

## The principle of the child's best interest in child protection

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### **Abstract**

The aim of this paper is to examine how governments in 43 high-income countries<sup>1</sup> interpret the vague and indeterminate principle of the best interests of the child in legislation, and furthermore, how this principle creates various degrees of discretionary space for frontline staff and judiciary decision makers. Governments have a range of steering mechanisms and incentives to guide and limit professionals' use of discretion. Legislation is an important mechanism by which governments state their goals and ambitions, and signal and instruct professionals on how they wish their goals to be implemented in the various institutions of a welfare state.

The empirical focus of this paper is the state's responsibility for children at risk of harm and intrusive measures such as removing children into state care. Child protection is a surprisingly understudied area of the welfare state, considering the power that is vested in decision-makers in a very difficult and highly sensitive area of intrusive state interventions into the private sphere (Burns et al., 2017). A key standard in this area is the Convention on the Rights of the Child (CRC) of 1989. This convention is almost universally ratified,<sup>2</sup> and several states have made the convention national law. The CRC gives children strong rights, with the principle of the child's best interests as one of its pillars: *'In all actions concerning children, whether undertaken by public or private, social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (CRC, article 3(1))'*.<sup>3</sup>

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<sup>1</sup> High Income countries understood as OECD countries and/or members of the European Union, except the United States as the US has not yet ratified the Convention on the Rights of the Child. See the Innocenti Report Cards series <https://www.unicef-irc.org/publications/series/report-card/>. The UK is for the purpose of this analysis counted as 4 separate countries, as each country within the UK has its own child welfare law.

<sup>2</sup> All states in the world, apart from the USA, have ratified the CRC as of 2015. See <http://indicators.ohchr.org/>

<sup>3</sup> Cf. the recommendation by the CRC committee on the interpretation of the material content of the best interest principle (General comment No. 14, 2013).