

Determination of the best interests of the child

Guidelines and checklist for Albanian professionals working on child protection issues

Developed by



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Save the Children in Albania

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Contents

Introduction.....	2
Chapter 1: The Best Interests of the Child	3
Chapter 2: The BIC Model	6
Chapter 3: Making Best Interest Determinations with the Help of the BIC Checklist Albania	10
BIC Checklist Albania: Part of a process	10
BIC Checklist Albania: An introduction	12
Chapter 4: Reality Check.....	15
Annex: BIC Checklist Albania	Error! Bookmark not defined.

Introduction

In the past twenty years Albania's child protection system has experienced many policy reforms. The most recent of these being the newly adopted law on the rights and protection of the child (Law No.18/2017). Numerous national and international organizations have furthermore supported initiatives to increase the availability, quality and child friendliness of services, for example by providing training to staff. Despite all these ongoing efforts at national and local level, it is generally agreed that the care and support for vulnerable children is still not up to par and remains very fragmented, with certain places (most notably the capital Tirana) offering much better child protection services than others. The causes for this are multifold, ranging from lack of budgetary support by national and local authorities to high turnover and poor professional qualifications and skills of child protection workers. These are problems that will need to be tackled by a concerted, committed and well-coordinated effort from relevant stakeholders within the country.

But many children at risk now living in Albania, children who face problems like: domestic violence, child abuse, homelessness, child trafficking, institutionalization, parents which are in a nasty divorce, and so forth, deserve that their best interests, one of the key principles in the United Nations Convention on the Rights of the Child, and also a key principle in the afore mentioned Law No. 18/2017, are taken into account when decisions affecting their lives are made.

Because the 'Best Interests of the Child' (BIC) principle is well-known, but very differently understood, Save the Children Albania has commissioned International Child Development Initiatives (ICDI) to develop a tool that practitioners in the child protection system can use to make (better) Best Interest Determinations (BIDs). This is what you will find in this document: guidelines on how to use the BIC-checklist, developed for the purpose of assisting people working on child protection issues in Albania.

These guidelines are intended primarily for Child Protection Workers (CPWs) working in the Child Protection Units (CPUs) and the Needs Assessment and Referral Units (NARUs) at local level. But the guidelines and checklist can also be used by other professionals, for example the participants in the so

called Multidisciplinary Teams (doctors, police officers, teachers, social workers, etc.), which are set up to address child protection cases. In fact, it could prove very beneficial to the children if these professionals use a common framework when making best interest assessments. Similarly, these guidelines and checklist could also be applied by professionals in the judicial system (judges, lawyers, court psychologists, etc.), as this would improve connections between the different layers in the child protection system, creating an “even playing field” in which all stakeholders assess the best interests of a child in the same way. This again could have very beneficial effects on the care and support of vulnerable children in Albania.

It should be emphasized that we have not tried to come up with an exhaustive document, in which all aspects, problems and pitfalls surrounding application of the best interests of the child principle are covered. The real aim here is to provide practitioners with a practical, easy to use tool that will support them in making best interests of the child assessments and determinations.

This document has the following chapters:

Chapter 1: The Best Interests of the Child

In this chapter we give a brief explanation on the principle of the ‘Best Interests of the Child’, what it means both in theory and in practice, and why it is considered so important when working with vulnerable children.

Chapter 2: The BIC Model

In which we explain the BIC Model and factors to take in to account when making a best interests assessment.

Chapter 3: Making Best Interest Determinations with the Help of the BIC Checklist Albania

This chapter will include a brief process description when making a best interest assessment. We will also describe the BIC checklist Albania and how professionals can use this in their daily practice.

Chapter 4: Reality Check

The reality of professionals working in the child protection system is such that they will often lack time, resources (including lack of available information), support and opportunities to make best interest of the child decisions following all the steps in the guidelines. In this chapter we will give some pointers as to what is necessary at a bare minimum to make the best possible best interests determination.

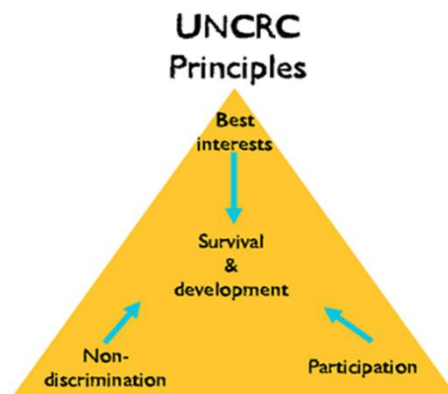
Chapter 1: The Best Interests of the Child

The 1989 United Nations Convention on the Rights of the Child (UNCRC), ratified by Albania in 1992, is the main legal instrument on the protection of children. It embodies four general principles:

- 1. The best interests of the child shall be a primary consideration in all actions affecting children (Article 3).**
2. There shall be no discrimination on the grounds of race, color, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status (Article 2).

3. States Parties recognize that every child has the inherent right to life and shall ensure to the maximum extent possible the survival and development of the child (Article 6).
4. Children shall be assured the right to express their views freely in all matters affecting them, their views being given due weight in accordance with the child's age and level of maturity (Article 12).¹

The guiding principles are crucial to understanding how to fully implement the UNCRC. They provide the means by which the different articles are interpreted and achieved. In keeping with the indivisibility principle of human rights, each of the guiding principles must be considered alongside each article. They are often described as instrumental rights - rights of good process that children should enjoy. It has been said that through adopting this approach the UNCRC becomes more than a mere list of obligations and instead acquires a soul!²



The term “best interests” broadly describes the well-being of a child. Well-being is determined by a variety of individual circumstances, such as the 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 with the UNCRC and other international legal norms, as well as with the guidance provided by the Committee on the Rights of the Child in its 2013 General Comment No. 14.

The CRC neither offers a precise definition, nor explicitly outlines common factors of the best interests of the child, but stipulates that:

- the best interests must be the determining factor for specific actions, notably adoption (Article 21) and separation of a child from parents against their will (Article 9);
- the best interests must be a primary (but not the sole) consideration for all other actions affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Article 3).

¹ In addition to these four principles, the CRC provides for a number of fundamental rights which include: the need for protection from abuse, exploitation and neglect, and the importance of the physical and intellectual development of the child. It gives particular attention to the role of the family in providing care to the child, and to the special protection needs of children deprived of their family environment.

² www.childrensrightswales.org.uk

This principle tries to redress the low priority often given to children's interests when there are strong, competing interests. It places an obligation on decision makers, budget, and law and policy makers to always consider whether a decision will have an impact on children's lives, to assess what that impact will be, and to elevate children's interests to the level of a primary consideration in the final decision.

In Albania, the recently adopted Law No.18/2017 'On the rights and protection of the child', also stresses the importance of the best interests of the child principle in both Article 5 ("The best interests of the child shall be the primary consideration in any child-related actions"), as well as Article 6 ("Application of the best interests of the child").

More specifically Article 6 of Law No.18/2017 explains that:

-The public and non-public authorities, and the court, shall consider the best interest of the child of primary importance in all actions and decisions taken concerning children.

-The best interest of the child shall imply the right of the child to have a sound physical, mental, moral, spiritual and social development and to enjoy an appropriate family and social life suitable for the child. In implementing this principle, the following shall be considered:

- needs of the child for physical and psychological development, education and health, security and sustainability, as well as the upbringing/belonging in a family;
- views of the child depending on age and maturity of the child;
- background of the child considering special situations of abuse, neglect, exploitation or other forms of violence against the child and the potential risk of occurrence of similar situations in the future;
- ability of the child or persons caring for the child to respond to the needs of the child;
- continuity of personal relations between the child and persons with whom they have kinship, social and/or spiritual relations.

All the above underlines the crucial importance that is given to the best interests of the child principle from a child and basic human right's perspective. This is of course especially true when it comes to vulnerable children: children in abusive family situations; trafficked children; children from discriminated minority groups; children on the street; and so on. Even more than "regular" children, these children have a right (and need) that their best interests are ensured in any decision affecting them, so they can develop healthily.

This makes perfect sense, but how does it work out in the Albanian practice? Not too well it seems. Although many people working on child protection issues know the principle of the best interests of the child, the understanding of what it entails or should entail, differs greatly. Also between different segments of the child protection system (CPU's, courts, police, etc.) there seem to be vastly different interpretations of what the principle means and how it should be applied. This is not to say that the different professionals don't try to take children's interests into account, they do. But since their understanding of which factors should be looked at are different, and the ways they garner insight into those factors is also different, it remains unclear in how far best interests' determinations are

made in an appropriate manner in the majority of child protection cases. The impression, reflected in different research done in the past years, is that the best interests principle of the child is seldom given the weight it should be given, and that decisions on what needs to happen with a child are mostly based on what is possible in terms of service delivery. Very often this means a child in need of protection is placed in an institution, which, also given the dire state of affairs in most institutions, is seldom in a child's best interest). In general child protection workers are aware of this problem, and have indicated the need for guidelines and/or tools that would help them to make better best interests of the child assessments and decisions.

Chapter 2: The BIC Model

As the previous chapter indicates, the best interests of the child principle is considered both very important as well as quite unclear. To help create a common understanding of what it means, the Committee on the Rights of the Child, in its General Comment Number 14 (in 2013), articulated seven specific elements for assessing a child's best interests:

1. The child's views;
2. The child's identity;
3. Preservation of the family environment and maintaining relations;
4. The care, protection, and safety of the child;
5. A situation of vulnerability;
6. The child's right to health;
7. The child's right to education.

The General Comment also explains that the best interests of children must be examined and determined in *each individual case* in light of the *specific circumstances* of each child or each group of children. These circumstances are related to the *individual characteristics* of the child or group of children concerned, including the *social and cultural context* in which the child or group of children find themselves.

Or, to give a graphical representation, the best interests of the child are to be determined within the following framework:



Taking this into account, and combining the UN Convention on the Rights of the Child with knowledge from pedagogy and child psychology, the BIC model was developed³.

The BIC model consists of 14 child-rearing conditions in a child's life which must be of sufficiently high quality to enable children to experience a good childhood and to safeguard their development. Together they represent the quality of the child-rearing environment. If these conditions are of a sufficiently high standard during an extended period – both in the current situation and in the past and future – it can be said that there is continuity and stability in the child's upbringing and circumstances. This is in the best interests of the child. The child can develop and lives in a qualitatively good social environment. If these conditions are of an insufficient quality over an extended period, this may harm the child's development and their experience of their childhood. This applies particularly to vulnerable children. The rearing environment of vulnerable children should meet extra high criteria⁴.

The BIC model takes the following conditions into consideration:

Family: current situation

Physical well-being

³ By Kalverboer, M.E. and Zijlstra, A.E. (2006)

⁴ This paragraph was taken from the chapter 'How to assess and determine the best interests of the child from a perspective of child development and child-rearing' by Kalverboer, M.E. in the publication *The Best Interests of the Child: A Dialogue between Theory and Practice*, Council of Europe, 2016.

1. Adequate physical care

Adequate physical care refers to the care for the child's health and physical well-being by parents or care providers. They offer the child a place to live, clothing to wear, enough food to eat and (some) personal belongings. There is a family income to provide for all this. In addition, the parents or care providers are free of worries about providing for the child's physical well-being.

2. Safe immediate physical environment

A safe direct physical environment offers the child physical protection. This implies the absence of physical danger in the house or neighborhood in which the child lives. There are no toxins or other threats in the house or neighborhood. The child is not threatened by abuse of any kind.

Care and upbringing

3. Affective atmosphere

An affective atmosphere implies that the parents or care providers of the child offer the child emotional protection, support and understanding. There are bonds of attachment between the parent(s) or caregiver(s) and the child. There is a relationship of mutual affection.

4. Supportive, flexible parenting structure

A supportive, flexible child-rearing structure encompasses several aspects such as:

- enough daily routine in the child's life;
- encouragement, stimulation and instruction to the child and the requirement of realistic demands;
- rules, limits, instructions and insight into why they are needed;
- control of the child's behavior;
- enough space for the child's own wishes and thoughts, enough freedom to experiment and to negotiate over what is important to the child;
- no more responsibilities than the child is capable of handling (in this way the child learns the consequences of his or her behavior within the limits which the parents or care providers have set).

5. Adequate example set by parents

The parents or care providers offer the child the opportunity to incorporate their behavior, values and cultural norms that are important, now and in the future.

6. Interest in the child

The parents or care providers are attentive to the activities and interests of the child, and to his or her perception of the world.

Family: future and past

7. Continuity in upbringing and care, future perspective

The parents or care providers care for the child and bring the child up in such a way that attachment bonds develop. Basic trust is to be maintained by the availability of the parents or care providers to the child. The child has a future perspective.

Society: current situation

8. Safe wider physical environment

The neighborhood the child grows up in is safe, as well as the society the child lives in. Criminality, (civil) wars, natural disasters, infectious diseases, etc. do not threaten the development of the child.

9. Respect

The needs, wishes, feelings and desires of the child are taken seriously by the child's environment and the society the child lives in. There is no discrimination because of background, race or religion.

10. Social network

The child and his or her family have various sources of support in their environment upon which they can depend.

11. Education

The child receives a suitable education and has the opportunity to develop his or her personality and talents (for example, sport or music).

12. Contact with peers and friends

The child has opportunities to have play and have contact with other children in various situations suitable to his or her perception of the world and developmental age.

13. Adequate examples set by the community

The child is in contact with children and adults who are examples for current and future behavior and who mediate the adaptation of important societal values and norms.

Society: future and past

14. Stability in life circumstances, future perspective

The environment in which the child is brought up does not change suddenly and unexpectedly. There is continuity in life circumstances. Significant changes are prepared for and made comprehensible for the child. Persons with whom the child can identify and

sources of support are constantly available to the child, as well as the possibility of developing relationships by means of a common language. Society offers the child opportunities and a future perspective.

The 14 child-rearing conditions of the BIC model together represent the social and cultural context the child grows up in. If the child-rearing conditions of the BIC model are of a sufficiently high quality over an extended period, there will be continuity and stability in the child's life; the child will be able to develop in a positive way. Conversely, if the conditions are of an insufficient quality over an extended period, this may harm the child's development and his or her experience of childhood; the child's identity will be threatened. This applies particularly to vulnerable children. The rearing environment of vulnerable children should meet extra high criteria. To experience a good childhood and to develop in a positive way, the child needs a social and cultural context which provides opportunities to do so. Good education, social bonds, ties with family and significant others, safety and respect for the child's individuality are essential⁵.

In the next chapter we will translate the BIC model into a BIC checklist, geared towards the Albanian child protection practice.

Chapter 3: Making Best Interest Determinations with the Help of the BIC Checklist Albania

BIC Checklist Albania: Part of a process

Before we start explaining the BIC checklist it is important to make a few cautionary remarks:

Firstly, in case of apparent immediate danger to a child's physical or emotional well-being it is always in their best interest to be put in safe circumstances (whatever those circumstances may be, as long as the child is protected from further harm). Please keep this in mind when applying the BIC checklist: it is meant to be used in those situations where a professional has the time and means available to do a thorough best interests of the child assessment and determination. It goes without saying that a BIC assessment still should be made as soon as possible after a child is brought to a safe place.

Secondly, we will not be too detailed in this chapter on how information should be gathered to fill in the BIC checklist. We simply don't have the space to do so, but we also don't think it is necessary, as there are enough tools available in Albania from which professionals can learn how to do proper

⁵ This paragraph was taken from the chapter 'How to assess and determine the best interests of the child from a perspective of child development and child-rearing' by Kalverboer, M.E. in the publication *The Best Interests of the Child: A Dialogue between Theory and Practice*, Council of Europe, 2016.

assessments in child protection cases (we especially refer here to the ‘Working Protocol for Child Protection Workers’, developed by Terre des Hommes Albania).

Thirdly, a best interest determination is always highly individual. Therefore, when applying the BIC checklist, one should always determine conditions in relation to the needs, wishes and opportunities of that specific child and his/her family/community. To give an explanatory example: when dealing with a child with a mental disability, conditions should be assessed differently than when the child has normal cognitive abilities. This does not mean that the conditions necessary for thriving of the child are less important, but the way they can or should be given shape may be different. Parents that otherwise could be expected to give appropriate care to a child with normal cognitive functions, may not be able to do so in the case of a child with a serious mental disability, because there is a lack of support services available (to emphasize: this is just an example. By no means is it implied that children with special needs cannot be taken care of by their parents!). This example highlights the importance of looking at and taking into account the individual child (with all his specific needs and possibilities), his/her family/caregivers and the community, when doing best interest assessments and determinations.

Finally, this BIC checklist is meant as a supportive tool when doing an assessment of a child’s situation. It can not and should not replace a thorough investigation into a child’s circumstances (as, for example, described in the Albanian Protocol for Child Protection Workers). At most it can be seen and used as a kind of summary of such an assessment, and can help create a common understanding amongst different professionals dealing with a certain child protection case. It should also never be seen as “definitive”: best interests of the child assessments and determinations should be part of an ongoing process, and have to be repeated at regular intervals. And of course even more important: all this should lead to concrete actions to improve a child’s circumstances, and not as some administrative ‘ticking the box’.

In other words, the BIC checklist should be part of the below process:



The focus of any assessment must be to answer the question: How is the child developing?

Core phases include:

1. Information gathering;
2. Analysis and assessment;
3. Decisions/agreements for action;
4. Review.

These phases are ongoing, occurring all throughout the process of family service, child protection and placement interventions.

Key domains of information gathering include:

- Child's safety;
- Child's stability;
- Child's development and well-being;
- Parent/carer capacity;
- Current family composition and dynamics;
- Family history;
- Social and economic environment;
- Community partnerships, resources and social networks;
- Future perspectives (in all these domains).

BIC Checklist Albania: An introduction

The BIC Checklist Albania is an easy to use tool, which can be filled in both digitally or, after printing out the form, manually.

It consists of two parts:

In **Part 1** administrative data on the child can be filled in (this can be adapted to whatever the requirements or regulations are). Next to this there are 14 questions, representing the different domains from the BIC model (see the previous chapter). For each there are accompanying example questions given, which can be used to make an assessment of the conditions the child is living in (we emphasize that these are just examples; more and other questions can and should be used). If information has been gathered in the appropriate manner (via conversations with the child, his parents/carers, family visits, desk research into the child's and family history, etc.), it should prove to be reasonably straightforward to fill in the checklist.

There are always four options to “score” a condition:

- **good**; this means that the assessor(s) consider the condition to be of good enough quality, when compared to the condition of most other children in that area (city, village, neighborhood, social class, ethnic group, etc.)
- **satisfactory**; this means that the assessor(s) consider the condition to be of sufficient enough quality, when compared to the condition of most other children in that area (city, village, neighborhood, social class, ethnic group, etc.)
- **moderate**; this means that the assessor(s) consider the condition to be of not enough quality, when compared to the condition of most other children in that area (city, village, neighborhood, social class, ethnic group, etc.)
- **unsatisfactory**; this means that the assessor(s) consider the condition to be of bad quality, when compared to the condition of most other children in that area (city, village, neighborhood, social class, ethnic group, etc.)

The above description of the scoring options highlights that the checklist does not pretend to provide absolute standards. It is always a matter of interpretation on behalf of the persons doing the assessment. Of course it is hoped and expected that such a person is capable of making assessments based on professional experience (both theoretical and practical), and with enough sensitivity and empathy for the child's specific circumstances as part of a broader community setting. It is also hoped that when the checklist is used by different professionals assessing a child, they will come to similar conclusions on what the best interests of that particular child are (in other words: we don't expect complete objectivity, but do hope for “inter subjectivity”; that in itself will already lead to higher quality of support for vulnerable children).

The checklist also does not dictate that all 14 conditions have to be given the same weight when doing an assessment (there are therefore also no “cut off” scores). Best interest determinations are by nature very individual. Professionals will need to determine which conditions in a certain case are

more important, and what the impression derived from the checklist implies for the best possible intervention for that particular child.

In **Part 2** a best interest of the child determination should be formulated, based on an interpretation of the findings in Part 1. To support this a list of possible options for follow-up actions is given (this list is of course not exhaustive). The idea is that a ranking will be made, whereby the preferred option is given a score of 1, the second preferred option a score of 2 and the third preferred option a score of 3. No more than three options are allowed, as beyond that one could not claim anymore to be acting in the best interest of the child. It is very important to stress that the best 3 follow up actions should be defined, not the 3 best *possible* follow up actions! The BIC checklist is meant to support the formulation of what would be in the best interest of a certain child in the best possible circumstances (so, for example, in those circumstances that all kinds of support services are available). Of course it is clear that these ideal circumstances don't exist in Albania (nor anywhere else, for that matter). That is why in Part 2 there is a section where the professional can give additional information on the best interest assessment and can describe the follow up actions that actually will take place (which, sadly, may be very different than the kinds of actions that were proposed based on the results of filling in the BIC checklist). There is tension here: for a professional it will be frustrating to see that the kind of support he/she would recommend for a child is in reality not possible. Still, for advocacy and future reference purposes, it is important to be able to show that best interests of the child determinations were made and may have led to a different advice for support interventions than those that actually happened. This kind of 'evidence' could strengthen efforts to make improvements in the child protection system.

For the full BIC checklist we refer to the Annex.

Chapter 4: Reality Check

In the introduction we highlighted the problems riddling the Albanian child protection system. Although many good efforts are underway to tackle the situation, it is unlikely that things will improve significantly in the foreseeable future. Especially at local, remote and rural level, people working on child protection issues will continue to face many of the same problems they are facing now. It is clear that this impedes best interests of the child decisions. To put it simply: if a child protection worker has no time, no support (budgetary or otherwise), no means (computer, transport, phone) and no options (no or few services available), it will be very difficult for him or her to do an adequate assessment (even with the checklist), let alone come to an appropriate best interests of the child determination. This isolated, lonely child protection worker will be faced with situations in which there is little information available, but that still require urgent action. What to do? How can the best interest of the child principle still be given the attention and priority it needs and deserves?

The answer, the real answer, is that it cannot. It would be false to claim that in those circumstances a valid best interests of the child assessment and determination could and/or would be done. Although it is urged, and by Albanian and international law even required, that best interest determinations take place for all vulnerable children, it is clear that this will not always be done in the way it should be done. That does not exonerate people working with at-risk children from trying to do so, they should always try and do so, but it is nonetheless a reality that cannot be denied.

Therefore, if you are a professional faced with a child at risk, and you have exhausted all options to gather information on the child's situation and what are the options available, and maybe even after you have filled in the BIC checklist, ask yourself this question:

If this was my child, what would I want to happen to him/her?

Or, if you find it difficult to relate to this question because you don't have children or don't particularly like children (in which case you probably should find a different job anyway), ask yourself:

If I was this child, what would I want to happen to me?

The answer will likely be in the best interest of the child. Do everything (everything!) you can to make the answer a reality for a child whose care you've been entrusted with. The empathy coming from putting yourself in that child's place should give you enough motivation.