

NICCY ANNUAL EVENT - 2014

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)**

THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD

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:
 - Substantive right
 - Fundamental, interpretative legal principle
 - 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:
 - **NOT** the primary consideration
 - A primary consideration vs. paramount consideration

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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