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THE BEST INTERESTS OF THE CHILD: AN INTEGRATIVE REVIEW OF ENGLISH AND PORTUGUESE LITERATURES[1] [2]

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ABSTRACT. The best interests of the child (BIC) should be of primary consideration in any situation involving children. Thus, BIC is commonly adopted as a principle, doctrine or test to weight decision-making regarding children. This study consists of an integrative literature review of English and Portuguese publications aimed at investigating how various studies address BIC definitions, characteristics and applications. The inclusion criteria were: 1) articles published between 2012 and 2017, and 2) those clearly addressing a BIC definition, characteristic and/or application. The chosen English databases were ASSIA, PsychARTICLES, PsychInfo, Scopus, Web of Science and Google Scholar; the Portuguese databases were: LILACS, PePsic, Redalyc, Periódicos CAPES and Google Scholar. The main descriptor used was 'best interests of the child' which led to 1488 articles being found, and 14 selected. Brazilian articles have focused on the need to protect the child's physical and psycho-socioemotional well-being, highlighting the child as a subject of rights, and maintaining child's familial bonds. English articles have broadened the BIC perspective, highlighting the child's idiosyncrasies, the role of the parent's interests, and BIC as non-individualistic, flexible and complex. Other results show that BIC is largely related to the child's development, which is divided into 'material-physiological' (basic needs and surviving) and 'contextual' (non-material and psychosocial and emotional needs) domains. Overall, BIC is a pluralistic, complex and multi-dimensional construct that depends on the child's relational contexts.

Keywords: Best interests of the child; child's development; child's rights.

O PRINCÍPIO DOS MELHORES INTERESSES DA CRIANÇA: UMA REVISÃO INTEGRATIVA DE LITERATURA EM INGLÊS E PORTUGUÊS

RESUMO. Os melhores interesses da criança/adolescente (PMICA) devem ser considerados primordialmente em qualquer situação que envolva crianças/adolescentes. Assim, o PMICA é comumente adotado como princípio, doutrina ou recurso para ponderar a tomada de decisão envolvendo

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crianças/adolescentes. Este estudo consiste em uma revisão integrativa da literatura com publicações em Inglês e Português brasileiro e teve como objetivo investigar como os artigos abordam as definições, características e aplicações do PMICA. Os critérios de inclusão foram: 1) artigos publicados entre 2012 e 2017; e 2) aqueles que abordam claramente uma definição, característica e/ou aplicação do PMICA. As bases de dados em Inglês foram ASSIA, PsychARTICLES, PsychInfo, Scopus, Web of Science e Google Scholar; as bases de dados em Português foram: LILACS, PePsic, Redalyc, Periódicos CAPES e Google Scholar. O descritor principal foi 'melhor interesse da criança', o que levou a 1488 artigos encontrados e 14 selecionados. Os artigos brasileiros focaram na necessidade de proteger o bem-estar físico e psico-socioemocional da criança/adolescente, destacando a criança como um sujeito de direitos e mantendo os laços familiares da criança/adolescente. Os artigos em Inglês ampliaram a perspectiva do PMICA, destacando as idiossincrasias da criança/adolescente, o papel dos interesses dos pais, sua característica como um construto não-individualista, flexível e complexo. Outros resultados mostram que o PMICA está amplamente relacionado ao desenvolvimento da criança/adolescente, que é dividido em dois domínios: 'material-fisiológicos' (necessidades básicas e de sobrevivência) e 'contextuais' (necessidades não-materiais = psicossociais e emocionais). Em geral, o PMICA é um construto plural, complexo e multidimensional que depende dos contextos relacionais da criança/adolescente.

Palavras-chave: Melhores interesses da criança; desenvolvimento infantil; direitos da criança.

EL INTERÉS SUPERIOR DEL NIÑO: UNA REVISIÓN INTEGRADORA DE LAS LITERATURAS INGLESA Y PORTUGUESA

RESUMEN. El interés superior del niño (PISN) debe ser una consideración primordial en cualquier situación que involucre los niños. Por lo tanto, PISN comúnmente se adopta como un principio, doctrina o prueba para ponderar la toma de decisiones con respecto a los niños. Este estudio consiste en una revisión integral de la literatura de publicaciones en inglés y portugués con el objetivo de investigar cómo varios estudios abordan las definiciones, características y aplicaciones de BIC. Los criterios de inclusión fueron: 1) artículos publicados entre 2012 y 2017, y 2) los que abordan claramente una definición, característica y / o aplicación de BIC. Las bases de datos elegidas en inglés fueron ASSIA, PsychARTICLES, PsychInfo, Scopus, Web of Science y Google Scholar; las bases de datos portuguesas fueron: LILACS, PePsic, Redalyc, Periódicos CAPES y Google Scholar. El principal descriptor utilizado fue el 'interés superior del niño', lo que permitió encontrar 1488 artículos y 14 seleccionados. Los artículos brasileños se han centrado en la necesidad de proteger el bienestar físico y psico-socioemocional del niño, destacando al niño como sujeto de derechos y manteniendo los lazos familiares del niño. Los artículos en inglés han ampliado la perspectiva de BIC resaltando las idiosincrasias del niño, el papel de los intereses de los padres, BIC como no individualista, flexible y complejo. Otros resultados muestran que el BIC está relacionado en gran medida con el desarrollo del niño, que se divide en dominios 'material-fisiológicos' (necesidades básicas y sobrevivientes) y 'contextuales' (no materiales y psicosociales y emocionales). En general, BIC es una construcción pluralista, compleja y multidimensional que depende de los contextos relacionales del niño.

Palabras clave: El interés superior del niño; el desarrollo del niño; los derechos del niño.

Introduction

The 'best interests of the child' principle (BIC) is a tool commonly used in any legal situation concerning children to decide and evaluate outcomes. However, there is uncertainty regarding its definition and application. The most frequent use of BIC is within the children-related justice system, mainly in Family Courts regarding divorce and custody dispute cases, where BIC has its main application. However, BIC is associated with a wide range of other subjects and fields which deal with children's rights and interests.

In Brazil, the translation of 'the best interests of the child' to Portuguese has two misinterpretations. The first one is how BIC is usually referred to: *o melhor interesse da criança* (the best interes**t** of the kid) – in the singular. The original English version clearly expresses the plural form, 'interests', since there is not only one best interest. The child is a complex and multi-determined individual with various interests and needs regarding their well-being (Mendes & Bucher-Maluschke, in press, Mendes, Bucher-Maluschke, Vasconcelos, Souza, & Costa, 2016a). The second misinterpretation resides in the fact that, in English, the word 'child' encompasses all individuals under the age of eighteen, that is, both children and adolescents. Thus, referring only to the *interesse da criança* (interest of the kid) may lead to a misinterpretation that the principle refers only to individuals up to 12 years old (according to the Brazilian Child and Adolescent Statute). Regarding these translation issues, it is common to find expressions such as 'the greatest interest of the kid', 'supreme interest of the kid' and 'superior interest of the kid' – it is also possible to find the use of the terms 'infant' or 'minor´. When one chooses *melhor* (best), it respects BIC's origin but also emphasises its qualitative aspect (singular, unique, complex), rather than its quantitative properties (Mendes & Bucher-Maluschke, in press, Lauria, 2003).

BIC will always depend on the context of definition and application, which involves many factors, such as the child's characteristics and social environment (family, community, and school). Culture is another factor that can have an impact on the understanding and application of BIC, influenced by local, regional and national cultural processes. Thus, there might be differences in BIC application according to country, culture and language. English and Portuguese are among the eight most widely spoken languages used for scholarly journal publications (Lobachev, 2008; World Economic Forum [WEF], 2018). The English (UK and US Common Law) and Brazilian (Civil Law) legal systems are significantly different which can lead to different conceptions and applications for BIC, making this a relevant issue for cross-cultural comparison.

There are very few BIC-focused publications in both languages, and those that exist tend to treat the concept superficially. There are more in English than in Portuguese and while these cover a more diverse range of issues than a focus on custody issues, there is still a lack of coherent understanding. This article presents an integrative review exploring definitions of BIC, its characteristics and applications, focusing on a cross-cultural comparison between English and Brazilian Portuguese literature.

BIC historical background and current status

The term 'best interests of the child' was used for the first time in 1924in the *Geneva declaration of the rights of the child* (GDRC) launched by the League of Nations. However, the *parenspatriae* doctrine originated in the 13th century and set a principle aimed to protect the interests of 'lunatics' and 'idiots' (Custer, 1978; Funderburk, 2013). In the 17th and 18th centuries this principle was extended to children by the English Chancery Courts during custody dispute cases. Concerns about children's well-being became an issue in the 18th century, when the concepts of 'child' and 'childhood' started to be seen as relevant to society, with an acknowledgment that the child has particular developmental needs (Ariès, 2012).

In the 20th century, after the GDRC, other international documents highlighted the BIC principle. In 1948, the United Nations (UN) stated in the 25thArticle of its *Universal declaration of the human rights* that children were 'entitled to special care and assistance'. The UN launched the *Declaration of the rights of the child* in 1959 and the *Convention on the rights of the child* (UNCRC) in 1989. The latter is the main source used to refer to the BIC. The BIC principle is encapsulated in the UNCRC's 3rdArticle which broadly shelters all the rights within the UNCRC itself. The article states that "[...] 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". However, neither the article nor the rest of the UNCRC offers any further definition of BIC, its application or factors of evaluation. This has made it a major target for critics of BIC.

BIC has three main characteristics: 1) it is a rule of procedure; 2) it is a substantive right; 3) it is a legal principle (Zermatten, 2010). As a rule of procedure, BIC must be invoked in any kind of decision-making process regarding children. In other words, any decision that can affect children and their rights should always be made in their best interests. A substantive right is related to any right regarding the condition of being human, so BIC as a substantive right means that, as with any other basic right (i.e., human rights), children have a natural right to have their interests taken into consideration whenever a decision or any other situation is regarding them. As a legal principle, BIC should be accessed and evaluated in any legal situation within the justice system regarding children.

BIC is used around the world in fields that involve children, such as health care, education, refugee status, and religious beliefs. However, it is most often applied in the justice system concerning children on matters relating to custody, adoption, neglect, maltreatment, and where a child is orphaned. With adolescents, it tends to be used in terms of law breaking and delinquency. It has now been incorporated into statutes and even the constitutions of many countries. Nevertheless, BIC faces some criticism. It is considered to be a complex construct, and its concept is difficult to define in an objective way, making it difficult to put into practice (Bobar, 2016; Funderburk, 2013; Mendes & Bucher-Malushcke, in press; Sund & Vackermo, 2015). Furthermore, BIC critics argue this doctrine has a lack of clear content, is directionless, individualistic and marginalises parents' rights. This lack of

clarity makes its application difficult, which can lead to bias by courts and other professionals. It is argued that personal views come into play, and that it should be less discretionary (Funderburk, 2013; Moyo, 2012; Pimentel, 2016; Pomerance, 2013; Salter, 2012).

In contrast, BIC defenders state that the principle's 'openness' is an important factor because it allows a state sovereignty in defining and putting in to practice BIC in specific cultural and legal contexts. In general, indeterminacy is a common characteristic among human rights where BIC belongs (Pomerance, 2013; Sormunen, 2016).

Method

This literature review was conducted using an integrative method, utilising a comprehensive methodology which integrates experimental and non-experimental studies. The aim of this method is typically to explore definitions of concepts, reviews of theories and/or a methodological analysis of a specific problem (Souza, Silva, & Carvalho, 2010). Thus, this literature review presents qualitative (concepts, definitions) and quantitative (frequencies) characteristics in its exploration of BIC among the found and then selected articles.

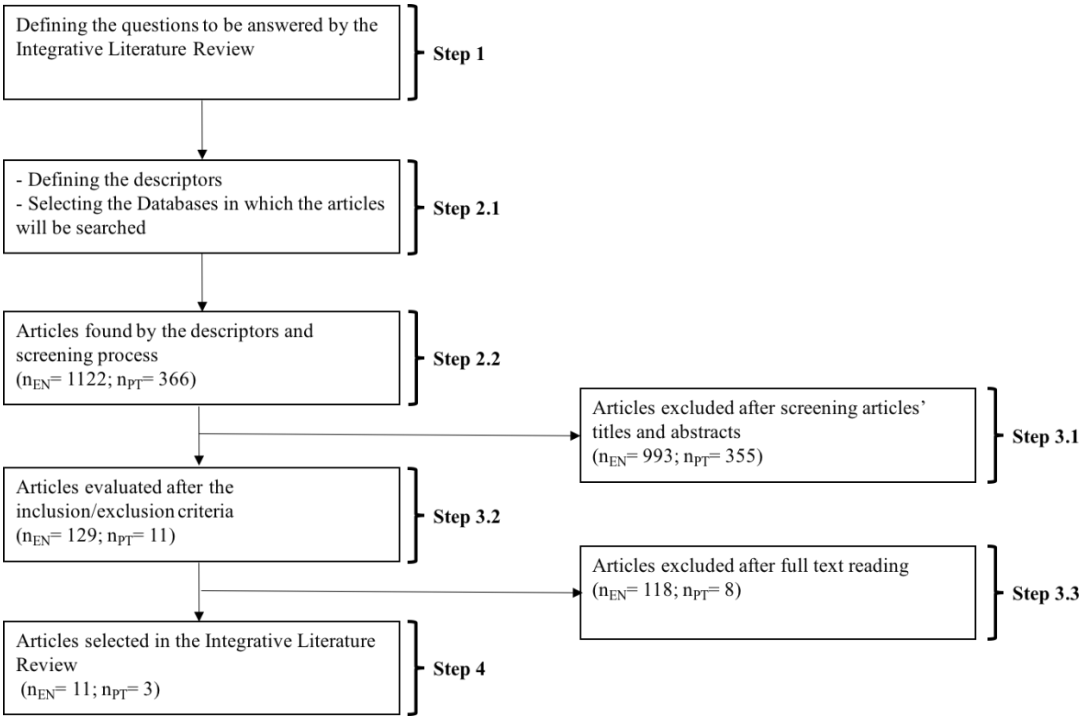
This study was undertaken in four steps. The first was to establish a set of questions regarding the literature: 1) Howis BIC understood and defined? 2) What are the guide lines used to evaluate and apply BIC? 3) What are the main determinants for promoting BIC? 4) Are there significant differences between English and Brazilian sources?

The second step involved a search for articles using descriptors based on the questions in step one. The descriptors were set in English and then translated into Portuguese. The translation was not literal, because there were some variations in Portuguese, but the core idea was preserved during the translation process. Thirty-six descriptors were searched based on the following combinations: 1)'best interests', 'best interest'➔'of the child', 'of the children', 'of the infant', 'of the youth', 'of the adolescent/teenager' + 'family court', 'custody'; 2)'child's welfare', 'children's welfare'; 'adolescent's welfare' + 'family court', 'custody'. The chosen databases for English were: ASSIA, PsychARTICLES, PsychInfo, Scopus, Web of Science and Google Scholar. For Portuguese they were: LILACS, PePsic, Redalyc, Periódicos CAPES and Google Scholar. These databases were chosen because they index articles from psychology, law and the social sciences.

In the third step, the articles' titles and abstracts were screened. They were then selected according to the following inclusion criteria: 1) published between 2012 and 2017– the rationale was that the last five years publications tends to present the most current approaches, discussions and information regarding a topic (Adams, 2016; Morgan-Rallis, 2014; Pautasso, 2013; Virginia Commonwealth University [VCU], 2018); 2) clearly address a BIC definition, characteristic and/or application – thus articles must go beyond a mere mention of BIC or UNCRC 3rd Article, presenting a statement, discussion or introduction of any BIC definition, characteristic and/or application; 3) only journal sources were considered (excluding masters or Ph.D. thesis, books, internet articles, newspaper, book reviews, etc.).

The last step involved organising and analysing characteristics and themes from the selected articles. Tables grouping the articles' main information were developed to answer the research questions set in the first step. Figure 1 summarises the process.

Figure 1. Integrative literature review process. Source: The authors.

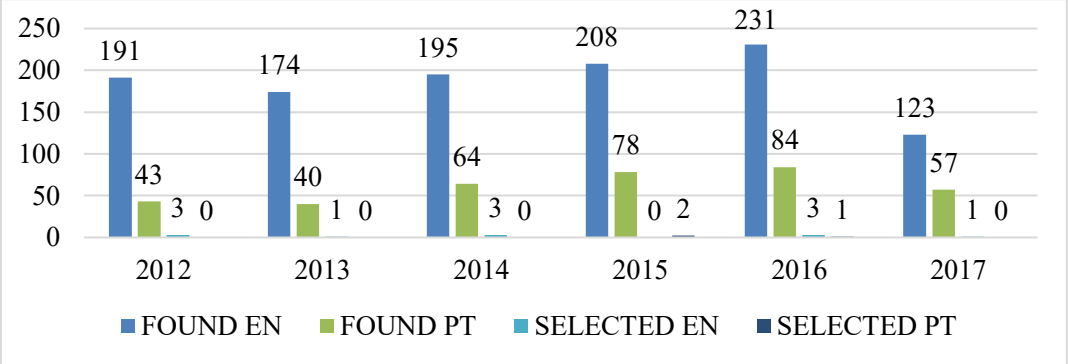


Results

General Characteristics and Frequencies of the Found Articles

As shown in Figure 2,1,488 results were found among English and Brazilian Portuguese literature. Of these, only 14were selected based on the inclusion/exclusion criteria. The database with the highest number of results (n_{EN}= 344; n_{PT}= 256) and articles selected was Google Scholar, representing 45.5% (n= 5) of the English articles selected and 100% (n= 3) of Brazilian Portuguese. The second were PsychInfo (n_{EN}= 145) and Scopus (n_{EN}= 74) representing 18.2% (n= 2; 2) of the selected articles each. Web of Science (n_{EN}= 224) andASSIA (n_{EN}=274) were third with 9.1% (n= 1; 1) each. LILACS, PePsic, Periódicos CAPES, Redalyc and Scielo did not have any results selected for the final analysis.

Figure 2. Number of Articles Found and Selected by Year and Language (EN = English, PT = Portuguese).



Source: The authors.

According to Figure 2, the results in English represent more than 75% (n= 1122) of the articles found and more than 78% (n= 11) of the selected ones. Using the range 2015-2016 yielded the higher number of results in English and Brazilian Portuguese (n= 601), representing 40.4% of the total.

During the third step (screening of and selection of potential articles), the first author analysed and computed the most common subjects associated to BIC based on the articles' titles and abstracts. Results are shown in Table 1.

Regarding Table 1, it is noted that 'Divorce & Custody' is the subject most associated with BIC, representing more than 25% of occurrences. 'Adoption & Vulnerable Children/Youth' was the second most associated subject, representing almost 10% of occurrences. 'Violence & Maltreatment' and 'Health Care' appear in third and fourth place, respectively, representing less than 10% of occurrences each.The subjects of 'Violence & Maltreatment', 'Children's Rights, Policies & Legislation', 'Refugee, Asylum & Immigration', and their associations to BIC were six times more frequentproportionally in English articles than in Brazilian Portuguese ones. Moreover, 'Mediation & Reconciliation' was more than three times more frequent proportionally in the English articles than in the Brazilian Portuguese ones. In contrast, 'Parental Alienation' and 'Joint Custody' and their associations with BIC were more than eleven times more frequent proportionally in the Brazilian Portuguese articles than in the English ones.

Table 1. The most common subjects associated to BIC in the found articles

Category	ENGLISH		PORTUGUESE		TOTAL	
	n	%	N	%	n	%
Divorce & Custody	335	27.15	91	22.52	426	26.01
Adoption & Vulnerable Children/Youth	109	8.83	42	10.40	151	9.22
Violence & Maltreatment	130	10.53	15	3.71	145	8.85
Health Care	109	8.83	30	7.43	139	8.49
Children's Rights, Policies & Legislation	129	10.45	7	1.73	136	8.30
Refugee, Asylum & Immigration	76	6.16	2	0.50	78	4.76
Parental Alienation	15	1.22	62	15.35	77	4.70
LGBTI Parenting	49	3.97	21	5.20	70	4.27
Mental Health & Disability	59	4.78	8	1.98	67	4.09
Joint Custody	13	1.05	47	11.63	60	3.66
Development & Pedagogy	37	3.00	16	3.96	53	3.24
Artificial Reproduction & Surrogacy	49	3.97	3	0.74	52	3.17
Legal Actors Practice	24	1.94	25	6.19	49	2.99
Abduction & Human Traffic	33	2.67	15	3.71	48	2.93
Parenting & Parenthood	43	3.48	3	0.74	46	2.81
Mediation & Reconciliation	11	0.89	12	2.97	23	1.40
Child Testimony/ Witness	13	1.05	5	1.24	18	1.10
TOTAL	1234*	100	404*	100	1638*	100

*The totals are bigger than the number of articles found (nEN= 1122; nPT= 366) because some subjects had more than one occurrence in the same article. Source: The authors.

Characterisation and analysis of the selected articles

As shown in Table 2, Google Scholar had the highest number of selected articles (n= 8) representing 57.1% of the total. PsychInfo and Scopus had 14.3% (n= 2; 2) of the selected

articles each, followed by ASSIA and Web of Science with 7.1% (n= 1; 1) each. The 'Health Care' and 'Law' fields represent 57.2% (n= 4; 4) of selected articles, although 'Psychology' represents 66.7% (n_{PT}= 2) of the Brazilian Portuguese articles selected. Regarding the focus, 'BIC Concept/assessment' and 'Custody/Divorce' represent 71.4% (n= 10) of the articles' focus. Among each language the same pattern is observed, however 'Custody/Divorce' represented 66.7% (n_{PT}= 2) of Brazilian Portuguese articles' focus. 'Theoretical' was the most common type of study among all selected articles (57.1%, n= 8), but 'Empirical-Qualitative' represented 66.7% (n_{PT}= 2) of Brazilian Portuguese articles.

BIC definitions, characteristics and application among the selected articles

This part presents four BIC categories qualitatively extracted from the selected articles. These domains express prescriptive ideas towards BIC and its application: 'definitions' (any statement regarding BIC meaning, its nature, scope and/or distinctness); 'characteristics' (any typical, unique and/or particular BIC description and/or attribute); 'BIC application' (any statement regard putting BIC into practice and/or its process of assessment and evaluation) and 'Pro-BIC context' (any statement regarding an ideal context in which BIC would be promoted and/or preserved). The results are presented in charts with two columns. The first one presents the summarisation of the articles' content throughout main aspects (in italic) and its explanation, according to each domain stated above. The second column presents the articles which were used to set the summarisation. They are referred by a code –see Table 2.

Table 2. Selected articles and its information regarding database, language, authors, year and journal of publication, related field, focus and type of study

DATABASE	LAGUANGE	AUTHORS	PUBLICATION	JOURNAL	FIELD	FOCUS	TYPE OF STUDY	REFERENCE CODE
ASSIA	English	Ryrstedt	2012	International Journal of Law, Policy and the Family	Law	Custody/Divorce	Empirical - Quantitative	A1
PsychInfo	English	Zawati, Parry, & Knoppers	2014	BMC Medical Ethics	Health Care	Returning genetic results	Theoretical	A2
PsychInfo	English	Van Os, Kalverboer, Zijlstra, Post, & Knorth	2016	Clinical Child and Family Psychology Review	Psychology	BIC Concept/ Assessment	Empirical - Systematic Review	A3
Scopus	English	Kalverboer, Beltman, Van Os, & Zijlstra	2017	Journal of Children's Rights	Policies	BIC Concept/ Assessment	Theoretical	A4
Scopus	English	Snelling	2016	Cambridge Quarterly of Healthcare Ethics	Health Care	BIC Concept/ Assessment	Theoretical	A5
Web of Science	English	Schües & Rehmann-Sutter	2013	Topi	Philosophy	BIC Concept/ Assessment	Theoretical	A6
Google Scholar	English	Salter	2012	Theoretical Medicine	Health Care	Medical Decision-making	Theoretical	A7

Google Scholar	English	Supaat	2012	and Bioethics South East Asian Journal of Contemporary Business, Economics and Law	Law	Human Rights	Theoretical	A8
Google Scholar	English	Toros, Valma, & Tiko	2014	Journal of Social Welfare and Human Rights	Policies	Custody/Divorce	Empirical - Documental	A9
Google Scholar	English	Hamper	2014	Ohio Northern University Review	Law	Human Rights	Theoretical	A10
Google Scholar	English	Nevondwe, Odeku, & Raligilia	2016	Bangladesh Sociological Society	Law	Custody/Divorce	Empirical - Documental	A11
Google Scholar	Portuguese	Ribeiro & Costa	2015	Revista de Psicología	Psychology	Custody/Divorce	Empirical - Qualitative	A12
Google Scholar	Portuguese	Kipper	2015	Revista Bioética	Health Care	BIC Concept/ Assessment	Theoretical	A13
Google Scholar	Portuguese	Mendes, Bucher-Maluschke, Vasconcelos, Souza, & Costa	2016a	Nova Perspectiva Sistêmica	Psychology	Custody/Divorce	Empirical - Qualitative	A14

Source: The authors.

Chart 1. 'BIC Definition', 'BIC Characteristics', 'BIC Application' and 'Pro-BIC Context' qualitative categories based on the selected articles' content

BIC DEFINITION (1.1)	REFERENCE	BIC CHARACTERISTICS (1.2)	REFERENCE
BIC as a primary consideration: it is a primary consideration in all actions concerning children, above any other concerns and/or interests, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies[1]. Protect the child's physical and mental welfare: it is related to the protection of the children's physical and mental well-being and their development[2]. Basic children's rights: it is based on civil, political, economic, social, and cultural rights of the children[3].	**1.** A1, A2, A3, A4, A5, A6,A7, A8, A10, A11, A13, A14. **2.** A1, A3, A4, A6, A8, A9, A10, A11, A12, A13, A14. **3.** A7, A9, A11. **4.** A2, A7. **5.** A2, A4, A5, A6, A7, A10, A11, A12, A14. **6.** A2, A3, A4, A6, A9,	Family coexistence: it is related to family's integrity (relationship with parents and siblings)[1]. Child's idiosyncrasies: it is determined by the child's individual characteristics such as age, sex, ethnicity, cultural identity, religious beliefs, personality[2]. Legal indeterminacy: cannot be [strictly] defined by law[3]. Not given: it is vague, wide, undetermined ➔ it is relative[4]. Adults' views: it is based on adult and society's views on children and childhood[5]. Plurality: it is plural and varies towards different children, families and cultures[6].	**1.** A2, A3, A4, A9, A10, A11, A12. **2.** A2 **,**A3, A4, A10, A11. **3.** A1, A3, A8. **4.** A1, A5, A8, A12, A13, A14. **5.** A1, A13. **6.** A3, A4, A5, A12. **7.** A1, A11, A12, A14. **8.** A5, A8. **9.** A7.

Temporality-orientation; the children's interests can be either 'present-oriented' or 'future-oriented'[4]. Physical and non-physical interests: its types can be: physiological interests, psychosocial interests, psycho-emotional interests, relational/bonding interests, and cognitive-developmental interests[5]. Physical and non-physical needs: all those interests expressed in the last aspect are related to some needs such as: need of happiness, love, understanding, stable living conditions, secure familial bonding, good nutrition, health care, protection and support against physical and social harms – physical or emotional violence, or economic and sexual exploitation[6]. Individuality & Identity: it is also part of their interests the need of knowledge, education, and experience – in order to become a mature selfhood individual with a social identity, and a responsible member of the community[7]. BIC aims: overall, BIC is intend to help the child to enter the adulthood freely and autonomously without any disadvantage[8].	A10, A11, A12, A14. **7.** A3, A4, A5, A6, A14. **8.** A6, A10.	Multi-dimensional: has multiple dimensions[7]. BIC promoters' biases: can be biased by the BIC promoters' views, ideas, and values (caregivers, child protectors, legal actors)[8]; Parents' interests moderation: somehow it is related to the parents interests, positively or negatively[9]. Temporality-sense: it has a sense of temporality (present or future)[10]. Multidetermined: determined by the child's relational contexts and social network moderate BIC[11]. Indelible: it is a basic right which must be concerned and applied all the time[12].	**10.** A4, A5, A8. **11.** A2, A3, A4, A6, A7, A14. **12.** A9.
BIC APPLICATION (1.3)	**REFERENCE**	**PRO-BIC CONTEXT (1.4)**	**REFERENCE**
Flexibility: must be flexible and assess the singular issues of each case, based on knowledge and evidence[1]. Child as a subject of rights: must to see the child as an individual with rights and, thus, hear them and their thoughts, wishes, needs, fears and expectations, trying to figure their perspective regarding the situation, addressing their age and maturity, and integrating this to the decision-making process[2]. Range of benefits: must determine the most spread net of benefits among the available options, assigning different weights of interest the child has in each option and minimising inherent risks or costs[3].	**1.** A1, A3, A9. **2.** A1, A2, A3, A4, A8, A9, A10. A11, A12. **3.** A2, A7. **4a.** A5, A6, A7, A8. **4b.** A7. **5.** A3, A4, A5. **6.** A3, A4, A8, A12, A14. **7.** A6.	**Parents** . Parent-child relationship: always put or, at least, have in great consideration what is the best for the child ➔ good parent-child relationship[1]. . See the child as a rights holder: understand that the child is not their property[2]. . Conflict free communication: relatively conflict-free cooperation between the parents and ability to minimally dialogue their differences (as persons and as parents), avoiding, thus, children's suffering[3]. **Legal actors** . Avoid bias: do not act throughout their bias[4]. . Listen to the child: their thoughts, wishes, needs, fears and expectations[5].	**1.** A3, A5, A11. **2.** A5, A8, A12. **3.** A1. **4.** A5, A8. **5.** A1, A2, A6, A8, A9, A12. **6.** A2. **7.** A3, A4, A8, A12, A14. **8.** A2, A11. **9.** A9 **10.** A2, A13. **11.** A2, A3, A8, A13.

Non-individualistic: cannot be seen and applied in an individualistic view[4a]. Must to integrate the children's interests with their family's and contexts ➔ BIC is relational[4b]. Temporality: must to identify the temporality of the interests to be evaluated and guaranteed[5]. Multi-professional evaluation: due to its multidetermined factors, BIC must be promoted by multi-professionals and their knowledge[6]. Holistic approach: figure out and integrate what children need (basic needs), what they want (their will) and what they are entitled to (children's rights)[7].		. Search for parents' criminal charges: look for any relevant civil or criminal proceeding that could harm the child's safety, security or well-being[6]. . Multi-professional work: BIC evaluation actors should articulate their work with each other[7]. . Continuity: ensure that any disruption and intrusion to a child's rights will be kept to a minimum – and based on a reasonable motivation[8]. . Promoting the best scenario for the child: create the best and most suitable conditions for child's living and development[9]. . Complex evaluation process: the evaluation and level of scrutiny shall be as higher as complexity of the decision to be taken as its potential impact on children's well-being[10]. **State** Promote and guarantee child's rights: will provide laws and policies to guarantee and promote the best interests of the child[11].	

Source: The authors.

As seen above, 'BIC definitions' (1.1) tend to contain an understanding of the 'best interests' as a primary consideration in all actions concerning children, above any other concerns and/or interests (public or private). This idea is based on the UNCRC 3rdArticle, and just two of the selected papers (Toros, Valma, & Tiko, 2014; Kipper, 2015) did not referto this article.

In sum, the selected articles define BIC as related to the protection of the child's physical and mental well-being and their development. The BIC's main goal would be to help with the raising of a capable and (socio-emotional) functional adult.

Based on the articles' fields, 'Law', 'Health Care' and 'Psychology' were responsible for 70% of this category.100% of the articles from 'Law', 'Health Care' and 'Philosophy' and referred to the aspect 'BIC as a primary consideration'; only 66.6% of 'Psychology' and 50% of 'Policies' did so. 100% of articles from 'Law', 'Psychology', 'Policies' and 'Philosophy' referred to the aspect 'Protect the child's physical and mental welfare'; only 25% of 'Health Care' articles did so. Only 'Law', 'Health Care' and 'Policies' referred to 'Basic children's rights' and 'Temporality-orientation' in ≥¼ of their articles.≥50% of the articles referred to 'Physical and non-physical interests' and 'Physical and non-physical needs'. All fields referred to 'Individuality & Identity', except 'Law'. The Brazilian articles referred only to 'Protect the child's physical and mental welfare' (100%), 'BIC as a primary consideration' ($^2/_3$), 'Physical and non-physical interests' ($^2/_3$), 'Physical and non-physical needs' ($^2/_3$) and 'Individuality & Identity' ($^1/_3$).

The majority of the articles stated that 'BIC Characteristics' (1.2) is strongly related to the maintenance of the family's integrity (relationship with parents and siblings, mainly) and also determined by the child's personal characteristics. Thus, BIC is a dialectical construct because it is wrought by the child's relationships.

A current characteristic attributed to BIC in the selected articles, but also very often in the BIC-related literature, is its indeterminacy as a main aspect, especially regarding the law. Some articles state that this is because BIC is not clear, thus is vague and has a wideremit, due to its quality of being relative, therefore particular and contextualised to each child and his/her context (family, social network, school, friends, community, public policies, cultural issues, etc.). Thus, BIC is pluralistic and has multiple dimensions, varying according to each child, family and culture. In addition, BIC is also somehow related to the parents' interests: they can secure (positively) or harm (negatively) the child's interests. BIC usually also have a sense of temporality (located in the present or in the future).

Based on the articles' fields, 'Law', 'Health Care' and 'Psychology' were responsible for 80% of this category.≥ 50% of articles from 'Law', 'Psychology' and 'Policies' referred to the aspect 'Family coexistence'. ≥ 50% of articles from 'Law', 'Policies' and ≤ 30% of the other fields referred to 'Child's idiosyncrasies'. Only 'Law' (50%) and 'Psychology' (33.3%) referred to 'Legal indeterminacy'. Only 'Law', 'Health Care' and 'Psychology' referred to 'Not given' in ≥50% of their articles. Only 'Law' and 'Health Care' referred to 'Adults' views', 'BIC promoters' biases' and 'Temporality-sense' in 25% of their articles. Only 'Health Care' (50%), 'Psychology' (66.6%) and 'Policies' (½) referred to 'Plurality'. Only 'Psychology' and 'Law' referred to 'Multi-dimensional' in≥50% of their articles. Only 'Health Care' referred to 'Parents' interests moderation' (25%). Only 'Policies' referred to 'Indelible'. All fields, except 'Law', referred to 'Multidetermined' in ≥50% of their articles. The Brazilian articles referred only to 'Not given' (100%), 'Multi-dimensional' ($^2/_3$), 'Family coexistence' ($^1/_3$), 'Adults' views' ($^1/_3$), 'Plurality' ($^1/_3$) and 'Multidetermined' ($^1/_3$).

During the whole process of 'BIC Application' (1.3), it is important to establish the child's needs, and integrate them with the child's will and rights. To do this, it is necessary to see the child as an individual with rights and, thus, to hear them and their thoughts, wishes, needs, fears and expectations is a must. In addition, it is important to try to ascertain the child's perspective regarding the situation, according to their age and maturity, and integrate this into the process. BIC cannot be seen or applied in an individualistic way. It is necessary to integrate the children's interests with their family's interests too, and this relates to the already mentioned 'dialectical' BIC characteristic.

Lastly, the BIC application process must identify the temporality of the interests to be evaluated and guaranteed, which relates to the 'temporality' BIC characteristic already identified. In other words, during the process, BIC promoters should identify if the interests to be assessed and evaluated are short-term (e. g. should the child go to a trip? What type of clothes should they have?) or long-term (e. g. type of residence, type of school, religious beliefs). In addition, they should also look for any civil or criminal charges relevant to the child's safety, security and/or well-being.

Based on the articles' fields, 'Law', 'Health Care' and 'Psychology' were responsible for 77.7% of this category. Only 'Law' (25%), 'Psychology' (33.3%) and 'Policies' (50%) referred to the 'Flexibility' aspect. Regarding 'Child as a subject of rights', 'Law' and 'Policies' referred to it in 100% of their articles, and 'Health Care' and 'Psychology' referred to it in 50% and 66.6% of their articles respectively. Only 'Health Care' (50%) referred to 'Range of benefits'. Only 'Law' (25%), 'Health Care' (75%) and 'Philosophy' (100%) referred to 'Non-individualistic'. Only 'Health Care' (25%), 'Psychology' (100%) and 'Policies' (50%) referred to 'Temporality'. Only 'Law' (25%), 'Policies' (50%) and 'Psychology' (100%) referred to 'Multi-professional evaluation'. Only 'Philosophy' (100%) referred to 'Holistic approach'. The

Brazilian articles referred only to 'Child as a subject of rights' ($^1/_3$) and 'Multi-professional evaluation' ($^2/_3$).

For the 'pro-BIC context' (1.4), the articles reveal three integrated relational sub-contexts. The first is 'parent-filial', in which parents should always put the child and their physical, psychosocial and emotional needs first, understanding that the child is not their property but has rights. In addition, parents' communication should avoid children's physical and psychological suffering and harassment. The second sub-context is 'justice-child', in which legal actors should make every effort to be unbiased and listen to children and their thoughts, wishes, needs, fears and expectations. The last sub-context is the 'state-child', in which the State should provide laws and policies to guarantee and promote the best interests of the child.

Based on the articles' fields, 'Law', 'Health Care' and 'Psychology' were responsible for 86.6% of this category. Only 'Law' (25%), 'Policies' (25%) and 'Psychology' (33.3%) referred to 'Parent-child relationship'. Only 'Health Care' (25%), 'Psychology' (33.3%) and 'Law' (50%) referred to 'See the child as a rights holder'. Only 'Law' referred to 'Conflict free communication' in 25% of their articles. Only 'Law' and 'Health Care' referred to 'Avoid bias' and 'Continuity' in 25% of their articles. 'Law' and 'Policies' referred to 'Listen to the child' in 50% of their articles while 'Health Care' and 'Psychology' did it in 25% and 'Philosophy' in 100%. Only 'Health Care' referred to 'Search for parents' criminal charges' (25%) and 'Complex evaluation process' (50%). Only 'Law' (25%), 'Policies' (50%) and 'Psychology' (100%) referred to 'Multi-professional work'. Only 'Law' (25%), 'Psychology' (33.3%) and 'Health Care' (50%) referred to 'Promote and guarantee child's rights'. Only 'Policies' referred to 'Promoting the best scenario for the child' in 50% of their articles. The Brazilian articles referred only to 'See the child as a rights holder', 'Listen to the child', 'Complex evaluation process' and 'Promote and guarantee child's rights' in $^1/_3$ of their articles and 'Multi-professional work' in $^2/_3$.

Discussion

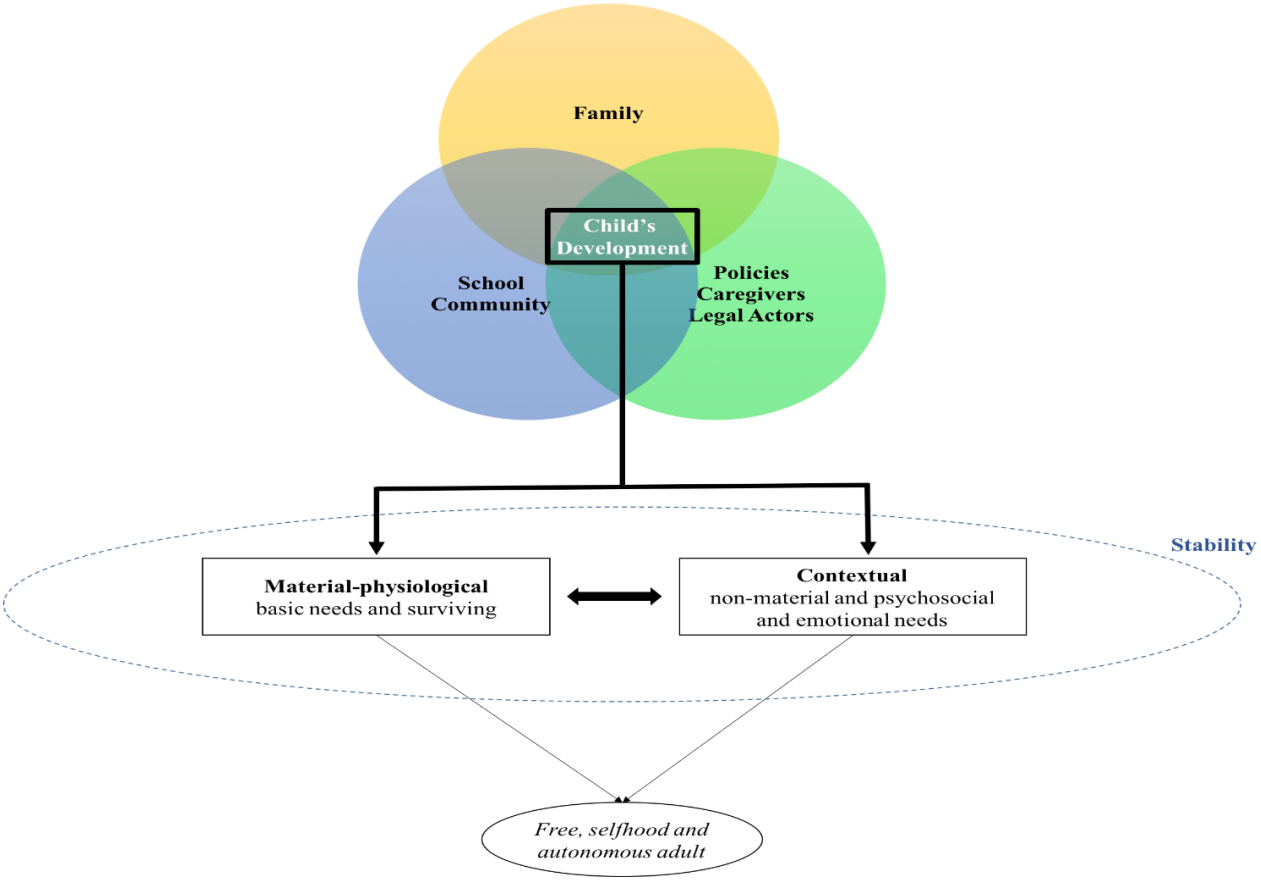
Regardless of the definition, characteristics, application or pro-BIC context, the core of the articles' BIC approach is 'development'. Hence, reference to 'best interests of the child' in fact refers to 'child development'. Henceforth: Child's development ➔ Needs/Interests ➔ Rights. As seen, the child's development leads to some developmental needs (or interests) which leads to some rights. For instance, the child's development, to be congruent and functional for the child, needs to address the child's physical and mental development which leads to the right to education, to play and to familial coexistence.

Based on the reviewed literature, there are two development domains: material-physiological and contextual (social, psychological and emotional). The material-physiological domain was mainly referred to in 'BIC Definition' (Chart 1, 1.1) which pointed to the child's physical needs, interests and welfare. The contextual domain was referred to in all four BIC categories highlighting the child's mental needs, interests and welfare, their idiosyncrasies, need of familial coexistence, BIC's plurality and its multidimensional characteristics.

Another frequent issue addressed by the articles, mainly regarding 'BIC characteristics' (Chart 1, 1.2) and 'Pro-BIC context' (Chart 1, 1.4), is the need for stability which represents the continuity, regularity, and maintenance of physical and psycho-

emotional well-being. In other words, a child will feel stable when he/she has food, shelter, clothing and physical protection on a regular basis. The same is valid for the need for love, affection, understanding and so on. Although, for the perception of stability as a whole, all those needs should be addressed, and provided together. Figure 3 presents a model that summarises all those ideas and points out BIC as a developmental issue with the two mentioned domains.

Figure 3. BIC Model based on the articles' definitions, characteristics and applications.



Source: The authors.

As presented in 'BIC Definition' (Chart 1, 1.1), BIC's goals intend to promote a process that leads to a 'free selfhood and autonomous adult'. Among its definitions, characteristics, application and ideal context for BIC, the articles refer to the child's development, therefore their best interests, as being affected by the child's relational context. Figure 3 shows the three main ones: family, school/community and policies, caregivers and legal actors. Many of the articles state that BIC has multi-dimensions because there are many complex dynamics involved based on interactions between the child and various contexts. This

dynamic also highlights the two domains mentioned above. The 'material-physiological' domain refers to the material, objective, quantifiable and measurable elements needed to ensure the child's basic needs and survival such as: nutrition, housing, physical integrity, clothing, etc. On the other hand, the 'contextual' domain refers to social, psychological and emotional contexts representing non-material, abstract, subjective, unquantifiable and un measurable (or hard to do so) elements needed to ensure the child can develop his or her personality, identity and good mental health such as: love, affectional bonds, understanding, culture, religious beliefs, learning (academic and also social abilities).

Despite the fact that these dimensions can be seen as opposites, they are, in fact, complementary within and between each other. For example, a child can have all their material-physiological needs fulfilled, but if the psychosocial and emotional ones are not addressed, and vice-versa, the child's best interests will not be achieved. Moreover, both domains are interdependent, as one can affect the other. For example, if a child does not have the minimum maintenance of their material-physiological needs, they would be very unlikely to achieve psychosocial-emotional ones. This rationale was outlined by Maslow in his 'Hierarchy of Needs Theory' which stated that psychological needs cannot to be achieved while the physiological (basics) ones are in deficit (Block, 2011).

Regarding 'BIC characteristics' (Chart 1, 1.2), the articles have emphasized that BIC is pluralistic and emerges in a unique way for each child. If BIC is basically related to development and despite common-shared phases and issues, development is a particular, unique and distinctive process carried for each individual (Rossato & Martínez, 2013; Zago & Ribeiro, 2017), then BIC is going to be equally a particular, unique and distinctive process regarding each child. Moreover, the child's relational contexts which set up his/her development, as shown in Figure 3, are also going to vary from child to child.

The literature indicates that contextual domain has been neglected by BIC stakeholders during decision-making processes (Toros et al., 2014). In this study, English-based articles have addressed this issue more than the Brazilian ones. This neglect probably occurs because it is hard to access, therefore recognise, evaluate and promote, the psychosocial and emotional elements that compose BIC. This is especially critical for judges and lawyers as the law still has some difficulty establishing non-objective and abstract phenomena (Mendes et al., 2016a). Furthermore, this limitation can lead legal actors to face emotional distress when they perceive that their instruments and practice cannot help the child or the family (Mendes & Bucher-Maluschke, 2017b).

Regarding the differences between the Brazilian and English articles, the majority of the model's statements were referred to by the latter rather than the former. The Brazilian articles' frequency was short not only regarding the number of articles found and selected but also in addressing BIC. With respect to BIC's definition, Brazilian articles referred only to the BIC as primarily concerning protection of the child's physical and mental welfare and physical/non-physical interests/needs. Aspects related to child's rights, temporality and growth (becoming a capable and functional adult) were not directly addressed. Brazilian articles also referred to BIC as 'not given' and 'vague', having multiple dimensions and depending on the child's relational contexts. Characteristics related to a child's idiosyncrasies, legal indeterminacy, BIC promoters' biases and parents' interests were not addressed in the Brazilian articles. Regarding BIC application (Chart 1, 1.3), the Brazilian articles approached only two of the eight aspects raised: 'child as a subject of rights' and 'evaluation by multi-professional staff'. Regarding the pro-BIC environment (Chart 1, 1.4), those articles addressed only two requirements: 'child is not a property' and 'listen to the

child'. In sum, Brazilian articles have focused on the need to protect the child's physical and psycho-socioemotional well-being, highlighting the child as a subject of rights and guaranteeing the maintenance of the child's familial bonds. On the other hand, the English ones have broadened the BIC perspective, approaching the child's characteristics, the role of the parent's interests, and difficulty in evaluating and promoting BIC according to each child. Thus, BIC comprehension, evaluation and application should be flexible, complex and take into account the largest range of benefits to the child in the present and in the future, making BIC an indelible construct.

Brazilian Portuguese articles have a restricted approachon subjects associated with BIC. They reveal a significant and almost exclusive focus on 'parental alienation' and 'joint custody' (Table 1). This was expected because Brazilian legal literature related to Family Law tends to be restricted to those two topics (Mendes, Bucher-Maluschke, Vasconcelos, Fernandes, & Costa, 2016b) – the proportion of Brazilian Portuguese articles on these topics was almost twelve times higher than in the English papers. After thirty years, parental alienation has not been proven to be a genuine problem, syndrome,or scientific matter (Mendes, 2019; Mendes & Bucher-Maluschke, 2017a; Shaw, 2016). Despite this, Brazil is the only country which has created and maintained a specific act to avoid parental alienation. The majority of the Brazilian legal literature points to joint custody as the most efficient solution to parental alienation and other high-level family litigation cases (Mendes et al., 2016b). Brazil has also enacted a bill making joint custody the typical arrangement in custody cases where parents cannot reach a custody agreement by themselves, regardless the level of conflict or the interaction between them. However, in practice, imposing joint custody may disregard the specific familial context and its characteristics, especially when parenting communication has failed and the level of litigation is considerably high (Mendes et al., 2016b; Mendes & Bucher-Maluschke, 2017a; Nevondwe, Odeku, & Raligilia, 2016; Ryrstedt, 2012). Thus, imposing this arrangement, without offering support to the family, may cause more harm than benefits to the best interests of the child and their family's welfare. Hence, the issue of parental alienation shows how 'superficial BIC speech' can cause more damage than gain. Unfortunately, this is common not only in Brazil's legal literature but also in legal practice and law and policy making contexts.

Final considerations

The literature suggests that the main understanding regarding BIC should be determining the balance between material-physiological and contextual needs (and the trade-off within and between them as well) that impact on the child's development. Thus, the articles reviewed reveal that material-physiological and contextual domains are the most frequent aspects used to address the child's development, and therefore their best interests. Moreover, neither of those domains should be neglected or underestimated for a complete BIC promotion; both domains should be fostered and seen as interdependent elements. In addition, BIC was viewed as a pluralistic, multi-dimensional and complex concept due to the child's relational contexts which make BIC a dialectical construct. Hence the main task in BIC decision-making is to wright and set the very best trade-off within and between those domains.

Stability is required to ensure a congruent development process, therefore a guarantee of stable living conditions (material-physiological and contextual) for the child appears to be the most effective way to promote BIC. This is especially important in divorce and custody disputes where family crisis can make the environment very unstable and can impair the child's development, meaning that the child's best interests are not met.

Findings indicate that the main difference between the English and Brazilian articles is that the former points to a broader view on BIC, and approaches it in different fields and matters, while the latter seems more restricted to custody issues and usually addresses the same subjects (parental alienation and joint custody). However, the Brazilian articles present a critical, extensive and solid discussion in terms of seeing the child as a subject of rights, especially recognising and validating his/her voice.

One of the most frequent critiques towards BIC is that it is a complex construct, difficult to define and put into practice. Perhaps these critiques emerged from the Law's difficulty in working with non-objective, non-linear and non-predictable issues. BIC is indeed a complex construct as shown, but it is not a problem *a priori*, if the BIC promoters apply an equally complex (and systemic) approach to the weight and trade-off of the child's development needs. Defining BIC requires a careful look at the child's personal, contextual and relational characteristics in each case. Another critique is that BIC has a lack of clear content and has no clear direction (especially referring to the UNCRC's 3rdArticle) and thus leads to bias. If one's perspective on BIC is restricted to the UNCRC's 3rdArticle,the perception of unclearness and lack of direction might occur. However, BIC cannot be restricted to only one article. BIC is sustained by the whole UNCRC and the 3rdArticle only emphasizes the 'primary consideration' principle. Regarding this principle, the argument that BIC is individualistic and harms parents' rights does not make sense. As seen, BIC is multidimensional, plural, and relies on the child's relational context. Prioritising the child's interests does not mean neglecting or ignoring the parents' rights, especially when the parents have a major concern with what is best for the child.

The limitations of this study relate to the number and type of sources (only journal articles) and chosen languages and databases. It is suggested that a broader set of sources (such as masters and Ph.D. theses, courts records, internet articles, interviews, professional bodies' documents and guidelines) would lead to different results and conclusions. The same critique applies to the chosen languages. Spanish, for example, is one of the most published scholarly languages and could add more reflection and insight to the ideas presented in this study.

We believe that this article can help to establish a better understanding regarding the definition, characteristics and application of BIC, and that the information presented in this study could help BIC stakeholders in decision-making processes. Nevertheless, our contributions could be expanded upon by other studies which focus on stakeholder perspectives (through qualitative interviews or surveys, for example) or possibly by focusing on the families and children's views, exploring how they themselves perceive this phenomenon.

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