

# UNHCR Guidelines on **Determining the Best Interests of the Child**





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**May 2008**

# Acknowledgements

These Guidelines have benefited from the input and expertise of a wide range of field colleagues as well as from advice provided by other international governmental and non-governmental organizations, in particular UNICEF, the International Committee of the Red Cross, the United Nations Committee on the Rights of the Child, the International Rescue Committee, the Permanent Bureau of The Hague Conference on Private International Law, Save the Children, the Lutheran Immigration and Refugee Service, among others. UNHCR wishes to acknowledge these valuable contributions with appreciation as well as the active cooperation of colleagues both at Headquarters and in the field.

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## *Photos*

*Cover:* An Afghan refugee child returning from Pakistan looks out of the window of a bus at the Puli Charki refugee centre.

*UNHCR/ N. Behring-Chisholm.*

*Chapter 1:* A young Afghan returnee born in exile in Pakistan smiles for the camera in the government-funded township of Sheikh Mesri, outskirts of Jalalabad.

*UNHCR/ M. Maguire.*

*Chapter 2:* Unaccompanied refugees from Darfur, Sudan.

*UNHCR/ H. Caux.*

*Chapter 3:* Refugee girls from Chechnya in a Polish reception centre.

*UNHCR/ B. Szandelszky.*

*Annexes:* An Indian origin Sri Lankan boy peeps out from his line room house in Strapthspey estate, Sri Lanka.

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# Foreword

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The principle of the best interests of the child has been the subject of extensive consideration in academic, operational and other circles. Legal documents relating to the protection of children, including those adopted by UNHCR's Executive Committee on children of concern to the Office, systematically refer to it. How to apply this principle in practice, however, often remains challenging for UNHCR and its partners. Limited guidance is available on how to operationalize the best interests principle. These Guidelines are intended as one step to help fill this gap.

Among others, the Guidelines describe a formal mechanism to determine the best interests of the child. BID systems should not, however, be established in isolation of other protection measures taken for the benefit of children falling under UNHCR's mandate. The mechanism is thus designed as part of a comprehensive child protection system.

These Guidelines in their final version have been produced following two years of field testing the provisionally released version of May 2006. I would like to express my appreciation to all those field operations which have pioneered the implementation of the Guidelines, in particular the operations in Ethiopia, Guinea, Kenya, Malaysia, Tajikistan, Tanzania and Thailand, which played an invaluable role in the pilot phase, without which the Guidelines could not have been finalized. I am also grateful to the many partner agencies whose expertise in child welfare and protection proved crucial in the drafting process. The true value of the Guidelines will, of course, be tested and established only by the extent to which they are used, and relied upon in actual practice. I urge all those into whose hands they will be placed to make the greatest use of them, and, on the basis of this experience, to encourage feedback to UNHCR, thus helping us to ensure that the Guidelines become an even better and more effective tool.

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# Table of Contents

A few definitions	8
Introduction	9
<b>1. The Best Interests Principle</b>	<b>13</b>
1. International legal framework	14
1.1 Convention on the Rights of the Child	14
1.2 Other relevant legal sources	15
2. Comprehensive child protection systems	17
3. How to apply the best interests principle	20
3.1 Scope of the principle	20
3.2 Actions affecting an individual child	21
3.3 Best interests assessment	22
3.4 Best interests determination (BID)	23
4. Supporting national child protection systems	26
<b>2. Best Interests Determination by UNHCR</b>	<b>29</b>
1. Durable solutions for unaccompanied and separated refugee children	30
1.1 Purpose of the BID	30
1.2 When is a BID required?	30
1.3 Family reunification	31
1.4 When to start a BID	32
1.5 What if the parents have been refouled?	33
2. Temporary care arrangements for unaccompanied and separated children in exceptional situations	34
3. Possible separation of a child from parents against their will	36
3.1 Exceptional nature of UNHCR's involvement	36
3.2 Severe harm from parents	38
3.3 Parents' separation	40
3.4 Implementing a BID involving separation	41
3.5 Custody rights	42
<b>3. BID Procedure and Decision-Making</b>	<b>47</b>
1. Setting up a BID procedure	48
1.1 Procedural safeguards	48
1.2 Establishing Standard Operating Procedures (SOPs)	49
1.3 Designating a BID supervisor	50
1.4 Assigning responsibility for collecting information	51
1.5 Establishing a BID panel	53
1.6 Working with interpreters and guardians	54

1.7 Simplified procedures for particular situations	55
2. Collecting information	57
2.1 Verifying existing information on the child	58
2.2 Exploring the views of the child	59
2.3 Interviewing family members and other persons close to the child	63
2.4 Relevant background information	65
2.5 Seeking the views of experts	66
3. Balancing competing rights in making a decision	67
3.1 Views of the child	68
3.2 Views of family members and others close to the child	69
3.3 Safety as a priority	69
3.4 The importance of the family and of close relationships	71
3.5 Nurturing the development needs of the child	74
3.6 Balancing best interests of the child with rights of others	76
4. Informing the child and follow-up measures	77
5. Keeping records	78
6. Reopening a BID decision	79
Endnotes	80
<b>Annexes</b>	<b>83</b>
Annex 1: BID for durable solutions for unaccompanied and separated refugee children	84
Annex 2: BID for temporary care arrangements for unaccompanied and separated children in exceptional situations	85
Annex 3: BID, including emergency procedures, for possible separation of a child from parents against their will, in the absence of responsible national authorities	86
Annex 4: Family reunification checklist to determine if a BID is required	87
Annex 5: Undertaking of confidentiality (BID procedure)	88
Annex 6: Best interests determination report	89
Annex 7: Checklist for child welfare officer	95
Annex 8: Checklist for BID supervisor	96
Annex 9: Factors that determine a child's "best interests" Checklist	97
<b>Figures</b>	
Figure 1: Where to find the answers to your questions	11
Figure 2: Elements of a comprehensive child protection system for unaccompanied and separated refugee children	19
Figure 3: Application of the best interests principle by UNHCR	22

# A few definitions

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A **“child”** as defined in Article 1 of the Convention on the Rights of the Child (CRC), means “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”. In terms of actions by UNHCR, the word “child” refers to all children falling under the competence of the Office, including asylum-seeking children, refugee children, internally displaced children and returnee children assisted and protected by UNHCR and stateless children.

**“Unaccompanied children”** (also called **“unaccompanied minors”**) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

**“Separated children”** are those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

**“Orphans”** are children both of whose parents are known to be dead. In some countries, however, a child who has lost one parent is also called an orphan.

A **“best interests determination” (BID)** describes the formal process with strict procedural safeguards designed to determine the child’s best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option.

A **“best interests assessment”** is an assessment made by staff taking action with regard to individual children, except when a BID procedure is required, designed to ensure that such action gives a primary consideration to the child’s best interests. The assessment can be done alone or in consultation with others by staff with the required expertise and requires the participation of the child.

# Introduction

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One of the key priorities of UNHCR is to protect and promote within its capacity the rights of all children falling under its mandate. To achieve this, UNHCR and its partners must support the strengthening or establishment of comprehensive child protection systems.

Such systems should include mechanisms to identify the best interests of the child. Depending on the impact on the child of the action to be taken, mechanisms may range from an assessment of which option is in the best interests of the child, to a formal process with strict procedural safeguards.

National child protection systems usually include strict procedural safeguards to identify the best interests of the child before taking certain major decisions. These include separation of a child from his or her parents against their will, determination of parental and custody rights in the case of separation and adoptions. Such decisions can normally only be taken by competent national authorities, such as the judiciary, and are subject to procedural safeguards foreseen by law.

A best interests determination (BID) describes the formal process, with strict safeguards, that UNHCR has established for decisions of a similar magnitude. A BID is particularly relevant for refugee children, although in certain circumstances best interests determinations may also need to be carried out by UNHCR for other categories of children.

Building on the practice of domestic child protection systems, this publication offers guidance (Chapter 1) on how to apply the best interests principle in practice, and defines (Chapter 2) the three situations in which UNHCR must undertake a BID. These include (i) the identification of the most appropriate durable solution for unaccompanied and separated refugee children, (ii) temporary care decisions for unaccompanied and separated children in certain exceptional circumstances, and (iii) decisions which may involve the separation of a child from parents against their will.

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The strict procedural safeguards of a BID are not required for other actions by UNHCR that concern individual children. UNHCR must, nevertheless, ensure that staff in charge of such actions have the knowledge and skills required to assess whether the action to be taken is in the best interests of the child.

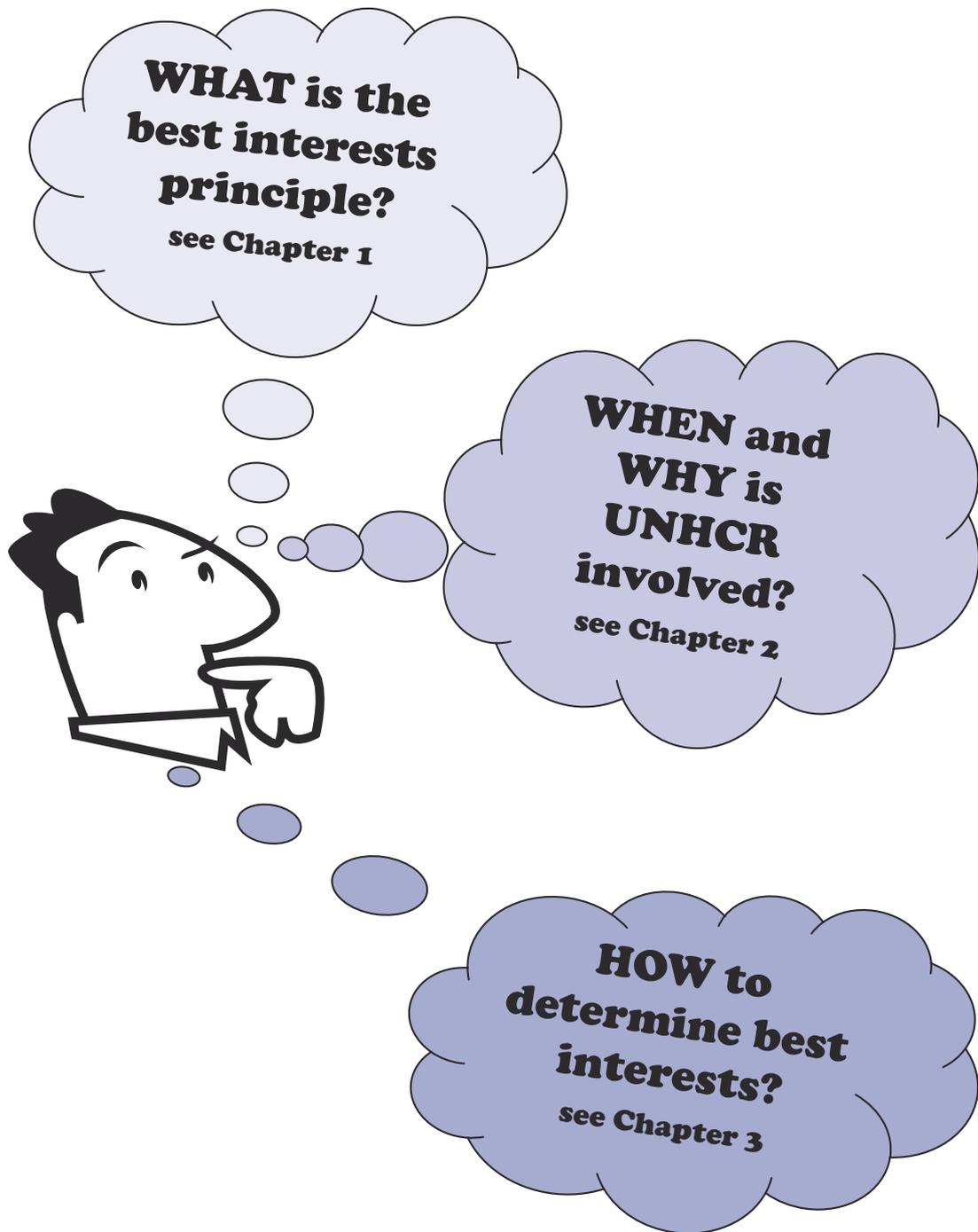
Chapter 3 of the Guidelines provides detailed guidance on the procedure. This consists essentially of two key steps: collecting and analysing all relevant information; and balancing all relevant factors to determine which of the possible options is in the best interests of the child. The first step can be undertaken either directly by UNHCR or entrusted to partners, usually NGOs, whereas the second step should normally be taken by a multidisciplinary panel. Chapter 3 also provides guidance on how to weigh the relevant factors, when determining a child's best interests.

A CD-Rom with further background information is included in this publication. It pertains to a range of issues of relevance to a BID, including tracing, family reunification, temporary care arrangements, age assessment, interviewing children, as well as materials and reports specific to the BID procedure. The CD-Rom also contains the text of essential documents quoted in the Guidelines.

The involvement of partners is essential when it comes to applying these Guidelines, so as to ensure that determining the child's best interests takes place as part of a comprehensive child protection system. Moreover, while these Guidelines are primarily intended as a tool for UNHCR and its partners in the field, its contents may also be helpful to States when extending their domestic child protection systems to displaced or stateless persons.

**Figure 1**  
**Where to find the answers to your questions**

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## 1

# The Best Interests Principle

This chapter briefly introduces the legal framework of the best interests principle. It discusses UNHCR's responsibilities to set up mechanisms for the determination of the best interests of the child, as part of a comprehensive child protection system. The chapter clarifies the differences between a best interests assessment and a formal best interests determination. It also outlines briefly when and how UNHCR can support national child protection systems.

## 1. International legal framework

### 1.1 Convention on the Rights of the Child

The 1989 Convention on the Rights of the Child (CRC)<sup>1</sup> is the main legal instrument on the protection of children. It embodies four general principles:

- ⦿ The **best interests** of the child shall be a **primary consideration** in all actions affecting children (Article 3).
- ⦿ There shall be **no discrimination** on the grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status (Article 2).
- ⦿ States Parties recognize that every child has the inherent **right to life** and shall ensure to the maximum extent possible the **survival and development** of the child (Article 6).
- ⦿ Children shall be assured the **right to express their views freely** in all matters affecting them, their views being given due weight in accordance with the child's age and level of maturity (Article 12).

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

#### **The use of the term “best interests” in the CRC**

The term “best interests” broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as the age, the level of maturity of the child, the presence or absence of parents, the child's environment and experiences. Its interpretation and application must conform with the CRC and other international legal norms, as well as with the guidance provided by the Committee on the Rights of the Child in its 2005 General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin. The



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

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

## 1.2 Other relevant legal sources

When determining the best interests of the child, it is important to consider all the rights of the child. In addition to the norms contained in the CRC, there are other relevant legal bases, both at the international and the national level, that may affect such decisions. In accordance with Article 41 of the CRC the higher standard must always apply.

- ⊙ **International and regional instruments** of relevance include those on general human rights, international humanitarian law,<sup>2</sup> refugee law<sup>3</sup> and child-specific instruments (see box below). Soft law, such as the above-mentioned General Comment No. 6 by the Committee on the Rights of the Child, and UNHCR Executive Committee (ExCom) Conclusion No. 107 on Children at Risk, are valuable interpretative sources.<sup>4</sup>
- ⊙ **National law and domestic jurisprudence** may provide more specific guidance on general principles set forth in international instruments, and should be carefully analysed, bearing in mind, however, that best interests principles elaborated at national level may be specific to custody disputes or petitions for adoption.

## Other child-specific international and regional instruments:



- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000;
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000;
- Convention on the Civil Aspects of International Child Abduction, 1980;
- Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption 1993, and its 1994 Recommendation concerning the application to refugee children and other internationally displaced children,<sup>5</sup>
- Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect to Parental Responsibility and Measures for the Protection of Children, 1996<sup>6</sup>
- African Charter on the Rights and Welfare of the Child, 1990;
- ILO Conventions No. 182 (Worst Forms of Child Labour), 1999, and No. 138 (Minimum Age), 1973.<sup>7</sup>

## 2. Comprehensive child protection systems

A comprehensive child protection system comprises laws, policies, procedures and practices designed to prevent and respond effectively to child abuse, neglect, exploitation and violence. It is the responsibility of States to promote the establishment and implementation of child protection systems, in accordance with their international obligations. Children within their jurisdiction should have non-discriminatory access to such systems. UNHCR and other relevant agencies and partners may assist States by strengthening and supplementing national child protection systems in areas where gaps exist.<sup>8</sup>

Figure 2 below illustrates some of the elements of a comprehensive child protection system for unaccompanied and separated refugee children. These include, inter alia, measures to identify unaccompanied and separated children, child-sensitive registration mechanisms, the appointment of a guardian, provision of temporary care and monitoring, refugee status determination, individual documentation, tracing, verification of family relationship, family reunification, identification and implementation of durable solutions.

In carrying out any of these actions, due respect must be paid to the principle of the best interests of the child. This requires establishing mechanisms to identify what is in his or her best interests, as part of a comprehensive child protection system aimed at strengthening the protection of children at risk.

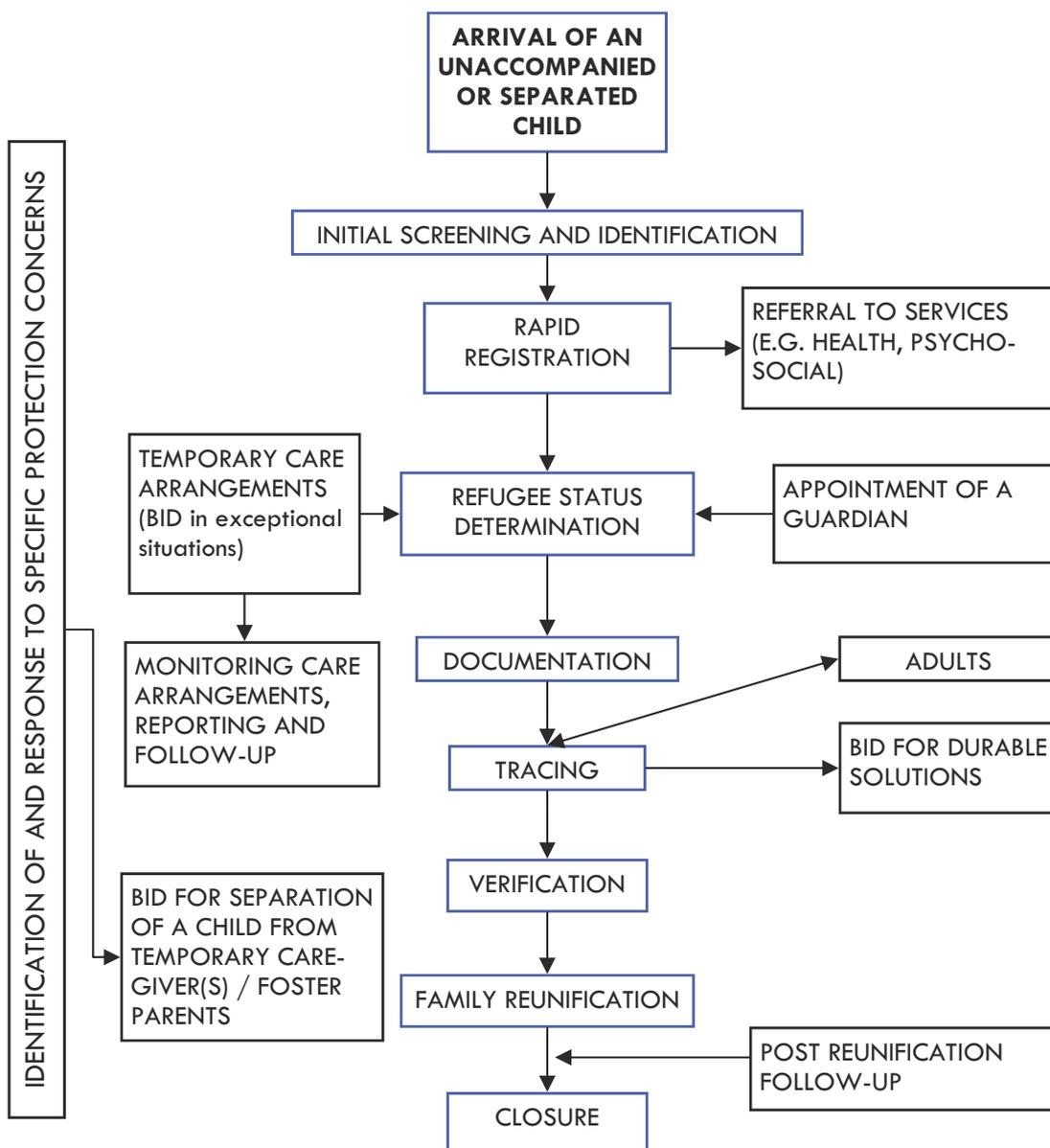
Having key elements of a child protection system in place and, in particular, accurate registration and documentation will also facilitate the determination of the best interests of the child. As outlined in the Inter-agency Guiding Principles on Unaccompanied and Separated Children, adequate time and resources should be devoted to the process of

recording information, in order to meet the specific needs of the child. This process, also referred to as documentation, should be a continuation of the registration. It should start at a very early stage, and continue with those who, through continued contact with the child, can obtain further information.<sup>9</sup>

It is also recommended to document the implementation and monitoring of care arrangements and establish an individual case file for every unaccompanied and separated child. Possible security risks posed by the storage of information must be carefully assessed and measures taken to safeguard it.<sup>10</sup> This process of information collection and storage will also ensure that the BID will be less time consuming, and will require fewer interviews with the child as information has been regularly collected.

**Figure 2**

**Elements of a comprehensive child protection system for unaccompanied and separated refugee children**



## 3. How to apply the best interests principle

### 3.1 Scope of the principle

UNHCR is committed to protecting and promoting the rights of children, including adolescents, falling under its competence.<sup>11</sup> In doing so, it is guided by the rights and principles enshrined in the CRC. The principle arising from Article 3 of the CRC, that the best interests of the child shall be a primary consideration, must therefore be applied in a systematic manner for any action by UNHCR that affects children of its concern. It applies to actions affecting children in general or specific groups of children, as well as to those affecting individual children of concern.

- ⦿ For **actions affecting children in general or specific groups of children** of concern, such as, data collection, planning, resource allocation, project implementation, monitoring, or development of guidelines and policies, the best interests principle requires that due attention is given to their specific situation and protection risks. Measures will include: consultation with children through participatory assessments that are systematic, age-appropriate and gender-sensitive; the collection of data by sex and age; giving primary consideration to the best interests of the child in resource allocation; the insertion of child-specific aspects in guidelines, policies, country operation plans, sub-project agreements and standard operating procedures; and many others.
- ⦿ For **actions affecting an individual child** of concern to UNHCR, such as registration, the provision of appropriate temporary care, or tracing, the best interests principle requires UNHCR to assess what is in his or her best interests, before the action is taken, and to make this a primary consideration. While relevant for all children of concern to the Office, unaccompanied and separated children require special attention in identifying their best interests, given the particular risks that they face.

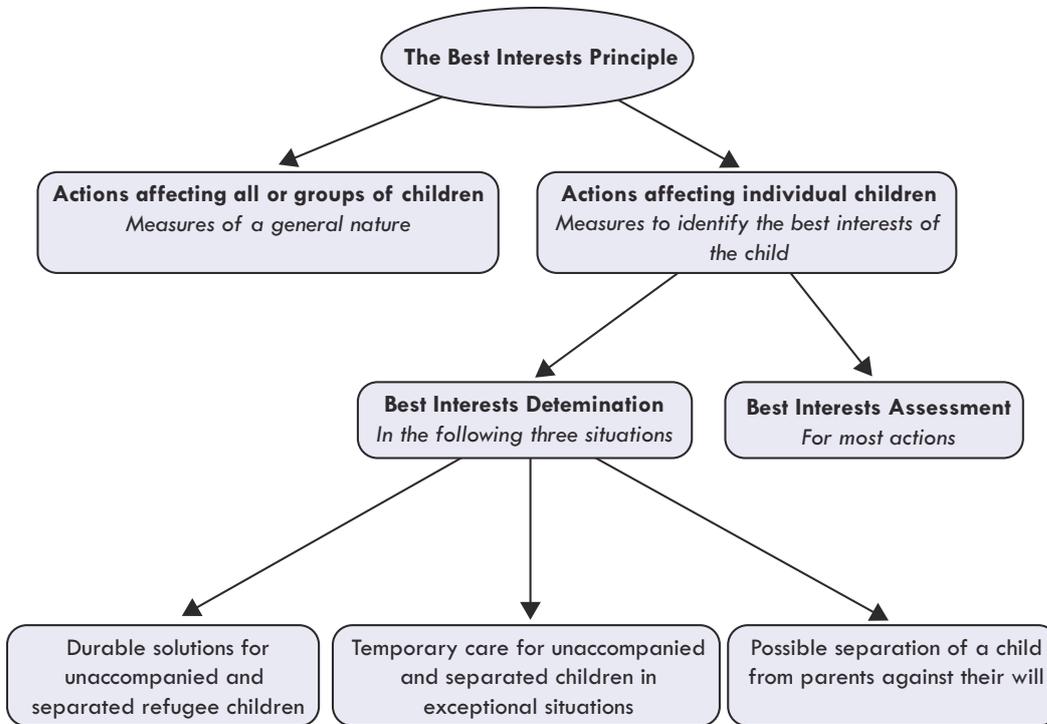
## 3.2 Actions affecting an individual child

Depending on the magnitude of the decision for the child, different procedural safeguards need to be in place in order to identify which among the available options is in his or her best interests. Under the CRC, strict procedural safeguards are required for adoptions (Article 21) and for decisions on separation from parents against their will, including decisions on parental rights and custody (Article 9), which can only be taken by competent national authorities, such as the judiciary, and are subject to procedural safeguards foreseen in national law. The Committee on the Rights of the Child has further specified, in its General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, that decisions on repatriation and resettlement of unaccompanied and separated children also require safeguards to ensure respect for the best interests principle (CRC, General Comment No. 6, paragraphs 84 and 92-93).

Figure 3 on the following page summarizes the application of the best interests principle by UNHCR. When strict procedural safeguards are needed to ensure that sufficient attention is given to define what is in the best interests of a child, UNHCR must carry out a BID. This will be the case in three particular situations. In all other cases, the best interests of the child should be identified through a best interests assessment.

**Figure 3**

**Application of the best interests principle by UNHCR**



**3.3 Best interests assessment**

A best interests assessment (illustrated in the figure above) is essential before any action affecting an individual child of concern to UNHCR is taken, unless a BID is needed. It does not require any particular formality, and should be conducted systematically in many circumstances that occur between the moment a child is identified as unaccompanied or separated or otherwise at risk, until a durable solution is implemented. It should be carried out, for example, prior to initiating tracing or to providing temporary care. The assessment can be done either alone or in consultation with others. It does not require the strict procedural safeguards of a formal determination, but staff should have the requisite skills and knowledge.

The child should in all cases be given an opportunity to express his or her views. The assessment should normally be documented, especially if there may be a need for future reference.

### 3.4 Best interests determination (BID)

A best interests determination describes the formal process designed to determine the child's best interests for particularly important decisions affecting the child, that require stricter procedural safeguards. Such process should ensure adequate child participation without discrimination. It should also allow the views of the child to be given due weight in accordance with age and maturity. It involves decision-makers with relevant areas of expertise, and balances all relevant factors in order to assess the best option.

As illustrated in figure 3 above, three situations require UNHCR to undertake a BID for actions affecting children falling under its competence:

- ⊙ the **identification of durable solutions** for unaccompanied and separated refugee children;
- ⊙ **temporary care arrangements** for unaccompanied or separated children in exceptional situations as listed below; and
- ⊙ possible **separation** of a child from his or her parents against their will.

Chapter 2 provides further details on each of these three situations. Some of the benefits of a BID are as follows:

- ⊙ it ensures that specific protection and care is provided to a child who is or may become deprived of the protection of his or her family;
- ⊙ it enables UNHCR staff and partners to review the situation of the child in a comprehensive manner, ensuring that decisions are in line with the provisions and spirit of the CRC, and other relevant international instruments;
- ⊙ it allows the child's opinion to be heard, and ensures that his or her views are given due weight according to his or her age, maturity and evolving capacities;

- by means of a child-focused approach, it helps to identify protection gaps affecting individuals or groups of children of concern to the Office; to monitor the effectiveness of past measures; to address gaps identified; and to enable follow-up remedial action if needed;
- where the age is unknown or disputed, it provides a comprehensive assessment of the person's maturity, allowing an appropriate response by UNHCR;
- through the involvement of persons with varying expertise, it avoids decisions which have a fundamental impact on the child being taken by one individual in isolation.

While determinations are primarily conducted by UNHCR for refugee children, they may also apply to stateless children if UNHCR is operationally involved.

In returnee and internal displacement situations, UNHCR together with UNICEF and other partners should work with competent State structures towards establishing or strengthening national child protection systems and their effective functioning. Best interests determination procedures developed outside national child protection systems should remain the exception. In internal displacement operations, particularly where the cluster approach is used, existing child protection working groups (normally led by UNICEF) may determine in consultation with protection working groups, whether and under what circumstances national child protection systems should be supplemented by BID procedures based on these Guidelines.

## Where to find guidance on working with unaccompanied and separated children:



- **Inter-Agency Guiding Principles on Unaccompanied and Separated Children** (ICRC, IRC, Save the Children UK, UNHCR, UNICEF, World Vision International), Geneva, January 2004;
- **Draft UN Guidelines for the Protection and Alternative Care of Children Without Parental Care** (submitted by International Social Services and UNICEF in collaboration with the NGO Working Group on Children without Parental Care), 2006;
- **Refugee Children: Guidelines on Protection and Care** (UNHCR), Geneva, 1994;
- **Working with Unaccompanied Children: A Community-based Approach** (UNHCR), Geneva, revised May 1996;
- **Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum** (UNHCR), Geneva, 1997;
- **The Lost Ones. Emergency Care and Family Tracing for Separated Children from Birth to Five Years** (UNICEF), 2007;
- **The Separated Children in Europe Programme: Statement of Good Practice** (UNHCR and International Save the Children Alliance), Brussels, third edition, October 2004;
- **Working with Separated Children, Field Guide. Training Manual and Training Exercises** (Save the Children UK), London, 1999;
- **No Small Matter. Ensuring Protection and Durable Solutions for Unaccompanied and Separated Children** (Lutheran Immigration and Refugee Service), Baltimore, 2007.

## 4. Supporting national child protection systems

The responsibility to implement the best interests principle is first and foremost that of a State, stemming from its international legal obligations. Within the framework of their respective child protection systems, States should utilize appropriate procedures for the consideration of the child's best interests, which ensure adequate child participation and the involvement of relevant experts, in order to determine and assess the best option.<sup>12</sup>

UNHCR and its partners should therefore seek to support national child protection systems in a spirit of partnership, rather than replace them, “by building on each actor's comparative advantages to reinforce the beneficial impact on the protection of children”.<sup>13</sup>

Where States have established appropriate procedures for the consideration of the child's best interests or are willing to do so, UNHCR's role will essentially focus on monitoring, capacity-building and advocacy. For example, UNHCR may:

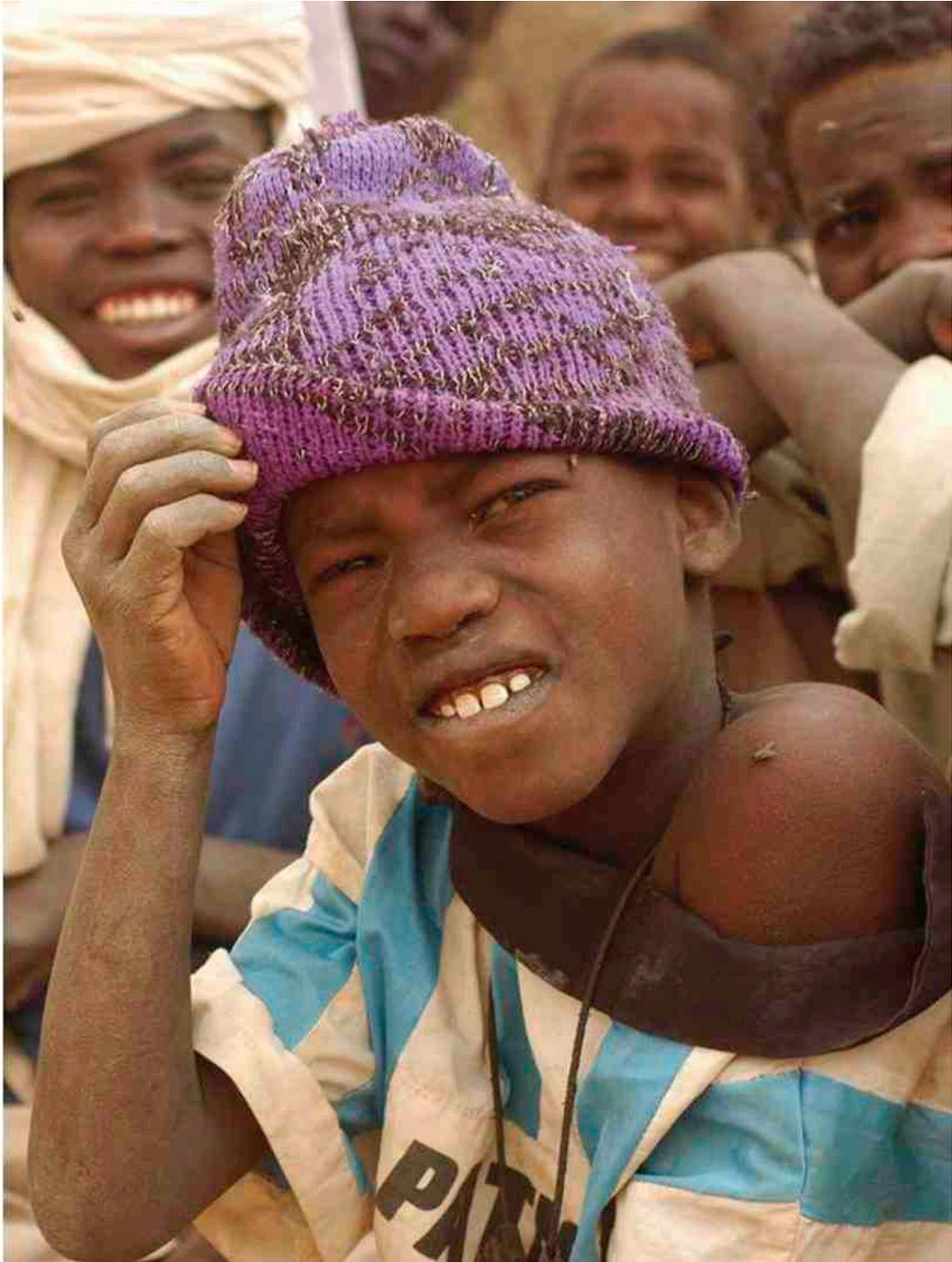
- monitor the application of procedural safeguards as defined in the CRC and international law;
- determine jointly with the competent authorities, UNICEF and other partners, including relevant NGOs operating in the country, the support required from the international community in order to extend national child protection systems to persons of concern to UNHCR, or to address other gaps that are identified;
- strengthen the capacity of responsible State authorities, and in particular child welfare structures, to implement their obligations under the CRC (this may include training, advice on international law, interpretation and translation services);
- provide advice on individual cases, as appropriate.

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A BID conducted by UNHCR, based on these Guidelines, may help complement national child protection systems in two distinct circumstances:

- ⦿ as an exceptional procedure in substitution of State responsibilities, when national systems to determine the best interests of the child cannot reasonably be made available or accessible to children of concern (see for example Chapter 2, Section 3, on separation from parents); and
- ⦿ for actions that UNHCR undertakes independently, such as, for example, the decision whether or not to submit an unaccompanied or separated refugee child for resettlement, or support his or her voluntary repatriation.

Whenever possible, UNHCR should make all reasonable efforts to involve the competent State authorities in its own BID procedures, including as part of the BID panel and in collecting information. This will encourage a more active role and may facilitate the Government's involvement in the implementation of decisions taken (for example, the issuance of an exit visa in cases of resettlement).



## 2

# Best Interests Determination by UNHCR

This chapter provides guidance as to the situations in which a BID is required in the context of:

- identifying durable solutions for unaccompanied or separated children;
- determining the most appropriate temporary care arrangements in exceptional situations;
- possible separation of a child from parents against their will.

It also explains the limits of UNHCR's involvement, and gives advice on dealing with the complexities that can arise.

## Best Interests Determination by UNHCR

### 1. Durable solutions for unaccompanied and separated refugee children

#### 1.1 Purpose of the BID

Identifying the most appropriate durable solution for an unaccompanied or separated refugee child generally requires carefully balancing many factors. Decisions on voluntary repatriation, resettlement or local integration are likely to have a fundamental and long-term impact on the child. Before taking such decisions a BID must be carried out to ensure sufficient focus on the child's rights when choosing:

- the most appropriate durable solution, and
- the right time for it.

If, when undertaking the BID, it is not possible to determine which durable solution is in the best interests of the child, and the child has been integrated into his or her community, the temporary care arrangements should be maintained and the case reviewed as soon as possible, and within one year at the latest. This may be the case after the signing of a peace-agreement, when a certain lapse of time is needed to decide whether voluntary repatriation is a realistic option; when tracing results are outstanding; or when UNHCR is engaged in discussions with the government regarding local integration which could lead to a durable solution for the foster family, and potentially the unaccompanied or separated child.

#### 1.2 When is a BID required?

The need for UNHCR to undertake a BID will depend on the degree of its involvement with the child. When a durable solution for a child is pursued by State authorities in the absence of any involvement by UNHCR, no BID is required by UNHCR.

UNHCR must however complete a BID:

(i) for all unaccompanied and separated refugee children to whom UNHCR provides direct or indirect care, notably

- ⦿ those recognized as refugees under UNHCR's mandate;
- ⦿ those staying in camps or facilities managed or coordinated by UNHCR, or by partners with UNHCR's support;
- ⦿ those supported by UNHCR living in scattered locations; and

(ii) for all other unaccompanied and separated refugee children whom UNHCR assists in finding durable solutions, such as providing travel or other documents, unless national authorities or other partners to which the task has been entrusted have already determined the best interests of the child through a process that respects the rights set out in the CRC, and the standards as defined by the Committee on the Rights of the Child in General Comment No. 6 (see in particular paragraph 20).

Field teams may also find a BID a useful tool to identify the most appropriate durable solution for other children falling under UNHCR's mandate, such as unaccompanied or separated stateless, internally displaced or returnee children.

As described below, specific considerations apply to family reunifications.

### **1.3 Family reunification**

Family reunification, whenever feasible, should generally be regarded as being in the best interests of the child. Once the family is traced, family relationships verified and the willingness of the child and the family members to be reunited has been confirmed, the process should not normally be delayed by a BID procedure.

However, prior to supporting reunification, an assessment needs to be made by UNHCR as to whether it exposes or is likely to expose the child to abuse or neglect. This assessment should be based, inter alia, on any verifications already undertaken by the competent authorities of the State receiving the child. If there are reasonable grounds to believe that the reunification exposes or is likely to expose the child to such a risk, UNHCR must verify through a BID whether family reunification is indeed in the child's best interests. The checklist attached as annex 4 can be used to determine this and identify if a BID is necessary. This precaution is also important to reduce the risk of trafficking.

To enable UNHCR to make a swift decision as to whether or not to support the family reunification, a simplified BID procedure may be applied (see Chapter 3, Section 1.7).

In countries which regularly seek UNHCR involvement in facilitating the family reunification of children from outside the country, UNHCR may encourage the relevant State authorities to put in place swift mechanisms to assess the likelihood of abuse or neglect, prior to issuing entry documents.

#### **1.4 When to start a BID**

The Committee on the Rights of the Child has indicated in its General Comment No. 6 (paragraph 79) that “efforts to find durable solutions for unaccompanied or separated children” outside their country of origin “should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated”.

It follows that a BID should be undertaken as early as possible in the displacement cycle. UNHCR should not wait until prospects for a durable solution emerge. However, as the results of tracing are a key factor in determining the most appropriate durable solution for an unaccompanied or separated child, a reasonable lapse of time must be allowed for tracing. Family tracing should begin immediately after the child has been identified as unaccompanied or separated, with regular and frequent

follow-up. How long to wait for tracing results will depend in each case on a variety of factors, such as the age of the child, previous tracing experience for similar profiles, the urgency of the case, the quality of information available on the family, and access to areas of origin. In any event, UNHCR should conduct a BID no later than two years from the moment an unaccompanied or separated child has been identified. A case by case approach is essential. There may be situations, particularly of younger children, for whom a maximum two year timeframe is too long.

A chart illustrating the triggers and summarizing the steps involved in a BID to identify the most appropriate durable solution for unaccompanied and separated children is provided in Annex 1.

### **1.5 What if the parents have been refouled?**

In the exceptional situation of a refugee child becoming separated or unaccompanied as a result of the *refoulement* of his or her parents, a BID should be undertaken to determine the most appropriate durable solution, and when it should be implemented. In the case of *refoulement* of foster parents, with whom the child has a strong emotional bond and a *de facto* family relationship, the same approach should be applied.

The BID should be immediate upon the parents *refoulement*, unless there are strong prospects that they will be rapidly allowed to return to the country of asylum.

## 2. Temporary care arrangements for unaccompanied and separated children in exceptional situations

Unaccompanied and separated children need to be provided with temporary care until they are reunited with their family or previous caregiver. This care should be based on the best interests of the child.

Temporary care decisions can normally build on existing arrangements and systems already functioning within the community. UNHCR or partner staff in charge of temporary care decisions should be qualified to make an assessment of whether the proposed care arrangement is in the best interests of the child. This decision should be swift and not be delayed by a BID procedure.

There are, however, exceptional situations, where an assessment alone is not sufficient, and where a wide range of factors and rights require a review by more than one person, and that each step of the process be documented. These situations are as follows:

- ⊙ If there are reasonable grounds to believe that an unaccompanied or separated child is exposed or is likely to be exposed to **abuse or neglect by the accompanying adult** and a decision on whether to place the child elsewhere has to be taken. Doubts about the legitimacy of the relationship with the accompanying adult may be indicative of an abusive or exploitative relationship.
- ⊙ In cases, where there are reasonable grounds to believe that **existing care arrangements are not suitable for the child** (for example, due to the child's cultural, ethnic or religious background, his or her association with armed groups or forces, or the caregivers' association with armed groups or forces) or, where multiple specific needs such as those of an unaccompanied child with a disability, may require additional support arrangements.

If temporary care arrangements are made by States, there is no call for UNHCR to undertake a BID, although it may assume a monitoring role.

The BID procedure should start as soon as the exceptional situation has been identified. If there are reasonable grounds to believe that the child is at **imminent risk** to his or her life or physical injury from the accompanying adult, it is vital to separate the child from the adult, as a preventive measure, prior to the BID. The procedure itself should take place as swiftly as possible.

Any separation from foster parents with whom the child has a particularly strong *de facto* family relationship and emotional bond should however follow the stricter guidance provided in Section 3.1.

Annex 2 provides a graphic illustration of the triggers and steps of a BID to determine the most appropriate care arrangements for unaccompanied and separated children, in the exceptional situations listed above.

#### ***The importance of monitoring care arrangements***

*During the time they remain separated from their families or care-givers, children must be able to live in a safe and protective environment, where they are properly cared for. Interim care should provide unaccompanied and separated children with the emotional and physical care that their parents would normally provide. This environment should also ensure that their health and educational needs are addressed. It is essential that UNHCR and its partners carefully and continuously monitor these care arrangements to ensure the protection and well-being of the child and that his/her best interests are respected. This monitoring should include listening to the views of the child and a confidential reporting and response mechanism. Where necessary, foster families should be supported in carrying out their responsibilities, within the context of wider, community-based activities that increase the ability of families to support the children in their care.*



## **3. Possible separation of a child from parents against their will**

### **3.1 Exceptional nature of UNHCR's involvement**

Article 9 of the CRC “requires that a child shall not be separated from his or her parents against their will, except when [such separation] is necessary for the best interests of the child”. The Convention also states that the child who is separated from one or both parents is entitled “to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests”.

A decision to separate a child from his or her parents falls within the competence of States. If UNHCR becomes aware of serious situations of abuse or neglect by the parents through its monitoring activities, through referrals by partners or through reporting by children themselves, its first responsibility is to inform the competent State authorities, and encourage them to carry out their responsibilities under Article 9 of the CRC. UNHCR may monitor the process, if necessary.

However, in cases where State procedures are unavailable or inaccessible, UNHCR in the exercise of its international protection mandate, may have to take measures to protect the fundamental rights of a child of its concern. In exceptional situations this may possibly involve separating the child from his or her parents against their will, for example, in cases of severe child abuse by the parents in a refugee camp managed by UNHCR, in the complete absence of national authorities.

Given the gravity of the impact on the child of separation from his or her parents, even if only a provisional arrangement, a BID is essential before any decision is taken which could lead to separation. To ensure that the separation is a measure of last resort, social work with the family should first be undertaken, before any separation is considered.

The CRC limits the competence for making decisions on the separation of a child from his or her parents against their will to “competent authorities subject to judicial review” (Article 9). Any intervention by UNHCR to separate the child from his or her parents can thus only be of a provisional nature, reserving the right to make a decision on parental rights or responsibilities to the competent State authorities.

The Section below describes the two situations where UNHCR may be required to undertake a BID: cases of abuse or neglect of the child by the parents in which a separation against their will is being considered; and cases where parents are or may become separated and there is a need to determine with whom the child should stay. An illustration of the triggers for a BID to consider separation and the steps to follow is contained in Annex 3.

The CRC also prohibits unlawful interference with the child’s family (Article 16) and his or her family relations as recognized by law (Article 8). The term family has to be interpreted in a broad sense including parents or, where applicable, the members of the extended family or community as provided for by local custom (Article 5). Although this Section refers to separation from parents, there are other relationships which require a careful balancing between the risks of abuse or neglect, and the impact of separation on the child, to which the guidance provided in this Section should also be applied. These include:

- ⦿ removal from any person holding custody rights, such as from the legal or customary primary care-giver;
- ⦿ removal from a care-giver (e.g. foster parent) with whom the child’s relationship and emotional bond is strong enough to constitute a family relationship. The relationship between the child and the care-giver, must be assessed on a case by case basis.

## 3.2 Severe harm from parents

The first situation includes cases of severe forms of abuse or neglect within the family. UNHCR should undertake a BID only in those situations in which the responsible State authorities are unwilling or unable to take action. As these are more likely to exercise their responsibilities in returnee or IDP settings, UNHCR's involvement will primarily, if not exclusively, concern refugee children.

Instances of abuse include physical violence (i.e. injury to a child which is not accidental), mental violence (i.e. liable to cause psychological harm), as well as sexual abuse. Neglect involves intentionally depriving a child of his/her essential needs (for example, food, clothing, shelter, and medical care).

The removal of children from their parents without justification is one of the gravest violations that can be perpetrated against children. The process to consider separation should therefore only be initiated by UNHCR when there are reasonable grounds to believe that, as a result of acts or omissions by the parents, the child is exposed or is likely to be exposed to severe abuse or neglect, such as, but not limited to:

- ⊙ serious physical or emotional damage caused, for example, by, severe beating, death threats, maiming, lengthy confinement by the parents as punishment, coercion to engage in the worst forms of child labour, continuous exposure to severe domestic violence within the home;
- ⊙ sexual abuse or exploitation, such as the inducement or coercion of a child to engage in any unlawful sexual activity; exploitative use in prostitution or other unlawful sexual practices; exploitative use in pornographic performances and materials.

In order to determine whether the child is likely to be exposed to severe abuse or neglect, the following elements may be considered: frequency and patterns of past incidents, trends of violence, possibilities for effective addressing and monitoring, and persistence of the root causes of the abuse or neglect.

Separation should be a measure of last resort. It should never be taken if less intrusive measures would protect the child. A BID should therefore only be conducted after reasonable efforts have been made to address the situation. This preliminary process should take place in two stages:

#### **a) Initial assessment of imminent harm**

As a first step, staff qualified to deal with such situations need to determine if there are reasonable grounds to believe that the child is at **imminent risk** to his or her life or of physical injury. If this is the case, a decision must be taken to remove the child immediately from the family and provide temporary care. The same assessment is required when the child has already been removed, as an emergency measure, by neighbours, the community, or others. If temporary care arrangements have already been found by others, their suitability needs to be assessed.

The decision to remove the child or not return him or her must be endorsed by the BID supervisor (or, in his or her absence, by another senior UNHCR staff) prior to the emergency removal, or, if not possible, at the latest within 48 hours. The decision must also determine the maximum time for separation until a BID is undertaken, which should be as short as possible. All reasons for the decision and the timeframe must be recorded in writing and included in the child's file. The BID supervisor should inform national authorities, accordingly.

If the child is removed or not returned, the parents should be informed about the procedures that will be followed. An assessment should also be made as to whether it is in the best interests of the child to share information on the whereabouts of the child to the parents at this stage, and visits should be arranged, if safe and appropriate.

#### **b) Supporting the family**

Regardless of whether the child stays with the parents or not, support should be provided to the parents to help them assume their parental responsibilities, and restore or enhance the family's capacity to take care

of the child. This family support should be carried out by staff with the necessary child welfare expertise, and begin immediately.

It is recommended that work with the family should be formalized in a **written agreement**. If the parents are illiterate, the agreement should be clearly explained to them. The agreement must specify all the parents' tasks and obligations regarding the care of the child, as well as timelines for compliance. If the parents agree to fulfil the tasks assigned to them, all those involved should sign it.

Monitoring its implementation and ensuring follow-up must then be undertaken by UNHCR and/or its partners. For example, if the agreement establishes that the parents must take the child to school every morning, it is essential that the teacher or another school staff member report to the relevant agency whether the parents are carrying out this task, if the child is going by herself or himself, or not at all.

If the agreement is successful, and the child is no longer in danger, there is no need for UNHCR to consider separation and thus no need for a BID. If, on the contrary, the agreement is not successful, or the parents do not agree with it and the child remains exposed or likely to be exposed to severe abuse or neglect, a BID must be undertaken based on these Guidelines.

### **3.3 Parents' separation**

The second situation requiring a BID by UNHCR will depend on the actual or potential separation of the parents, and the need to determine with which parent the child should stay. In these cases BID by UNHCR should be limited to those situations in which the competent authorities are unwilling or unable to take action.

The examples below illustrate possible scenarios requiring a BID:

- ⦿ The parents separate and the child is abandoned.
- ⦿ The parents separate and both parents want the child to stay with him or her.
- ⦿ The parents do not agree with whom the child should be submitted for resettlement, in those cases where the two parents will be submitted separately, as may be the case in situations of polygamous families or when only one parent is to be resettled. With regards to polygamous marriages, most resettlement countries only accept one spouse in view of their own national legislation forbidding polygamy. As this could lead to the children of the other spouses being separated from their father, a BID should normally be undertaken to help advocate for the right of the children to remain with both parents.<sup>14</sup>
- ⦿ Finally, a BID will also be necessary in those exceptional situations in which the parents agree on a solution for the child following their separation, but UNHCR has reasonable grounds to believe that the parents' choice exposes or is likely to expose the child to severe harm. A BID is essential in all cases in which the resettlement of one parent is based on a protection risk emanating from within the family (e.g. domestic violence cases).

### **3.4 Implementing a BID involving separation**

The BID must be undertaken immediately once a protection risk has been identified, and if the risk cannot be resolved through other interventions, such as an agreement with the parents. The BID procedure should be concluded and the decision implemented as promptly as possible.

Given the importance of the BID decision for the child, the need for professional judgment is particularly important, and utmost care should be taken to involve staff with the required skills and expertise. UNHCR is encouraged to seek professional expertise among its partners, when this is not available within its own staff. All efforts should be made by UNHCR to involve the competent national or local authorities in its BID.

As already specified, the separation of a child from his or her parents due to severe abuse or neglect should be a measure of last resort, only to be considered if there are no lesser measures to protect the child, and should be for the shortest possible time. The BID decision must also determine the timeframe for which the separation is necessary and, if there is some prospect of a future reunification with the parents, establish a timeframe for a review of the decision.

Any BID for separation of a child from parents against their will, must determine the parents' access to the child, including frequency and type of contact.

### **3.5 Custody rights**

As part of its international protection mandate, UNHCR has been requested by its Executive Committee to take actions for the resettlement of women and children at risk and to facilitate a speedy departure of women at risk and their dependants.<sup>15</sup> In this context complex custody issues are likely to arise.

The authority to separate a child from his or her parents against their will falls within the competence of States (Article 9 CRC). The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, states that, for refugees, such responsibility falls on the State where the child is present (Article 6).

The transfer of a child to a third country without the consent of the parents or of any other person, institution or body holding custody rights may, in certain circumstances amount to international child abduction. Article 3(1) of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction considers the removal of a child as wrongful where "(a) it is in breach of rights of custody attributed to a person [...]"

under the law of the State in which the child was habitually resident immediately before the removal or retention; and (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.”

It follows that the transfer of a child without the consent of the person, institution or any other body holding the rights of custody will not constitute an abduction if custody rights are not being exercised. Depending on the circumstances this can occur if the relevant person or body has not, without any reason, been in contact with the child or care-giver of the child for an extended period of time.

In those cases in which custody rights are being exercised by both parents, UNHCR must take all reasonable measures to clarify custody rights before facilitating the resettlement of a refugee child without one of his or her parents. In those cases in which, in the exercise of its international refugee protection functions, UNHCR concludes after a comprehensive review that resettlement of one parent is the only or most appropriate solution to prevent his or her further exposure to serious protection risks, UNHCR should take the following precautionary measure as regards the child:

- ⦿ Obtain from the parent who is not travelling with the child, his/her informed written consent to the child’s departure for resettlement.
- ⦿ If the parent is absent or if he/she refuses, verify whether previous custody decisions have already been made and, if so, obtain them, unless contacting the authorities of the country of origin would jeopardize the child’s safety or that of the parents.
- ⦿ If no previous custody decisions exist – or if they are clearly not based on international standards relating to the best interests of the child – the competent authorities in the asylum country should be asked to determine custody prior to departure. UNHCR may, where necessary, support building the capacity of the competent authorities in the asylum country, possibly including the introduction of a special procedure for urgent cases.

- ⦿ If the competent national authorities will not clarify custody rights, including cases where one parent is being resettled and custody disputes remain unresolved (due to the unavailability or inaccessibility of competent authorities, or to the impossibility of obtaining official documents from the country of origin), UNHCR should undertake a BID to determine if resettlement together with one parent is in the best interests of the child.<sup>16</sup> All reasonable efforts should be made to include representatives of the asylum country in the BID procedure in order to give it the strongest possible legitimacy.
- ⦿ Where custody issues remain undecided, the parent with whom the child is resettled should be advised to initiate procedures to acquire full custody rights upon arrival in the resettlement country. In addition, a formal request should be made to the resettlement country to take a decision on custody rights as soon as possible after the resettlement of the child, based on Art. 25 of the 1951 Convention Relating to the Status of Refugees (administrative assistance). This decision should also specify rights of access.
- ⦿ Whenever possible, a copy of the letter of consent, custody decisions or other relevant documentation regarding the child's custody should accompany the child or care-giver. This documentation may be helpful to determine custody in the country of return or resettlement.





# 3

## BID Procedure and Decision-Making

This final chapter provides more specific guidance on the BID procedure and decision-making, notably

- procedural safeguards and standards;
- the persons involved in the process and their respective roles;
- how to collect and verify information;
- balancing all relevant factors to determine the best interests of the child;
- informing the child;
- recording and reviewing decisions.

## 1. Setting up a BID procedure

### 1.1 Procedural safeguards

For the integrity of the BID process, it is essential to adhere to basic procedural safeguards as recommended in these Guidelines: adequate child participation; the involvement of persons with different relevant expertise; and the systematic documentation of each step of the procedure.

In this context the collection and analysis of comprehensive information on the child and his or her environment is of particular importance. It should be undertaken by persons experienced in protection, community services, or child welfare as a basis for a decision by a multi-disciplinary BID panel. Charts illustrating the key elements of the BID procedure for each of the three situations listed in Chapter 2 can be found in the annexes. A checklist (Annex 9) provides an overview of the factors to consider when determining the best interests of the child. Its use can facilitate both the information gathering as well as the decision-making process.

Suitably qualified personnel should be involved in the determination process with expertise in a range of sectors. Since this expertise may not be available within UNHCR, it is recommended to involve partners with child protection capacity and expertise in the BID process, both in collecting and analysing information required and in the decision-making.

To ensure the integrity and quality of the BID process:

- ⦿ all those involved must sign the UNHCR Code of Conduct or a similar undertaking of the organization or entity for which they work, as well as the undertaking of confidentiality (see Annex 5); signed copies should be retained by UNHCR;
- ⦿ they should not be involved in an individual BID case if there is a conflict of interest, such as in cases involving friends or relatives; and
- ⦿ they should receive training on these Guidelines, the Code of Conduct and on other relevant issues.

## 1.2 Establishing Standard Operating Procedures (SOPs)

To ensure fairness, transparency and efficiency of the BID process, office-specific Standard Operating Procedures (SOPs) will need to be put in place. Whenever possible, these should be based on existing SOPs, adding relevant sections on the BID process, using these Guidelines. Such office-specific procedures should be developed in co-operation with partners and take account of the national context and operational realities.

The BID procedures should not be established in isolation, but should be part of a comprehensive child protection system, as explained in Chapter 1. Links with SOPs for the prevention of and response to sexual and gender-based violence should also be made.

With the key elements for the protection of unaccompanied and separated children in place, determining what is in the best interests of the child will become easier and swifter. Such elements include individual registration, documentation, refugee status determination, tracing as well as monitoring, reporting and referral mechanisms. Gathering the information required for a BID will thus require less time and resources.

While a BID by UNHCR is normally limited to children, in some operations young adults may be living together in groups with unaccompanied children, and may share the same experiences of flight. In such situations, Field Offices may decide to extend the BID process to young adults of up to 21 years of age, if required by their protection needs or to help identify a durable solution.

### 1.3 Designating a BID supervisor

An important step for a Field Office working with children who require a BID is to identify a staff member responsible for setting up and supervising the BID process. He or she should be designated by the Head of Office among staff with child protection or child welfare expertise, or at the least, with community services or protection expertise.

The BID supervisor is essentially responsible for the following tasks (see also the checklist provided in Annex 8):

- to set up and monitor the BID process, including establishing the BID panel and identifying staff or partner organizations to collect information;
- to develop or amend existing Standard Operating Procedures;
- to provide training and uphold integrity and confidentiality of the BID process, ensuring that the Code of Conduct and the undertaking of confidentiality are signed by all those involved in the BID;
- to maintain a dialogue with competent local and national authorities, keeping them informed periodically, if they are not directly involved in the BID;
- depending on the context, to review the BID analysis and the recommendations to be presented to the BID panel;
- to set up and interact with the BID panel, and monitor the follow-up to the BID decision;
- to ensure that the BID process is properly documented;
- to reopen the BID procedure, in circumstances listed in Section 6 (“Reopening a BID decision”) below;
- based on the operational context, to determine how to prioritize cases for a BID in a fair manner.

Any prioritization should normally take into account the existence of imminent protection risks for specific groups of children, any serious health concerns, the age of the child, and prospects for a durable solution. Young children should generally be given priority. However, in certain situations, when resettlement opportunities are only available for children, it may be wiser to give priority to those closest to adulthood to preserve access to this option and to the support provided upon arrival in the resettlement country. In other situations, specific groups of unaccompanied and separated children (e.g. girls, children of a certain age, those heading a

household, or those with disabilities) may face heightened risks of abuse through trafficking, sexual exploitation, slavery or servitude, and should therefore be given priority.

In smaller operations only sporadically dealing with unaccompanied or separated children, in which neither UNHCR nor its partners have the capacity to establish a full BID procedure, support should be sought from the BID supervisor in the relevant Regional Office. Mechanisms established there, including the BID panel, may then be used, provided panel members have the necessary knowledge to deal with children located in another country.

Large operations with several field offices undertaking BIDs, may wish to appoint a **BID coordinator** in a Branch or Regional Office, to ensure consistency between procedures in the various locations, and ongoing support and coordination of the BID process. The role of the BID coordinator is especially important within a country operation in which it is decided to establish a single BID panel at national level, instead of several panels in the various field locations. In this case the tasks of the BID coordinator resemble those normally assigned to the BID supervisor.

#### **1.4 Assigning responsibility for collecting information**

The task of collecting all information needed for the BID process, should be entrusted to one or more **child welfare officer(s)**, either by the BID supervisor within UNHCR (e.g. among protection or community services staff), or, preferably, delegated to a partner agency. The term child welfare officer is used in these Guidelines to designate the person responsible for specific actions in the BID process, and is not intended as a specific function or position.

The child welfare officer must have child protection, community services or child welfare expertise. If this expertise is not available or cannot be coopted, Field Offices should try to build this capacity by engaging local staff who may not have educational qualifications in child welfare work, but once adequately trained, can work under the close guidance and monitoring of the BID supervisor.

For reasons of independence, it is recommended that the child welfare officer should not be selected from within the refugee community, although he or she needs to understand that community and work closely with it.

All reasonable efforts should be made to use female interviewers and interpreters for girls, unless the child herself requests otherwise.

Relevant guidance for collecting information needed for the BID process is provided in Section 3 (“Balancing competing rights in making a decision”) below. It covers the review of existing information, interviews with the child, with persons holding parental rights (when present), and with others close to the child. The child welfare officer should also analyse the information collected and draft recommendations for decisions (see also the checklist provided in Annex 7).

Expertise required of a child welfare officer includes:

- » familiarity with age-specific interviewing techniques;
- » ability to assess age and maturity;
- » understanding of child rights;
- » gender-sensitivity;
- » knowledge as to how cultural, religious and socio-economic factors may influence the child’s behaviour and understanding;
- » expertise in psychosocial counselling involving an understanding of mental and physical development of children, ability to recognize signs of distress.



## 1.5 Establishing a BID panel

The function of this panel is to consider the recommendations of the child welfare officer, as reviewed by the BID supervisor, in order to assess available options and decide which is in the child's best interests.

Its establishment is the responsibility of the BID supervisor. The panel should be multi-disciplinary, gender-balanced and normally composed of 3 to 5 persons with professional expertise in child development and child protection. Members are expected to sit on the panel as independent experts. As indicated in the previous Section, if BIDs are being undertaken in several field locations within an operation it may be possible, depending on the context, to establish local panels in each area, or one central panel in the Branch Office, to which all cases are referred.

Whenever possible, the BID panel should be established in cooperation with the responsible national or local child welfare authorities, who should assume an active role in the decision-making process. International and/or national organizations and NGOs with child-specific mandates, who are familiar with the population of concern to UNHCR, should also be invited to participate in the BID panel. Organizations that may have a conflict of interest, such as those involved in specific aspects of the care and maintenance of children or in the resettlement processing for UNHCR, should not have a majority within the panel. To gain a better understanding of the community, consideration may be given to inviting an experienced member of the community to sit on the panel, provided adequate safeguards to uphold the integrity and confidentiality of the process and to ensure his or her safety can be put in place. While UNHCR should be represented on the panel, the BID supervisor should normally not have the right to vote.

The panel's procedures should be defined in operation-specific SOPs. Decisions should be by majority, or qualified majority, depending on the panel's composition. Decisions that define resettlement as the most appropriate solution must be endorsed by UNHCR. Section 3 ("Balancing competing rights in making a decision") below provides guidance on how to

balance all relevant factors to determine the best interests of the child in an individual case. Annex 9 contains a checklist of factors to consider in taking a decision.

Deliberations by the panel must be recorded in Section 3 of the BID Report form (see Annex 6). It is important to record whether the decision was reached by a majority, or unanimously, as well as full reasons for the decision. If any information is rejected (e.g. for lack of credibility), this must be recorded in the BID report form.

The BID panel must also determine and record in the BID form if certain information should not be shared with the child, if considered not to be in his/her best interests.

The panel should have solid knowledge of and experience in the following:

- » child rights and domestic legal context;
- » international refugee law, refugee durable solutions policies and an experience in working with refugees;
- » practical implications of the different stages in child and adolescent development and psychosocial well-being;
- » specific protection risks, such as trafficking, recruitment, sexual and gender-based violence;
- » procedural aspects of the BID;
- » the community, including traditional child care practices.

## 1.6 Working with interpreters and guardians

Persons working as **interpreters** in the BID process should have access to specific training.<sup>17</sup> In addition to their language skills, interpreters should be aware of the impartiality of their role, respect confidentiality, and possess the ability to show sensitivity to gender, age and cultural matters.



The precise role and manner of appointment of a **guardian** varies from country to country. While he or she should always be consulted when collecting relevant information, the guardian's role in the BID process will vary depending on their function. Those appointed by the authorities to represent the child during judicial proceedings should normally be asked to attend panel sessions. By contrast, when "guardianship" refers to adults who assume care responsibilities for the child (e.g. foster parents) they should not be invited to the BID panel.

## 1.7 Simplified procedures for particular situations

Simplified BID procedures may apply in deciding durable solutions or temporary care arrangements in exceptional situations, when there are clear indications as to what constitutes the best interests for an individual child or group of children sharing the same characteristics (e.g. ethnic background, area of origin, or similar care arrangements). In such circumstances, the Heightened Risk Identification Tool<sup>18</sup> or operation-specific checklists may be used to determine which children may require a full BID, and those for whom a simplified procedure would be appropriate.

A simplified BID should be limited to the following situations:

- ⦿ before family reunification;
- ⦿ for medical or protection emergencies, requiring an immediate resettlement response;
- ⦿ for sudden movement of large numbers of unaccompanied and separated children over a short period of time, where practical constraints limit the capacity of UNHCR and of partners to undertake a full BID. This may, for example, be the case in large scale voluntary repatriations where past BID decisions need to be reviewed, or when, due to the short duration of the displacement, no BID for durable solutions has previously been carried out.

Key safeguards of the BID process must be maintained in cases of simplified BID procedures: each child should be interviewed and individual information collected; more than one person should be involved in the BID process; each case should be properly documented. Decision-making may, however, be simplified by:

- ⦿ reducing or adapting panel membership; or
- ⦿ by replacing the panel by a reviewing officer with child protection expertise.

The simplified BID should be accompanied by other protection safeguards to minimize risks for the child. They may include focus group discussions with children to identify any protection risks, strengthened monitoring arrangements upon arrival in the country of return or resettlement, escort during travel, final verification of a BID decision on the day of departure, monitoring and review of care arrangements in the country of return or resettlement.

## 2. Collecting information

As a BID requires a clear and comprehensive understanding of the child's background, it is essential to discover as much as possible about his or her needs and protection risks, affective ties, capabilities, interests, and also the capacity of the adults willing to care for the child. The process needs to be child-centered, gender-sensitive, guarantee the child's participation, and have a forward-looking approach.

Findings need to be factual and based on credible information, as they will determine the outcome of the BID. If information is incomplete or contradictory (due, for example, to lack of access to the country of origin, to insecurity in the locations under consideration, or to lack of access to confidential information), the decision-makers must strike a reasonable balance between the need for a swift decision on the best interests of the child, and ensuring that the decision is based on comprehensive information.

Maintaining confidentiality is also important. The child may be unaware of his or her foster status, and foster parents may request, for good reasons, not to disclose this information to the child or to the community. BID staff should respect this request, as disclosing this information may lead to discrimination against the child, or be otherwise detrimental to his or her best interests.

The information collected by the child welfare officer must include:

- ⦿ verification of existing documents providing information on the child;
- ⦿ interviews with the child and, if appropriate, observations;
- ⦿ interviews with persons within the child's network including, care-givers, extended family and siblings, friends, neighbours, teachers, community leaders and workers, the guardian;
- ⦿ background information on conditions in the geographical locations under consideration; and
- ⦿ the views of experts, as appropriate.

The child welfare officer should present to the panel an individual file, preferably in hardcopy (as this limits the risk of further sharing). It should include the child's registration form, a summary of the child's history, the available options and their likely impact on the child as well as a recommendation based on the analysis of all relevant factors. The file should also reflect all opinions and views recorded, as well as any other relevant background information that has been collected. For decisions relating to separation from parents, the views of each parent should also be presented to the panel. The **BID report form** (see Annex 6) should be used to present the information in a systematic manner.

## 2.1 Verifying existing information on the child

Collecting information should begin as soon as an unaccompanied or separated child or a child at risk is identified. An individual file should be opened. The information collected during the registration process, information on the welfare of the child collected by UNHCR or partners during monitoring activities, as well as aspects of individual refugee status determination (RSD) procedures are important for the BID process, in particular if it reveals exposure to violence or level of maturity. The individual case file established at the outset will provide a useful starting point for the BID process.

Verifying this information is important to avoid subjecting the child to repeated interviews, especially in cases involving distressing events.

The child welfare officer must be given access to all relevant information in order to be able to present an informed recommendation to the panel. This should include access to UNHCR's registration data and summary of the child's claim for refugee status, which can normally be shared with the panel. He or she should also be given access to relevant parts of individual files kept by UNHCR, implementing partners and NGOs, if they contain information that is relevant to determining the best interests of the child. Such information should normally only be used as background information, and withheld from the panel, to respect data protection. Data sharing agreements would need to be concluded with or among partners.

Should the child welfare officer consider that additional information from RSD files, or from other confidential sources would be essential for the panel to make an informed decision (e.g. current antiretroviral therapy in the case of voluntary repatriation to a country where such treatment is not available), he or she must seek the advice of the BID supervisor. The latter should normally authorize sharing the level of information required for an informed decision, minimizing any risk to the child and his or her family.

## **2.2 Exploring the views of the child**

A child who is capable of forming his or her own views has the right to express those views freely, in all matters that affect him or her. Interviews with the child thus play a central role in the BID process. It is important to know the child's thoughts, feelings, and opinions in order to properly assess the impact of a proposed action on his or her welfare.

This Section looks at how to support the child in sharing his or her views, and clarifies what kind of information can be collected from the child. It should be read in conjunction with available Guidelines on interviewing and methods of collecting evidence from children. A list is provided later in this Section.

### **a) Supporting the child to share his or her views**

The BID process should be explained and discussed with the child and relevant adults, such as parents or foster parents, from the outset. They should then be kept informed throughout the process. The child welfare officer will need to ensure that the BID is understood by all involved.

According to his or her maturity, the child should also be informed of the intention to use past information he or she has provided to UNHCR and its partners for the purposes of the BID process. The child should be asked whether he or she objects to any of this information being used. Having ensured that the child understands the purpose of the BID process, the child welfare officer should record the reasons for any objections expressed. If

the child does not want information he or she has provided in the past to be shared, advice should be sought from the BID supervisor to determine whether it will be in the best interests of the child to disclose or to withhold such information from the BID panel.

Issues to remember include the following:

- ⦿ Children cannot be expected to give adult-like accounts of their experiences. Simple, age-appropriate language should be used. The child's age and stage of development at the time that the relevant events took place, as well as at the time of the interviews, must be considered. Children may not be able to present information relating to context, timing, importance and details with the same precision as adults, and may only have limited knowledge of the conditions in the country of origin. Good communication is more likely to occur if the interviewer considers the ability and competence of children as being different from, rather than inferior to, those of adults.
- ⦿ In order for the child to express his or her views in a meaningful way, all options should be explained in a child-sensitive manner.
- ⦿ Many children find it easier to speak in the presence of a friend or guardian. However, caution must be exercised in this regard, as current care-givers, foster parents, and others, may have a personal interest in the process and may prevent the child from freely expressing his or her views. Adults suspected of abuse should never be present.
- ⦿ Interviews with the child should take place in a confidential and child-friendly atmosphere. If possible, the venue should be chosen by the child. Emphasis should be placed on putting the child at ease and developing a relationship of trust. The environment and tone of the interviews should be as informal as possible.

- ⦿ Children should always be allowed to say “no” or refuse to answer questions. They should be allowed to change their minds and to make mistakes.
- ⦿ Children may not connect emotionally with what they are recounting in the same way as adults. Children may have no emotional reaction at all or react to emotional cues from the interviewer. The interviewer therefore, should be careful not to draw judgments about how a child feels toward a certain event or situation, based on adult reactions.
- ⦿ The experience of trauma can affect a child’s ability to pass on information during interviews. Therefore, the child welfare officer should also use other methods and approaches, such as observation, sentence completion, games and drawing, to help the child to express traumatic experiences (e.g. flight, separation).
- ⦿ The length of the interview should be tailored to the age, maturity and psychological conditions of the child. To reduce stress for the child, it is recommended to have two or three short interviews, instead of a long one. It is best to use the same interviewers and interpreters, as children often need time to build relationships. If the child at any time expresses preference for certain persons, this should be discussed.
- ⦿ In exceptional cases of extreme distress, such as incidents of abuse, arrangements should be put in place to ensure that the child has immediate access to counselling, especially if the information that may cause distress is likely to surface during the interview.

## **b) Nature of information to be collected from the child**

The kind of information which can be solicited from a child depends on a variety of factors, including his or her age and maturity, the type of decision to be taken, and the information available from other sources. Here are some examples of issues to explore:

- ⦿ the quality of the relationship between the child and others who cared for him or her in the past;
- ⦿ reasons for separation or causes of particular protection risks;
- ⦿ past experiences of the child that can have an impact on the decision;
- ⦿ the child's views and fears with regard to the different options under consideration.

### **Where to find guidance on how to interview children:**



- ⦿ **Working with Refugee and Immigrant Children: Issues of Culture, Law and Development** (Lutheran Immigration and Refugee Service), 1998;
- ⦿ **Action for the Rights of Children, Module on Working with Children** (Save the Children, UNICEF, OHCHR, UNHCR), 2002;
- ⦿ **Can you hear me? The right of young children to participate in decisions affecting them** (Bernard Van Leer Foundation), 2005;
- ⦿ **Mobility Mapping and Flow Diagrams: Tools for Family Tracing and Social Reintegration Work with Separated Children** (Brigette De Lay), 2003.

There is no standard form for recording interviews with a child. It is important to record all information he or she provides and to note, in particular, any follow-up action regarding the child's protection or other concerns that need to be addressed. An assessment of the child's age and maturity should be carried out and recorded at the end of the interview.

Basic information on the child should be recorded in the inter-agency registration form for unaccompanied and separated children (available on the accompanying CD-Rom). If this or a similar form has already been completed during registration (as should normally be the case), such information should be verified.

### **2.3 Interviewing family members and other persons close to the child**

Relevant information should also be collected from persons close to the child, as their in-depth knowledge of the child can be very valuable for the BID process. This is particularly the case of parents (if present), siblings, foster parents as well as guardians. Their views as to what is in the best interests of the child should be recorded. Their role is especially relevant in the case of young or extremely distressed children, from whom only limited information can be obtained directly.

The child's assistance can help map the network of persons who are close to him or her, as well as their relationship. One method is to ask the child to draw the persons with whom he or she is in contact and to whom he or she feels close.

When speaking to these persons, the child welfare officer must exercise caution and preserve strict confidentiality. Information received from the child and his or her wishes should never be disclosed, as this may put the child at risk, and endanger the relationship with the child welfare officer. In suspected cases of trafficking and child abuse, the safety and security of the child must determine whether or not to make inquiries of persons closely associated with the child, and guide the choice of method of inquiry.

Caution must likewise be exercised in communication with the parents of unaccompanied or separated refugee children, who remain in the country of origin. These contacts could reveal to the home country authorities that the child is seeking asylum elsewhere, and expose the parents or the child to possible harm. When tracing has been successful, the information provided by the ICRC or another agency undertaking tracing as to the situation of the family, and its readiness to receive the child, will frequently be sufficient for the BID process.

In cases of **separation of children from parents against their will**, the parents have a right to be heard, and their views must be recorded separately and presented to the panel. The same applies to decisions involving a possible separation from an accompanying adult, when determining temporary care arrangements, and in cases of removal from foster parents, which require a BID.

Here are some examples of information to be collected from persons close to the child:

- ⦿ duration and quality of the relationship with the child, including, where relevant, the potential effects on the child of separation;
- ⦿ location and care arrangements of siblings;
- ⦿ views as to fears, concerns, and wishes expressed by the child (such views must be based on the facts available to the interviewee, not those of the child welfare officer);
- ⦿ areas in which there may be a possible conflict of interest;
- ⦿ the child's playing habits and interaction with other children and community members (in the case of children in foster care, interaction with other children in the foster family and with the foster parents);
- ⦿ how the child is coping in school, including his or her ability to concentrate during lessons and to interact with other children and teachers;
- ⦿ information as to flight, parents, and the situation in the country of origin prior to the flight.

## 2.4 Relevant background information

A decision on what constitutes the best interests of the child must also take account of information from external sources obtained through independent research. Depending on the circumstances, such information, gathered from public or internal sources, could include:

- ⊙ the security situation in the various geographical locations and risks to the child's safety (including potential international protection needs, exposure to sexual abuse and exploitation, as well as harmful traditional practices) and the possible impact of the security situation on the child;
- ⊙ discrimination patterns against girls, in particular those unaccompanied or separated in the various geographical locations;
- ⊙ feasibility of ensuring continuity in the child's upbringing and maintaining links with his or her own ethnic, religious, cultural and linguistic background;
- ⊙ availability and quality of health services in the various locations, with particular attention to specific medical and psycho-social needs of the child, such as caused by disabilities, HIV/AIDS, domestic violence, other forms of sexual and gender-based violence;
- ⊙ availability and quality of educational services in the various locations, not only in terms of facilities available, but also the quality of the education and safety of the school environment, and how such services prepare the child to lead a meaningful life in society;
- ⊙ customary attitudes and support of the community for children in general, and for unaccompanied and separated children in particular, both before flight as well as in exile, and resources available for such support, including opportunities for social integration into the community, and its capacity to care for and protect children, particularly those with specific needs.

## **2.5 Seeking the views of experts**

In some cases, it may be useful or necessary to seek expert medical and psycho-social views, particularly in assessing children who have experienced traumatic events, and those with mental or physical disabilities. Such expertise may help determine whether the child's ability to provide information is affected, for instance, by trauma. Investigations must not, under any circumstances, violate the child's physical or mental integrity. In the absence of local expertise, access to the services of experts located in the capitals or elsewhere may be arranged.

### 3. Balancing competing rights in making a decision

The result of the BID must take account of the full range of the child's rights, and hence consider a variety of factors. The best interests of the child is rarely determined by a single, overriding factor.

The primary consideration for decision-makers is to determine which of the available options is best suited to securing the attainment of the child's rights, and is thus in his or her best interests. Both the short and long-term impact of each option needs to be weighed before deciding which is best suited to the individual circumstances. It follows that a BID on temporary care arrangements or other immediate protection needs should take account of longer-term prospects for a durable solution.

According to circumstances, the BID should be informed by decisions already taken or under consideration by competent State authorities, notably court decisions on custody. While UNHCR must generally respect such decisions, there may be evidence that a decision is not based on the best interests of the child. If this occurs, UNHCR must first endeavor to rectify the decision through available domestic remedies.

Determining the best interests of a child thus requires taking account of all relevant circumstances, while keeping in mind the indivisible nature of the CRC and the inter-dependency of its articles. BID decisions should build on the existence of any arrangements for child protection and care within communities, provided they are in conformity with international standards. Giving weight to these various factors can be a challenge. The following sections attempt to provide some guidance.

### 3.1 Views of the child

Article 12 CRC requires that the views of the child be given “due weight in accordance with the **age and maturity** of the child”. In implementing this requirement, it is important to bear in mind the following factors for all age groups:

- ⦿ A flexible attitude to age, taking account of relevant cultural and developmental factors is required. Children as young as eight can make good, well-informed decisions about serious matters affecting their lives.
- ⦿ While Article 12 of the CRC does not define ‘maturity’, it implies the child’s ability to comprehend and assess the implications of various options. For instance, the child may only have limited knowledge and understanding when it comes to a decision on resettlement to a distant country.
- ⦿ Traumatized children, like adults, may have difficulties in expressing themselves, acquiring knowledge and solving problems. It is recommended to involve experts if necessary.
- ⦿ In cases of family reunification, any reluctance on the part of the child or his or her family to be reunited must be carefully assessed. Reasons may include painful memories of the separation which are difficult to overcome, feelings of anger at being abandoned by the family, or fear of having to live with persons with whom the child is not familiar (particularly in cases where one of the parents remarried). Where possible, obstacles should be addressed through social services, family mediation and counselling, rather than simply relying on the child’s preference.
- ⦿ The views expressed by the child may wholly or partly be the result of manipulation by others, in which cases efforts should be made to determine the real views of the child.

## 3.2 Views of family members and others close to the child

Information collected from persons within the child's network can often help elucidate details as to the nature of relations between the child and others close to him or her, the reasons behind certain preferences expressed by the child, as well as his or her strengths and skills.

- ⦿ The more important and meaningful the person's relationship is for the child, the greater the weight that should be given to their views.
- ⦿ Caution must, however, be paid to potential conflicts of interest, such as where there are indications that the relationship may be abusive or exploitative.

In some situations, the views of the person close to the child go beyond helping to understand the views of the latter, and constitute a separate factor that carries its own weight. This is the case when:

- ⦿ a relative is required to confirm his or her willingness and ability to be the care-giver, since this care arrangement cannot be implemented without his or her consent;
- ⦿ a decision needs to be taken as to whether the child should remain with one or both parents. Here caution is needed when attributing weight to the views of the parents in determining what is in the best interests of the child.

## 3.3 Safety as a priority

The right to life and freedom from torture, other cruel, inhuman or degrading treatment or punishment as laid down in international human rights instruments<sup>19</sup> set decisive parameters for a BID. Articles 19, 34, 35, 36, 37 and 38 of the CRC relate specifically to protecting the safety of children, including protection from physical and mental violence, abuse, neglect, sexual exploitation, harmful traditional practices, trafficking and abduction, child labour and protection from threats posed by armed conflict to children's lives, such as underage recruitment.

Therefore, if the BID panel finds that the child is exposed or is likely to be exposed to violations of fundamental human rights of the kind described in the previous paragraph, this would normally outweigh any other factor. The need for access to life-saving treatment for mentally and/or physically ill children or children with disabilities should be given the same priority. Safety considerations must remain an important factor, but will not automatically outweigh other factors in cases where it has been determined, after a comprehensive assessment, that the harm is of a less severe nature.

In giving a weight to the child's safety, the following guidance should be followed:

- ⦿ Resettlement is generally in the best interests of an unaccompanied or separated refugee child, when it is the only means of preventing serious violations of fundamental human rights, existing in both the country of origin and in the country of asylum.
- ⦿ With regard to return to the country of origin, the principle of *non-refoulement* should always be upheld. In addition, when the child genuinely wishes to return and has the support of his or her guardian, voluntary repatriation cannot be considered to be in the child's best interests "if it would lead to a "reasonable risk" that such return would result in the violation of fundamental human rights of the child" (General Comment No. 6 by the Committee on the Rights of the Child, paragraph 84). Similarly, return would not be in the child's best interests if adequate care arrangements are not available upon return.
- ⦿ For a child who is seriously distressed as a result of past events, such as through serious violations of his or her fundamental rights, no decision that could cause even more distress to the child can be considered to be in his or her best interests.

### **3.4 The importance of the family and of close relationships**

Various international human rights instruments, including the 1948 Universal Declaration of Human Rights (Article 16) state that the family is the natural and fundamental social group unit and is entitled to protection from society and the State. Article 18 of the CRC requires the State to support parents and legal guardians in performing their child-rearing responsibilities, as laid down in Articles 3 (2), 7, 9, 10, 18 and 29 of the Convention. It follows that, for unaccompanied and separated children, all BIDs should ultimately address the extent to which family reunification is attainable.

The existing bond with the (extended) family, including parents, siblings and other persons important to the child's life is thus a key factor in determining the child's best interests. While individual circumstances and the quality of relationships must always be carefully examined, emphasis should also always be placed on the continuity of the child's relationship with the parents, siblings and other family members because:

- ⦿ this continuity is vital to the child's feelings of security;
- ⦿ identifying with parental figures is essential to the process of socialization, in which a child adopts the values and norms of society, and develops the capacity to empathize with others;
- ⦿ continuity of the child's contact with his or her external surroundings, including people and places, has an important psychological effect on developing and maintaining the child's inner stability.

Thus, except for the above-mentioned safety considerations, the interests of the child are generally best met when the child remains with or joins his or her family. The factors listed below provide further guidance:

### **BIDs relating to durable solutions:**

- ⦿ Every effort should be made to keep siblings together.
- ⦿ Resettlement is normally in the best interests of the child if it leads to family reunification.
- ⦿ Though normally regarded as being in the best interests of the child, family reunification could, in certain circumstances, not be in his or her best interests. This would be the case when it exposes or is likely to expose the child to severe harm, or when it is opposed by the child or the parents, and efforts to address the problem through social work, family mediation and counselling remain unsuccessful. One example can be when the parent has remarried and remains unwilling to accept the child.
- ⦿ The child may have forged such a strong bond with his or her foster family that forcing the child to move away from them would be as traumatic as the initial separation from the parents. A phased implementation of reunification may be preferable, unless the parents oppose it and consent to the adoption of the child by the foster parents.
- ⦿ If family reunification is not possible, the child has a right to maintain direct contact with his or her parents. Realizing this may entail considering practical matters and costs of maintaining contact, so as not to undermine the possibility of family reunification in the future.
- ⦿ Resettlement to a country other than that of the parents can be in the best interests of the child, if family reunification is neither possible in the place of residence of the parents (for instance, due to safety considerations) nor in the country of asylum, and the child faces serious protection risks which cannot be addressed in the environment of the country of asylum. Resettlement must, however, be implemented in a manner that does not undermine future prospects for family reunification. The parents have to be consulted and informed as to the whereabouts of the child, unless it would endanger the family or the child.

- ⦿ In some cases, a group of children may have developed close links with one another in the country of asylum where they have been living together under group care. In these cases, it is recommended that the children be grouped together in a submission for resettlement.

**BIDs in the context of temporary care arrangements:**

- ⦿ Foster care arrangements are preferable to institutional care, which should normally be avoided.
- ⦿ Care systems existing within the community should be used, provided they function satisfactorily and do not expose the child to risks.
- ⦿ Care within the extended family should be given priority. If such care is not possible or appropriate, temporary care should be in a family-based setting, with arrangements to keep siblings together.
- ⦿ Decisions should not build on hypothetical prospects of a better relationship in the future, but rely more on the proven history of the relationship in the past.
- ⦿ The decision should stipulate which mechanism should be in place to monitor the recommended temporary care arrangement.

**BIDs on possible separation of the child from parents against their will:**

- ⦿ A decision to separate a child from his or her parents against their will should only be taken if the BID panel finds that the child is or is likely to be exposed to severe abuse or neglect which cannot be addressed through less intrusive measures than separation. These may include monitoring or targeted assistance, such as a weekly visit by a doctor for cases where the parents have neglected the child's medical needs.

- ⦿ Separation should be for the shortest possible time. The BID decision should specify the length of the separation, and establish a deadline to review the separation, whenever there is any prospect of possible future reunification.
- ⦿ If the child is to be placed with other family members, the BID decision should also stipulate what monitoring arrangements need to be established to ensure that any restriction to contact between parents and the child are respected.
- ⦿ In case of separation, frequency and type of contacts with the parents need to be determined by the panel, and should be discussed with all relevant parties, including the child. The panel must clarify the long and short term purpose of the visits, any necessary supervision, duration, the related costs and the selection of a responsible person or agency to monitor and assess the impact of the visits on the child.

### **3.5 Nurturing the development needs of the child**

Article 6 of the CRC calls on States to ensure to the maximum extent possible the survival and development of the child. This includes the physical, mental, spiritual, moral, and social development of the child, in a manner compatible with human dignity.

The feeling of being wanted and valued is the basis for a healthy emotional life. Such feelings are rooted in family relations, and broaden as a person matures into increasingly larger circles that encompass relatives, peers, the community, and society. The need to feel valued grows into a need to belong to social groups and have a place in society. It is therefore important to prevent possible uprooting effects of the BID decision. Continuity of contact with external surroundings, including people and places, has an extremely important psychological effect on the child's development and inner sense of stability.

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Important factors to be taken into account when determining the development needs of the child, as defined in the CRC, include:

- ⦿ the “right [...] to preserve his or her identity, including nationality, name and family relations” (Article 8);
- ⦿ due regard to “the desirability of continuity in a child’s upbringing and to a child’s ethnic, religious, cultural and linguistic background” (Article 20); understanding that this should not lead to the acceptance of harmful traditional practices and that with maturity the child may make a free choice regarding his or her religion;
- ⦿ “the right of the child to the enjoyment of the highest attainable standard of health” (Article 24);
- ⦿ “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral, and social development” (Article 27);
- ⦿ access to education (Articles 28 and 29);
- ⦿ “the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child” (Article 31).

These development needs are generally best met when the child remains within or in close contact with the family and his or her social and cultural network. A BID relating to a durable solution, should normally not prioritize access to better health services or educational facilities in a given location over the possibility of family reunification in another location, or consider them as more important than maintaining cultural continuity.

In special situations, such as that of an adolescent for whom access to higher education is essential to his or her development needs, more weight can be attributed to education. However, in order to be in the child’s best interests, access to educational facilities must be provided in a way that does not sever the child’s link with his or her family and culture.

### **3.6 Balancing best interests of the child with rights of others**

The interests of a child can sometimes conflict with the interests of other persons or groups in society. The general principle contained in the CRC provides that the best interests of the child shall be a primary consideration. The Convention does not, however, exclude balancing other considerations, which, if they are rights-based, may in certain rare circumstances override the best interests considerations.

Once the best interests of the child has been determined, UNHCR may thus be required to balance them with other legitimate concerns based on the rights of other persons. For instance, the placement in a foster family of a child suffering from tuberculosis may well be in his or her best interests in the short term, but may lead to infection within the family, if placement takes place prior to treatment. Exceptional cases such as these, in which UNHCR decides to override best interests considerations, must be carefully analysed and documented.

## 4. Informing the child and follow-up measures

The BID supervisor must inform relevant partners of the follow-up measures decided by the BID panel and monitor their implementation.

He or she must also set up a system to ensure that the child is informed of the decision as soon as it is made. If the child has been involved throughout the process, as should be the practice, the decision will normally not come as a surprise. When children feel that they have been heard, understood and respected, it may also be easier for them to accept a decision, even if they may initially oppose it.

However, there may be instances where the child is hostile. Honest and frank communication between the child welfare officer and the child, particularly on the practicality of the desired option and on available options is necessary. Prior counselling may also be helpful in some circumstances, but should not lead to undue delay.

Just as every BID case differs, so the reactions of the child to the BID outcome will differ. Every child must be given time to come to terms with the decision, and some children may need more than others. The child welfare officer should therefore be ready for different reactions, and have considered various ways, in line with the best interests of the child, to implement the changes in his or her life as gently as possible.

Depending on the circumstances, it may be advisable to formalize or celebrate the implementation of the decision. In cases of family reunification as well as those of foster arrangements, some form of acceptance ceremony and a signed record witnessing the event may help to underline the responsibilities of the care-giver and ensure that the child is protected in his or her new environment.

## 5. Keeping records

All information collected, including interview protocols, BID forms and other materials, should be kept in a single file. An action sheet may be kept in each BID file recording all stages in implementing the BID decision. This will help to monitor implementation. Access to BID documents is restricted to staff authorized by UNHCR. Files must be kept locked in a secure location. It is recommended to keep an electronic copy in read only format of the BID report form. Section III of the report, including the panel members' signatures should be scanned and attached to the form in its final, approved version. Partners involved in the BID process, such as those entrusted with collecting information or participating in the BID panel, must ensure that all BID-related documents are kept securely.

The panel may determine in its decision which documents should be shared with the child only once he or she has attained a certain age. Access to the child's file, upon request, should be given once the child attains majority, as well as to parental rights holders.

Responsibility for filing and sharing information normally lies with the BID supervisor. The BID report form and other key documents of the BID process, such as, custody agreements, must follow the child, while a copy should be retained by UNHCR, preferably in electronic form, for the lifespan of the child. Procedures for storing closed BID files, and for transferring individual BID files to Headquarters, should be put in place and applied in accordance with the directives of the Archives Section at UNHCR Headquarters.

Field Offices using proGres should record key steps of the BID process in the database as 'Protection Events'. Staff involved in other operations may wish to use the best interests determination form included in the Interagency Child Protection Database (included in the accompanying CD Rom). Whenever resettlement is recommended, existence of a BID procedure should be mentioned under the relevant section of the Resettlement Registration Form.

## 6. Reopening a BID decision

Normally, a BID decision is reopened by the BID supervisor. A BID decision can be **reopened** if:

- ⦿ there have been changes in circumstances, such as successful tracing or the emergence of new evidence, that could alter the original decision;
- ⦿ the initial BID decision could not be implemented within a reasonable timeframe, which in the context of durable solutions should not extend beyond one year after the initial BID decision.

In addition, in some circumstances the BID panel may have **deferred** the decision or recommended that it be **reviewed** within a specific timeframe. This will normally be the case in the context of BIDs for durable solutions, when none of the three durable solutions could be recommended. In this case, the BID should be reviewed when circumstances change, and no later than one year from the initial BID decision.

Finally, a BID decision on the **separation** of a child from parents against their will can also be reopened at the request of the child's guardian (or by the child, if there is no guardian) or holders of parental rights. While the final decision on parental rights rests with the competent State authorities, UNHCR must review the measures taken, if requested by the child's guardian or the parents, on the basis of new facts, evidence, or legal considerations that may affect the initial decision. It is recommended that SOPs foresee that such reviews be considered by an expanded panel, or by a panel of different composition than the one that made the previous decision. The parents or the guardian must be given access to the documentation presented to the Panel during the previous BID.

## ENDNOTES

1. For the text of the CRC and that of most of the other international and regional legal documents quoted in these Guidelines, please refer to Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR at [www.unhcr.org/publ/PUBL/455c460b2.html](http://www.unhcr.org/publ/PUBL/455c460b2.html). For human rights instruments, see also the United Nations High Commissioner for Human Rights (OHCHR) website at [www2.ohchr.org/english/law/index.htm#instruments](http://www2.ohchr.org/english/law/index.htm#instruments). This site also provides an up-to-date list of States Parties to a number of human rights treaties.
2. See the four Geneva Conventions: (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; (III) relative to the Treatment of Prisoners of War; (IV) relative to the Protection of Civilian Persons in Time of War, adopted on 12 August 1949. See also the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.
3. See in particular the Convention Relating to the Status of Refugees, 28 July 1951; the Protocol Relating to the Status of Refugees, 31 January 1967; and the OAU Convention Governing Specific Aspects of Refugee Problems in Africa, 10 September 1969.
4. See ExCom Conclusion on Children at Risk, No. 107 (LVIII), 2007.
5. Text available at [www.hcch.net/index\\_en.php?act=publications.details&pid=934&dtid=2](http://www.hcch.net/index_en.php?act=publications.details&pid=934&dtid=2) on the Hague Conference on Private International Law (hereinafter HCCH) website.
6. *Idem*, at [www.hcch.e-vision.nl/index\\_en.php?act=conventions.text&cid=70](http://www.hcch.e-vision.nl/index_en.php?act=conventions.text&cid=70).
7. See also Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour, R190/1999, adopted on 17 June 1999; and Recommendation concerning Minimum Age for Admission to Employment, R146/1973, adopted on 26 June 1973, available on the International Labour Organization website at [www.ilo.org/ilolex/english/recdisp1.htm](http://www.ilo.org/ilolex/english/recdisp1.htm).
8. See ExCom Conclusion on Children at Risk, No. 107 (LVIII), 2007, at b (ii-iii).
9. Inter-agency Guiding Principles on Unaccompanied and Separated Children, Jan. 2004, pages 33-34.
10. *Ibid.*, page 34.
11. See “UNHCR Policy on Refugee Children”, EC/SCP/82 Executive Committee of the High Commissioner’s Programme, Forty-fourth session Sub-Committee of the Whole on International Protection, 23rd meeting, 6 August 1993 at paragraph 1. The Executive Committee welcomed the policy in its Conclusion No. 71 (XLIV), 1993, at w.
12. See ExCom Conclusion on Children at Risk, No. 107 (LVIII), 2007 at g (i).
13. *Ibid.*, at b (iii).
14. *Ibid.*, at h (xviii).
15. ExCom Conclusion on Women and Girls at Risk, No. 105 (LVII), 2006, at p ii); Conclusion on Children at Risk, No. 107 (LVIII), 2007, at h (xviii).
16. *Ibid.*
17. The UNHCR training module “Interpreting in a Refugee Context”, RLD 3, Geneva, June 1993 can be used as a self-instructory training tool for interpreters. Further guidance on how to interview children can be found in “Interviewing Applicants for Refugee Status”, UNHCR Training Module, RLD 4, Geneva 1995; UNHCR Procedural Standards for RSD under UNHCR’s Mandate, at 4.3.7; Action for the Rights of Children, Working with Children; UNHCR, “Resettlement Handbook”, November 2004, chapter 6.5. See also documents relating to refugee status determination procedures, including: Immigration and Refugee Board, “Guideline 3, Child Refugee Claimants: Procedural and Evidentiary Issues”, Ottawa Canada, September 30, 1996; Finnish Migration Board, Directorate of Immigration, “Guidelines for Interviewing (separated) minors”, Finland, 2002; and US Department of Justice, Immigration and Naturalization Service, “Guidelines for children’s asylum claims”, 1999. See furthermore The Australian Law Reform Commission, “Seen and heard: priority for children in the legal process”, Report No. 84, September 1997, at [www.austlii.edu.au/au/other/alrc/publications/reports/84/ALRC84.html](http://www.austlii.edu.au/au/other/alrc/publications/reports/84/ALRC84.html) as well as Save the Children UK, “Communicating with Children”, 1 January 2000.
18. See Refworld at [www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=46f7c0cd2](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=46f7c0cd2).
19. See in particular the 1966 International Covenant on Civil and Political Rights, Art. 7; the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the CRC, Art. 37.

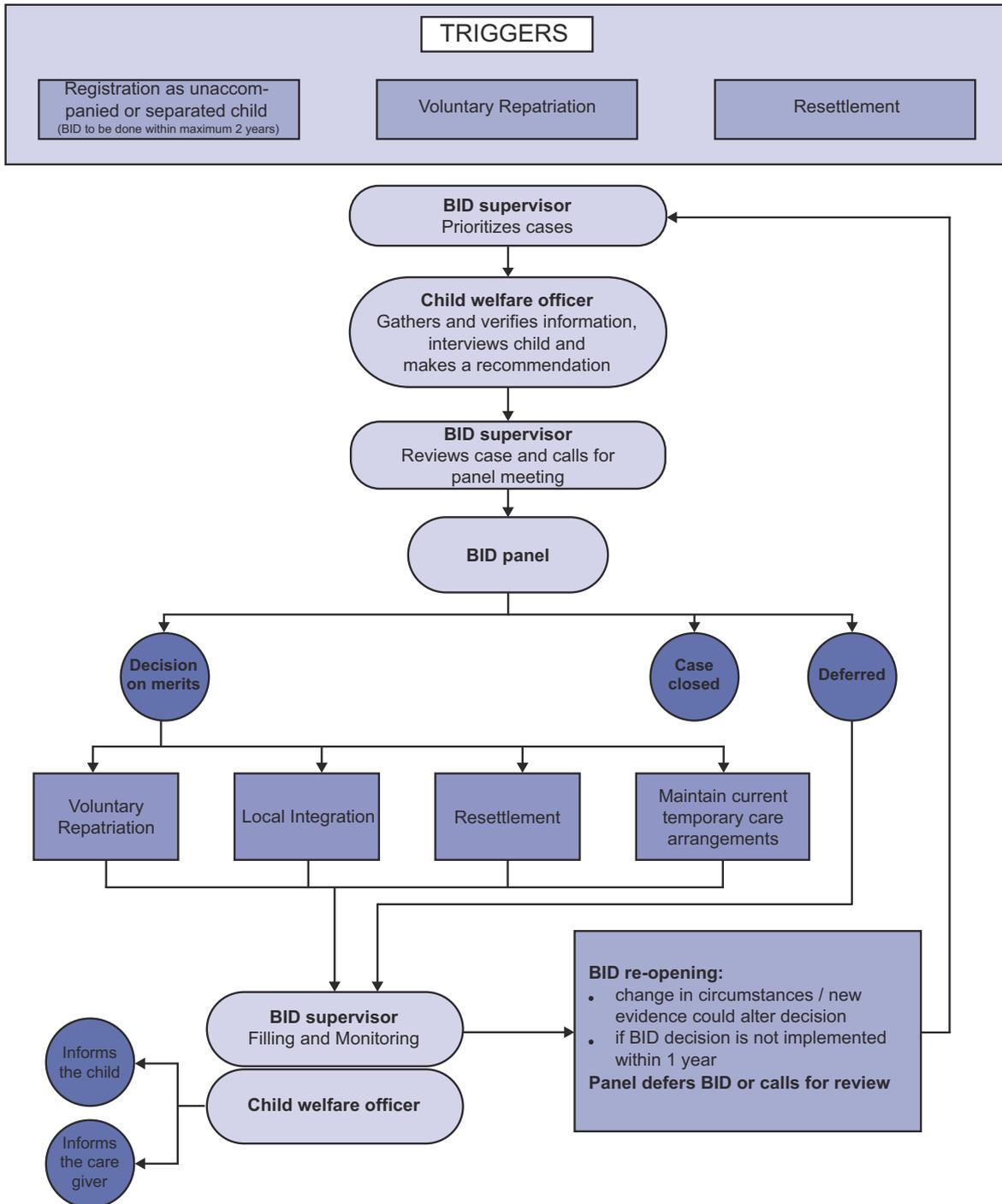




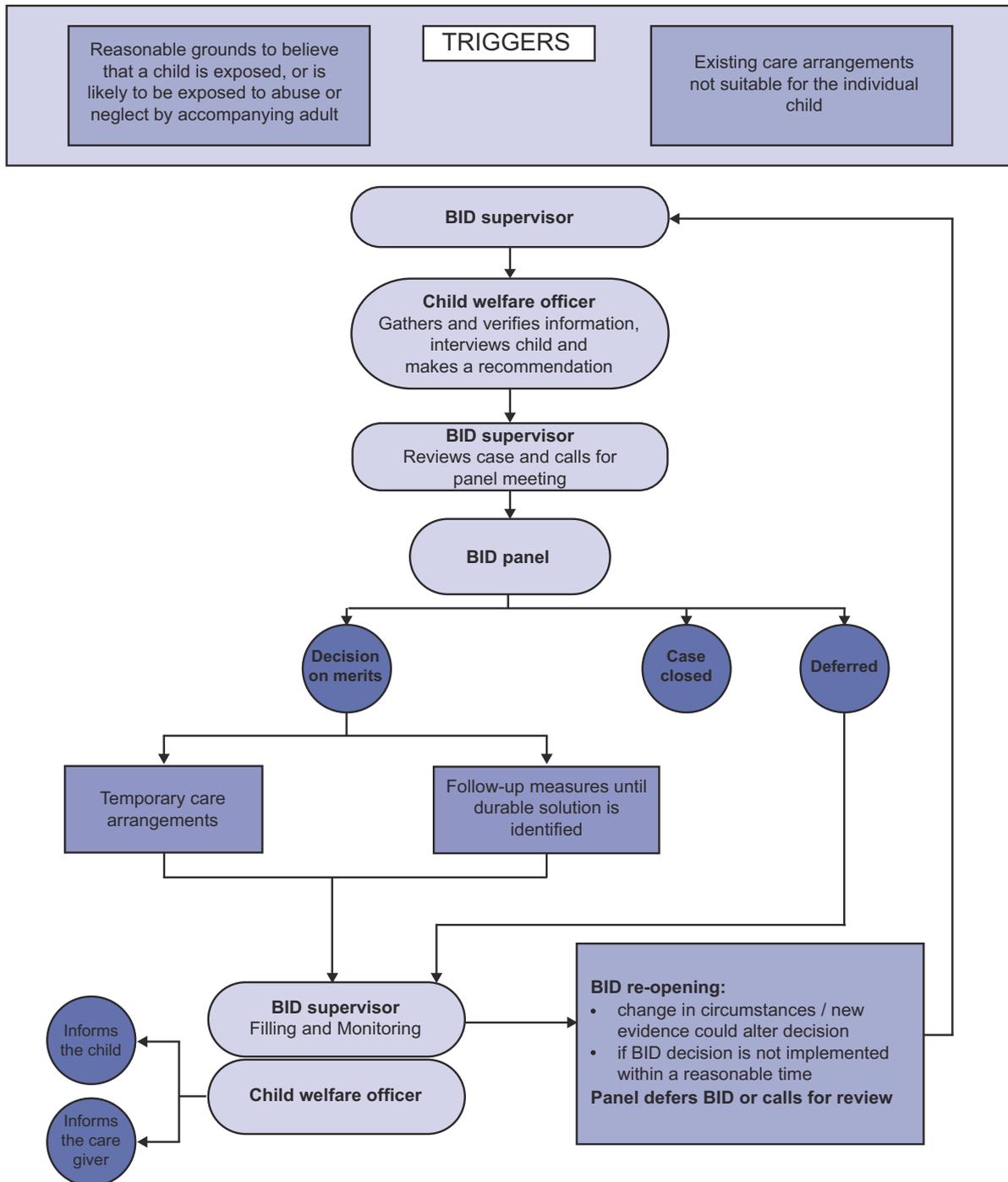
# ANNEXES

Annex 1

**BID for durable solutions for unaccompanied and separated refugee children**

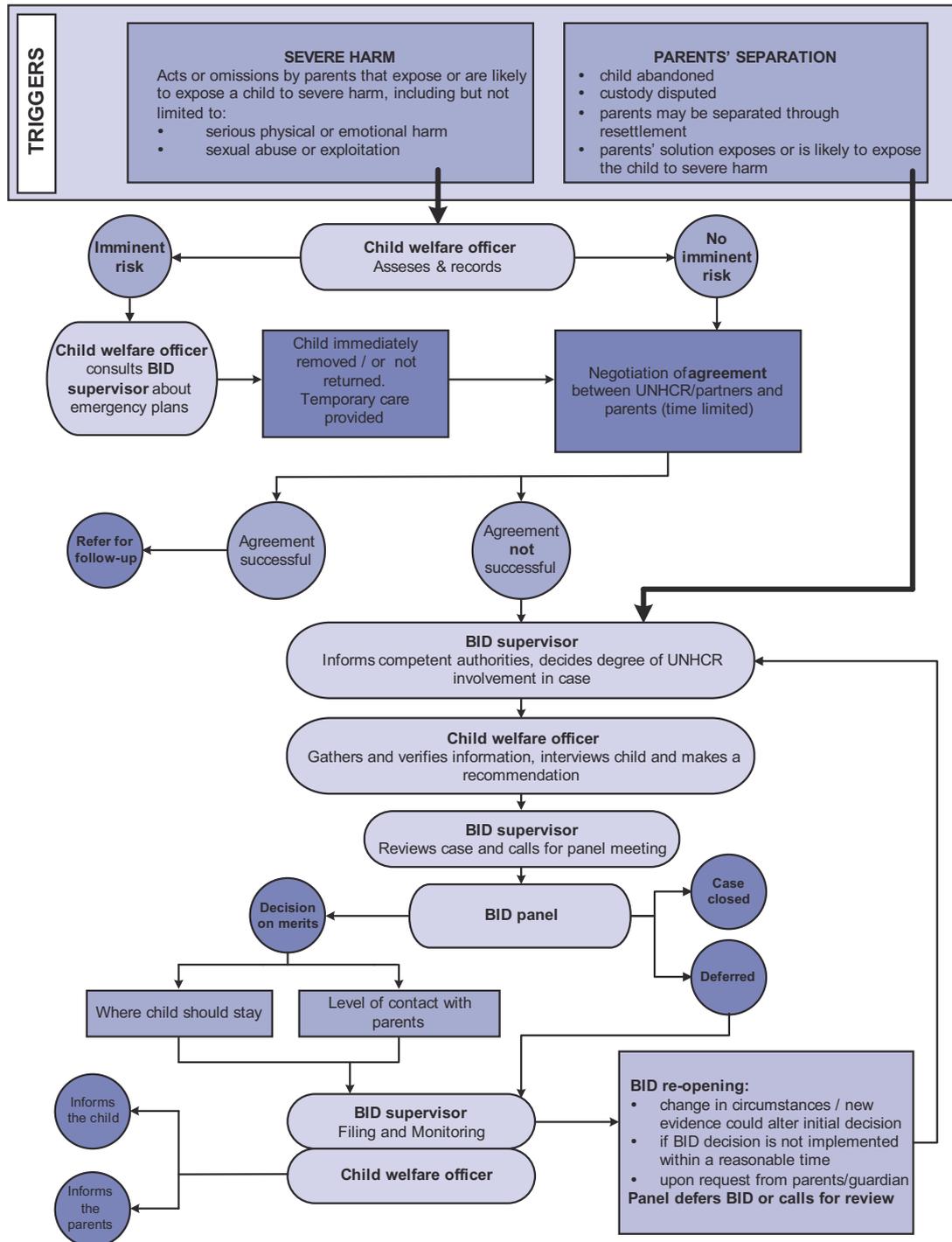


**BID for temporary care arrangements for unaccompanied and separated children in exceptional situations**



### Annex 3

## BID, including emergency procedures, for possible separation of a child from parents against their will, in the absence of responsible national authorities





**Annex 5**

**UNITED NATIONS  
HIGH COMMISSIONER  
FOR REFUGEES**

**NATIONS UNIES  
HAUT COMMISSARIAT**

**UNDERTAKING OF CONFIDENTIALITY  
(BID PROCEDURE)**

**Name:** .....

**Role:** .....

I, the undersigned, undertake not to disclose or discuss with parties external to the BID process, any information that comes to my knowledge as a result of my role in that process. I understand and accept that the obligation of confidentiality will continue after my formal role in the BID process has ceased.

I understand that this signed Undertaking will be retained by UNHCR. I also understand that any breach of the terms of this Undertaking may lead to exclusion from further participation in the BID process, be reported to my employer and that UNHCR may take other measures as it deems fit.

**I have read, understand and accept this Undertaking of Confidentiality.**

**Signature:** .....

**Date:** .....

**Place:** .....

## BEST INTERESTS DETERMINATION REPORT

### SECTION 1: OVERVIEW

**CAMP / LOCATION:**  
**BID FILE No:**  
**REGISTRATION NUMBER:**

**LINKED CASES:**  
**CASE REFERRED BY:**

**STATUS OF THE CHILD**

UNACCOMPANIED   
 SEPARATED   
 ORPHAN   
 NONE OF ABOVE

**PURPOSE OF BID**

DURABLE SOLUTION   
 TEMPORARY CARE ARRANGEMENTS   
 SEPARATION   
 OTHER

**PRIORITY OF THE CASE (MENTION REASONS)**

URGENT		
NORMAL		
SPECIFIC NEEDS OF THE CHILD		SPECIFY:

**CHILD'S BASIC BIO-DATA (REFER TO REGISTRATION FORM)**

	WHERE RELEVANT, INDICATE IF INFORMATION IS AN ESTIMATE
FULL NAME	
ALIAS	
AGE	
GENDER	
DATE OF BIRTH	
PLACE OF BIRTH	
DATE OF ARRIVAL IN THE COUNTRY	
DATE OF ARRIVAL AT CURRENT LOCATION	

## Annex 6

NATIONALITY	
ETHNICITY	
RELIGION	
CURRENT ADDRESS	
REGISTERED ADDRESS	
CURRENT CAREGIVER	
RELATED CASE (S)	
LINKED BID(S)	
NAME OF FATHER	
NAME OF MOTHER	
SIBLINGS	

<b>TRACING</b>	<b>STARTED ON</b>	
	<b>STATUS</b>	

### INTERVIEWS

PERSON INTERVIEWED	NO. OF INTERVIEWS	DATE OF INTERVIEWS

**Annex 6**

	NAME	ORGANIZATION
INTERVIEWER		
REVIEWING OFFICER		
INTERPRETER		

**DOCUMENTATION ATTACHED**

1	
2	
3	

**SECTION 2: OPTIONS AND RECOMMENDATIONS**

<p><b>Part I - BRIEF SUMMARY INFORMATION ON THE CASE</b></p> <p>Please <u>briefly summarize</u> key issues, such as current care arrangement, information on parents and family, and the options under consideration.</p>
---

## Annex 6

### **Part II - HISTORY PRIOR TO FLIGHT/SEPARATION**

Please record the child's recollections about the flight/separation, and evidence provided by persons close to the child (if interviewed). Indicate how this information has been verified.

### **Part III - CURRENT SITUATION**

Please describe the current living situation of the child, to include:

- Current care arrangement, living conditions, safety, relationships with foster parents/siblings/care-givers/other family members;
- Community networks, education and school attendance;
- Assessment of child's age and maturity, physical and mental health and any specific needs assessment.

Please state who has been contacted and who provided information, e.g. child, family, persons close to child, care-givers, teachers, neighbours, social workers/NGO staff.

### **Part IV - AVAILABLE OPTIONS & ANALYSIS**

Please indicate all the available options and follow-up mechanisms and analysis of each.

Please refer to all the factors included in the Annex 9 checklist in recommending what is in the child's best interests, under the following headings:

- Views of child
- Family and close relationships
- Safe environment
- Development and identity needs

**FINAL RECOMMENDATION**

Please provide the final recommendation and reasons.

**Name of the assessor:**  
**Signature of the assessor:**

**Date:**

**Name of reviewer:**  
**Comments by reviewer to the report:**

**Signature of reviewer:**

**Date:**

**SECTION 3: PANEL DECISION**

This section should be completed and signed at the BID panel sessions. The signed page should then be scanned in order to protect the information included, attached to sections 1 and 2 of the form and converted into a pdf document.

The panel

- Approves the recommendations
- Defers decision (please explain why)
- Does not approve the recommendations (please explain why and provide the panel's recommendation)
- Reopens the case (please explain why, and who requested the reopening)
- Closes the case

**FULL REASONS FOR DECISION**

**Annex 6**

**FOLLOW UP ACTIONS REQUIRED (TICK AND SPECIFY)**

- None
- Provide counselling to the
  - Child
  - Biological parents
  - Foster parents/care-giver
- Undertake formal tracing
- Refer child for
  - Alternative care arrangements
  - Protection measures
  - Educational assistance
  - Psychosocial assistance
  - Material assistance
  - Medical assistance
- Other (explain)

**COMMENTS**

**SIGNATURE OF PANEL MEMBERS:**

NAME	ORGANIZATION	SIGNATURE

**DATE:**

## CHECKLIST FOR CHILD WELFARE OFFICER

Actions recommended prior to submission of a BID for review

- HOME VISIT**
  - ✓ Have you visited the child in his/her home environment? If not, why not?
  - ✓ Have you recorded your observations and assessed relationships at home?
  
- INTERVIEWS**
  - ✓ Have you interviewed the child in a friendly environment?
  - ✓ Have you interviewed persons close to the child?
    - Parents and other family members (e.g. siblings)
    - Current and future care-givers (e.g. foster parents)
    - Relevant NGO staff
    - Neighbours (length of time known)
    - Others;
  - ✓ Before asking their views, did you explain the purpose of the BID?
  
- OTHER SOURCES**
  - ✓ Has information in individual files been reviewed?
  - ✓ Has the necessary background information on the geographical locations under consideration been collected?
  
- VERIFICATION OF INFORMATION**
  - ✓ Has all information been checked as to its accuracy?
  - ✓ Has the child's history been verified by a non-family member? Please explain, if nobody is available.
  
- BID REPORT FORM**
  - ✓ Has the following information been presented in detail in the form:
    - History of the child
    - Current living situation and well-being
    - Child's network
    - Security and existence/quality of basic services (education, health) in each geographical location under consideration
    - Views of child on the best option
    - Views of family members and others as to what is the best option;
  - ✓ Has the range of options, including timescale, monitoring mechanisms and other necessary follow-up measures for each option been presented?
  - ✓ Has the accuracy of names, dates of birth, age, addresses, and registration numbers been double checked and are contact phone numbers listed?
  - ✓ Has location of all relatives including name and, where relevant, their registration numbers been listed?
  
- DOCUMENTATION**
  - ✓ Have supporting letters/custody agreements been signed, translated (if necessary), and attached?
  - ✓ Have other documents such as medical or school reports been translated and attached to the BID report form?
  - ✓ If there is no documentation available, is it explained why not?

## Annex 8

### CHECKLIST FOR BID SUPERVISOR

- SETTING UP/ CONSOLIDATING THE BID PROCESS**
  - ✓ Establish a multi-functional BID panel;
  - ✓ Draft, amend or update all relevant Standard Operating Procedures;
  - ✓ Provide the BID team with adequate training on:
    - BID Guidelines
    - Data collection
    - How to interview children
    - Writing techniques;
  - ✓ Ensure that all members of the BID team sign the Code of Conduct and the Undertaking of Confidentiality;
  - ✓ Identify competent local or national authorities, inform them regularly about the BID process and involve them in the process, if possible;
  - ✓ Consult with all the NGOs working on child protection or child welfare issues in order to define roles and responsibilities in the BID process;
  - ✓ Identify how to inform the community about the BID purpose and process;
  - ✓ Determine how to prioritize cases.
  
- REVIEWING THE BID REPORT FORM (IF RELEVANT)**
  - ✓ Check if the child's bio data is correctly reported in the BID report form;
  - ✓ Check if the history of the separation/flight, or the assessment of abuse or neglect is clearly reported;
  - ✓ Check that all documents utilized to draft the recommendations are available and attached to the BID report form;
  - ✓ In case of resettlement for family reunification, ensure that the parents/relatives were contacted and interviewed;
  - ✓ Review if the recommendations proposed are consistent with the BID Guidelines.
  
- LIAISING WITH THE BID PANEL**
  - ✓ Submit the BID report forms with the related documentation to the panel with proper advance notice;
  - ✓ Act as reference point for the panel if more information or clarification on BID cases are required;
  - ✓ Receive decisions from the panel and monitor that the decision and any follow-up measures are implemented;
  - ✓ Ensure that the child and his or her parents or care-giver are informed in a timely manner about the decision.
  
- MAINTAINING RECORDS**
  - ✓ Create a read-only electronic copy of the BID report form;
  - ✓ Ensure secure filing of the BID report form and other relevant BID documents;
  - ✓ If the child departs for another country, ensure that a copy of the BID report form and other key documents, such as custody decisions, travel with him/her.
  
- RE-OPENING**
  - ✓ Monitor the possible need to reopen a BID decision and initiate the process if required.

## FACTORS THAT DETERMINE A CHILD'S "BEST INTERESTS" CHECKLIST

All factors listed below are of relevance when determining which among the available options is in the child's best interests, including identifying the follow-up measures required. The weight of each factor inevitably varies according to the individual child. Advice on the difficult task of balancing these factors is provided in Chapter 3 of the Guidelines.

- VIEWS OF THE CHILD**
  - ✓ Child's wishes and feelings and were these obtained from the child directly?
  - ✓ The weight to be given to them, in light of the child's age and maturity;
  - ✓ Child's ability to comprehend and assess the implications of the various options.
  
- SAFE ENVIRONMENT**
  - ✓ Safety is normally a priority. Exposure or likely exposure to severe harm usually outweighs other factors. Consider:
    - safety in the geographical location/household under consideration
    - availability of life-saving medical treatment for sick children
    - past harm (frequency, patterns, trends)
    - ability to monitor
    - whether root causes of past harm still persist.
  
- FAMILY AND CLOSE RELATIONSHIPS**
  - a) General factors:
    - ✓ Quality and duration of the relationship and degree of attachment of the child to:
      - siblings
      - other family members
      - other adults or children in the cultural community
      - any potential care-giver;
    - ✓ Potential effect of separation from family or change in care-givers on the child;
    - ✓ Capacity of current and potential future care-givers to care for the child;
    - ✓ Views of persons close to the child, where relevant.
  - b) Factors specifically relevant to durable solutions for unaccompanied or separated children:
    - ✓ Possibility of family reunification (normally presumed to be in the best interests). Consider whether:
      - tracing has been initiated and its results
      - the efforts made to contact the parents/family directly
      - the family relationship to the child has been verified
      - the child and family member are willing to be reunited and, if not, reasons for any reluctance.

## Annex 9

c) Factors specifically relevant to temporary care arrangements:

- ✓ Retention of family and sibling relationships;
- ✓ Prospects for care in a family setting;
- ✓ Prospects of using community care systems (provided they are safe and effective).

d) Factors specifically relevant to separation of a child from parents against their will (normally strongly discouraged):

- ✓ The views of both and the weight to be attached to them;
- ✓ Quality of the relationship between the child and parents and likely effect of separation;
- ✓ Capacity of parents to care for the child;
- ✓ Capacity of extended family members to care for the child;
- ✓ Considerations of proportionality in cases involving removal from family.

Consider:

- options for addressing problems in a less intrusive way
  - maintaining a minimal continuity of contact (e.g. under supervision)
  - separation for the shortest duration and early deadline for review;
- ✓ Access rights.

### **DEVELOPMENT AND IDENTITY NEEDS**

- ✓ The child's cultural and community network;
- ✓ Continuity in the child's ethnic, religious, cultural and linguistic background;
- ✓ Specific considerations based on age, sex, ability, and other characteristics of the child;
- ✓ Particular physical or emotional needs;
- ✓ Physical and mental health considerations;
- ✓ Educational needs;
- ✓ Prospects for successful transition to adulthood (employment, marriage, own family).





**UNHCR**

United Nations High Commissioner for Refugees

Haut Commissariat des Nations Unies pour les réfugiés

