

2011-2012

Article 3 of the Convention on the Rights of the Child

The Best Interest of the Child

*In all actions concerning children taken by
legislative bodies, the best interests of the child
shall be a primary consideration.*

Prepared by: Fatma Hassan Beshir
Prepared for: Public Policies and Child Rights Diploma
Course: Child Rights in Law



I. Introduction:

In its general guidelines on periodic reporting, adopted in October 1996 the Committee on the right of the child introduced the term «General Principles» and identified these as the articles 2, 3, 6 and 12 of the Convention. In the guidelines the Committee does not explain what it means by «General Principles» nor why they are limited to these four articles – one could argue that e.g. articles 4 and 5 of the Convention could also be qualified as general principles.

But if we follow the ordinary meaning of this term we may assume that these principles should be taken into account when implementing the (other) articles of the CRC. This is confirmed in various general comments of the CRC Committee such as general comment No. 6 on unaccompanied and separated children outside their country of origin and general comment No. 9 on the rights of children with disabilities.

Some of the general principles are applicable beyond the implementation of the provisions of the CRC. Article 2 links the right to non-discrimination to «the rights set forth in the present Convention».

The best interests of the child shall be a primary consideration in all actions concerning children (art. 3) and the right of the child to express her/his views freely is applicable in all «matters affecting the child». Article 6 is to a certain degree a «fremd Körper» in the list of general principles. The inherent right to life is much more than a «general principle»; it is one of, if not, the most fundamental human right. But the survival and development of the child are concepts not limited to the implementation of the Convention.

The ordinary meaning of «principles» is weaker than the legal obligations of States Parties. Principles are usually guiding notions and allow for exceptions. Articles 2, 3, 6 and 12 of the Convention are much more than guiding notions. Another problem that could be addressed is the way the general principles are used in the dialogue with States parties. Questions raised with regard to the implementation of the general principles often - and unavoidably - pertain to other provisions of the Convention.

II. Article 3: The best interests of the child

The rule that the best interest of the child shall be a primary consideration in all actions concerning children is not found for the first time in the CRC. On the contrary, it is a rule that was accepted in many countries far before the adoption of the CRC in 1989. At the same time this «general principle» has been the source of discussion and extensive academic or other articles and books. Article 3(1) of the Convention sets out a rule of a procedural nature: when actions concerning children

are undertaken the best interest of the child must be taken into account as a primary consideration. Given the wording «all actions concerning children» this must be applied not only in actions concerning a specific group of children, but also to actions regarding an individual child. In this regard I like to commend the office of the UN High Commissioner for Refugees for the development of Guidelines for the Formal Determination of the Best Interests of the Child (May 2006), a very detailed set of rules on how to determine best interests of the child and who should be responsible for this determination in the different decisions which have to be made e.g. on the identification of durable solutions, on the temporary care arrangements and in situations which may involve separation of the child from her/his parents.

The concept also means that the rules should be applied in a very broad manner, not limited to actions directly or exclusively concerning children.

Finally article 3(1) does not mention actions undertaken by individual private persons. But article 18(1) requires that the best interests of the child will be the basic concern of parents in discharging their responsibilities for the upbringing and development of their child.

Article 3 has (of course) a substantive meaning and is therefore a leading principle for the implementation of all substantive articles of the CRC. But the Convention provides little information on the practical meaning of «the best interests of the child» such as in respect of decisions made by State organs in the field child protection health and education. The same applies for decisions to be made by parents: the question what concretely is in the best interests of the child has to be answered by themselves. But if their answer is detrimental to the development of the child the State has the right and obligation to take action to protect the child.

This lack of specificity in the articles of the Convention results in a reporting and examination process that focuses mainly on article 3. Concerns and recommendations of the CRC Committee are usually of a general nature, e.g. the principle should be better integrated in legislation and/or the decision-making process.

This is unavoidable given the fact that the meaning of the «best interests» is different in different contexts and depends on various factors.

But the Committee should try to elaborate more in the dialogue with States Parties on the meaning of the best interests of the child in relation to articles in which this principle is explicitly mentioned. For instance: what kind of factors should be taken into account to lead to a decision that a separation of the child from her/his parents is necessary in her/his best interests (articles 9(1) and 20(1) CRC). Similar questions can be raised regarding adoption (best interests shall be the paramount consideration; article 21 CRC), separation from adults (article 37(c) CRC) and the

(non)presence of the parents during a juvenile justice trial (article 40(2)(b)(iii) CRC). The Committee could provide more information on what the interpretation of the best interests principle is in the different States parties. The Committee should also consider developing guidelines similar to those developed by the UNHCR for other fields covered by the Convention, e.g. on determination of the best interests in cases of child protection (perhaps distinguishing different settings in which protection is needed).¹

The concept of the “best interests” of children has been the subject of more academic analysis than any other concept included in the Convention on the Rights of the Child. In many cases, its inclusion in national legislation pre-dates ratification of the Convention, and the concept is by no means new to international human rights instruments.

The Committee on the Rights of the Child has highlighted in the article 3(1), that the best interest of the child shall be a primary consideration in all actions concerning children, as one of the general principles of the Convention on the Rights of the Child, alongside articles 2, 6 and 12. The principle was first seen in the 1959 Declaration of the Rights of the Child, which uses it in Principle 2: “The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.”

Interpretations of the best interests of children cannot trump or override any of the other rights guaranteed by other articles in the Convention. The concept acquires particular significance in situations where other more specific provisions of the Convention do not apply. Article 3(1) emphasizes that governments and public and private bodies must ascertain the impact on children of their actions, in order to ensure that the best interests of the child are a primary consideration, giving proper priority to children and building child friendly societies.

Within the Convention itself, the concept is also evident in other articles, providing obligations to consider the best interests of individual children in particular situations in relation to:

- separation from parents: The child shall not be separated from his or her parents against his or her will “except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child”; and States

¹ 18 Candles The Convention on the Rights of the Child Reaches Majority, Institut international des droits de l’enfant (IDE), pages 33-34

must respect the right of the child to maintain personal relations and direct contact with both parents on a regular basis “except if it is contrary to the child’s best interests” (article 9(1) and (3));

- parental responsibilities: Both parents have primary responsibility for the upbringing of their child and “the best interests of the child will be their basic concern” (article 18(1));
- deprivation of family environment: Children temporarily or permanently deprived of their family environment “or in whose own best interests cannot be allowed to remain in that environment”, are entitled to special protection and assistance (article 20);
- adoption: States should ensure that “the best interests of the child shall be the paramount consideration” (article 21);
- restriction of liberty: Children who are deprived of liberty must be separated from adults
- “unless it is considered in the child’s best interest not to do so” (article 37(c));
- court hearings of penal matters involving a juvenile: Parents or legal guardians should be present “unless it is considered not to be in the best interest of the child” (article 40(2)(b)(iii)).

The Working Group drafting the Convention did not discuss any further definition of “best interests”, and the committee on the Rights of the Child has not as yet attempted to propose criteria by which the best interests of the child should be judged in general or in relation to particular circumstances, aside from emphasizing that the general values and principles of the Convention should be applied to the context in question.

The Committee has repeatedly stressed that the Convention should be considered as a whole and has emphasized its interrelationships, in particular between those articles it has elevated to the status of general principles (articles 2, 3, 6 and 12).

Thus, the principles of non-discrimination, maximum survival and development, and respect for the views of the child must all be relevant to determining what are the best interests of a child in a particular situation, as well as to determining the best interests of children as a group. And consideration of best interests must embrace both short and long-term considerations for the child. Any interpretation of best interests must be consistent with the spirit of the entire Convention – and in particular with its emphasis on the child as an individual with views and feelings of his or her own and the child as the subject of civil and political rights as well as special protections. States cannot interpret best interests in an overly culturally relativist way and cannot use their interpretation of “best interests” to deny rights now guaranteed to children by the Convention, for example to protection against traditional practices and violent punishments.

The wording of the first paragraph "... shall be a primary consideration" indicates that the best interests of the child will not always be the single, overriding factor to be considered; there may be competing or conflicting human rights interests, for example between individual children, between different groups of children and between children and adults. The child's interests, however, must be the subject of active consideration. It needs to be demonstrated that children's interests have been explored and taken into account as a primary consideration.

The wording of the principle indicates that its scope is very wide, going beyond State-initiated actions to cover private bodies too, and embracing all actions concerning children as a group. In its reporting Guidelines and in its examination of States Parties' reports, the Committee on the Rights of the Child has emphasized that consideration of the best interests of the child should be built into national plans and policies for children and into the workings of parliaments and governments, nationally and locally, including, in particular, in relation to budgeting and allocation of resources at all levels. The assessment of child impact and building the results into the development of law, policy and practice thus become an obligation (see article 4)

Where the phrase "best interests" is used elsewhere in the Convention (see above), the focus is on deciding appropriate action for individual children in particular circumstances and requires determination of the best interests of individual children. In such situations, the child's interests are the paramount consideration (as stated explicitly in relation to adoption in article 21).

The Committee on the Rights of the Child has emphasized that article 3(1) is fundamental to the overall duty to undertake all appropriate measures to implement the Convention for all children in article 4. For example, where a plan of action for children is proposed, the "best interests" principle should be fully integrated. Integration of the principle must imply the development of mechanisms to assess the impact of government actions on children and to incorporate the results of the assessment in policy development (see article 4).

In relation to the vital issue of resource allocation, the best interests principle demands first that within the overall central government budget, and regional and local budgets, there must be an adequate allocation for children (see article 4). There must therefore be sufficient analyses of relevant budgets to determine the proportion and amount allocated to children. In considering priorities in resource allocation, both between and within services at the national and local level, best interests must

be a primary consideration. The non-discrimination principle is also important; but as emphasized in article 2, the non-discrimination principle allows for positive discrimination – that is, affirmative action – on behalf of particularly disadvantaged or vulnerable groups of children.

Thus, the setting of priorities and targeting within resource allocation is vital to reducing discrimination in overall implementation. The Committee has paid increasing attention to the importance of budget analysis in its examination of reports and in its discussions with representatives of States Parties. Its Guidelines for Periodic Reports seeks information on: the proportion of the budget devoted to social expenditure for children at all levels; budget trends; the “arrangements for budgetary analysis enabling the amount and proportion spent on children to be clearly identified”; and “the steps taken to ensure that all competent national, regional and local authorities are guided by the best interests of the child in their budgetary decisions and evaluate the priority given to children in their policymaking”.

Similarly, the impact on children of economic adjustment policies and budgetary cuts must be considered in the light of the best interests principle and other basic principles. This consideration is also highlighted in the Guidelines for Periodic Reports: “The measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector” (para. 20).

The Committee looks for processes which ensure that the best interests of children are considered in policy formulation, and it has promoted the concept of child impact assessment (art. 4). The second and third paragraphs of article 3 are also of great significance. Article 3(2) outlines an active overall obligation of States, ensuring the necessary protection and care for the child’s well-being in all circumstances, while respecting the rights and duties of parents. Together with article 2(1) and article 4, article 3(2) sets out the overall obligations of the State.

Article 3(3) requires that standards be established by “competent bodies” for all institutions, services and facilities for children, and that the State ensures that the standards are complied with. This paragraph demands that institutions, services and facilities be established for children, and that the State must ensure that the standards are complied with through appropriate monitoring. Other articles refer to particular services that States Parties should ensure are available; for example “for the care of children” (in article 18(2) and (3)), alternative care provided for children

deprived of their family environment (article 20), care for disabled children (article 23), rehabilitative care (article 39) and institutional and other care related to the juvenile justice system (article 40).

The provision covers not only state-provided institutions, services and facilities but also all those “responsible” for the care or protection of children. In many countries, much of the nonfamily care of children is provided by voluntary or private bodies, and in some States policies of privatization of services are taking more institutions out of direct State control. Article 3(3) requires standards to be established for all such institutions, services and facilities by competent bodies. Together with the non-discrimination principle in article 2, the standards must be consistent and conform to the rest of the Convention.²

III. The best interests of the child, functions and characteristics

A- Functions

The concept of the best interests of the child, as it is defined by the CRC and the Hague Adoption Convention, is a concept that has two “traditional” roles; one that seeks to control and one that seeks solutions (criterion of control and criterion of solution).

Control Criterion: in this criterion, the best interests of the child principle is applied to ensure that the exercise of rights and the obligations towards children have been enabled and fulfilled. This control criterion is exclusively found in family law, child protection services, situations of alternative care and cases of migration. In all these actions or decisions, it is necessary to determine if the best interest issue has been considered.

As stated before, it is also a guarantee available to each individual child, to groups of children, or children “in masse,” that the right to have their best interests taken into account in decisions that will affect their lives will be fully realized.

Solution Criterion: in this criterion, the concept of the interest of the child can assist decision-makers in finding the most appropriate decision in cases involving children. Whenever a decision-maker must render this kind of decision, s/he must systematically look for solutions with the most positive, or least negative impact on the child or children in question. In the majority of cases, there will be a range of possibilities. The solution chosen should then be selected because it is in the “interest of the child.” This is an essential function of the decision-making process because it represents a bridge between a theoretical concept and its direct application in reality.

² http://www.kinderrechte.gv.at/home/upload/crc_on_best_interest_of_the_child.pdf

B-Characteristics

The concept of the best interests of the child encompasses several characteristics:

1. Contrary to the majority of articles in the Convention, Article 3 (1) does not constitute a subjective or substantive right *stricto sensu*, but rather institutes a principle of interpretation which must be used in all forms of interventions regarding children and which confers a guarantee to all children that decisions that will affect their lives will be examined in accordance with this principle of interpretation.

2. This provision imposes an obligation on States that the best interest of the child/children must be an immediate consideration during the decision-making process (in all actions).

3. Article 3 (1) cannot be considered in a vacuum. It belongs to a larger entity (the CRC) and establishes a new status on the child as an individual that is a subject of rights. This connection of Article 3 to the rest of the Convention confers a particular dimension on this concept. This is especially the case if we link it to other general principles of the Convention, namely, non-discrimination (Article 2), the right to life and harmonious development (Article 6) and the right of the child to be heard and to have those views considered and duly weighted (Article 12). In addition to the other norms contained in the CRC, it is also essential to consider all the rights of the child. There are other legal bases, both at the international and national levels that may affect what constitutes the best interests of a child or a group of children in a particular situation. One must, however, take into account that the higher standard of the best interests of the child shall always apply.

4. The concept of the best interests of the child is an unspecified legal concept which must be clarified in practice and should follow internationally accepted procedural rules of application. Jurisprudence will also, through case studies, lead to the development of solutions for individual situations or an entire group of children. This principle must be trusted, accepted and applied by those who must make decisions.

5. The criterion of the best interests of the child is relative in space and time. This criterion is relative in time since it is dependent on scientific knowledge about the child and the pre-eminence of such theories in any given time period. It is relative in space, since this criterion should take into account the valid standards present in certain countries. It must be repeated here that the principle of best interests cannot be threatened by arguments of cultural relativism that seek to justify decisions which would negatively impact on respect for and the enjoyment of the substantive rights of the child/children!

6. When a decision must be reached with regard to a child or children, we must think of *hic and nunc*, but also mid- and long-term consequences. By definition, the child is a human being in development. As such, the decision-maker must bear in

mind the concept of mid- and long-term consequences to ensure that the aims of the application of the best interests principle not only considers a short-term solution, but also takes into account the interests of the child's future. Since the child is always evolving, her/his interest should consequently be detached from the law of "everything, immediately," in favour of long-range vision of the future. When we listen to the child's aspirations within the framework of Article 12 of the CRC, we must remain attentive to this aspect of "futurology."

7. The concept of the criterion of the child is evolutionary, since the projections of knowledge continue to develop and because it has only been twenty years since the adoption of the Convention. The doctrine and jurisprudence will therefore lead to an undoubted evolution in this concept. In domains where the principle of "best interests." is regularly applied (often in cases relating to marriage, divorce, custody...) we have witnessed a rapid evolution of our sociological situation, which has in turn necessitated a redefinition of the role of parents after divorce and led to legislative adaptations. New situations appear including parental co-responsibility, or shared parental authority (found for example in Swiss legislation). All of these novelties have had a direct impact on children and on their best interests. This has required judges and courts to render their decisions while taking into account new points of view. The principle of "best interests" must continue to be applied when determining the best solution for the child, but the sub-criteria will likely continue to change in a significant manner!

8. Linked to this latter observation is one that the criterion of the interest of the child is doubly subjective. First, we have collective subjectivity. This means that in any given society, at any given moment of its history, there is an image of what the interest of the child is: for example, the education of the child in one religion or another or the refusal of all "excesses" as a religious practice.

In the interest of the child, there is also a personal subjectivity. This personal subjectivity can be further broken down into three levels:

First, there is the subjectivity of parents, caregivers, or legal representatives. What parent does not claim to act in the interest of their child, even when their actions may seem to be motivated by selfish reasons (judges in divorce cases know this all too well)?

Second, there is the subjectivity of the child/children. Problems emerge when the child's views or wishes under consideration do not correspond to the view(s) held by the parents (or other adults) regarding a situation or a proposed solution.

Finally, there is the subjectivity of the judge, or the administrative authority invested with the power to make the decision (the decision-makers). While the strength (or risk) of this subjectivity is well-known, in most cases, it will be asserted that the decision was reached based on a "scientific" analysis of the situation.

These characteristics of the interest of the child show both the flexibility and richness of this criterion as well as its potential and actual weaknesses. As this concept has not yet been fully defined in a precise manner, particularly in relation to time and space, and in light of the multiple sources of subjectivity, this concept could conceivably void the understanding of children's rights, and may even appear to be counter-productive. In this sense, it may favour the interest of the State or the family to the detriment of the child. As a result, numerous criticisms have been (and continue to be) levelled against the imprecision of these criteria and the vagueness of this concept.

According to Professor Van Bueren: "...a lack of certainty or indeterminacy is inherent in the best interests principle. Indeed, such a lack of certainty, which some may regard as flexibility and as a virtue, is essential in the case-by-case approach, which the best interest standard requires."

In its defence, let us say that this concept has the advantage of being broad and flexible and has the capacity to be adaptive (relative to time and space) to the cultural and socio-economic particularities of various legal systems. It is a universal concept can be applied everywhere and is useful to all. The principle is a practical tool, or in more colloquial terminology, can serve as the "the jack of all trades" of the Convention. It is the instrument which provides the link between the theory and the practice.³

IV. Law Reform and the best Interest of the Child

For some countries, the concept employed is that of the 'welfare' of the child, rather than the 'best interests' of the child. Whether these terms are equivalent depends on the way they are defined, interpreted and applied by the legislation and competent authorities.

In general, however, the concept of welfare has overtones of physical safety, material well-being and the child as a passive beneficiary of protection, while the 'best interests' concept connotes the child as an active subject of rights whose interests have physical, mental, social, moral and spiritual dimensions.

In some countries, concern that the 'best interests' principle could open the door to subjective decision-making by administrative and judicial authorities has led to the adoption of legislative definitions.

In Africa, the 'best interests' principle is recognized in the constitutions of Ethiopia and South Africa. The Child Rights Act of Nigeria also recognizes this principle, in strong terms:

³ The Best Interests of the Child, Literal Analysis, Function and Implementation, Working Report 2010, Jean Zermatten, pages 15:18

where article 3 of the Convention states that the best interests of the child shall be a primary consideration, and Section 1 of the Act states that they shall be the primary consideration in “every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority.”

The Rwandan law on the rights of the child also recognizes this principle. In Asia, the Indonesian Law on Child Protection and the Philippines Special Protection of Children against Child Abuse, Exploitation and Discrimination Act recognize the ‘best interests’ principle in very broad terms, with express reference to the CRC. The Juvenile Justice and Welfare Act of 2006 of the Philippines reaffirms this principle and defines the best interests of the child as “the totality of circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child’s physical, psychological and emotional development.” The Constitution of Sri Lanka contains a provision close to the spirit of the CRC, and the Children’s Charter substantially reproduces the language of article 3, para. 1. In some other countries, including Fiji, India, Japan and the Republic of Korea, this principle is recognized, especially in family and child welfare legislation.

For some Islamic States, there appears to be a tendency to equate the best interests of the child with the precepts of Islamic law. The Committee on the Rights of the Child has pointed out the ‘best interests’ principle requires that decisions be based on the needs and circumstances of the individual child, and that it is a dynamic concept that must take into account the views and evolving capacities of the child.

Only a few of the Islamic States reviewed have incorporated the ‘best interests’ principle into their legislation thus far. For example, in Tunisia, the Child Protection Code recognizes this principle in terms that are substantially identical to article 3, para. 1 of the Convention. The Egyptian Children’s Code also recognizes this principle in broad terms. Many of the children’s codes adopted in Latin America give particular importance to the ‘best interests’ principle. The Colombian Code provides that the best interests of the child shall be the prevailing consideration, and not merely “a primary consideration.” The Nicaraguan Code clarifies this concept, equating the best interests of the child with “all that favours the child’s physical, moral, cultural and social development, in keeping with the evolution of the child’s capacities.” Some codes contain provisions designed to safeguard against the possible misinterpretation or misapplication of this principle. The Guatemalan Code, for example, declares that it shall never be applied so as to diminish or restrict any right recognized by the Constitution, by treaties such as the Convention or by the code itself. The Ecuadorian Code provides that, in case of a conflict, the ‘best

interests' principle prevails over other principles, in particular that of respect for cultural diversity.

The 'best interests' principle was also incorporated into the new constitutions of Colombia and Paraguay. The latter states simply: "In case of conflict, the rights of the child shall prevail." The Mexican child protection law contains a similar provision stating "the exercise of the rights of adults may not, at any time or in any circumstances, condition the exercise of the rights of a child or adolescent."

In Central and Eastern Europe progress has been made in incorporating the 'best interests'

principle into the new civil and family codes and other laws concerning the family that many countries have adopted since 1990. The Civil Code adopted by Georgia in 1997, for example, calls on parents to give primary consideration to the best interests of their children and recognizes the importance of this principle in the context of custody care and protection proceedings. The Adoption Act adopted the same year also recognizes the primacy of this principle.

Legislation incorporating the 'best interests' principle in broad, general terms nevertheless remains rare in the region. One exception is the Romanian Law on the Protection and Promotion of the Rights of the Child, which uses language similar to article 3 of the Convention. The 'best interests' principle has long been recognized in the legislation of many western European countries concerning the family. Although this principle may not have been incorporated into national law in broad general terms similar to those of the Convention, recent legislation has incorporated it into new areas of law. For example, Italian legislation concerning immigration adopted in 1998 provides that the best interests of the child should be given priority in all decisions regarding family reunification of foreigners. In addition, the Constitutional Court of Italy has held that the 'best interests' principle is implicit in provisions of the Constitution concerning human rights and the protection of children. Sweden initially took the position that its legislation concerning the family contained rules intended to ensure respect for the best interests of the child.

In 1998, however, this legislation was amended to include provisions more closely resembling the 'best interests' principle as set forth in the CRC. The same year, the Social Services Act was amended to recognize that the best interests of the child must be given "full consideration when adopting any measures affecting the child's life or status." Sweden's Third Report to the Committee in 2002 also indicates that law reform intended to incorporate this principle into other areas of law was still pending.

The 1989 Children Act of the United Kingdom provides that the best interests of the child are to be the paramount consideration in decisions about the upbringing of children taken by the courts, children's services and local authorities. The Act

contains no statutory definition of the best interests of the child, although it recognizes some principles that can be seen as related to this concept. One provides that no court shall make any orders concerning a child unless it is satisfied that making an order would be better for the child than making no order; another is the principle that any delay is likely to be prejudicial to the child. The Children (Scotland) Act contains similar provisions, although it also establishes an exception to the principle for cases in which the interests of a child are outweighed by the interests of public safety. The Children (Northern Ireland) Order 1995 makes the welfare of the child the paramount consideration in any legal proceeding concerning the upbringing of a child. Similarly, in Canada, since no law specifically on the rights of the child has been adopted, there is no legislation incorporating the general principles recognized by the CRC into national law in terms as broad as those of the Convention. Nevertheless, much of the new legislation adopted by the provinces and territories since 1989 does incorporate the principles contained in the Convention into domestic law, especially into family law.

The Civil Code of Québec, Canada, for example, adopted in 1991, provides that all decisions concerning a child are to be taken in light of the rights and interests of the child. This applies not only to judicial and administrative decisions but also to decisions made by parents.

The Judicature Act of Nova Scotia was amended in 1991 to create specialized family courts that use mediation services, counselling and awareness programmes to ensure that the best interests of the child are paramount in custody and access disputes. The Child, Family and Community Service Act adopted by British Columbia, Canada, in 1996 not only provides that the best interests of the child must be taken into account in interpreting and applying the Act, but it also sets out guidelines as to how the best interests of the child shall be determined.⁴

⁴ Law Reform and Implementation of the Convention on the Rights of the Child, UNICEF Innocenti Research Centre, pages 23:25