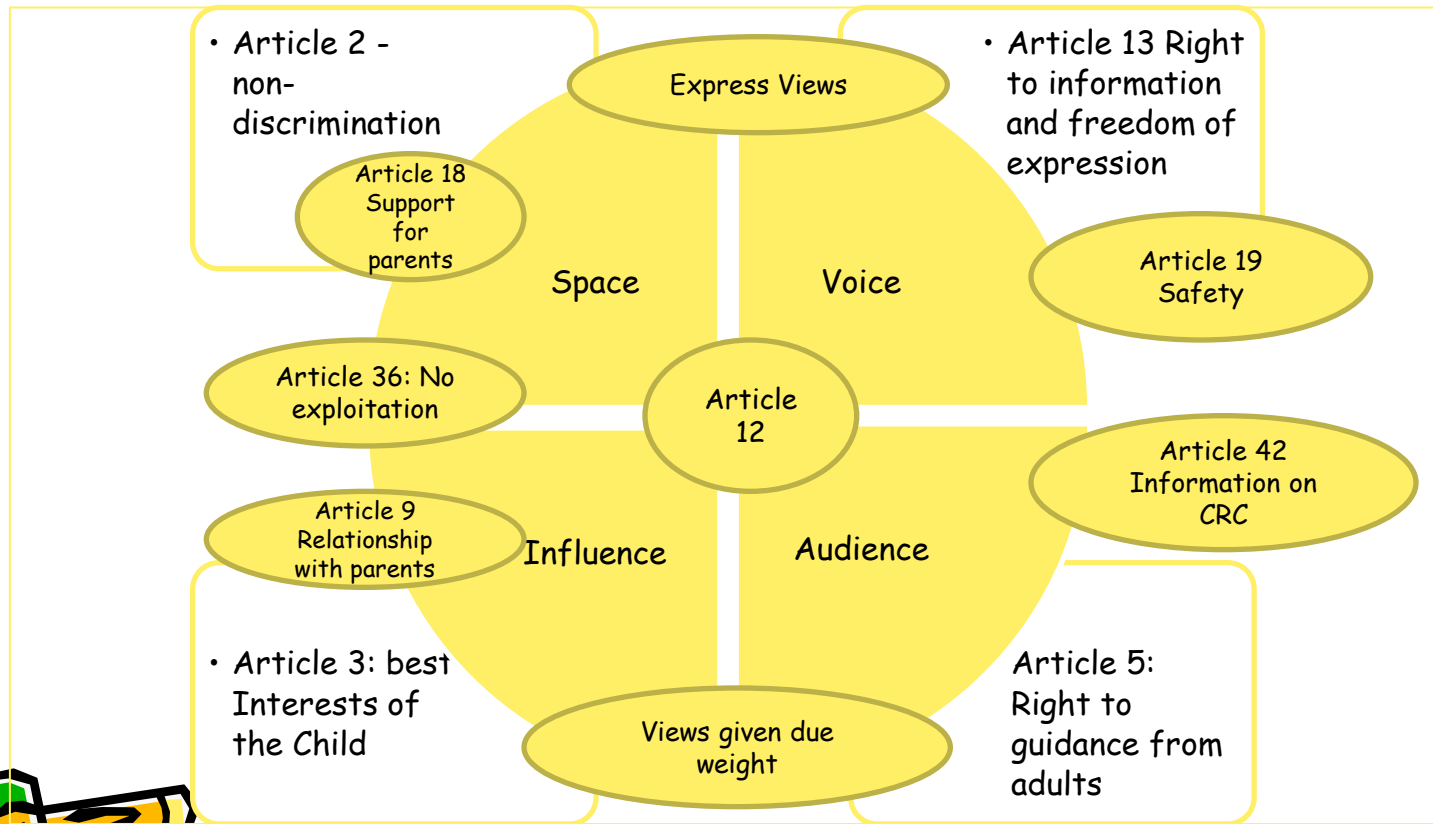
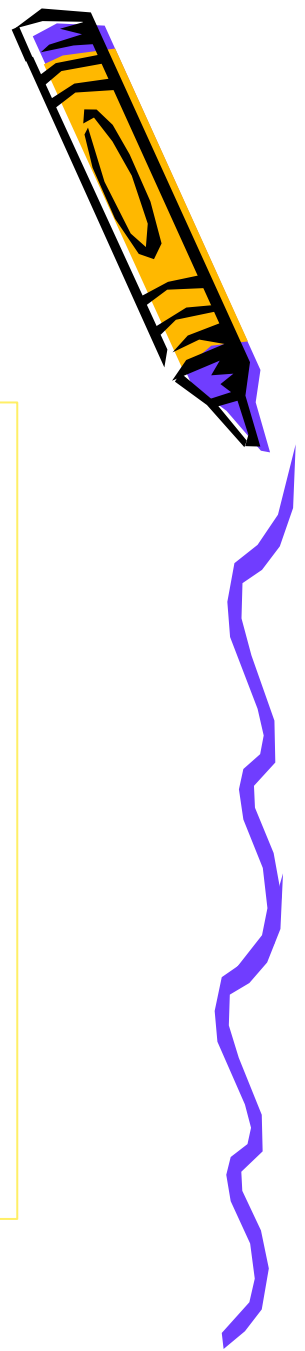
# Core Requirements

- All processes in which a child or children are consulted must be:

Transparent	voluntary
Respectful	relevant
Child friendly environment	inclusive
Supported by training	Safe
Sensitive to risk	Accountable
Diversity sensitive	Age appropriate

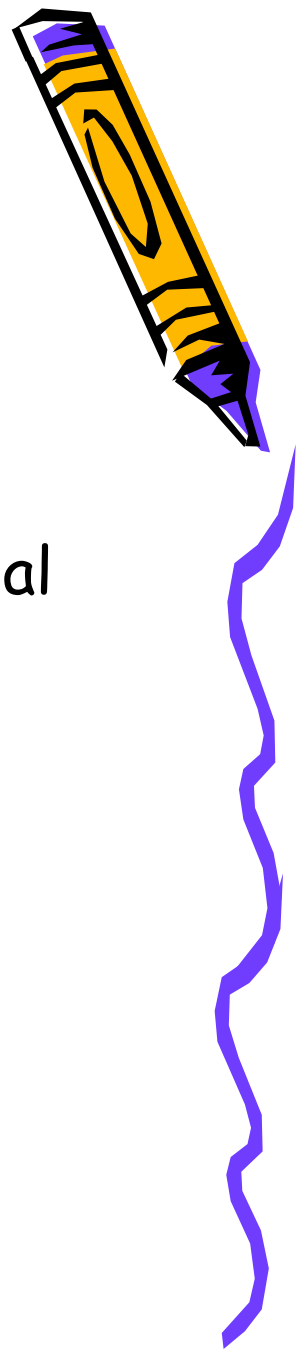


# Conceptualisation of Article 12 for participation in Family and personal matters (O'Kelly, 2017)



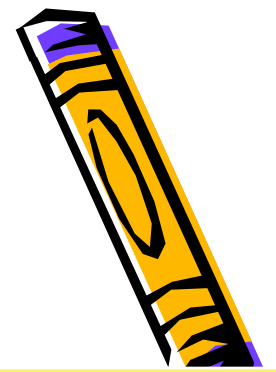
# Recognition Theory

- Theories of recognition are mainly associated with the works of:
  - Axel Honneth - human interaction, individual and group identity
  - Nancy Fraser - fairness in resource distribution
  - Charles Taylor - fundamental rights, equal treatment and recognition of difference



# Honneth (1995)

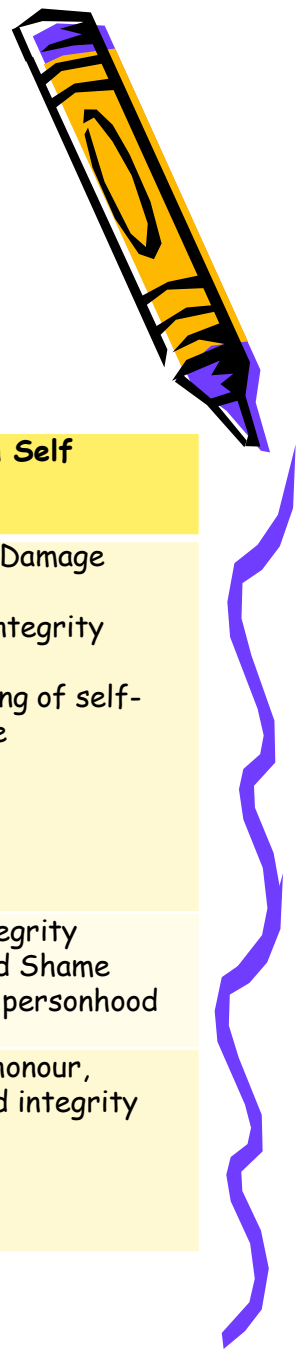
## Structures of Relations of Recognition



Mode of Recognition	emotional support/love	cognitive respect/rights	social esteem/solidarity
Dimension of personality	needs and emotions	moral responsibility	traits and abilities
Forms of recognition	Primary relationships (love, friendships)	Legal relations (rights)	community of value (solidarity)
Practical relation to self	basic self-confidence	self-respect	self-esteem
Forms of dis-respect	abuse and rape	denial of rights, exclusion	denigration, insult
Threatened component of personality	physical integrity	social integrity	'honour', dignity



# Structures of relations of recognition in the context of parental separation, divorce and family re-ordering (O'Kelly, 2017)

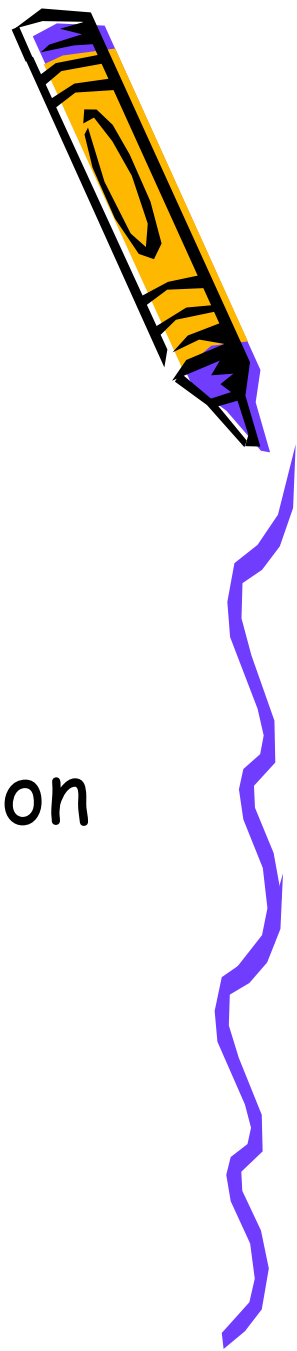


Forms of Relating to Self (Honneth, 1995)	Provided to Children & Young People (CYP) through	Disrespect associated with Separation & Changed Family Life	Impact on Self Identity
<b>Self-Confidence - Love</b>	Secure relationships of Love and Care	Undermining of secure relationships with each parent Inter-parental conflict Criticism of other parent Exposure to domestic violence Expectation of parent for CYP to 'take sides' Decisions -making relating to family changes	Emotional Damage  Physical Integrity  Undermining of self-confidence
<b>Self-respect - Rights</b>	Recognition as an individual with equal rights	Non-recognition of CYP as rights bearers No access to legal advice	Social Integrity Stigma and Shame Individual personhood
<b>Self-esteem - Solidarity</b>	Respect and Solidarity within community Provision of opportunity to engage with others	Decision making without consultation Societal structures non-acknowledgement of CYP	Personal honour, dignity and integrity





# Honneth's Principles of Recognition: Love, Rights & Solidarity

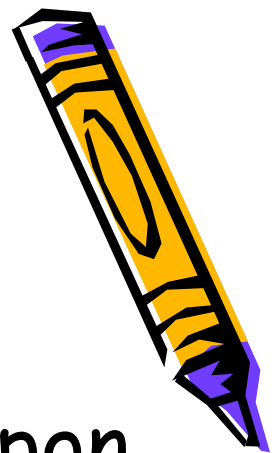


- Stresses the importance of social relationships
- Maintenance of Identity
- Human Flourishing is dependent upon the existence of 'ethical' relationships - recognises the uniqueness of individuals



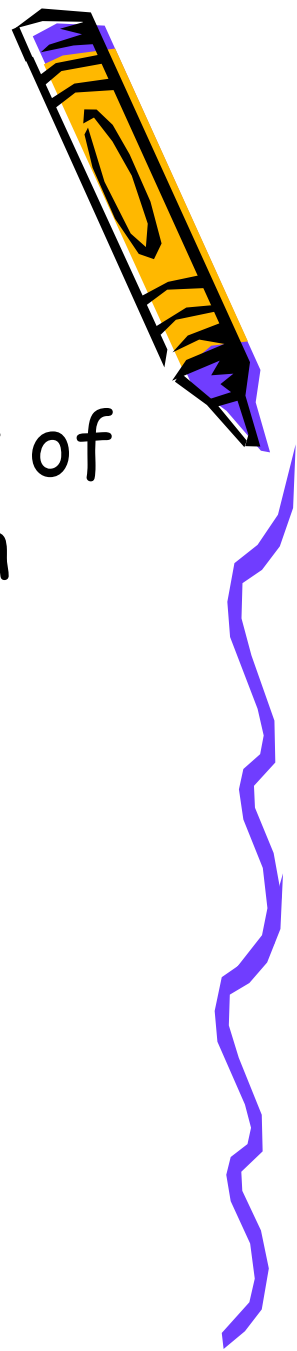
# Honneth's Principles

- Identity Formation is dependent upon the development of:
  - Self confidence - love and solidarity
  - Self respect - obtained through legal rights
  - Self-esteem - recognition of personal uniqueness of each individual



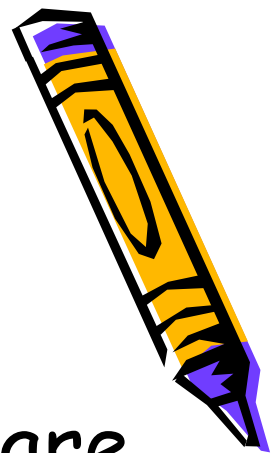
# Honneth's Principles

- To obtain these the establishment of relationships of mutual recognition are needed
  - Love and Friendships
  - Networks of Solidarity
  - Legal safeguards

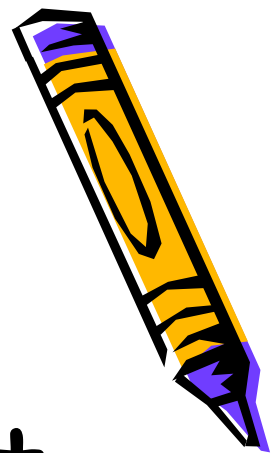


# Mis-Recognition

- Occurs when groups or individuals are denied full partner status in social interactions
- Prevented from participating fully in social life
- Prevented from participating in matters that affect their lives

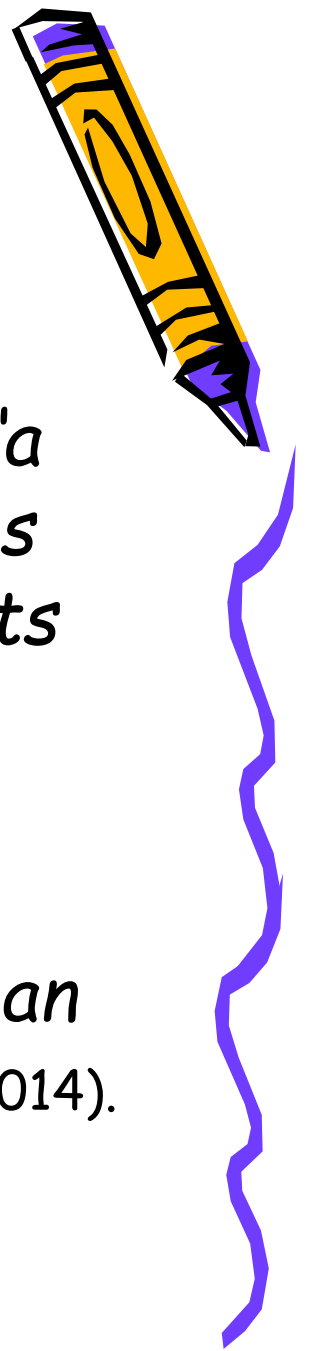


# The Convention and Theory of Recognition



- It is acknowledged that the UNCRC (1989) and Honneth's (1995) theory serve different functions





- The convention has been described as: '*a promise the international community has made to children in respect of the rights of children*' (Children's Assembly of Wales).
- The theory of recognition has been described as: '*three spheres of recognition, which, when denied create an impediment to self realisation*' (Rossitor, 2014).



# The Marriage of Recognition Theory and the UNCRC

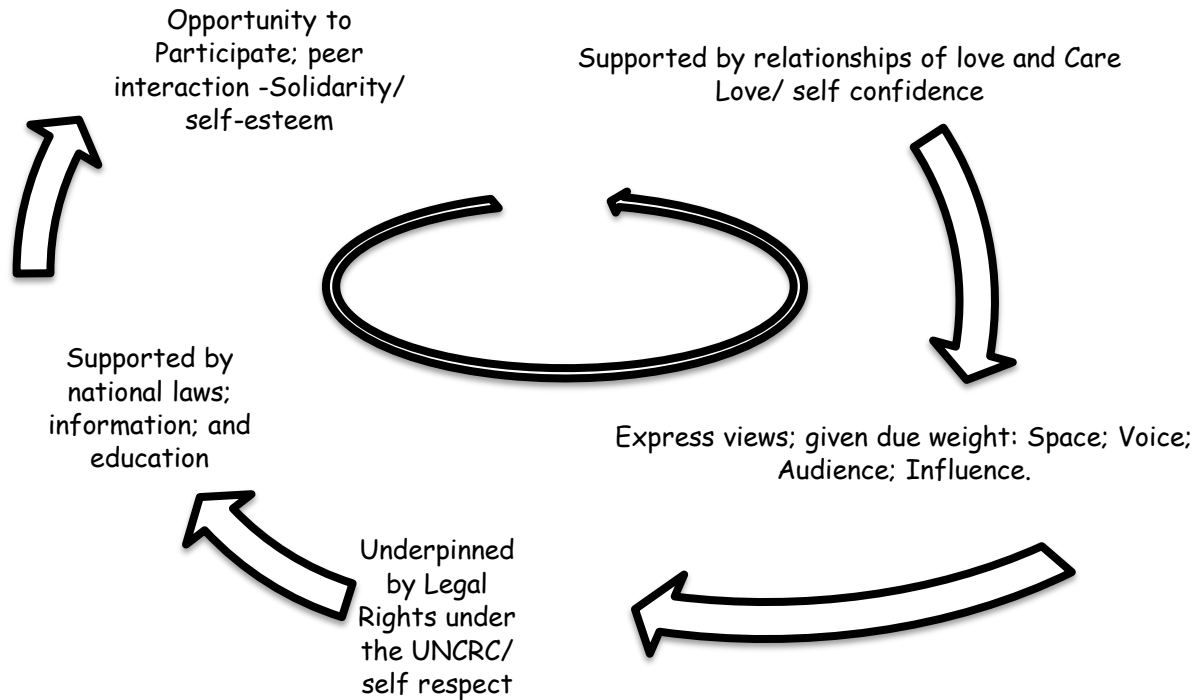
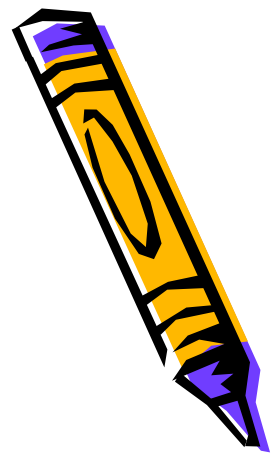
**UNCRC (1989)  
Principle of Participation**

**and**

**Theory of Recognition (1995)  
Love; Rights; and Solidarity**

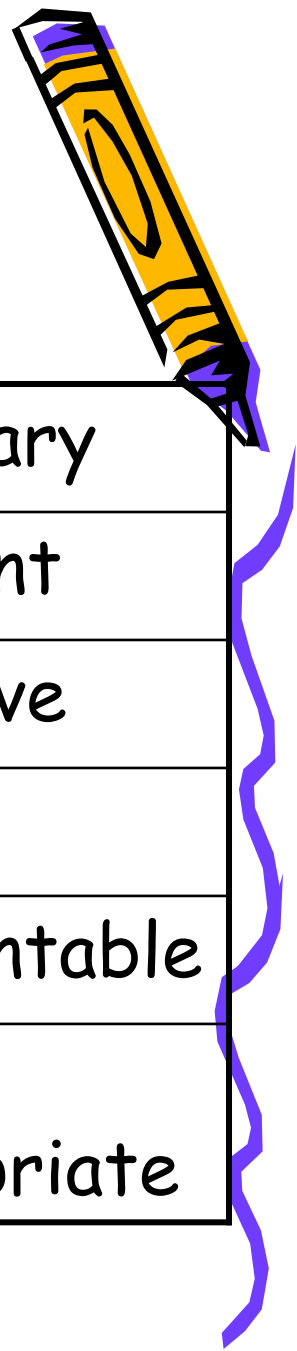


# How to ensure the marriage will flourish in dispute resolution context





# Core Requirements (UNCRC)



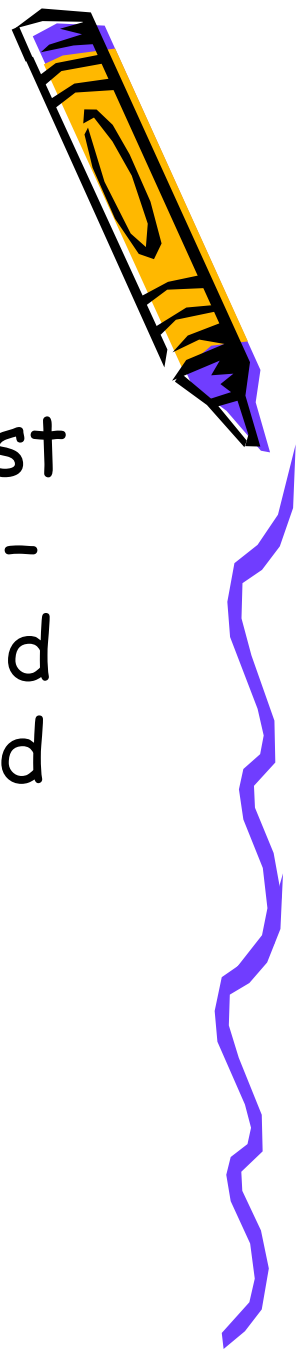
- All processes in which a child or children are consulted must be:

Transparent	voluntary
Respectful	relevant
Child friendly environment	inclusive
Supported by training	Safe
Sensitive to risk	Accountable
Diversity sensitive	Age appropriate



# One Important Note

- Children and Young People also have the right to refuse to participate
- This right must be respected - children should not be coerced to participate



# Core requirements of recognition theory



- An acknowledgement of children's and young people's self identity
- Their legal rights as citizens
- Their contributions to society

Particularly important when in vulnerable situations such as during parental separation, divorce and family re-ordering



# Use of Recognition Theory in Social Science discourse



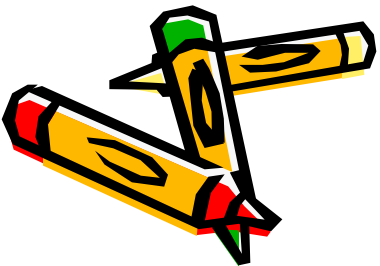
- *Children and Young People*
- **Children's Participation** (Thomas 2012; 2014; 2016; Warming, 2006; Fitzgerald & Graham, 2007)
- **Children in Care** (Hooper & Gunn, 2013; Smith et al 2017)
- **Family Support** (Houston & Dolan, 2008)
- **Social Work Practice** (Houston, 2016, Turney, 2012, Juul, 2007 )
- *Other areas of Social Science Research*
- **Social Inclusion** (Morrison, 2010; O'Brien, 2013; Howarth, 2002)
- **Adult Education** (Fleming & Finnegan, 2009)
- **Dignity in Health Care** (Aranda & Jones, 2010)



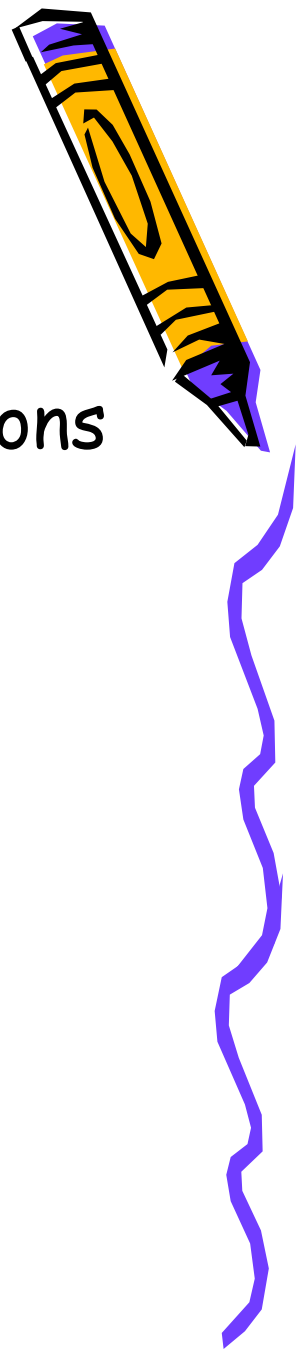
# Specific obligations relevant to Dispute Resolution in Separation and Divorce

Parental separation and  
divorce affects children's and  
young people's lives

Therefore they need to be  
given a voice in all dispute  
resolution processes



# Meeting the Core Requirements



- Philosophical underpinning of organisations and individuals - belief in the right
- Staff training - in the application of Article 12
- Ensuring appropriate conditions
- Endeavour to give due weight to child's views
- Use opportunities to combat negative views of children





• Děkuji za pozornost



# References

Committee on the Rights of the Child, 51<sup>st</sup> session (2009)

Honneth, A. (1995) *The Struggle for Recognition The Moral Grammar of Social Conflicts*. Polity Press.

Lundy, L. (2007) 'Voice' is not enough: conceptualizing Article 12 of the United Nations Convention on the Rights of the Child. *British Educational Research Journal* 33 (6) 927-942.

O'Kelly, A. (2017) How do children and young people in Ireland experience parental separation and divorce and subsequent changed family life? Giving recognition to children's experiences. PhD Thesis, NUI Galway. <http://hdl.handle.net/10379/6498>

UN Convention on the Rights of the Child (1989) Geneva.

