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**Addis Ababa University School of Graduate Studies College of Law and Governance
Studies**

Variations and Uniformities in the Interpretation of the Best Interest of the Child under Custody
Decisions: the Law and Practice in Ethiopia

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ID no: GSE/1425/14

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VARIATIONS AND UNIFORMITIES IN THE INTERPRETATION OF THE BEST
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IN ETHIOPIA

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SCHOOL OF GRADUATE STUDIES

COLLEGE OF LAW AND GOVERNANCE STUDIES

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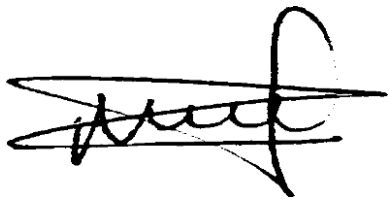
DECLARATION

I, Mihret Tekilemichael, declare that 'Variations and Uniformities in the Interpretation of the Best Interest of the Child under Custody Decisions: the Law and Practice in Ethiopia' is my own work, and I have fully acknowledged all the sources used or quoted through complete references.

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A handwritten signature in black ink, appearing to be 'Mihret Tekilemichael', written in a cursive style with a large loop at the end.

Signature

Acknowledgment

I would like to say thank you to the sacred Holy Father and his kingdom.

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Acronyms

ACRWC----- African Charter on the Rights and Welfare of the Child

AU-----African Union

Art -----Article

BIC -----Best Interests of the Child

CRC----- Convention on the Rights of the Child

CEDAW-----Convention on the Elimination of All Forms of Discrimination against Women

CSM-----Child Saving Movement

FDRE----- Federal Democratic Republic of Ethiopia

FFIC-----Federal First Instance Court

GC----- General Comment

LN-----League of Nation

Para -----Paragraph

RFC----- Federal Revised Family Code

SNNP-----Southern Nations, Nationalities, and People

TYD-----Tender Years Doctrine

UN-----United Nation

UDHR -----Universal Declaration of Human Rights

US-----United States

E.C-----Ethiopian-calendar

Table of Contents

Acknowledgment	i
Acronyms	i
Abstract	iv
1. Introduction	1
1.1. Statment of the problem.....	3
1.2. Objectives of the study	4
1.2.1. General Objective	4
1.2.2. Specific Objective.....	4
1.3. Research Questions.....	4
1.4. The Research Methods.....	4
1.5. Sampling Techniques.....	5
1.6. Data Collection Methods	6
1.6.1. Case Analysis.....	6
1.6.2. Data Processing	6
1.7. The Significance of the Study.....	6
1.8. Literature overviews	7
1.9. Scope of the study.....	8
1.9.1. Focus area	8
1.9.2. Scope in Geography	8
1.10. Limitation of the study.....	8
1.11. Organization of the study.....	8
1.12. Ethical Consideration.....	8
Chapter two: Interpretation of the Best Interests of the child	9
2.1. Historical Foundation of the BIC and its Interpretations	9
2.1.1. Early Roman Law and English Common Law	9
2.1.2. Parens Patriae Doctrine.....	10
2.1.3 The Tender Years Doctrine (TYD).....	12
2.1.4 Child Saving Movement (CSM)	13
2.2. Definition of the BIC	14

2.3. Normative Frameworks	15
2.3.1. International and Regional Human Rights Instruments	15
2.3.1.1. The 1924 Declaration of Child Rights (Geneva Declaration)	15
2.3.1.1. The 1959 Declaration on the Rights of the Child	16
2.3.1.2. CEDAW	16
2.3.1.3. CRC	16
2.3.1.4. ACRWC	17
2.3.2. Ethiopian Legal Frameworks	18
2.3.2.1. The 1995 FDRE Constitution	18
2.3.2.2. The Federal Revised Family Code 2000	19
2.3.2.3. Regional States Family Proclamations	19
2.4. The Common and Different Features in the Interpretation of BIC	20
2.4.1. Common Features	20
2.4.1.1. Primary Consideration of the BIC	20
2.4.1.2. Interpreting based on the holistic approach of the child's interests	21
2.4.1.3. Interpreting BIC on case-by-case	21
2.4.1.4. Interpreting based on the views and participation of the child	22
2.4.1.5. Stability of Living Condition and Vulnerability of the Child	23
2.4.2. Different Feature's	23
2.4.2.1. The social and cultural situation	23
2.4.2.2. The legal frameworks across jurisdictions	24
A/ South Africa	24
B/ England and Wales	25
C/ France	26
2.4.2.3. The judicial discretion in determining the BIC	26
2.4.2.4. The age and maturity of a child and any particular vulnerabilities or needs of the child	28
2.4.2.5. Priority for parental rights	28

Chapter Three: Findings and Discussions.....	30
3.1. Interpreting the best interest of the child across FFIC's	30
3.1.1 The Agreement of Parents	30
3.1.2. The Social Worker Expert Reports	32
3.1.3. The age and maturity of the child	34
3.1.4. The views of the child.....	34
3.2. Criterion in determining the BIC	36
3.3. Uniformity and Variations in Interpreting the BIC IN FFIC Custody Decisions	37
3.3.1. Uniformities.....	37
3.3.1.1. The psychological and physical maturity of the child	37
3.3.1.2. Case by case determination.....	37
3.3.1.3. The vulnerability of the life of the child	38
3.3.1.4. Assessing views of the child	39
3.3.2. Variations.....	40
3.3.2.1 Lack of determination of the primary consideration of a child	40
3.3.2.2. Absence of determining the BIC after declaring Divorce	41
3.3.2.3. Inadequate assessment of the interests of the child.....	44
3.4. Key Findings.....	46
Chapter Four: Conclusions and Recommendations	47
4.1. Conclusion	47
4.2. Recommendations.....	48
APPENDIX 1, CASE ASSESSMENT QUESTION CHECKLIST	56
APPENDIX 2 SAMPLE CASES.....	57

Abstract

This research paper analyzes the variations and uniformities in the interpretation of BIC under custody decisions in Ethiopia concerning international and national child rights instruments. The research uses qualitative methods and in-depth judgment analysis, aside from analyzing legislation and secondary sources. The study found that determining the BIC in FFIC hinges on the social worker's assessment, even when the child's views do not concur with this assessment. In some cases, interpreting the BIC solely depends on the age of a minor child. Most importantly, the current trends of the FFIC seem uniform in interpreting the BIC based on the child's age, child vulnerability, the social worker report, and sometimes the child's views. Some variations in FFIC's interpretation of the BIC include a lack of primary consideration of the child, an absence of making the BIC a strict requirement when deciding divorce, and inadequate assessment of the child's interests. Further, the federal RFC provides an insufficient criterion for determining the BIC.

As a result, the research recommends the development of uniform criteria for the determination of the BIC, the provision of training for judges to strictly interpret the BIC when deciding divorce cases, the provisions of training for judges and social workers to assess the primary consideration of the child in their decisions or reports. Responsible organizations like the federal courts, the Ethiopian Human Rights Commission, a group of experts in child rights, and judicial training institutes offer this training. Additionally, decision-making organs are acutely aware of following the CRC general comment 14's assessment requirements in determining the BIC. Moreover, there should be a legal reform on the RFC to include the assessment criterion of the best interest determination of a child. Finally, the research believes these findings are beneficial for decision-making organs related to preserving the BIC, lawmakers, and the community.

Keywords: BIC, interpretation, primary consideration, child rights, assessment criterion, RFC, GC no.14, uniformities, variations

1. Introduction

Historically, the perceptions of children have been significantly impacted by the fact that references to a 'human' have traditionally been perceived as references to a grown man.¹ An adult man and the father have considered a full right exercised by them. Children were not perceived as the right owners to exercise on their own. The main discourse opposing this perception treats children as social actors able to act on their behalf and both capable of and entitled to have a say in what is done to and for them. This discourse proposed that, while it's true that childhood may be a time of physical growth and intellectual maturation than adulthood, this does not mean that in some way children are incomplete.²

This discourse led philosophers to raise different viewpoints regarding the rights of a child to exercise as a person. For instance, philosophers in the eighteenth century argued that children could not be regarded as right-bearers because they were incompetent to exercise a choice over the exercise of that right.³ Liberationists support the idea that the same rights, duties, and responsibilities that apply to adults should also be relevant to children.⁴ Proponents of interest theory, on the other hand, argue that children as human beings have rights if their interests are the basis for having rules, which require others to behave in certain ways concerning these rules.⁵ Such arguments through time have paved the way for children to be recognized as a human being and a bearer of rights.

The Convention on the Rights of the Child has principally recognized the child as a human being entitled to full rights.⁶ Today, it is generally accepted that children have rights, and a body of

¹Liv Torunn Grindheim and Jorunn Spord Borgen (Eds), *Childhood Cultures in Transformation* [2021] Brill 11

²Mary Jane Kehily, *An Introduction to Childhood Studies* (2009) 2 Open University Press 109

³Mhairi Cowden, *Capacity Claims and Children's rights* (2012) 11 CPT 365

⁴Songa, R., *Evaluation of Children's Rights in South African law: The Dawn of An Emerging Approach to Children's Rights?* (2011) 11 *Comparative and International Law Journal of Southern Africa* 463

⁵*ibid*

⁶Convention on the Rights of the Child, 1990, preamble

rules informing these rights in the form of legislation has been developed in many jurisdictions.⁷ Both internationally, and nationally, the BIC is accepted as the most central, recurrent concept in modern legislation on childhood, as well as in judicial praxis in matters concerning children and their legal status⁸.

The BIC principle is a core part of determining a child's rights. However, there is little consensus in law or science, about what 'best interests' means. In the absence of a clarifying definition, the personal preferences of lawyers, judges, and social workers may govern decision-making.⁹ Frequently, the BIC doctrine is used in the children-related justice system, mainly in family courts regarding divorce and custody disputes.¹⁰ This doctrine requires the court to consider both objective and subjective evidence in evaluating what is best for the minor's welfare.¹¹ The doctrine affects the placement and disposition of children in divorce, custody, visitation, adoption, abuse proceedings, neglect proceedings, crime, economics, the death of a parent, and all forms of child protective services.¹² When the spouses decide to divorce, they have two options: either they reach an agreement regarding the tutor or guardians of their children or let the court decide it for them. In the latter case, courts are expected to take into account the BIC as their primary consideration.¹³

⁷Songa. R (n4)343

⁸Hannele Tolonen and Sanna Koulu, *Children's Constitutional Rights in the Nordic Countries* (2019) 5 Brill 159

⁹ Hansen and Patricia Ann, *The Best Interests of the Child thesis: Some Thoughts from Australia* (2009) 18 *International Journal of Social Welfare* 436

¹⁰ Mendes Josimar and Ormerod Thomas, *The Best Interests of the Child: An Integrative Review of English and Portuguese Literatures* (2019) 24 *Psicologia em Estudo* 1

¹¹Cushing Maureen, *The Legal Side: Whose Best Interest? Parents vs. Child Rights* (1982) 82 *AJN American Journal of Nursing* 313

¹²Kohm Lynne, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence* (2008) 10 *SSRN* 1

¹³AfeshaNigussie, *Legal and Practical Aspects of Child Custody, Visitation and Maintenance: A Case Study in SNNP Regional State* (2017) 11 *Mizan Law Review* 289

Initially, the Ethiopian federal courts have to decide custody cases based on the primary consideration.¹⁴ However, there is likely some variation in the interpretation of the BIC. This research paper, therefore, tries to search for both the practical uniformity and variation in the interpretation of the BIC in custody cases and analyze them with international and national child rights instruments.

1.1. STATEMENT OF THE PROBLEM

Little argument exists among Ethiopian scholars about the shortcomings and strengths of the BIC standard. At the top, it can be described as a holistic process that, most accurately, decision-makers use for comprehensive child well-being to protect a child's psychological, physical, and emotional needs. At the bottom, the standard has been interpreted based on the cultural values of society. In addition, subjective interpretation leads to a potential bias in determining the BIC.

Fundamentally, the Federal RFC dictates that when a parent dissolves their marriage, the issue of child custody should also be decided. However, in determining the BIC standard, judges have been making undefined future decisions that impact the child's best interest. Furthermore, no criteria are typically offered on how judges determine the merits of cases and make custody settlements in the child's best interest. The subjectivity of interpretation of the best interest also either protects the child's right or loses its protection for reasons of improper interpretation. This will have both a positive and a negative impact on the child's well-being and child rights.

The custom of Ethiopian federal courts has shown subjective jurisdiction to decide the best interest as long as the decision is best to protect the child's rights. However, reports suggest that in certain custody cases, the interpretation has departed from the fundamental welfare and best interests of the child. As a result, this study has focused on analyzing the BIC standard interpretation in practical cases.

¹⁴*Tsedale v Kifle*[2008]Federal Cassation Court 23632

1.2. OBJECTIVES OF THE STUDY

1.2.1. GENERAL OBJECTIVE

- The general goal of this study is to evaluate the interpretation of the BIC in child custody decisions.

1.2.2. SPECIFIC OBJECTIVE

The specific research objective aims to:

1. To review the normative applicability of the BIC after parental divorce
2. To see the interpretation of BIC standard in federal court custody cases
3. To identify the uniformity and variations in interpreting the BIC under FFIC in custody decisions.
4. To propose recommendations for ensuring consistency in the interpretation of BIC for custody decisions

1.3. RESEARCH QUESTIONS

The specific research questions are:

1. How do federal courts interpret the BIC?
2. Is there any criterion for determining the BIC?
3. Is there any uniformity and variations in interpreting the BIC under the FFIC custody decisions?
4. What recommendations can be made to ensure a more consistent interpretation of BIC in custody decisions?

1.4. THE RESEARCH METHODS

This research has used a mixed approach, referring to doctrinal and qualitative legal research approaches. Doctrinal research characterizes the study of legal texts, and seeks to answer the question of ‘What is the law?’ In a particular context, the research examined international human rights instruments and national laws regarding the BIC. On the other hand, qualitative legal research aims to study legal phenomena using qualitative methods. It involves analyzing legal

texts, such as judicial opinions, to understand their unique characteristics and performative capabilities. Its steps include framing specific questions, choosing data collection tools, sampling, data collection, analysis, and interpretation. This method allows for a mature understanding of the problematic world.¹⁵ Therefore, these research methods are useful because they involve on examining the actual interpretation of the BIC in custody cases, and it has been relevant to acquiring a deep understanding of the area.

1.5. SAMPLING TECHNIQUES

Typically, the research focuses on screening cases that receive the final BIC ruling. The cases were collected using non-probability sampling techniques. These custody decisions are taken through a purposive case selection process. Accordingly, I used 26 custody cases decided in 2014 and 2015 E.C. as a data sample to verify the research in question. The data were analyzed using an assessment of the question checklist.

The sample size of cases would be selected based on small sample techniques for an in-depth understanding of the research. Different legal research experts argue that the size depends on the type of research conducted. For instance, Padgett suggests that sampling varies on the qualitative research design as narrative inquiry, phenomenology, and case studies use small samples. On the other hand, ethnography and grounded theory permit comparatively large samples.¹⁶ And, a small sample allows the researcher to be focused on an in-depth understanding of a particular social and cultural context, which is generally not possible through studying larger samples.¹⁷ Therefore, 26 relevant cases are selected from two FFICs. It is enough to analyze in-depth the research in question. More importantly, accessing the court cases is difficult so that it is relevant to use 26 cases as a sampling size.

¹⁵P.IshwaraBhat, Qualitative Legal Research a Methodological Discourse[2020]359 available at <https://typeset.io/> accessed 12/2/2024

¹⁶Khim Raj Subed, 'Determining the Sample in Qualitative Research'[2021] Scholars Journal 2

¹⁷ Ibid 7

1.6. DATA COLLECTION METHODS

The research has used both primary and secondary sources. Specifically, primary sources are taken from legislation, classification decisions, and case reports. Secondary sources are taken from books, journals, and articles.

1.6.1. CASE ANALYSIS

Typically, research uses case analysis to verify the research question. This approach is carried out by examining cases related to the legal issues at hand. The studied cases are obtained from court decisions with permanent legal force. The main thing that is studied in each of these decisions is the judge's consideration of the BIC so that it can be used as an argument in solving the legal issues faced.¹⁸ This has been more relevant to discussing the issue in the case and verifying the uniformity and variations in the interpretation of BIC across the federal courts.

1.6.2 DATA PROCESSING

The collected cases were processed by creating a data repository using the coding of cases. The codes and coding technique utilize the case-oriented approach strategy referred to as 'partial ordered displays' to analyze the case study data. This strategy allows for the quick identification of the segments relating to the research questions and any potential themes.¹⁹ These are followed by steps. These are, first, a review of the case to get an overview of the situation, and then reading the case thoroughly. Second, determine the key issue and identify the core problem, and finally decide on the final set of recommendations.²⁰ Through this thematic analysis, the research closely examined the issue in question.

1.7. THE SIGNIFICANCE OF THE STUDY

The BIC is a well-known term in human rights, specifically child rights studies. The interpretation and application of this concept vary across different jurisdictions, especially; in

¹⁸Ridwan Muannif and others, *Approaches in Legal Research (A Introduction about Study Analysis Western Law and Islamic Law)* [2021] EAI

¹⁹John Atkinson, *Four Steps to Analyze Data from a Case Study Method*[2002] ACIS 2

²⁰University of Southern California, *Writing a Case Analysis paper* <https://libguides.usc.edu/writingguide/assignments/case-analysis>

decision-making organs such as custody courts, which always rely on what is best for the child. However, due to the subjective interpretation of the standard, it is exposed out of its purpose. This would challenge the protection element of child rights. As a result, the research helps understand the current interpretation of the BIC from a child rights perspective. Moreover, previous research primarily concentrated on the child's best interests through comparative analysis and general assessment, without relying on case analysis to distinguish between uniformity and variations. As a result, the research is useful in demonstrating the practical uniformity and variations in BIC interpretation.

1.8. LITERATURE OVERVIEWS

The rights related to BIC are outlined in pieces of literature. The judicial application of the BIC in Ethiopian legal frameworks, and safeguarding the primary interest of the child through the judiciary, are researched. The kinds of literature discussing BIC in comparison to Uganda and Nigeria Child Act and challenges of Ethiopian legal frameworks, further discuss how the judiciary shall safeguard the BIC, and find that the laws in Ethiopia are not wholly informed on consideration of the BIC²¹no clear assessment on the use and evaluation of the BIC.²²It recommended that courts in making decisions consider other international laws and practices of different countries and see issues in terms of how they can be a resource for the implementation of the primary interest of the child, and the judiciary and other stakeholders to take into consideration the interest of the child. These studies rely on comparative studies of the BIC, and some did not involve empirical studies. Still, these authors forward further research. As a result, this paper tries to show variations and uniformity of the BIC interpretation through case analysis. Further, assess the inadequate provision of federal RFC custody provisions. Such gaps still need exhaustive research.

²¹Woldetsadik Tadesse, Judicial Application of Best Interest of The Child Principle in Ethiopia Comparative study[2015]SSRN

²²Abreha Mesele and Mekonnen Nigussie (2019)13 Mizan Law Review

1.9. SCOPE OF THE STUDY

1.9.1. FOCUS AREA

The research has focused on civil proceedings, specifically custody cases following parent separation. Also, the study has focused only on federal RFC custody provisions in light of best-interests interpretation. The research has not included maintenance, visitation, paternity, and other issues.

1.9.2. SCOPE IN GEOGRAPHY

The research has occupied the federal status of interpretation of the child's best interests and will not include the regional situation.

1.10 LIMITATION OF THE STUDY

The research is limited in time, scope, and budget. Due to time constraints, the research has focused only on gathering data from two FFIC case decisions. More importantly, there is difficulty in accessing and selecting custody cases, specifically cases that have a uniform and varied interpretation. In addition, budgetary constraints have also limited the research.

1.11. ORGANIZATION OF THE STUDY

The introduction, literature reviews, findings, conclusion, and recommendation are the four chapters that make up this paper.

1.12 ETHICAL CONSIDERATION

The researcher has gathered data on the confidentiality of court practice and has not used a sensitive or close hearing of cases. The selected data has been diligently gathered from the courts and critically to provide information.

Chapter two: Interpretation of the Best Interests of the child

In this chapter, we discuss the existing literature on the interpretation of the best interests of the child. The chapter also carefully assesses the gaps in current interpretations of the BIC. Additionally, explores the theoretical and legal frameworks used to interpret the BIC from the perspectives of child rights.

2.1. HISTORICAL FOUNDATION OF THE BIC AND ITS INTERPRETATIONS

The foundation of the BIC is rooted in early legal precedents and child welfare movements such as early Roman law and common law, *parens patriae* doctrine, the child movement, and the tender year's doctrine.

2.1.1. EARLY ROMAN LAW AND ENGLISH COMMON LAW

Prior to the 16th century, the conception of childhood was not a distinct right. Children beyond six years of age were considered small adults and were not separated from adults as a class.²³ Parents have a natural responsibility to love their children, care for them, and provide for their welfare with the main rules concerning the father's rights and needs.²⁴

For instance, in early Roman *Patria potestas* was understood as a kind of lifelong guardianship, with children owning separate property but under the father's supervision.²⁵ The father was responsible for them and their property.²⁶ In the same way, the absolute paternal preference rule that dominated British legislation until the nineteenth century derived from the father's dominant

²³Asher Ben-Arieh, Hanita Kosher and Yael Hendelsman, *Children's Rights and Social Work* [2016]Springer cham 9

²⁴Kaplan Yehiel, Child Custody in Jewish Law: From Authority of the Father to the Best Interest of the Child (2008)24 *Journal of Law and Religion* 89

²⁵Antti Arjava, Paternal Power in Late Antiquity (1998) 88 *The Journal of Roman Studies* 161

²⁶ *ibid*

right in all family matters.²⁷ The father had an automatic right to the custody of the minor children of his marriage; supported by theories of sole provider and natural tenderness.²⁸ The sole provider is an economically based theory; it refers to the father being assumed to have a corresponding entitlement to the benefits of his children and their services. Natural tenderness refers to the belief that the father, as the ‘author of their being’ would express the greatest love for the children.²⁹ In the Elizabethan tradition, the father's rights stem from the reciprocal relationship between father and children, in which children were valued for their labor or as property, but in exchange for their economic contribution, the father had a duty to care for and provide for them.³⁰ Despite that, disallowing the father's rights was rare, and until the mid-nineteenth century courts generally gave the father presumptive custody³¹ yet modern perception often suggests children takes the position of slaves under the father’s complete control.³²

2.1.2. PARENS PATRIAE DOCTRINE

The main hunch concerning the legal relationship between parents and a child in many ancient legal systems was largely focused on the rights of parents. They were expected to nurture their child.³³ Reciprocally, Children were expected to honor and obey their commands, otherwise they faced severe punishment.³⁴ Parents are generally the protectors of their children, yet they sometimes fail to fulfill their parental duties. In such a case, the state, as *parens patriae*,

²⁷Jon Elster, *Solomonic Judgments: Against the Best Interest of the Child* (1987) 54 *The University of Chicago Law Review* 7

²⁸Johnson LaKeisha, *The Best Interest Standard: A Review of How Broad Judicial Discretion and Influences of Social and Political Suggestion Have Led to An Abandonment of the Rule’s Primary Purpose In Child Custody Decisions*[2005]Spring 3

²⁹ *Ibid* p.4

³⁰ Harris Lesli, *The Court, Child Custody, and Social Change: The Rhetorical Role of Precedent in a 19th Century Child Custody Decision* (2004) 34 *Rhetoric Society Quarterly* 31

³¹ *Ibid*

³² *Ibid*

³³ Kaplan Yehiel (n24) 91

³⁴ *Ibid*

intervenes on the child's behalf.³⁵ Traditionally, the doctrine of *parens patriae* began during the reign of King Edward I (from 1272 to 1307)³⁶. The king was on a duty to give ward ships for those who were temporarily insane, intellectually disabled from birth, and permanently insane.³⁷In 1722 however, English courts broadened the *parens patriae* to infants who cannot defend, govern, or order their lands, tenements, goods, or chattels, the King of right ought to have custody and protection³⁸

Essentially, the doctrine focused on the protection of children's property and fathers' rights over their children, and such power was only disturbed when they failed to fulfill their parental duties.³⁹ The presumption was that the BIC was aligned with the father's interests, the maintenance of his authority, and the stability of marriage.⁴⁰ The doctrine grants the state's inherent power to protect legally incapable individuals, such as children⁴¹ The American courts have accepted the doctrine, and developed the state's action as quasi-sovereign, allowing the state to bring a suit as a guardian of the population including children.⁴² If the state finds that a child has been abused or neglected, regardless of a child's right to privacy, institute a proceeding to terminate parental rights.⁴³ This doctrine assumes that the BIC is well protected by the parents and the states as well.

³⁵Bellis Claudio and Soja Marta, Child Standing in Parental Termination Proceedings and the Implications of the Foster Parent-Foster Child Relationship on the Best Interests Standard (1993) 8 Journal of Civil Rights and Economic Development 502

³⁶ Lawrence B. Custer, The Origins of the Doctrine of *parens patriae* (1978) 27 Emory Law Journal 195

³⁷ Higdon Michael, *Parens patriae* and the Disinherited Child (2020) 95 UTK Law Faculty 644

³⁸ *ibid*

³⁹ Robert van Krieken, The 'Best Interests of the Child' and Parental Separation: On the Civilizing of Parents (2005) 68 The Modern Law Review 28

⁴⁰ *Ibid*

⁴¹ Carl Funderburk, Best Interest of the Child Should Not Be an Ambiguous Term (2013) 33 Child. Legal Rts. J 245

⁴² Curtis George, The Check the Checkered Career of Peer of *parens patriae*: The State as *Patriae*: The State as Parent or Tyrant? (1976) 25 DePaul L. Rev 895

⁴³Bellis Claudio and Soja Marta (n 35) 503

2.1.3 THE TENDER YEARS DOCTRINE (TYD)

The TYD emphasizes that the mother is the preferred custodian of the child. Some states take a legal presumption of maternal custody unless proven unfit by the father.⁴⁴ The doctrine originated in the nineteenth century as a child protective reform intended to elevate the interests of children above fathers' common-law proprietary rights.⁴⁵ In raising this doctrine, the name Caroline Norton is prominent. She was a famous British feminist at the beginning of the 19th century who campaigned for women's rights, proposing that custody of children be given to the mother in the event of divorce. And, convince the British parliament to pass a law that protects mothers' rights.⁴⁶

Under this doctrine, a presumption of maternal custody is best for the child in custody disputes. The father has been tasked with disproving the presumption by rebuttal.⁴⁷ Mainly assumes children need the care and love of their mothers and mothers are the Primary caregivers.⁴⁸ As per this doctrine, the mother is fit to protect the BIC unless proven unfit or commits adultery.

For example, in 1842 New York's highest court granted custody of a sickly three-year-old daughter to her mother, on the reason that the law of nature has an inherent attachment for her child and depriving her of this right would not be a proper exercise of the court and violate the law of nature.⁴⁹ Be that as it may, TYD is challenged through gender bias. Currently, prohibits

⁴⁴ Ramsay Laing Klaff, The Tender Years Doctrine: A Defense California Law Review (1982) 70 California Law Review 336

⁴⁵ Ibid

⁴⁶ Baysinger Henson Reimer & Cresswell PLC, The Tender Years Doctrine Origin, History, Modern usage and criticism (2018) <https://baysingerlaw.com/2018/02/tender-years-doctrine-origin-history-modern-usage-criticism/> accessed on February 20/2024

⁴⁷ Ibid

⁴⁸ Hartenstein Jaimee, Tender years Doctrine, [2016] Eastern Illinois University 2

⁴⁹ Kathleen Kelley Reardon and Christopher Noblet, *Childhood Denied*, Chapter 4 A Brief History of Child Custody Issues Related to Abuse and Neglect (2009) Sage Publications 88

the inclusion and is gradually replaced with the BIC Standard, as it violates the equal protection clause for gender.⁵⁰

2.1.4 CHILD SAVING MOVEMENT (CSM)

The main development in children's rights arose in connection with industrial child labor.⁵¹ The 19th century is considered the "child-saving" era.⁵² The perception of children as property has changed and gradually recognizes children to protect from harm, abuse, and neglect.

The movement was dominated by women, simultaneously for children's rights. This has brought dramatic improvements in the education and welfare system, decreased child labor, and saved from exploitative industrialists, and negligent families.⁵³ CSM served as a symbolic and ceremonial function for native, middle-class Americans elevating the nuclear family, especially women, and defending the family's right to supervise youth socialization.⁵⁴

This CSM cuddles a variety of causes such as the removal of children from almshouses; the creation of children's aid societies; the replacement of institutional care with foster homes, reforming juvenile justice, the reality of compulsory education, campaigning against child labor; advocating for mothers' pensions and reducing infant mortality are the main outcomes of the movement.⁵⁵

These early precursors suggest children have no recognized rights except their parents, especially their fathers; this leads attention to the protection of child rights through child movements.

⁵⁰ Hartenstein Jaimee(n48)

⁵¹ Asher Ben-Arieh, Hanita Kosher and Yael Hendelsman(n23)

⁵² Ibid

⁵³C. R. Margolin, *Salvation versus Liberation: The Movement for Children's Rights in a Historical Context* (1978) 25 *Social Problems* 443

⁵⁴ Joseph Whitehill, *The Child Savers: The Invention of Delinquency* (1970) 68 *Michigan law review* 787

⁵⁵Susan Tiffin, *In Whose Best Interest?: Child Welfare Reform in the Progressive Era* (1986) 26 *Cambridge University Press* 413

2.2. DEFINITION OF THE BIC

Defining the BIC in a single term is formidable. The term has no clear definition; it is a complex and adaptable concept that needs to be determined on a case-by-case basis. The judge, administrative, social, or educational authority will be able to clarify a concept, and make concrete use thereof.⁵⁶

Scholars argue that ‘Best interests’ should be interpreted as the constitutional right of the child, equal to parental rights with limited application and protection from governmental intrusion.⁵⁷ The court must determine which rights it’s protecting, thus restraining it from imposing its version of “good” in the name of ‘best interest.’⁵⁸ Comparing these arguments in light of the CRC, the convention does not provide a set definition for “best interests” allowing states to determine what “best interest” means in their context.⁵⁹ However, the non-appearance of specific definitions does not make the principle completely purposeless; there are commentaries on the international scene about assessing the term BIC.

According to GC no.14’s paragraph 32, the concept of the BIC is complex, and its content must be determined on a case-by-case basis. The concept is flexible and adaptable. It should be adjusted and defined on an individual basis, taking into consideration their personal context, situation, and needs.⁶⁰

⁵⁶VaghriZiba ,Zermatten Jean, Lansdown Gerison et al., *Monitoring State Compliance With The Un Convention on The Rights of a Child the Rights* (2022)25 Springer 25

⁵⁷ Carl Funderburk, Best Interest of the Child Should Not Be an Ambiguous Term ((2013)33 Child Legal Rts. J 232

⁵⁸ Ibid 240

⁵⁹Benjamin Pomerance, Not Just Child’s Play: Why Recognizing Fundamental Principles Of The UN Convention On The Rights Of The Child As Jus Cogens Would Give Needed Power To An Important International Document (2013)16GJIL14

⁶⁰The Committee on the rights of a child General Comments no.14(2013) on the right of the child to have his or her best interests taken as a primary consideration Para 32

The common criticism of the principle is that it is open-ended or indeterminate. Meaning, its application in a given situation will not necessarily lead to any particular outcome.⁶¹ Such as ambiguity of the BIC criteria, lack of precision, subjective value judgments and no objective basis for predicting custody arrangements.⁶² However, the endorsement of GC no.14's resolved such confusion, and improved case-by-case interpretation. Whenever applying this principle, interprets most effectively serving the child.

2.3. NORMATIVE FRAMEWORKS

The concept of BIC relies on international, regional, and national legal instruments, which are discussed further as follows:

2.3.1. INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

At the beginning of the 20th century, most child rights instruments were endorsed. The ambivalent child rights instruments are discussed below:-

2.3.1.1. The 1924 Declaration of Child Rights (Geneva Declaration)

The 1924 Geneva Declaration, adopted by LN in 1924⁶³ It is the mother text of international child instruments recognizing the physical, psychological, and safety of the child. It provides five articles on the child's physical and mental health, the child's right to food and shelter, support, protection from every form of child exploitation, and the expression of child views. However, it does not contain the elements of the BIC standard.

⁶¹Aliston Philip and Bridget Gilmour-Walsh, *the Best Interests of the Child: Towards a Synthesis of Children's Rights and Cultural Values* (1996) Innocenti studies2

⁶²Warshak Richard , *The Approximation Rule, Child Development Research, and Children's Best Interests After Divorce* (2007) 1 *Society for Research in Child Development* 120

⁶³Geneva Declaration of the Rights of the Child of (1924) League of Nations

2.3.1.1. The 1959 Declaration on the Rights of the Child

The Declaration on the Rights of a Child was adopted in 1959. It was based on the UN Charter and the UDHR. Aiming to promote social progress and a better standard of life especially, for the interests of the child's due to their physical and mental immaturity.⁶⁴ The basic requirements under the declaration are special protection and special safeguards for a child through laws or other means, and considering the BIC as a paramount consideration.⁶⁵ Principle 7 guides the educational rights of a child to be in a BIC and requires parents to safeguard the child's educational needs. The inclusion of the paramount consideration in the declaration helps later child legal instruments to see broadly the concept of BIC.

2.3.1.2. CEDAW

The CEDAW was adopted in 1979 and entered into force in September 1981. It takes an important place towards the equal rights of men and women.⁶⁶ Article 16(1) (d) and (f) CEDAW provides that women have the same rights in matters concerning the child, guardianship, wardship, trusteeship, and adoption of a child, and in all such cases the interest of the child shall be a paramount consideration. This convention not only protects the rights of women but also addresses the interests of the child.

2.3.1.3. CRC

The CRC was adopted in November 1989 by the UN General Assembly,⁶⁷ was the end process of the discussions started on a draft convention submitted by Poland.⁶⁸ This time, written statements by governmental and non-governmental organizations contributed to the draft

⁶⁴Declaration on the Rights of the Child (1959) Preamble

⁶⁵ Ibid principle 2

⁶⁶Convention on the Elimination All Discrimination Against Women (1981), <https://www.ohchr.org/en> accessed 05/01/2024

⁶⁷Convention on the Rights of the Child(n6)

⁶⁸Background of the Convention ,Committee on the Rights of a child Available at <https://www.ohchr.org/en> accessed 05/01/2024

convention.⁶⁹ It entered into force in September 1990 and currently, 196 states have ratified it.⁷⁰ During the drafting process, there was a discussion on the BIC as “the” or “a” or “paramount” or “primary” consideration.⁷¹ In all such observations, the working group reached a consensus that the BIC shall be “a primary consideration.”⁷²

The scope of Article 3 (1) of CRC encompasses a substantive right, an interpretive rule, and a procedural part.⁷³ The substantive involves assessing the primary interest of the child, considering different interests.⁷⁴ Similarly, the interpretive part indicates that, when there are multiple interpretations, the most effectively serving the child’s best interests should be chosen.⁷⁵ The procedural part shows that, whenever a decision is made that will affect a specific child, follow an effective procedure for the evaluation of the possible positive and negative impact of the decision on the child.⁷⁶ Additionally, this provision includes all parts of the state apparatus and stakeholders consider the BIC in their decision-making.⁷⁷

2.3.1.4. ACRWC

The ACRWC was adopted by the AU in 1990 and entered into force in November 1999; now 50 African nations have been ratified,⁷⁸ with five African nations remaining⁷⁹. The charter consists of 63 provisions. Article 4 discusses, in all actions concerning a child the primary consideration

⁶⁹Legislative History of the Convention on the rights of the child(2007)1United Nation36 available at <https://www.ohchr.org/en> accessed 07/01/2024

⁷⁰ Ratification Status for CRC - Convention on the Rights of the Child, UN treaty bodies Database, Available at <https://www.ohchr.org/en> accessed 05/01/2024

⁷¹Legislative History of the Convention on the rights of the child (n69)339

⁷² Ibid

⁷³ General comment no 14 (n60) para6

⁷⁴ Ibid para6(a)

⁷⁵ Ibid para6(b)

⁷⁶Ibid para6(c)

⁷⁷Graf Jan-Phillip, Let Kids Be Kids! The Procedural Dimension of the ‘Best Interests of the Child’ Principle in International Migration Law (2020)3 Journal of International Law of Peace and Armed Conflict 25

⁷⁸, RATIFICATION TABLE, AVAILABLE AT [HTTPS://WWW.ACERWC.AFRICA/EN](https://www.acerwc.africa/en) ACCESSED ON 8/1/2024

⁷⁹ Overview of African Charter on the Rights and Welfare of the Child, Available at <https://www.acerwc.africa/en> accessed 8/1/2024

is taken into account. One of the underlying differences between the ACRWC and the CRC is that Article 3(1) of the CRC declares the best interest as a primary consideration. The charter maximizes the influence of the BIC principles in proclaiming its supremacy over other considerations.⁸⁰ The African Human Rights Commission GC provides “the primary consideration” must be crucial when compared to other competing considerations.⁸¹

2.3.2. ETHIOPIAN LEGAL FRAMEWORKS

The principle of BIC was recognized in the FDRE after ratifying the 1990 CRC. As per the UN database, Ethiopia ratified the convention on 14 May 1991.⁸² Similarly, the ACRWC was ratified on 2 October 2002⁸³. The 1991 FDRE constitution article 9(4) provides that all international agreements ratified by Ethiopia are part and parcel of the laws of the land after passing the publication process.

2.3.2.1. The 1995 FDRE Constitution

According to Article 36(2) of the 1995 FDRE constitution, the BIC is “the primary consideration” and the judiciary and other state organs must observe.⁸⁴ The spirit of the ACRWC is shared by the constitution, emphasizing that the child’s interest is taken as “the” primary consideration. The provision obliged governmental and non-governmental organizations to give attention to the protection and safeguards of a child. Accordingly, the coming draft child rights policy emphasizes the development, growth, prevention, protection, rehabilitation, care, and support of a child.⁸⁵

⁸⁰ Michael Gosse, The African charter on the rights and welfare of the child (2002)Community Law centre 26

⁸¹ The Committee on the rights of a child General Comment no 5(2018) on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection Para. 10

⁸² Ratification Status for CRC - Convention on the Rights of the Child(n70)

⁸³ Ratification table, (n78)

⁸⁴ The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, Federal NegaritGazeta, 1st Year, No.1 art 36(2)

⁸⁵Girmachew Alemu and Yonas Birmeta, *Handbook on the Rights of the Child in Ethiopia*[2012]Center for Human Rights 29

2.3.2.2. The Federal Revised Family Code 2000

The ratification of CRC and ACRWC helps with the drafting of the federal RFC, formulated from an international child rights perspective.⁸⁶ According to article 221(3) of the proclamation, where spouses are divorced by mutual consent, they shall agree regarding the child's tutor and guardianship. While spouses disagree, the court decides on divorce and the tutor and guardian of children.⁸⁷ This article encouraged courts to consider the primary interests of a child in declaring a divorce. Furthermore, Article 113(1) of this proclamation provides that when rendering the dissolution of marriage, it is crucial to decide custody of the children. However, this RFC does not specify the criteria judges should use when determining what is included in the BIC.

2.3.2.3. Regional States Family Proclamations

The FDRE constitution, under article 52(b), recognizes states to enact regional laws,⁸⁸ including family codes. Accordingly, the SNNP family proclamation preamble states that the primary interests of the child shall be considered when applying the proclamation. Articles 128 and 233 also provide, that courts consider the age and interest of the child when rendering a decision⁸⁹ Similarly, the Oromia family Proclamation article 127 provides, when courts decide the dissolution of marriage, they also decide, the custody of the children, and asks both of the parents including the child before reaching the decision, in sub-article 3 of this provision, children will be kept with their mothers until the age of five.⁹⁰ Similarly, Tigray Family Proclamation article 105 stated that decisions regarding the care and treatment of the children should be in the BIC. Unless there is a compelling reason, children keep with their mother until the age of five, then with the father or the mother of their choice.⁹¹ Furthermore, article 136

⁸⁶ The Revised Family code, Federal Democratic Republic of Ethiopia, Federal NegaritGazeta 6th year no. 213/2000

⁸⁷ Ibid article 221

⁸⁸ The Constitution of the Federal Democratic Republic of Ethiopia (n84)article 52 (2)(b)

⁸⁹The SNNPR state family proclamation no. 75/2004. Art 128 and 233

⁹⁰ The Oromia family proclamation no.69/2003 article 127

⁹¹ The Tigray Family proclamation, TigrayNegaritGazeta 15th yr no. 116/2007 article 105

provides when deciding divorce, the social court must take into account the parents' income, age, health, and living conditions, as well as the interests, and needs of children.⁹² The Amhara family proclamation article 124(1) provides, courts when deciding divorce also decide the custody of the children, with Sub article 3 of this provision courts grant custody to the mother when the child is below five years.⁹³

2.4. THE COMMON AND DIFFERENT FEATURES IN THE INTERPRETATION OF BIC

The interpretation of BIC shares some common features with the primary interest of the child in an individual context and varies across jurisdictions and cultures based on applicability. These features are discussed as follows:

2.4.1. COMMON FEATURES

The international child rights instruments have provided some common features for interpreting the BIC. These are:-

2.4.1.1. Primary Consideration of the BIC

The BIC made its first appearance in the 1959 Declaration of the Rights of the Child⁹⁴ with the paramount consideration, crucially, CRC Article 3(1) provides that the BIC should be determined based on a primary consideration.⁹⁵ The word primary consideration refers to considering the child's best interests, while paramount consideration is weighing all relevant facts, relationships, claims, and wishes of parents, risks choices, and other circumstances, ultimately choosing the course most in child welfare.⁹⁶ For instance, the 1989 English Child Act provides that child rights are determined as paramount consideration. The UN concluding observation however recommends state parties take all appropriate measures to ensure BIC

⁹² Ibid article 136

⁹³ the Amhara Regional Family proclamation, ZikreHig Gazette 8th years no.79/2003 article124

⁹⁴Declaration on the Rights of the Child(n64) principle 2

⁹⁵Vaghri Ziba,Zermatten Jean, Lansdown Gerisonet al. (n56)22

⁹⁶ Ibid

following article 3 of the CRC.⁹⁷ The applicability of the preposition ‘a’ or ‘the’ in primary consideration is doubtful and applied differently across jurisdictions. For instance, the FDRE constitution uses the preposition “the” in determining the primary interest of the child, considering the overriding interest of the child. While, in some jurisdictions, such as the Belgian constitution, article 22 provides, in all decisions concerning children the interest of the child is ‘a’ primary consideration.⁹⁸ The GC 14’s paragraph 6 remarks that BIC is assessed as a primary consideration when considering different interests.⁹⁹

2.4.1.2. Interpreting based on the holistic approach of the child's interests

The BIC needs to be interpreted after weighing the entire dimension of the child’s interests. According to the UN Child Committee comments, the full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral, and spiritual integrity of the child and promote his or her human dignity.¹⁰⁰ As per the committee comment, the child's best interests are aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.¹⁰¹

2.4.1.3. Interpreting BIC on case-by-case

The basic justification for interpreting the BIC in an individual case is that, allows responsive to the situation of individual children and evolving knowledge about child development.¹⁰² Assessing a child's best interests is complex, and its content must be determined on a case-by-case basis.¹⁰³ Thus, BIC interpretation and application requires an in-depth consideration of the

⁹⁷ Committee on the Rights of the Child, Concluding Observations (2008), CRC/C/GBR/CO/4, parag26 and 27

⁹⁸ The Belgian constitution, Belgian Official Gazette of 31 January (2014) article 22

⁹⁹General comment no 14 (n60)Para 6

¹⁰⁰ Ibid Para 5

¹⁰¹ Ibid para.4

¹⁰² Ibid Para 32

¹⁰³ Ibid Para 34

needs and rights of the particular child, considering the child's real-life situation.¹⁰⁴ Such an individual case evaluation however is susceptible to abuse. According to the UN committee comment, the flexibility of the concept of BIC may also leave room for manipulation and abuse. For example, parents often defend their interests in custody disputes, while professionals sometimes dismiss the assessment of the child's best interests as irrelevant or unimportant.¹⁰⁵ Due to such challenges, determining the BIC on case-by-case criteria is crucial with psychological, social, and physical considerations.¹⁰⁶

2.4.1.4. Interpreting based on the views and participation of the child

The CRC Article 12(1) mandates that states have to give due weight to the views of the child following their age and level of maturity. This provision asserts children have a right to express their views in every decision that affects them. Any decision that does not take into account the child's views or does not give their views due weight according to their age and maturity, does not respect their best interests.¹⁰⁷ The child does not deprive his or her right to express their views, nor reduce the weight given to the child's views in determining BIC.¹⁰⁸ In many states, the child's preference is given great weight in custody disputes, if the child is deemed of sufficient age and capacity to form an intelligent opinion.¹⁰⁹ When judges interview children in court, they must consider confidentiality and adequate interview skills to elicit reliable and sufficient information from children who may be anxious and shy to be forthcoming in a formal, adversarial setting.¹¹⁰

¹⁰⁴Ton Liefwaard, Jaap E. Doek, *Litigating the Rights of the Child The UN Convention on the Rights of the Child in Domestic and International Jurisprudence* (2014) 2015th Springer 21

¹⁰⁵General comment no 14 (n103)

¹⁰⁶ Jenny Krutzinna, Who is "The Child"? Best Interests and Individuality of Children in Discretionary Decision-Making (2022) 30*The International Journal of Children's Rights* 126

¹⁰⁷ General comment no 14 (n60) Para 53

¹⁰⁸ Ibid Para 54

¹⁰⁹ Kelly Joan, *The Determination of Child Custody* (1994)4 *The Future Children* 131

¹¹⁰ Ibid

2.4.1.5. Stability of Living Condition and Vulnerability of the Child

The UN committee, GC no.14, provided that when determining the BIC, states must ensure full respect for the child's inherent right to life, survival, and development. Paragraph 76 provides that the BIC in a specific situation of vulnerability will not be the same as those of all the children in a different situation. Authorities and decision-makers need to consider the variety of situations and degrees of vulnerability of each child, as each child is unique.

2.4.2. DIFFERENT FEATURE'S

Different literatures provide interpretations of BIC that have some differences across jurisdictions. The most varied are:

2.4.2.1. The social and cultural situation

Cross-cultural differences in child-rearing practices and beliefs can lead to different interpretations of what is considered in a child's best interest.¹¹¹ For instance, Cultural practices that severely restrict child rights and perpetuate or are premised on discrimination cannot be permitted to compete for the child's best interests. Similarly, practices that affect the child's development and growth cannot be described as being in the BIC.¹¹² Article 21 of ACRWC provides, that States Parties shall take all appropriate measures to eradicate harmful social and cultural practices affecting the welfare and the holistic development of the child and in particular those customs and practices prejudicial to the health or life of the child, customs and practices discriminatory to the child on the grounds of sex or other status.

¹¹¹Aliston Philip(n61)

¹¹²KaimeThoko , the convention on the rights of the child and the cultural legitimacy of children rights in Africa (2005) 5 African Human Rights Law Journal 232

2.4.2.2. The legal frameworks across jurisdictions

The civil, common, and mixed legal systems are basic legal classifications; it is crucial to understand the interpretation of the BIC in these jurisdictions. Based on this, the French, English, and South African legal frameworks are discussed as follows:

A/ South Africa

The best interest principle in South African law developed in the early 1900s, particularly in family law and welfare proceedings. However, its inclusion as a right occurred in the Bill of Rights in the Constitution.¹¹³ The 1996 constitution of South Africa, Article 28(2) provides the child's best interests are of paramount importance in every matter concerning the child.¹¹⁴ Also, section 39(2) obliges courts, when interpreting the Bill of Rights, to consider international law and promote the spirit, purport, and objects of such instruments. The Constitutional Court of South Africa made it clear that the word 'paramount' in section 28(2) does not mean that children's best interests can never be limited by other rights.¹¹⁵ The Constitutional Court found that section 28(2), like other rights in the Bill of Rights, is subject to reasonable and justifiable limitations, and interpreting the child's best interests as a concept is overriding other competing rights.¹¹⁶ Before the enactment of the Children Act 2005 of South Africa courts determined the BIC through a wide range of considerations.¹¹⁷ Accordingly, the emotional bonding, parents' character, parents' capability, and the mental, physical, and moral integrity of the parents are the least of considerations. Furthermore, the stability of the child's environment and the child's preferences are given weight if the court believes appropriate in the specific context. This Children Act includes the above determinant factors in a more non-exhaustive way. Article 7 provides the personal relation of the child; the attitudes of the parents, the vulnerability and

¹¹³ Ann Skelton, Best interests of the child in South African jurisprudence, 2019 52 De Jure Law Journal 558

¹¹⁴ The Constitution of the Republic of South Africa, adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly

¹¹⁵ Ton Liefwaard, Jaap E. Doek (n104) p.20

¹¹⁶ Ibid

¹¹⁷ Bertus Preller, Child Centric Justice: Interpreting the Best interest of the Child in South African law (2024) <https://familylaws.co.za/> accessed March 05/03/2024

survival of the child, stability of the living conditions of the child are the basic factors that courts of South Africa consider in determining the BIC.¹¹⁸

B/ England and Wales

The judicial tradition of the BIC determination in England and Wales is concerned with the paramount welfare principle. Section 1 of the 1989 Child Act of England provides where a court regulates the upbringing, child property administration, or income arising from it, the child's interests shall be the paramount consideration.¹¹⁹ section 1 of subsection 3 provides, courts consider the wishes, feelings, age and understanding, physical, emotional, and educational needs, the likely effect of any harm suffered, and any attributes of the child's and the capability of parents.¹²⁰ However, the extent of application of this Child Act is very slim compared to Article 3(1) of the CRC. The Children Act 1989 does not 'fulfill' the UK's State Party obligations under article 3 of CRC,¹²¹ differences can be recognized between the concepts of the BIC as developed within the bounds and the jurisprudence of the CRC.¹²² These differences have been judicially acknowledged in cases such as; a judicial prudence to allow independent representation of children where their parents disagree over residence or contact.¹²³ Independent representation indicates courts decide based on the social worker's 'child Guardian' report on the welfare and views of the child. In other terms, the 'Tandem model' refers to a senior social worker, called the child's 'guardian', who inquires, collects evidence, and reports to the court on both the welfare question and the course of action that will best serve the child's welfare. It is by these means, rather than by hearing evidence directly from the child, that the family courts 'hear' the voice of the child.¹²⁴

¹¹⁸Republic of South Africa government gazette, no.38 children's act (2005) article 7

¹¹⁹ England Child act 1989, section 1 subsection 2

¹²⁰ Ibid subsection 3

¹²¹Ton Liefwaard, Jaap E. Doek(n104)59

¹²² Ibid

¹²³ Ibid

¹²⁴ Ibid 60

C/ France

The French constitution does not contain specific international human rights provisions, including child rights.¹²⁵ Specifically, France has not adopted a consolidated children's rights statute following the ratification of the CRC but has taken a moderate approach to reforming national laws affecting children.¹²⁶ The French Civil Code makes known the famous maxim: 'benefit of the children' (avantage des enfants) as the standard for the court to use in settling certain custody disputes.¹²⁷ In France's judicial courts, mostly the civil and criminal cases concerning children are dealt with by specialized judges for children (juges des enfants) and specifically assigned judges to deal with family law matters. In taking these considerations, the concept of the interests of the child is left to the entire discretion of judges deciding cases on their merits and is central to judicial decisions.¹²⁸ The Court expects a pertinent application of article 3(1) CRC by the lower courts and sets aside or rejects decisions in matters concerning children where the lower courts have not inquired into the BIC.¹²⁹ Article 3(1) seems an acceptance in the jurisprudence of the Council.¹³⁰ Such trends of the court of cassation present days acknowledge the direct applicability of Article 3(1) of the Convention, preserving the primacy of the BIC.

2.4.2.3. The judicial discretion in determining the BIC

In resolving custody disputes, courts perform private dispute settlement which involves evaluating the parents with the most association with the child and choosing between two or more private individuals, with associational interests.¹³¹ The Judiciary also considers parental

¹²⁵ The French constitution, 1958

¹²⁶ Ton Liefaard, Jaap E. Doek(n104)125

¹²⁷ Blakesley Christopher, Child Custody and Parental Authority in France, Louisiana and Other States of the United States: A Comparative Analysis (1981)4S Boston College International and Comparative Law Review 316

¹²⁸ 3rd and 4th periodic report of France to the UN Committee on the Rights of the Child (2008)CRC/C/FRA/4, 21 Para 12

¹²⁹ Ton Liefaard, Jaap E. Doek(n104)128

¹³⁰ Ibid .131

¹³¹ Robert H. Mnookin, Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy (1975)39 Law and Contemporary Problems229

behavior in child custody decisions.¹³² Courts may interpret BIC subjectively, and the outcome is unable to be predicted either by courts or psychological or social welfare theories and necessitates a judge to choose among alternatives.¹³³ The BIC principle proposes that judges should decide by choosing among alternatives that "maximize" what is best for the child.¹³⁴ However, the BIC determination becomes problematic when there is indeterminacy in reaching the best interest and consensus weakens, making it more difficult to choose between competing interpretations.¹³⁵ The best interest assessment involves, determining the BIC and evaluating those interests through outweighing any countervailing factors.¹³⁶ A decision-maker must determine what is in the BIC as a first and separate stage. It is insufficient simply to state they have taken into account the interests of the child, without spotting adequate particularity in what those interests are.¹³⁷ According to GC 14's, the assessment of BIC should be undertaken in each case, in the light of the specific circumstances of each child or group of children or children in general.¹³⁸ The assessment is non-exhaustive and goes beyond those and considers other factors relevant to the specific circumstances of the individual child or group of children.¹³⁹ Furthermore, the GC 14's outlines the child's views, identity, stable environment, Care, protection, Situation of vulnerability, health, and child's right to education to consider in assessing the BIC.¹⁴⁰

¹³²Ibid

¹³³ Robert van Krieken, The 'Best Interests of the Child' and Parental Separation: On the 'Civilizing of Parents' (2005) 68 *The Modern Law Review* 32

¹³⁴Robert H. Mnookin(n131)255

¹³⁵Robert van Krieken(n133)

¹³⁶ Pobjoy Jason, The Best Interests Of The Child Principle as an Independent Source Of International Protection (2015) 64 *The International and Comparative Law Quarterly* 346

¹³⁷Ibid 347

¹³⁸ General Comment 14(n60) Para 48

¹³⁹Ibid Para 50

¹⁴⁰ Ibid Para 52

2.4.2.4. The age and maturity of a child and any particular vulnerabilities or needs of the child

The term maturity refers to the ability to understand and assess the implications of a particular matter.¹⁴¹ Article 12(1) of the CRC imposes States to give due weight to the views of the child following their age and level of maturity. This has a great impact on a decision in the life of a child.¹⁴² Crucially, the views of the child must be given due weight following the age and maturity of the child, and assess those views and capacity to influence the outcome of the process.¹⁴³ Article 12 CRC provision stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his views. Age alone cannot determine the significance of a child's views; children's levels of apprehension are not consistently linked to their biological age.¹⁴⁴ What is clear is that the child's maturity cannot be linked solely to the child's age. Judges shall rely firstly on the intellectual, cognitive, and rational abilities of children to assess whether the children are mature enough to give due weight to their views.¹⁴⁵

2.4.2.5. Priority for parental rights

The rights of parenthood in English law confer an exclusive privilege to raise children of tender age, which can be limited by the general law or, where necessary, by the courts or by local authorities responsible for the welfare of children.¹⁴⁶ In some commonwealth countries like Canada, courts have increasingly recognized access is the 'child's' and not the 'parents' right,

¹⁴¹ Committee on The Rights of the Child General Comment No. 12, The right of the child to be heard (2009) Para 28

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ Ibid

¹⁴⁵ Lembrechts Sara, Marieke Putters, Kim Van Hoordeet al., Conversations between children and judges in child abduction cases in Belgium and the Netherlands [2019] Family and Law Journal 6 <https://doi.org/10.5553/FenR/.000039>

¹⁴⁶ Kodilinye Lystra, Is Access the Right of the Parent or the Right of the Child? A Commonwealth View (1992) 41 The International and Comparative Law Quarterly 5

prioritizing the BIC, not the right of the parent to access the doctrine of parental rights.¹⁴⁷ In the U.S. Supreme Court visitation case, *between child grandparents v. the mother* discusses the parental rights and the BIC, by which parents are permitted to make decisions concerning their children. And the children's best interests are used by the Supreme Court in deciding visitation rights. In U.S. courts, these standards can be synonymous or mutually exclusive. Some argue, when these standards are not in harmony, the BIC is preferable only if the parents are unfit to raise their children,¹⁴⁸Typically, courts use the BIC standard, which prioritizes the child's perspective in custody decisions, but often contradicts the virtue of nature from the parent's perspective. This is one of the main arguments against using the BIC standard.¹⁴⁹

The above discussion delves into the historical antecedents, legal frameworks, and common and unique features of the BIC interpretation, addressing an individual child case assessment. It also provides a detailed usage of the term and its applicability.

¹⁴⁷ Ibid

¹⁴⁸Matt Christensen, *Parental Rights v. Best Interest: A War Between Parents and Grandparents*(2001)15 *Brigham Young University Pre Law Review* 36

¹⁴⁹ Ibid

Chapter Three: Findings and Discussions

This chapter discusses the data's findings in the interpretation of the BIC across federal courts. And discuss the variations and uniformities in their interpretation.

3.1. INTERPRETING THE BEST INTEREST OF THE CHILD ACROSS FFIC'S

This section examines how FFICs interpret the BIC in custody decisions. So that the common features that FFICs use to interpret the BIC are addressed. The most abundant elements FFICs apply for the interpretation of the BIC are the agreement of parents, the social worker's report, views, age, and maturity of the child.

No.	Bases of Interpretation of the BIC in FFIC	Findings
1	Agreements of the parents	Seven cases
2	Social worker expert reports	Eight cases
3	Age	Three cases
4	Views	Two cases

3.1.1 THE AGREEMENT OF PARENTS

The collected data shows that out of 26 cases, 7 cases were decided based on the agreement of the parent. Custody of the child was granted to this parent. Before the 19th century, custody of the child was granted to the father, even if he had illegally committed adultery against his wife. The main reason was that by birth, a child is subject to a father. The Court should not, except in

extreme cases, interfere with the discretion of the father.¹⁵⁰ However, the welcoming of mother movements and TYD proves the mother is the sole guardian and best for the custody of the child.¹⁵¹ These back steps address whether the custody of the child is the father or the mother. At this point, the interests of the child depend on the interests of the father or the mother. Agreement of parents for custody of the child is implemented on current dates with priority to the interest of the child. For instance, under the England Infants Act, parental agreements are not enforced if the court did not think that it was for the child's benefit.¹⁵² According to Article 9 of CRC, a child shall not be separated from his/her parents against their will unless such separation is necessary for the BIC. One of the compelling reasons is the separation of the parents and a decision about the place where the child is living. This article exhausted that, the agreements of parents for the custody of the child for one of the spouses is unacceptable on the reason that as a principle child is not separated from his/her parents but if there is compelling force such as divorce of the parents the decision where the child resides should be determined by the court or by parties agreement for the interest of the child.

The collected data shows that out of 26 custody decisions, seven are based on the agreement of the parents. For instance:-

The applicant lodges a statement of claim for the dissolution of marriage and custody of a 2-year-old child. The respondent reflects that there is no opposition if the custody of the child is with a mother. The court after examining the issue ruled that, on the ground that, the father has agreed on the wellbeing of the child with the mother; for the benefit of the child the custody has been granted to the mother.¹⁵³

The cumulative reading of RFC articles 83 and 113(1) shows that when spouses agree to divorce, they should reach an agreement on its effects. According to Article 113 RFC, the agreement of the parties is one of the determinants for custody of the child. Similarly, Article 221(2) of the

¹⁵⁰Nv Lowe, *The Legal Position of Parents and Children in English Law* [1994]Singapore Journal of Legal Studies335

¹⁵¹Baysinger Henson Reimer & Cresswell(n46)

¹⁵²Nv Lowe (n150)336

¹⁵³*Meaza v Alexander* [2022]Yeka FFIC 176542

RFC stipulates that both spouses must agree on child custody when they separate. This demonstrates that the RFC incorporates the agreement of the spouses as a determining factor for child custody. When deciding custody based on an agreement, one should consider the child's primary interests. The reviewed cases show that an agreement between the parents is enough for the custody decision without further assessment of the child's interests. But it should be better to assess the views, care and protection, and a child's situation of vulnerability for the BIC. The current approaches of FFICs indicate that courts are determining the child's best interest solely based on an agreement between parents, which appears to be prevailing parental rights.

3.1.2. THE SOCIAL WORKER EXPERT REPORTS

The collected data shows out of 26 collected cases, 8 of them were decided solely based on the social worker's report. One of the procedural requirements developed by the committee on the rights of the child is that assessment shall be undertaken using qualified professionals who have expertise in matters related to child and adolescent development.¹⁵⁴ These professionals assessed a child's interests in individual case-by-case specifications. Such assessments are non-exhaustive but apply to all children in general. According to GC 14's paragraph 48, some assessments include age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory, or intellectual disability, as well as the social and cultural context in which the child or children find themselves. These professional assessments are not taken as an outcome of the decision of the court, but it is necessary to weigh the evidence for determining the BIC. The federal RFC art 113(2) also provides non-exhaustive elements in assessing a child's interests. These elements are: which spouse shall have custody of the children, care of their education, health, maintenance, and the rights of the parents and the children to visit each other. In addressing this, the prevalent current trends of the federal court decision show assessments are undertaken based on the social worker's report.

In one of the collected data, the child's mother has claimed custody of 3 and half years of a child. The father responds that the child has resided with him for seven years, and it is better if

¹⁵⁴ General comment 14(n60) Para 94

custody of a child is decided in favor of him. The court then examines who is best for custody and care of the child. During such time, both parents need the custody and well-being of the child. As a result, the court referred the case to a social worker to study the well-being of the child, based on the report; the court ruled that the father had granted custody of the child. The typical reasons of the social worker are: the interests of the child are fulfilled when living with his father, the child has a special affiliation with his father, the child needs parental control and the mother's income is less beneficial for the wellbeing of the child.¹⁵⁵

When an assessment is undertaken by a social worker, courts have to weigh the report with sufficient primary consideration of the child's interest. In chapter two, I have raised the Tandem model in England. The English courts are determining the BIC based on independent representation. However, such determination has failed because it does not consider other factors, such as the child's viewpoint. Concerning this, some analyzed cases show varied oral statements from parents and children to the social worker and the court. In such instances, courts shall weigh the social worker's report with other determinant factors.

For instance, from the collected data,¹⁵⁶The father objects to the social worker's report on the basis that one of his children is vulnerable to autism, and the social worker cites a lack of open communication and silence of the child without considering the child's views. This highlights the need for courts to determine the child's vulnerability and other conditions further than the social worker's report. When determining child custody, it's common for courts to rely on the social worker's assessment to reduce the court burden and to safeguard the child's best interests. However, sometimes the social worker's reports are rejected by the parents because they believe it does not qualify the child's interests. In such situations, courts should determine the collected report with pertinent factors, such as asking the child's views in court or proving the vulnerability of the child.

¹⁵⁵*Tigist v Sisay* [2022]Yeka FFIC 176780

¹⁵⁶*Lensa v Biruk* [2023]Bole FFIC 134149

3.1.3. THE AGE AND MATURITY OF THE CHILD

Out of the collected cases, three were decided solely considering the age and maturity of the child. For instance, in one of the cases, the mother filed a claim for a petition for divorce and custody of a one-year-old child. The father responds that he wants custody of the child as well. The court then determines the child is below five years old and in the interest of the child custody is granted to the mother. The main reason for the judge is that the child is below five years of age, and he needs special care and protection from his mother.¹⁵⁷ Out of all analysis cases, the social workers often recommend the mother as the sole custodian because the child is an infant and needs the care of the mother. Article 12 of CRC provides that the age and maturity of the children should be an element in determining their interests. However, if a child is better off expressing his/her views, shall recognize his/her views. The federal RFC article 113(2) also provides age as one requirement to determine a child's interest.

3.1.4. THE VIEWS OF THE CHILD

The finding of cases shows out of 26 cases, two cases are decided solely in considering the views of the child in furtherance of the social worker report and other factors. According to article 12 of CRC, the child who is capable of forming his or her views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight considering the age and maturity of the child.¹⁵⁸ It was placed special attention by the committee on the rights of the child that the views of the child are necessary in 'every decision' that affects them. The RFC article 113(2) provides that courts in determining the custody of the child shall consider the ability of the parents and the age and interest of the children; it provides cumulative assessment factors of the BIC. However, this provision does not expressly include the views of the child. It seems to let courts consider the views of the child in deciding every matter related to custody of the child.

¹⁵⁷*Welanisa v Temeselew*[2022]Yeka FFIC174979

¹⁵⁸General Comment 14(n60) Para 53

In collected cases, the applicant claims the dissolution of the marriage and custody of 9, 6, 5&3-year-old children. The father replies that the mother was often out of town, leaving the children at home, and he takes care of them and asks the court for custody and guardianship of the children. The court after receiving the social worker's report and hearing the views of the child reached an argument that the social worker's report was different from the court's examination of the views of the children. Crucially, despite the social worker's report which includes the parents' and the child's views indicating the mother was better off for custody of the children, the overall assessment of the court in asking the children illustrates that the father is well off in the upbringing of the children.¹⁵⁹ This decision shows courts have to weigh each piece of evidence before determining the BIC. Most of the time, giving the chance to express the child's views and to be heard at the court is less formal because such views are brought through a social worker report. But for a better outcome, it is necessary to ask and hear the child's views in court.

For instance, in File No. 177074 the court uses the social worker report to determine the custody and wellbeing of 14 and 8-year-old children. As a result, the social worker report includes the children's perspectives. The 14-year-old child expresses a desire to live with the respondent's grandmother following the death of their mother, for whom the court previously declared guardianship. The father then claimed guardianship and custody of the children. At the same instance, the court asked for the social worker's reports and reversed the decision that, since the father was living abroad, he was a better choice in the treatment of the 8-year-old autistic child without further assessing the child's views. When discussing a child's views, it is crucial to consider the child's ability to articulate his own opinion, the courts should consider these views when assessing the evidence and determining the child's primary interests. Most of the collected cases show that when the views of the child are well expressed in the social worker report, there is no more hearing the views of the child in court. Indeed, the child's perspective is essential if they are mature enough to express their opinion.

¹⁵⁹*Firehiwot v Birhane* [2022]Bole FFIC130404

3.2. CRITERION IN DETERMINING THE BIC

The collected cases show that courts use the RFC in determining the best interest of the child. Especially, Article 113(2) applies to determining a child's interests. This requires the parent's capacity, age, and the best interests of the child. More specifically, the code indicates the income, age, health, and condition of living of the spouses.¹⁶⁰ This provision uses both parental capacity and the interests of the child to determine custody of the child. The collected cases manifest that courts weigh evidence that comes across the social worker's report, the child's views, and the age and maturity of the child. In assessing these factors and determining evidence, courts are susceptible to ambiguity. In such a scenario, courts depend on the governing laws of the federal RFC and the FDRE constitution. However, the RFC has not provided sufficient criteria for determining BIC. For instance, in the Republic of South Africa, and England, the Child Act provides determinant factors for assessing BIC. In the case of Ethiopia, the collected data shows courts solely depend on the RFC, which needs further incorporation of relevant factors. Concerning this, the cassation decision file 8 no 35710 pronounces a judgment that children can participate in the decision-making process on matters that affect their lives. In addition, they have the right to exert their influence on the decision that concerns their interests. And, when the decision is rendered on who shall bring up the child it should be in due consideration that the children have a right to give his/her opinion and to be heard, such views however necessary when a child is capable of expressing his views and matured enough. This ruling shows courts to consider the views of a child in passing a decision that affects the interests of the child. However, it reveals that courts have no certain criteria that determine the BIC. In 1999 the Committee on the Rights of the Child concluding observation recommended Ethiopia adopt a specific child code¹⁶¹, this might help to include determinant factors of the child's best interest but still in the process.

¹⁶⁰The Federal Revised Family Code(n86) article 113(2)

¹⁶¹Committee on the Rights of the Child, Concluding Observation to Ethiopia [2006]Para8

3.3. UNIFORMITY AND VARIATIONS IN INTERPRETING THE BIC IN FFIC CUSTODY DECISIONS

In demonstrated cases, the research finds some uniformities and variations in the interpretation of the BIC. These are as follows:

3.3.1. UNIFORMITIES

The primary consideration of a BIC is determined through a case-by-case assessment. Such determinations are made by a variety of factors. The social worker report, which includes the child's age, view, and living conditions, served as the sole basis for decision making in most collected cases. The FFIC's current trend matures the case-by-case determination decision; all assessed cases appear on the individual child assessment. The uniformity of federal courts in interpreting the BIC is discussed as follows:

3.3.1.1. The psychological and physical maturity of the child

The one determinant factor for deciding the interests of the child is the holistic development of the child's physical and psychological development. The collected cases show such assessments undertaken by a social worker expert.¹⁶² The court either confirms the assessment or finds further evidence. One of the social worker assessments is reviewing the age and maturity of the child. And further the psychological condition of the child, such as the education of the child or vulnerability. Most of the collected cases show such holistic individual assessment is undertaken through the social worker.

3.3.1.2. Case by case determination

The GC 14's paragraph 48 states, individual case assessment of the child is essential for the determination of a specific child's condition. RFC article 113(2) also addresses assessment based on the age and interests of the child. Even if the RFC does not explicitly state individual case-by-

¹⁶²*Tigist v Sisay* (n155)

case determination, considering the interests of the child under Article 113(2) indicates that the code conceptualizes individual assessment.

The collected cases show that custody of the child was decided on a case-by-case determination. For instance, the applicant lodged a file stating that, during their marriage with the respondent they had two female children, and one of their daughters, her age is 8 years old, the father asks to be the guardian, on the reason for, the best interest of the daughter. The mother has agreed to the guardianship of the father. After collecting the social worker's information and examining the report, the court concluded that the child's views given to the expert showed her interest lies in living with her mother, based on this fact, the court ruled that the claim of the father for guardianship for 8 years of the child was canceled.¹⁶³

These show that the FFICs are assessing child interest based on an individual matter. It appears that the FFICs have taken into account the CRC and the assessment criteria outlined in general comment No.14, paragraph 48, which mandates a case-by-case determination of the child's interest.

3.3.1.3. The vulnerability of the life of the child

GC no.14's provides that the purpose of determining the BIC in a vulnerable situation should not only be about the full enjoyment of all the rights provided for in the Convention but also about other human rights norms related to these specific situations, such as those covered by the Convention on the Rights of Persons with Disabilities and the Convention relating to the Status of Refugees, among others. In gathered data, for example,

The case was brought to the court for claiming guardianship and custody of 14 and 8-year-old children respectively. The father claims that, upon his wife's death, the court ruled that her mother was the sole guardian of the children. However, he stated in the claim that he had the full potential to ensure the well-being and custody of these children. He further noted that one of his children is vulnerable to autism, and for better care and treatment he wants to relocate the

¹⁶³*Rachel v Efeson*[2022]Bole FFIC141277

children to London. The respondent's grandmother replies that the applicant's father and their mother brought their children to stay in Ethiopia, and she treats a vulnerable autistic child, since their mother's death. At that moment, the father did not take any responsibility for taking care of the children. He moved away when he heard one of their children was autistic. As a grandmother, she has taken responsibility for the children and asked the court to reject custody claims by the father. The court then took an assessment of the social worker's report. After this inquiry, it concluded that, since the father was living abroad, he was a better choice in the treatment of the autistic child, and the other for their better life. As a result, it was ruled that custody had been granted to the father.¹⁶⁴This case revealed that courts assess the vulnerability of the child before deciding custody of the child. This dictates that one requirement for deciding the primary interest of the child is an assessment of vulnerability.

3.3.1.4. Assessing views of the child

The child's viewpoint is an important factor in deciding on the BIC. According to Article 12 of the CRC, a child possesses the right to freely express their views, provided they are capable of forming their own views in all matters that impact them. The consideration of the child's views takes into account their age and maturity level. The collected data shows the views of the child were collected through assessments of social workers. In some cases, courts hear child views directly in the courtroom. This experience shows that the federal courts are using the views of the child assessment as one requirement for determining the BIC.

For instance, in File no. 130404 the applicant claims the dissolution of marriage and custody of their 9, 6, 5 & 3-year-old children. The respondent's father replies that the mother was out of town, leaving the children at home, and most of the time he is primarily responsible for taking care of them, so the father is seeking custody and guardianship of the children. Then, the court hears directly the views of the child, and other witnesses before reaching the decision. Ultimately, the court argued that the father is capable of bringing up the children and concluded

¹⁶⁴*Adamu v Yewebidar* [2022]Yeka FFIC177074

that the father is the custodian of the child. This decision shows the court assessed all weighing evidence for the primary interest of the child, including the social worker's report, and the child's views to conclude that the father is better off in custody of the children.¹⁶⁵

3.3.2. VARIATIONS

The collected data shows there are some variations in interpreting and applying the BIC in federal courts. These variations include failing to determine the primary consideration of a child, failing to declare custody of a child after divorce, and failing to conduct an assessment. These variations are discussed as follows:

3.3.2.1 Lack of determination of the primary consideration of a child

The primary consideration of the child's interests is the critical element in assessing BIC. According to the CRC article 3(1), all judicial and administrative decisions as well as policies and legislations concerning children demonstrate that the child's best interests as a primary consideration. Article 4 of the ACRWC also provides for the state to fulfill the primary interest of the child. Article 36(2) of the FDRE Constitution similarly provides that the primary interests of the child must receive due consideration in all actions concerning them. According to this article, courts must have given due weight to the factors determining the child's primary interest. The collected data shows that most of them are addressed through both the parents' capabilities and the child's interests. However, in some cases, there is a deviation from the principle.

For instance, in the gathered data, the applicant's grandparent's filed for guardian and custody of a 3-year-old child. Her reason was that the child's mother had died through the action of her father; he hit the mother and caused her to die. Due to his actions, the father has been sentenced and lives in prison. So the applicant's grandparent requests guardianship of the child for the best care. The court then for the sake of the child asks the father by ordering the prison administration to bring him and give his word for the claim. The father, upon presenting himself to the court,

¹⁶⁵*Firehiwot v Birhane*(n159)

said he should not give his child to grandparents. Then the court decides that the grandparent claim is rejected for the reason that the father has opposed the guardianship of grandparents.¹⁶⁶

The aforementioned case demonstrates that the court denied the grandparents custody of the child due to the father's opposition to such guardianship. But the critical issue here is: what about the primary interests of the child? How did the court decide without proof of the wellbeing of the child? According to Article 113(2) of the RFC, the best interest of the child should be a priority when making a decision. The above facts of the case show that the child's mother died due to assault by the child's father. As a result, her grandparents are seeking guardianship of the child due to the father's imprisonment. In this situation, the court must assess the primary interest of the child and determine who is better in custody of the child by examining evidence. Despite such facts, the court's decision to close the case is affecting the BIC. As per Article 36(2) of the FDRE constitution, the BIC should be determined based on the primary consideration of the child's interests. In this case, the court neither assesses the evidence nor takes into consideration the primary interest of the child. Simply denying the custody of the child on the mere opposition of the father is not a sufficient way to determine the wellbeing of the child. It shows that there is a gap in addressing the child's primary consideration. This leads courts to expose detailed assessments for the primary consideration of the child's interests.

3.3.2.2. Absence of determining the BIC after declaring Divorce

A child shall not be separated from his or her parents unless there is a compelling force, Such as separation of parents in divorce through a court order. According to article 9 of the CRC, a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, following applicable law and procedures, that separation is necessary for the BIC. Such a compelling situation may be necessary in a particular case involving abuse or neglect of the child by the parents, or one where the parents are living separately, and a decision must be made as to the child's place of residence.¹⁶⁷ As per this article,

¹⁶⁶*Nebiyat v no respondent* [2023]Bole FFIC 146867

¹⁶⁷Convention on the Right of the Child (n6) article 9

one element of considering the BIC is when the parents are separated by a court decision. In such situations, both parents are primarily responsible for the upbringing and development of the child. As per Article 18 CRC provision, parents are primary responsibility for the upbringing of the child. Additionally, the RFC Article 113(1) also articulates that, when a court decides the dissolution of a marriage, it also decides which spouse shall have custody of the children, care of their education, health, maintenance, and the rights of the parents, and the children to visit each other. From the collected data, the one analysis case illustrates that the court only decides on the divorce petition of the spouses and disregards the custody of the child. To see the case illustratively:-

The applicant has claimed the dissolution of the marriage and custody of a 10-year-old child. The respondent's mother brings her defense that the upbringing and custody of their child should be decided on the child's previous intention, the future child custody to whom shall rely on and in the best interest of the child. Then the court after examining the issue with the claim, statement of defense, and oral arguments ruled that the marriage of the spouses is dissolved. However, concerning their 10-year-old child, since the child resides in America, the court has no power to give orders on custody of the child. And states the reason that, the federal RFC Article 85(5), 113, and 221(2) provides, in deciding divorce the court shall simultaneously decide the custody and upbringing of the child and more importantly, the child-rearing shall be determined in the BIC. However, it should not be necessary to follow strict interpretations on deciding divorce and custody decisions simultaneously. For a strong reason, since the applicant's father, the respondent mother, and their child live abroad, and there is no mutual agreement on the enforcement of the decision in their country of residence except the parties have a chance of bringing custody issues where they live, the court cannot decide on the custody of a child. And, declares only a divorce petition.¹⁶⁸

When we see this case in light of Article 9 of the CRC Convention and Article 113(1) of the RFC, it misses the legal fact that, upon declaration of divorce, the court shall decide the custody of the child. The court has not decided on the BIC and has overlooked the child's primary

¹⁶⁸*Sebsibe v Elisabeth* (2022)Bole FFIC 145575

interest. Principally, when courts have the power to make a decision in matters of divorce, they also have jurisdiction over matters concerning custody of the child. Concerning this, the principle is that the child should not separate from his or her parents unless there are compelling reasons, such as divorce. The authority granting the divorce decision should also entertain custody of the child. The child's interests are the most important factor. Even after divorce, both parents have a responsibility to bring up their child. Therefore, in rendering a divorce decision, courts shall consider custody issues with the primary consideration of the child who undertakes custody of the child. The main reason of the court is that 'it should not be necessary to follow strict interpretation' in deciding divorce and custody decisions simultaneously. However, the CRC Article 9 and the RFC Article 113(1) show that when a court decides on parents living separately, it must also decide on child custody by considering his/her primary interest.

The other main justification for the court disregarding the custody decision was that the child and parents are living in America and therefore believed it had no authority to entertain the case. However the crucial issue is that, despite accepting the spouses' divorce petition, the court's decision to leave the child's custody unresolved represents a significant departure from the Convention and the child's primary interest, potentially impeding the child's holistic development. The court gave a decision regarding the spouse's separation, which inherently means that the court has entertained the custody issue. However, in this case, the court accepts the parents' divorce petition while simultaneously rejecting the child's custody and forcing the child to be abandoned without any consideration for their welfare. Because a child is a minor, the court has basic concerns about the primary interests. Article 266 of the RFC provides that courts shall prioritize the primary interest of the child in rendering a decision on guardianship. In the above-illustrated case, the court failed to consider the child's best interests, which does not align with the convention's and RFC's goals. Courts have to render a decision in consideration of the primary interest of the child, especially when those decisions significantly affect the child's life. When courts pass the decision of divorce, they shall strictly follow the primary interest of the child, in which the care and wellbeing of the child are to be considered. For the strong reason that courts are play a crucial role in safeguarding and ascertaining the child's primary interest.

3.3.2.3. Inadequate assessment of the interests of the child

	Lack of assessment in BIC interpretation
A	The overall primary interest of the child is not assessed
B	The views of the child and the social work assessment are not undertaken

Out of the 26 cases collected, 6 of them do not disclose the assessment and determination of the child's interest. GC 14's paragraphs 48 up to 52 states the assessment of the interest of the child should consider factors such as the child's age, and maturity, views, vulnerability, culture, and so on. Similarly, RFC Article 113(2) stated the age and the interest of the child as requirements. Furthermore, article 266 of the RFC Amharic version states that the court shall decide the primary interest of the child when the father and the mother are in disagreement and such a condition has not been solved privately by them or through arbitration. In such a situation, courts should evaluate the necessary factors to determine the child's primary interest of the child before reaching a divorce decision. In some collected cases, there is a lack of assessment in determining the BIC. The one variation is a lack of an overall assessment of the primary consideration of the child's rights. This issue is addressed in the previous discussion. Moreover, the lack of assessment of the social worker report and the views of the child is also a gap in the research found in the gathered data.

For instance, in one verified case, the applicant's mother lodged for the divorce and custody of a 4-year-old child. The father responds that the child needs both parents, so the upbringing of the child shall be decided by considering both parents for the care of the child. The court then decides the father does not raise the question of custody and concludes the mother has granted the custody of the child.¹⁶⁹The case illustrates that the overall assessment of the primary interest of the child has not been assessed. Factors for determining the child's interests such as the views, expert report, vulnerability of the child, and so on were not considered in the decision. The

¹⁶⁹*Kidist vs. Dawit* [2022]Bole FFIC135031

determinant factors that the committee on the rights of the child wants to address are not considered in this decision. The case shows a gap in assessing the child's interest through determinant factors. It lacks assessment and needs courts to determine and assess the child's interest based on the child's primary interest.

The other point in the assessment of the child's primary interests is related to the input from the social worker report. According to GC no.14's para.94 qualified experts such as psychologists, social workers, and a team of experts are necessary in assessing the BIC. From collected cases, however, there is a lack of expert assessment in determining the child's interest.

For instance, in the revealed case, the applicant's mother claimed the dissolution of an irregular union and custody of three children, aged 5, 3, and 8 months old respectively. Then the court for the BIC considering their ages declared the mother was fitted for the guardian of the child. The father then claims that two of the children require medical treatment, as one is autistic and the other has serious heart cases. Furthermore, the mother planned to move abroad with the children. As a result, the father instituted custody and cancellation of the guardianship of the mother. The respondent's mother replies that the father has a habit of drinking alcohol, and allegedly tells the children things that hurt them. This personal character of the father is not fit for custody of these children and requests cancellation of his claim. The court then decided the father had not proved the mother's intention to move with the children, nor had he stated any reason for the cancellation of the guardianship. Furthermore, the mother has a right since she has been a guardian of the children to fix where they live and concludes the custody of the child granted to the mother has not been canceled.¹⁷⁰

In the above case, the parents cannot agree on who should have custody of the children; in such cases, the court should ascertain who is better suited to care for the child. At this moment, the court does not consider the factors that determine the child's interests. For example, the court does not use the social worker's report to conclude that these three children want to live. The place where the child lives is not left to one parent unless an assessment has been conducted using expert views. It needs a detailed analysis of the social worker report. In the above case, the

¹⁷⁰*Barnabas vsHibret*[2022]Yeka FFIC 174761

court neither took the social worker's report nor examined the parties' primary concerns about the child. Such kinds of decisions create a gap for better protection of the BIC.

3.4. KEY FINDINGS

In the overall analysis, I discovered some near-findings from prior research, and some of the new findings that I have gotten in addressing this research paper are:

- Most of the collected cases show that the determination of the BIC is dependent on the assessment of the social worker's report. And in some cases, there is no assessment of the child's views.
- In some cases, interpreting the BIC solely depends on the age of the child, and the mother is the sole guardian for that matter.
- The current trends of the FFIC mostly seem uniform in interpreting the BIC based on the child's age, vulnerability, social worker report, and sometimes the child's saying and views considered by the court.
- In some cases, the interpretation of the BIC through primary consideration of the child's interests has lacked applicability.
- Absence of deciding on the BIC as a strict requirement when deciding on divorce.
- The FDRE constitution uses the word 'the' primary consideration of the child, showing our country gives a better legal framework to preserve the primary interest of the child by overriding other factors.
- The legal framework for child rights in federal courts is based on the federal RFC and FDRE constitution, but the code does not include the best interest assessment criterion.

Chapter Four: Conclusions and Recommendations

4.1. CONCLUSION

Internationally, the drafting of the 1959 Declaration on the Rights of the Child (Geneva Convention) was a significant step in emphasizing the BIC's paramount consideration. The 1989 convention consolidated the best interests of the child by protecting its primary interests. The Committee on the Rights of the Child also specifies the criteria for determining the child's interests. However in all of these, the main challenge to the concept of the best interest of the child is the absence of a clear definition. An interpretation of the best interest is possible in individual child cases. For this reason, most writers argue that the best interests of the child are subjective and indeterminate. In Ethiopia, the concept of the best interest of the child took root after the ratification of the CRC and ACRWC. The FDRE Constitution, Article 36(2) stipulates that the interests of the child shall be the primary consideration. Following this, the federal RFC incorporated this element into the provisions. However, in the interpretation and application of the best interest standard, there have been instances where courts have demonstrated a lack of consistency in determining the child's best interest. This paper aims to identify the problems by assessing the federal first-instance courts' interpretation of the best interest principle, the criteria they adhere to, and the uniformity and variability in their interpretation of the child's best interest, which is the primary focus of the research. Upon assessment, the research found that the federal first-instance courts typically interpret the best interest of the child by considering factors such as parental agreements, the social worker's expert report, the views of the child, and the child's age and maturity. More importantly, the courts have uniform interpretations in using social worker reports based on the views of the child, maturity, and vulnerability of the child. However, the paper also finds variations such as a lack of the primary interest consideration of the child, an absence of determining the interest of the child after declaring the divorce, and a lack of detailed assessments of the interest of the child.

4.2. RECOMMENDATIONS

The research provides certain recommendations that the decision-making organs should follow to adhere to uniformity and reduce the variation in the interpretation of the BIC. These are:-

- Provide training for the judges to follow a strict interpretation of the child's primary interest when making a divorce decision.
- Give judges and social workers training on how to assess the child's primary considerations when making decisions or reports.
- Responsible organizations like the federal courts, the Ethiopian Human Rights Commission, a group of experts in child rights, and judicial training institutes offer these trainings.
- Inform the judge and other decision-making bodies about the importance of achieving the CRC committee's general comment No. 14 assessment requirements when determining what is in the child's best interest.
- There is a need for a legal reform of the RFC to incorporate determinant criteria for interpreting the best interests of the child.
- The trend of courts considering the views of the child as the primary consideration is appreciable and should continue to determine the best interest of the child.

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APPENDIX 1, CASE ASSESSMENT QUESTION CHECKLIST

This checklist is prepared to assess the collected cases. The question has prepared in accordance with assessment requirements and the intent of CRC General Comment No.14. So that, the question checklist are verifies the current trends of the FFIC in the interpretation of best interest of the child. The list of questions is as follows:

1. What is the basis of the judge for the interpretation of the child's best interest?
2. Does the case use each and every matter for the assessment of the primary interest of the child?
3. What is the criterion used by the judges in the given custody case to determine the interest of the child?
4. Which criteria does the case solely depend on?
5. Is the definition of the best interest of the child applied in individual case assessment in this case?
6. Is the primary consideration of the child's interest considered in this case?
7. Are the child's views heard in the courtroom?
8. Is there any uniformity obtained from the case in the interpretation of the best interest of the child in comparison to other FFIC collected custody cases? If yes, what are they?
9. Is there any variation in the cases in comparison with other FFIC collected cases? If yes, what are they?
10. On what legal basis does the judge render the custody decision?

APPENDIX 2 SAMPLE CASES

1. Case no. 141277

Appellant Rachel hailu v EfesonTesfaye

File opened Bole FFIC

The file was opened on 29/11/2014 and closed on 30/12/2014 E.C

The applicant has filed a case stating that, during their marriage with the respondent, they brought two female children into the world. For one of these daughters, who are 8 years old, the father has requested guardianship. His reason was that the daughter needed special treatment, and in her best interest, the father wanted to move her to where he lives. The respondent's mother was replayed; she has consented to the guardianship of the father. Simultaneously, in another file, the mother lodged a statement on the dissolution of the marriage. The father responded to the mother's claim and exposed that, the mother opened this file due to her interest in traveling out of the country. The reason was to bring up the children in the place where she wanted to move, and then he refused the mother's claim for custody of the child. The court, after collecting the social worker's information on the wellbeing and custody of the child, decided that the parents were responsible for the wellbeing, custody, and best interest of the child. Accordingly, the court examined the information of the experts and stated that the child gave her statement to the social workers that her interest is to live with the mother. This leads the court to consider the interest of the child, and as a result, the court declared that for the interest of the child and wellbeing, it should participate in the child's views. In this case, the child was interested in living with her mother, and as a result, the court concluded on the cancellation of the guardianship of the father, which was granted before for the interest of the child.

2. Case no 132679

Applicant

File opened 5/2/2014 decided on 18/5/2014 E.C

Bole FFIC

The statement of the claim began with the applicant's mother endorsing a divorce petition and simultaneously requesting custody of 3 children, aged 15, 10, and 3, respectively. In the claim of the mother, the father needed an agreement, and the court granted a cooling period. However, they were not reaching an agreement. As a result, the court decided on the dissolution of the marriage. The court then simply decides that the mother is in charge of the child's custody. In this file, after the decision has been rendered and the case closed, the respondent's father lodges a file on the custody of the children. Accordingly, the court issued with whom the child's custody should be decided and asked the social worker to take the issue and bring a report. The social worker reports indicated that the children were not receiving a satisfactory upbringing from their mother, and the child expressed a desire to live with the respondent's. The court then determined that the child's interest is to live with his father, thereby granting the father custody and responsibility for the child's wellbeing.

3. File no. 145575

Applicant sebsibe v Elisabeth

Bole FFIC

Decided 2014 E.C

The applicant has lodged a file for the dissolution of the marriage and custody of a 10-year-old child, decided in favor of the father. The respondent's mother has stated in her defense that, on the upbringing and custody of the child, the court should consider and base its decision on the child's previous intention, the future child custody on whom it shall rely, and the best interest of the child. The court after examining the issue with the claim, statement of defense, and oral arguments ruled that the marriage was dissolved through the jurisdiction of the court and since the child is living abroad the court has no power to give order on the custody of the child. The reason for the court is that the revised family code articles 85(5), 113, and 221(2) are interpreted as in deciding divorce the court along with deciding on the custody and upbringing of the child. However, there

is no strict formal procedure for deciding divorce also determines the custody of the child. Furthermore, the child's upbringing shall be determined in the best interest of the child. However, since both the parties and their child live abroad, there is no mutual agreement on the enforcement of the decision in the country where they live unless the parties have a chance to bring custody issues where they live. As a result, the court does not decide the custody of the child, and it declares that, even if the custody of the child is not determined, the divorce should be ruled. The basic reason for the court is that it should not be necessary to follow strict interpretations of divorce and custody decisions simultaneously.

4. File no. 177074

Applicant Adamu v yewebidar

Yeka FFIC

File opened 5/5/2014 E.C decided 30/7/2014 E.C

The file was lodged with the guardian and custody of 14 and 8 years old of the children. The father claimed that upon his wife's death, her mother was claiming to be the guardian of these two children and the court granted the guardianship to the grandmother. Then the father claims that he was in full potential to ensure the well-being and custody of these children. He further stated that the children by nationality were British nationals. So, the court's decision to grant guardianship to the grandmother has to be repealed. The respondent's grandmother replies that the husband and the children's mother brought the children to their grandmother to stay in Ethiopia when she was alive. Since that time, one of their children was autistic and the mother left her job and came to Ethiopia for the wellbeing of their children. The father did not take responsibility at that time. He was leaving when he heard one of the children was autistic. As a grandmother, she has taken responsibility for the children and asked the court to reject the custody of the father. The court then ordered a social work expert's report. In the report, one of the children wants to live with her grandmother. The court after receiving the social worker's report declared that, since the father was living abroad he was a better choice in the treatment of the autistic child, and the other for her better education.

5. File no. 180576

Applicant tigest v Elias

File opened 19/9/2014 and decided 22/3/2015 E.C

Yeka FFIC

The file was lodged for the dissolution of marriage and custody of the 11-year-old child. The respondent's father, on receiving the applicant's claims, responded that he wants custody of the child and wants to decide with him. The court after arguing between the parties orders a social worker report. According to the report, the child's views are to live with both parents and the child says the father was treating him well for his wellbeing. Then the court after receiving the social worker's report decides, in the interest of the child, it is better to live with his mother.

6. File no. 184665

Applicant wendewessen v. respondent selamawit

File opened 5/3/2015 and decided 16/5/2015 E.C

Yeka FFIC

The applicant's husband requested the court for a divorce with the respondent's wife and claimed custody of the 9 and 7-year-old children. The respondent replied that she wanted the child custody of their children to decide to be with her. The court requested the social worker's report. In the report, the expert stated that the father was not present during the examination of the parents. Then the court after examining the case and the social worker's report decides custody of the child is to the mother. The reason is that the father has not taken any responsibility for the wellbeing of the child.

7. File no. 176542,

The applicant meaza v. respondent Alexander

File opened December 7/2014 E.C and decided on 29/6/2014 E.C

Yeka FFIC

The applicant lodged a claim of statement on the dissolution of marriage with the respondent-husband and claimed custody of 2 years old of a child. The respondent's

husband reflects and gives his response that there is no opposition if the custody of the child is with his mother. The court then decided to grant the mother custody of the child, as the father had agreed this was in the child's best interest.

8. File no. 139540

The applicant Surafel v. Respondent Meron

The file opened on July 14/2014 and decided August 17/2014 E.C

Bole FFIC

The applicant's husband filed a divorce petition with the respondent and claimed the custody of a 2-year-old child. The respondent's mother said that she agreed to leave the child with his father. Then the court based on the social worker's report decides that the custody of the child is given to the father.

9. File no. 147054

Applicant Samrawit v Respondent Anteneh

The file opened December 4/ 2015 and decided 16/5/2015 E.C

Bole FFIC

The file has lodged for a petition for divorce and custody of 3 years, and 9 months old children. The respondent father said he has agreed for both children to live with their mother. The court then, based on the agreement of the parents decided, that the applicant granted custody of the child.

10. File no. 117094

Applicant Mrs. Yetinayet v. Yonas

File opened 10/5/2015 and decided 30/6/2015 E.C

Bole FFIC

The file was lodged for the dissolution of the marriage between the parties and the custody of a one-year-old child. The father then responded and requested the court that

the well-being and custody of the one-year-old child for her best interest be decided in favor of him. The reason he was raised was because the mother hit the child without a proper reason. The court then without requesting the social worker's report or any initial ground decided custody for the mother, and the father was ordered to give maintenance and provide visitation rights for the father.

11. File no. 174761

Applicant Barnabas v. Hibret

File opened 24/9/2014 and decided 30/5/2014 E.C

Yeka FFIC

The file was lodged for dissolution of an irregular union and custody of three children whose ages were 5, 3, and 8 months respectively. The respondent's mother replied that the custody and upbringing of the child, she claims custody of the children was decided in favor of her. The court then decides in the best interest of the child and considering their ages, the mother is the guardian of the children. The father then claims the two children need medical treatment since the child is autistic and the other has a serious heart case. The mother forbids the father to visit and take care of the well-being of his children typically; the mother has exercised to move the children to live outside their home country. As a result, he instituted a claim for custody and cancellation of the guardianship of the mother. The respondent's mother replied that the father has a habit of taking alcoholic drinks and telling the children which hurts them more; this personal character of the father is not fit for custody of these children. The court then after examining their arguments decided that, the father had not proved that, the mother had the intention to live out of the country with their children and also he did not prove that the children had been affected by the mother's actions and also he did not state any reason for the cancellation of the guardianship of the mother. Furthermore, the mother has a right since she is a guardian of the children to fix where they live. As a result, the court without further assessment decided that the custody of the child granted to the mother had not been canceled.

12. File no 134149

Applicant lensa v. respondent Biruk

File opened 25/8/2014 and decided 15/2/2015 E.C

Bole FFIC

The case has been lodged for custody of the 8 and 6-year-old children. The father was absent, and the court called the defendant for the hearing through federal negarit gazeta, but the respondent was not present. As a result, the court ordered the absentee of the respondent and heard the suit based on the applicant's claim. Then the court declares that for the best interest of the children and their wellbeing, the custody and guardianship of the children will be decided on behalf of the mother. After this decision, the respondent applied for the decision on the custody and guardianship of the children. His reason was the children were living with their grandparents and not with their mother, and also since one of their children was affected by autism, the children would get better treatment in London where both parents have nationality over there. The mother upon receiving the claim replied that the father has a strange character, and for the wellbeing and custody of children, it is better to decide that the children live with their mother. The court then decided that the children had given their views to the social worker living with their mother illustrating that, the children have an interest in living with their mother more importantly; the father has hit the mother with evidence so that in the best interest of the child the custody has been given to the mother.

13. File no. 176780

Applicant Tigist v. Respondent Sisay 2014 E.C

Yeka FFIC

The applicant has lodges for custody of a 3-and-a-half-year-old child. The father responds that the child is living with him in a better condition, and it is better custody decided in favor of him. The court then examines who is suitable for custody of the child, and in due time, both parents need custody and well-being of the child, then the court orders a social worker expert to study for the child's well-being. The expert stated the reason that the interest of the child is fulfilled when he lives with his father. Considering

the special affiliation with the father, the child needs parental control and the mother worker is not as good for the wellbeing of the child. Based on this assessment, the court decided that the father had granted custody of the child.

14. File no. 146867

Applicant Nebiyat v. no. respondent

File open 28/3/2015 and decided 9/5/2015 E.C

File open in Bole FFIC

The grandparents lodge for guardianship and custody of the 3-year-old child. The case stated that the child's mother was killed in the assault of the father; he had recently been sentenced to jail. The applicant requested the court, for the welfare of the child's wellbeing, demand custody of the child to the grandparent. The court then for the sake of the child asked the father through ordering the prison administration to bring him and give his word to the child. The father upon appearing in court said he would not give his child to grandparents. Then the court without further assessment of the interest of the child concluded the applicant's claim was rejected on the ground that the father opposed the guardianship of grandparents.

15. File no. 163395

Applicant Desta v. Respondent Yirdaw

File opened 13/6/2012 and decided 4/4/2015 E.C

Yeka FFIC

The applicant's wife claims for the dissolution of marriage with her husband and claims for sole custody of a 9-year-old child. The father upon receiving the claim responds that he takes care of two other siblings he was born to other women, and agreed on the custody of the child to the mother. The court then for the custody of the child orders a social worker's report that reveals both parents have agreed for a child to live with their mother so that the court declares this agreement.

16. File no 179376

The Applicant Meseret v. Melkamu

The file opened 3/8/2014 and decided 30/2/2015 E.C

Yeka FFIC

The applicant issued a claim for the dissolution of marriage and custody of 9 and 6-year-old children. The applicant in her oral argument stated that she wants custody of the child decided in favor of her but she lacks an income for the wellbeing of the child, so she has given the custody to the father. The father responds that he can take care of the children. The court then after hearing their arguments gives custody to the father, for the reason that the father has a better position for the child's wellbeing.

17. File no. 125084

Applicant Abebe v Respondent Seble

File opened 23/10/2013 and decided 23/10/2013 E.C

Bole FFIC

The file has been lodged for the dissolution of the marriage and custody of minor children. The mother upon receiving the claim responds that she needs custody of the children decided for her, and strongly argues the children have been living with her for the past seven years. The court then decided that, since the father has agreed to live with their mother, custody of two children is granted to the mother.

18. File 132549

Applicant Rediet v. Yisak

Case opened 22/2//2014 and decided 17/3/2014 E.C

Bole FFIC

The applicant filed a claim for the dissolution of their marriage to the respondent and custody of a 2-year-old child. The father was not present and was not given a defense to the claim. The court orders to hear the case in the absence of the father, since he did not appear. Then the court declares since the father does not claim custody of the child the court orders the absence based on art 70(a) of the CPC and grants to the mother the custody of the child.

19. File no. 135031

Applicant Kidist v. Dawit

The case opened on 18/5/2014 and decided on 19/7/2014 E.C

Bole FFIC

The applicant has lodged for the dissolution of their marriage and custody of a 4-year-old child. The father after receiving the claim responds that the child needs both parents, so the custody and care of the child is decided for both of them for protecting the affection of the child and his interests. The court, after examining their statements and defenses without rendering another assessment, decides the father does not raise the question of custody in respect of him as a result the mother grants custody of the child.

20. File no. 132545

Applicant Abush v. respondent tigist

File opened October 2/2014 and decided 18/4/2014 E.C

Bole FFIC

The applicant has lodged a file for the dissolution of the marriage and custody of a 4-year child. The respondent's mother replays custody of the child and decides in favor of her. The court then considered both parents' needs for the wellbeing of the child and further assessed the interest of the child through the social worker report that dictates that the mother was better fit for custody of the child since the age of the child needs continuous follow up of the mother's care and protection. Then, upon accepting the social worker's report, the mother was granted custody of the child.

21. File no. 176982

Applicant Elisabeth v. Respondent Getachew

The file has opened 2/5/2014 and decided 25/8/2014 E.C

Yeka FFIC,

The applicant's wife has opened a file for dissolution of marriage with her husband and claimed custody of 12, and 11-years old of a child. The respondent's father, upon receiving the claim replayed, and if the court decided to divorce, granted the custody of the child to the father. After examining the arguments presented by the parties, the court concluded that the father had not opposed the mother's claim for custody. Therefore, the court granted the mother custody of the child.

22. File no. 136266

Applicant sirgut v. respondent zeriay

Opened 1/6/2014 and decided 29/10/2014 E.C

Bole FFIC

The file has been opened for the dissolution of marriage and the custody of 11, 9 and 6-year-old children respectively. The respondent's husband replied there is no legally recognized relationship with the mother and stated the children were born out of wedlock. The court then analyzes whether there was a marriage between the parents, and proves there was a marriage. And, decides on the custody of the child to live with their mother without further assessment on the reason that both parties are not denied they have children.

23. File no. 176947

Applicant zerfe v. respondent Daniel

The file has opened 27/4/2014 and decided 25/6/2014)

Yeka FFIC

The applicant's mother claims the dissolution of marriage and custody of the 3-year-old child. The respondent's father does not oppose custody of the mother but complains about the maintenance amount. The court then without further assessment reasons out the legal grounds and says the upbringing of the child is both parents' responsibility. However, if one of the spouses has a good income and protects the child's interest, this parent has a right for the upbringing and concludes that the father has not opposed the custody of the child. So the court grants custody to the mother

24. File no. 130404

Applicant firehiwot v. respondent birhane

Filed opened 14/11/2013 and decided 13/3/2014 E.C

Bole FFIC,

The applicant wife claims dissolution of marriage and custody of 9, 6, 5& 3-year-old children. The respondent's father upon receiving a claim responded that the mother was out of town leaving our children at home at this time he takes care of the children as a

result he demands custody and guardianship shall be decided for him. Then, the court hears the views of the child at the court, furthermore, asks another witness in the court, and reaches an argument that the social worker's report is different from the court examination of the children and the parties. As a result, the court concludes that the father is granted custody of the child. Here the social worker's report includes parental views, the child's views, and an overall assessment of the child. It says the mother gives care and protection to the children and the two children need the mother's follow-up, recommending custody of the child to the mother. But when the court examines the children and the respondent and witness, it finds that the father is taking care of the child and is capable of bringing up the children. As a result, the court decided that the father should be granted custody of the children. The decision shows the court assessed all weighing evidence for the best interest of the child, the social worker report and the views of the child and further examining other witnesses, the school where the children studied, and the foster care of the children into account in determining the best for the children.

25. File no. 173739

Applicant Samson v. Nigat

File opened 5/1/2013 and decided 27/4/2014 E.C

Yeka FFIC

The applicant's husband lodged a case for the dissolution of marriage with his wife and required custody of 12, 9, and 1-year-old children respectively. The respondent after receiving the claim replied that she demanded custody of the child. Then the court assessed evidence from the social worker's report and found that one of their children is an infant at 1 year of age and all children are better able to live without separating from this child due to the best interest of the children and the court concluded that for the best interest of the children, it's better to live with their mother.

26. File no. 174979

Applicant welanisa v. respondent temeselew

The case was opened on 11/2/2014 and decided on 18/5/2014 E.C

Yeka FFIC

The applicant opened a claim with the respondent's husband for divorce and sought custody of a one-year-old child. The respondent after receiving the claim responds that he demands custody of the child with him. The court then without further assessment concludes that the child is below five years and for the interest of the child, custody is granted to the mother.