

NICCY ANNUAL EVENT - 2014

Exploring the Best Interests of Children and Young People: From Principle to Practice

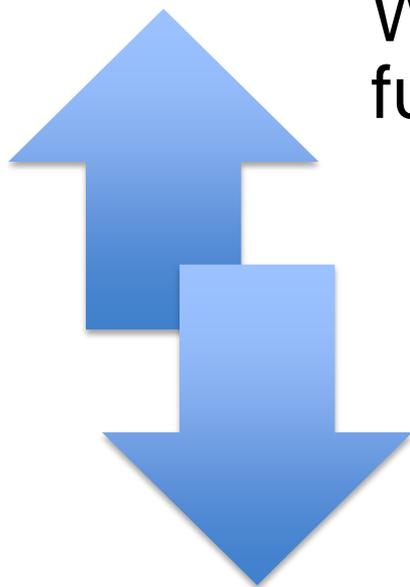


BEST INTERESTS: IMPLICATIONS FOR THE REALISATION OF RIGHTS

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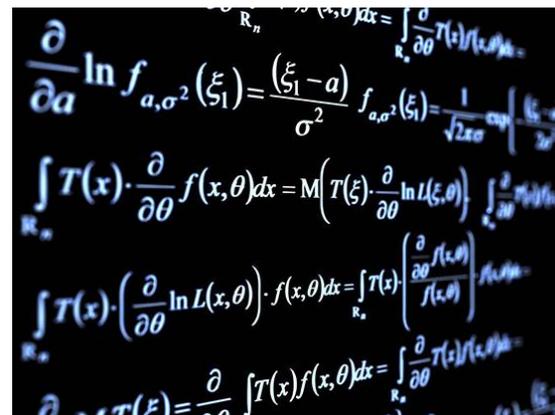
CONCEPT OF BEST INTERESTS



Warm and furry?



Complex and challenging?



IMPLICATIONS OF BEST INTERESTS

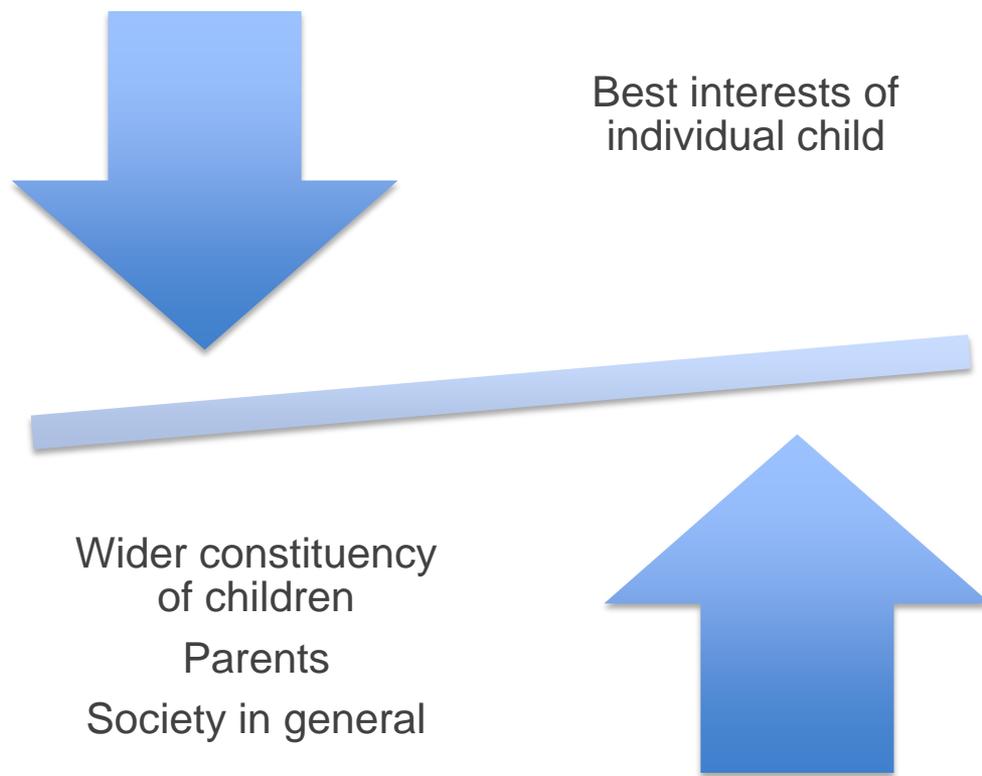
CRC introduces a radical conception of best interests:

- Central building block at the heart of the CRC
- Wide-ranging - applies to private as well as state institutions
- Applies to children as a constituency as well as individuals
- Applies in all actions – either as paramount or a primary consideration
- Applies in the realisation of all rights

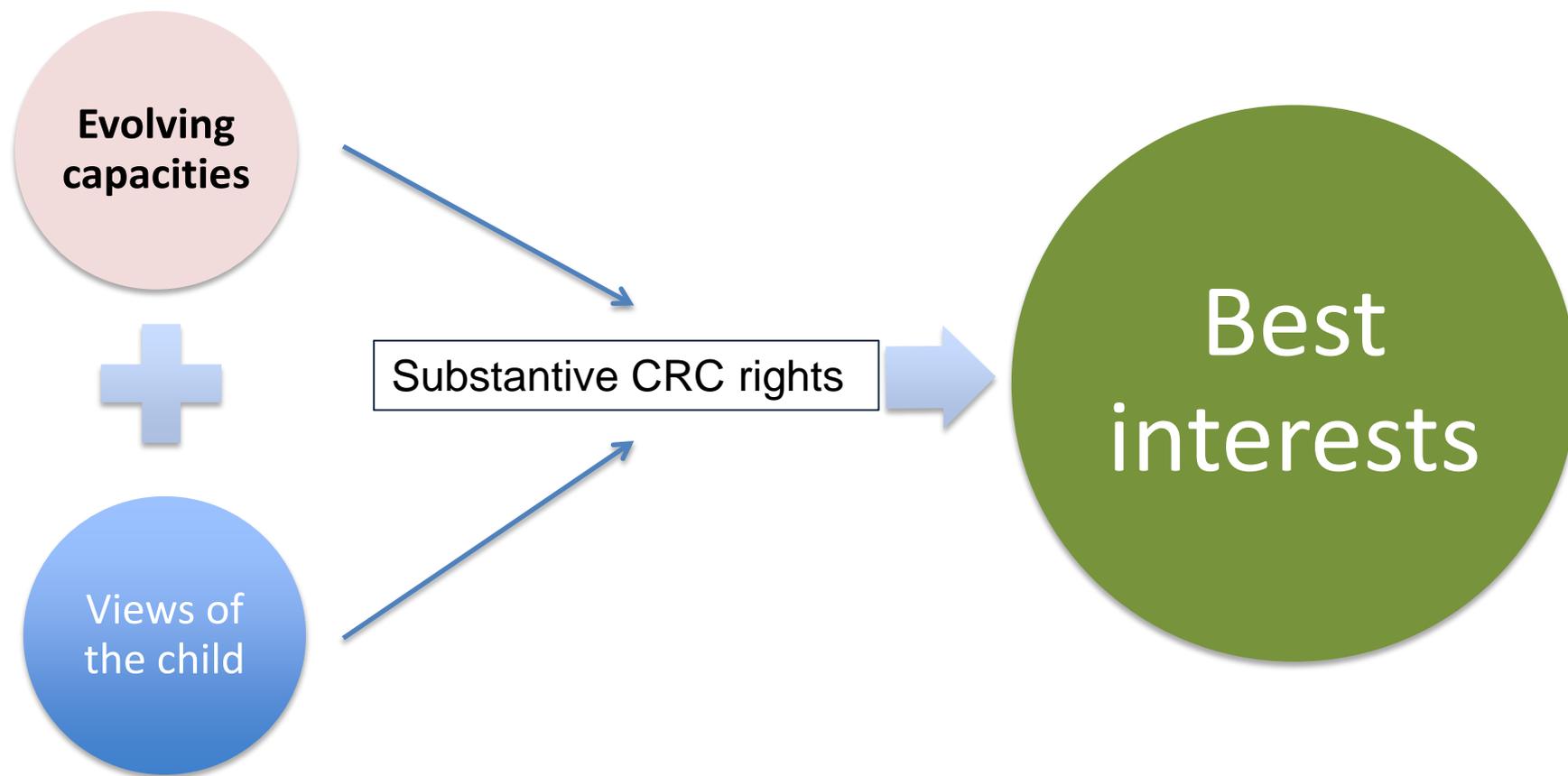
FACTORS TO CONSIDER IN DETERMINATION OF BEST INTERESTS

- Implementation of CRC: Best interests served by realisation of rights
- Holistic approach: Necessary to consider the child's overall rights when addressing their best interests
- Long and short term interests
- Balancing competing interests

BALANCING COMPETING INTERESTS



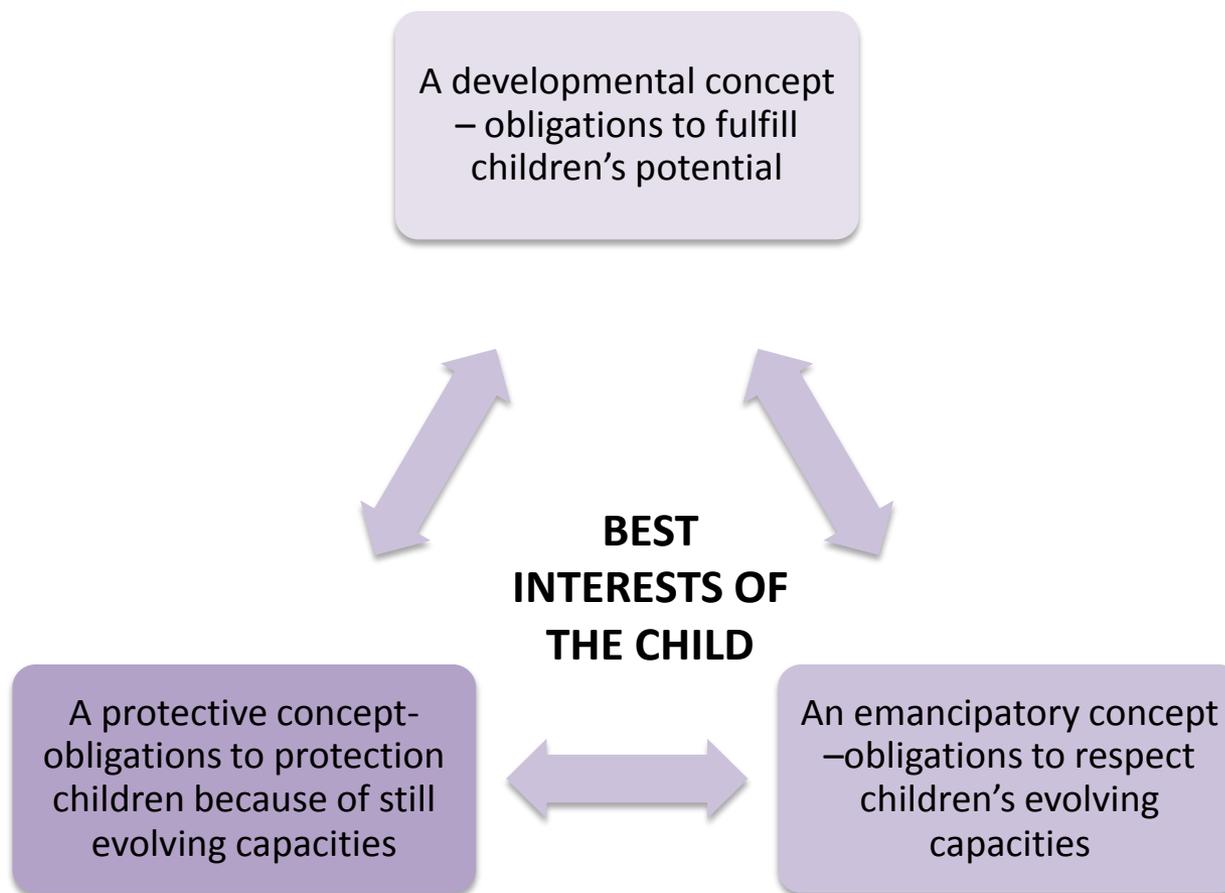
PROCEDURAL RIGHTS WITHIN THE CRC TO DETERMINE BEST INTERESTS



ARTICLE 5: EVOLVING CAPACITIES OF THE CHILD

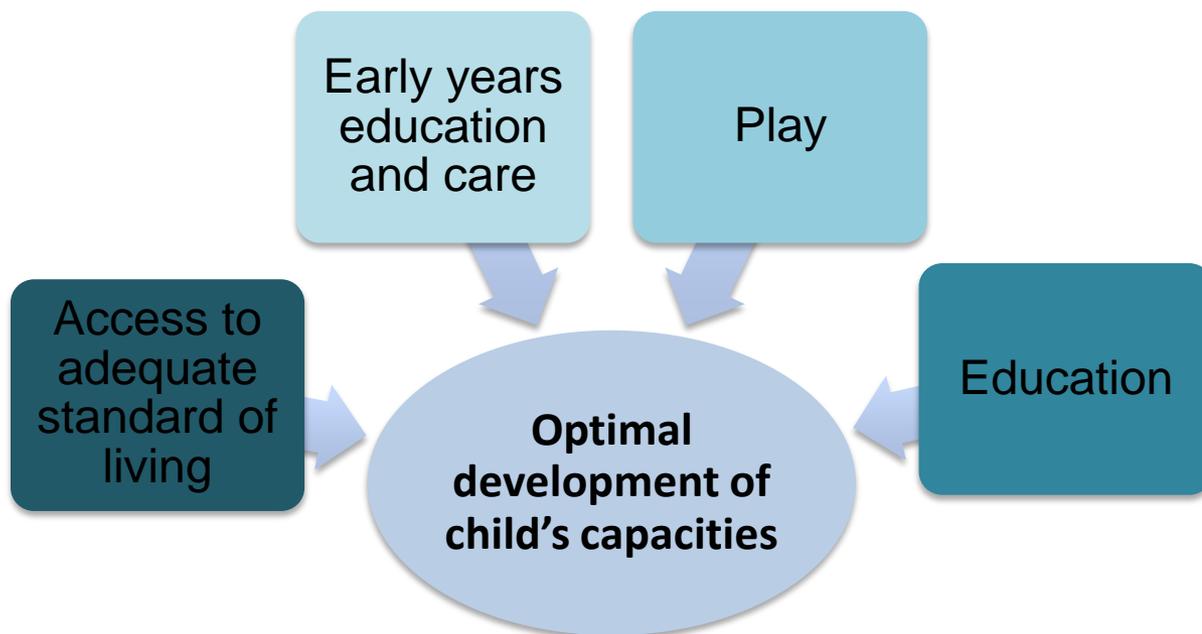
‘States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, *in a manner consistent with the evolving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

EVOLVING CAPACITIES



BEST INTERESTS THROUGH FULFILMENT OF CHILDREN'S CAPACITIES

A DEVELOPMENTAL CONCEPT



BEST INTERESTS THROUGH RESPECT FOR CHILDREN'S CAPACITIES

AN EMANCIPATORY CONCEPT

- Considerations of culture and context:
- Limitations of research in defining age competencies
- Invisibility of children's competencies and agency
- Impact of discrimination



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

BEST INTERESTS THROUGH PROTECTION OF CHILDREN'S CAPACITIES

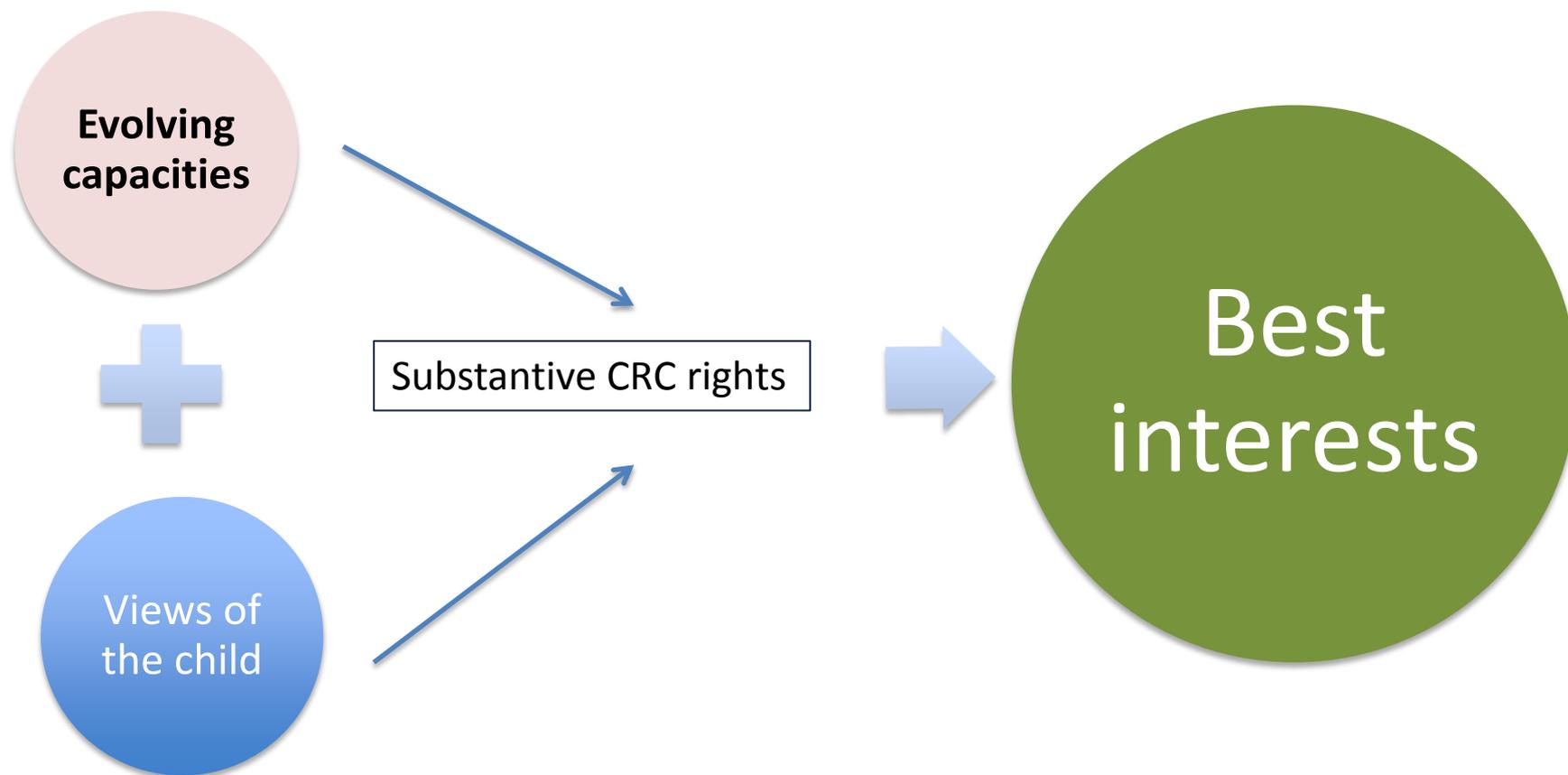
A PROTECTIVE CONCEPT

- Balancing risks of over and under protection
- Inconsistencies in legislation
- Providing protection irrespective of competence
- Involving children in their own protection

ARTICLE 12: THE VIEWS OF THE CHILD

- Both a substantive and procedural right
- Best interests and views of the child are complementary
 - Best interests not a ‘trump card’
- Perspective of the child is integral to determination of best interests
 - Article 3 to determine best interests
 - Article 12 the methodology through which to achieve that determination
- Important to recognise impact of failing to respect children’s views

RETURNING TO THE MODEL..... A case study



Conclusions

- Best interests not a stand alone principle
- Must be understood and applied within the context of the CRC as a whole
- Will only be achieved through realisation of rights
- Can only be determined with reference to Article 5 and Article 12
- Must never be used simply to trump other rights