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Exploring the Best Interests of Children and Young People: From Principle to Practice
THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD

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• Best Interests of the Child and General Comment Number 14 (2013)
1. The Concept of the Best Interests of the Child - Overview

- One of the most important/difficult
- One of the four general principles of the CRC
- A dynamic concept – assessment appropriate to the specific context
- No definition – a lot of confusion/misunderstanding
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2. Two roles of the Best Interests of the Child

• Control

• Solution

[“Control and solution criterion”]
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3. General Comment Number 14 “The right of the child to have his or her best interests taken as a primary consideration”

• The goal

• Drafting General Comment Number 14 – the main difficulties

• The structure
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4. Understanding the Best Interests of the Child (I)

• A rule in itself:
  o Substantive right
  o Fundamental, interpretative legal principle
  o Rule of procedure

• Best interests of the child vs. welfare of the child
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5. Understanding the Best Interests of the Child (II)

• Best interests of the child and other articles of the CRC

• Best interests of the child and the child’s right to “have a say” (CRC, article 12)
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6. Legal Analysis

• All actions

• Concerning children

• Public or private social welfare institutions, courts of law, administrative authorities or legislative bodies

• A primary consideration:
  o NOT the primary consideration
  o A primary consideration vs. paramount consideration
7. What is in the Best Interests of the Child?

- Best interests assessment
- Best interests determination
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8. Implementation: Elements of Assessment of the Best Interests of the Child (I)

• The child’s views

• Safe environment

• Family environment and family relations
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9. Implementation: Elements of Assessment of the Best Interests of the Child (II)

- Development of the child
- Protection and care
- Specific situation of vulnerability
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10. Implementation: Procedural Safeguards

- The child’s right to express his/her views
- Establishment of facts
- Time perception
- Qualifies professionals
- Legal representation
- Legal reasoning
- Review/revision mechanisms
- Child-rights impact assessments
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11. Obligations of the State Parties

• Appropriately integrate and consistently apply

• Demonstrate – describe

• Private sector actors