

Responses to Violence against Children in Suriname: Is the Best

Interests of the Child a Primary Consideration?

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Introduction

The concept of the best interests of the child in Article 3, para. 1 of the United Nations Convention on the Rights of the Child (CRC) requires that all States parties to this Convention shall ensure that in all actions concerning children the best interests of the child is a primary consideration, stating: *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*. The Committee on the Rights of the Child (hereafter: the Committee) considers this article together with article 2, 6 and 12 as the General Principles of the CRC which have to be taken into account in the interpretation and implementation of other articles of the CRC. In this article the above mentioned principle will be shortened, when appropriate, to “BIC-principle”. All professionals and others, who work for or with children, must ensure that in all their actions the best interests of the child is a primary consideration. Guidelines have been issued by the Committee in General Comment no. 14 (GC 14), to make a real change in the attitude of all authorities, so that children are seen as holders of universal, indivisible rights.

The aim of the research is to examine to what extent Article 3, para. 1 of the CRC is applied in daily practice of organizations/institutions that provide care and support to children in Suriname who have been victims of violence.

The CRC does not define “best interests”, and various attempts have been undertaken to establish a definition - without lasting effect.¹ However, the Committee qualifies it as “a dynamic concept that encompasses various issues”, which are continuously evolving and thus allow for a degree of flexibility in its application.²

Thus, the determination of the best interests of the child has to take into account a variety of individual circumstances, such as age, the level of maturity of the child, the presence or absence of parents, the child’s environment and experiences. Its interpretation and application must conform to the CRC and other

¹ Freeman, M., *Article 3: The Best Interests of the Child. A Commentary on the United Nations Convention on the Rights of the Child*, 2007.

² General Comment No. 14 on The right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) para. 11. UN Doc. CRC/C/GC/14, 29 May 2013.

international legal norms³, as well as with the guidance provided by the Committee in its General Comment no. 14.

A formal process should be in place with strict procedural safeguards designed to determine the child's best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option. When determining the best interests of the child, it is important to consider all the rights of the child. In addition to the norms contained in the CRC and the two Optional Protocols to the CRC⁴, there are other international and regional legal instruments that may be relevant for assessing the BIC such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, the African Charter on the Rights and Welfare of the Child (ACRWC) and the Convention of the Council of Europe on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). In addition domestic laws and jurisprudence may be relevant for determining the best interests of the child such as for Suriname the Act on Eliminating Domestic Violence⁵ and the Act on Care Institutions.⁶ Determining what is in the best interests of the child is necessary for all juridical decisions, actions, behaviors, proposals, services, procedures and abstentions.

Within the framework of their respective child protection systems, States should utilize appropriate procedures for the assessment of the BIC, in order to determine what for a child in a concrete situation is the best option.⁷

The BIC is a threefold concept: first it is a substantive right, second it is a fundamental interpretative legal principle and third it is a rule of procedure.⁸

As a **substantive** right the BIC will be applied whenever a decision is to be taken concerning a child, a group of (un)identified children or children in general. Therefore, State Parties have to put in place legislative provisions, policies and other measures to ensure that the BIC is a primary consideration in all actions (GC 14, para 6 under a).

³UNHCR, (2008). *Guidelines on Determining the Best Interests of the Child*, p. 14.

⁴ The Optional Protocol on Sale of children, Child Prostitution and Child Pornography (OPSC) adopted by the UN General Assembly on 25 May 2000, entered into force on 18 January 2002. The Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) was adopted by the UN General Assembly on 25 May 2000 and entered into force on 12 February 2002.

⁵ Bulletin of Acts and Decrees 2009, No. 84

⁶ Bulletin Acts and decrees 2014, No. 7

⁷ See Executive Committee UNHCR 56th session, *Conclusion on Children at Risk*, No. 107 (LVIII) - 2007 at g (i).

⁸ Zermatten, J., *International Journal of Children's Rights*, Volume 18: Issue 4, 2010, p. 483-499.

See also General Comment No. 14, para. 6.

As a fundamental **interpretative** legal principle the BIC means that in case a legal provision is open to more than one interpretation the interpretation should be chosen that serves most effectively the best interests of the child (GC 14, para 6 under b).

As a rule of **procedure** the BIC requires that the decision-making process includes an evaluation of the possible negative or positive impacts of a decision on the child or children concerned. In addition, a decision must show that the BIC has been taken into account with an explanation on how the BIC has been respected and what criteria have been used to decide what is in the best interests of the child (GC 14, para 6 under c). Kalverboer and Zijlstra⁹, two Dutch researchers, developed an interpretative framework to weigh the best interests of children in (legal) decision-making procedures in which the place of residence of a child is an issue. They identified fourteen pedagogical environmental conditions that refer to the family and the society.

It must be ensured that the BIC is not used as an instrument to determine or disqualify the lifestyle and parenting style of the parents. Parental rights may be restricted in case their life style and style of parenting damage the development of the child and when it's against the law. Article 371 of the Civil Code of Suriname applies the BIC to protect children against damage in their development. Parenting must meet minimum requirements, including prevention of harm to the child's interests.

The preamble and different articles of the CRC create high expectations and set high requirements for both parents and the government.¹⁰

GC 14, contains guidelines for the interpretation and implementation of the BIC.¹¹ The Committee has linked the following principles of the CRC to the BIC: Art. 2 CRC (the right to non-discrimination), Art. 6 CRC (the right of life, survival and development) and Art. 12 CRC (the right to be heard).¹² In the assessment of the BIC in a particular situation, these principles should be taken into consideration as well. According to the Committee article 3, para. 1 is directly applicable (self-executing) and can be invoked before a court.¹³ However, most judges in the Netherlands do not consider article 3 (1) as a directly applicable provision of the CRC.¹⁴

For all clarity, within the Surinamese legislation, the BIC- principle is incorporated in the Civil Code (Articles 435-438, 371), in the Act on Eliminating Domestic Violence (Article 4b), in the State Decree of

⁹ Kalverboer & Zijlstra, *Het belang van het kind in het Nederlands recht; voorwaarden voor ontwikkeling vanuit een pedagogisch perspectief*, 2006.

¹⁰ Liefwaard T., *Het belang van het kind en de hooggespannen verwachtingen van het IVRK: Pleidooi voor een kinderrechten benadering*. In: *De pedagogische benadering van de jeugdrechtspleging*, 2016.

¹¹ UN Doc CRC/C/GC/14, 29 May 2013, www.ohchr.org

¹² GC, 14, para 41 – 45.

¹³ GC, 14, para. 6 under (a).

¹⁴ Liefwaard & Doek, *'Kinderrechten in de rechtspraak: een internationaal perspectief'*, Tijdschrift voor Familie- en Jeugdrecht 2015, 12(4), p. 82-87.

2017 for the implementation of the Act on Care Institutions (Articles 2, 10, 12, 13, 14, 15, 16) and in the Law on Hearing Children in Judicial Proceedings (article 119 a sub 5).¹⁵

The BIC-principle is a very important provision of the CRC and, as stated earlier, one of the most difficult to interpret. An important aspect of this principle is the political dimension. This dimension requires that legislators should ask basic questions regarding the potential impact of laws, ordinances and rules on the BIC of children.¹⁶

Factors important for the assessment of the BIC

In its GC 14, the Committee mentions a non-exhaustive list of 7 elements, which have to be taken into account when assessing and determining the BIC. It underlines that the interpretation of the BIC is a matter of guaranteeing the rights of children, which is why the elements are directly linked to children’s rights.¹⁷

TABLE 1 IMPORTANT ELEMENTS FOR ASSESSMENT OF THE BIC

A	Respect for the views of the child (<i>Art. 12 CRC</i>)
B	The right to preservation of identity (<i>Art. 8 CRC</i>)
C	Preservation of the family environment and maintaining relations (<i>Art. 9, 18, 20 CRC</i>)
D	Care, protection and safety of the child (<i>Art. 19 CRC</i>)
E	Situation of vulnerability (<i>Art. 22, 23, 40 CRC</i>)
F	Child’s right to health (<i>Art. 24 CRC</i>)
G	Child’s right to education (<i>Art. 28 CRC</i>)

Summary of findings

The aim of this research was to examine to what extent the seven elements mentioned in GC 14 for the implementation of the BIC principle (Article 3 (1) CRC), are applied in daily practice by Surinamese organizations when providing aid to child victims. The results of this research have been presented in the previous paragraph. In this summary I like to present what I consider to be the most important findings. The service providers consider the BIC principle as a right of the child although they have their own (and diverse) understanding of the practical meaning of this principle.

¹⁵ Civil Code of Suriname (Bulletin of Acts and Decrees 1868, No.14) Act on Care Institutions (Bulletin of Acts and Decrees 2014, No. 7; Act on Eliminating Domestic Violence (Bulletin of Acts and Decrees 2009, No. 84), Law on Hearing Children in Judicial Proceedings (Bulletin of Acts and Decrees 2008, No. 19), Explanatory memorandum on Article 119 a sub 5) of this Law.

¹⁶ Zermatten, 2010, p. 498.

¹⁷ UN Doc CRC/C/GC/14, 2013, par. 52-79.

The service providers use in the determination of the BIC in their practice the elements the Committee considered as important. For instance, they all give special weight to the views of the child, but in practice these views are not always accomplished. They recognize the importance of family environment preservation while emphasizing the need for large scale introduction of parenting training programs and they are concerned that child safety cannot always be guaranteed in childcare homes. In addition to the seven elements of the Committee they mention as important factors in determining the BIC the right of the child to an adequate standard of living (Article 27 CRC) and the right of the child to privacy (Article 16 CRC).

All elements of the determination of the BIC are used in the decision-making process of the judges in Suriname.

The Surinamese jurisprudence shows that for the determination of the BIC, some elements mentioned in GC 14 are taken into account when the court/judge is, for example, imposing a child protection measure, as provided in the Civil Code (in civil law cases). These are: the views of the child, care, protection and safety, health and education.¹⁸

A remarkable, and in this context noteworthy, judgment of the Cantonal Court in a civil law case, is the non-implementation of the rule in the Civil Code of Suriname (Art. 336) that a man cannot legally recognize a child when he is married with a woman other than the mother of the child. The court was of the view that the existence of "family life" between the applicant (the biological father) and the child justified the non-implementation of the rule of Art. 336 Civil Code. Moreover, the court was of the view that this Article 336 was in conflict with Article 17 of the International Covenant on Civil and Political Rights (ICCPR). In determining the best interests of the child in this case, an important factor was that the wife and the marital children of the applicant had no objection to the right of a family life for the illegitimate child and the applicant.¹⁹

Two elements mentioned in GC 14 were main considerations in this judgment from 2003: the child's identity (legitimization of the illegitimate child by the married father) and the preservation of the family environment.

The Law on Hearing Children in Judicial Proceedings is applied in every child-case by the judge. The judge takes all elements of the BIC into account when pronouncing judgments.

¹⁸ Cantonal Court (2017) A.R. No. 16-547B; Cantonal Court (2016) A.R. No. 16-2650; Cantonal Court (2013) AR. No. 13-1121; Cantonal Court (2007) A.R. No. 062239; A.R. No.: 16-1078

¹⁹ Surinamese Law Journal (Surinaams Juristen Blad), 2003, no.3, p. 50-61.

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