

# Best Interests of the Child

## GENERAL PRINCIPLES SET BY THE CONVENTION ON THE RIGHTS OF THE CHILD

- 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).
- Each child has a fundamental right to life, survival and development to the maximum extent possible (Article 6).
- Children should be assured the right to express their views freely and their views should be given “due weight” in accordance with the child’s age and level of maturity (Article 12).

The **principle of the best interests of the child shall be a primary consideration** and must be applied in a **systematic manner for any action by UNHCR that affects children of its concern. The principle must be adhered to** in any planning and policy-making (or decision and action) by any office that affects a child of concern to UNHCR and must permeate all protection and care issues involving UNHCR and implementing partners.

The term ‘**best interests**’ broadly describes the **well-being** of a child. As each case is unique, a general definition of what is in the best interests of the child cannot be given. Therefore, the ‘best interests’ of the child needs to be examined on an individual basis, taking into account the specific features of each case.

In order to ensure the **optimal implementation** of the best interests principle in actions affecting individual children, one of the following **procedures** may be applied, depending on the circumstances: 1) the best interests assessment and 2) the best interests determination (BID).

### 1. BEST INTERESTS ASSESSMENT

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

### 2. BEST INTERESTS DETERMINATION

A 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.

#### 2.1. When to make a formal BID

Normally, States have child protection systems with provisions to determine the best interests of the child. UNHCR should **only** conduct a BID in the absence of competent State authorities or when States are unable or unwilling to carry out the BID. In addition, 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). Specifically, UNHCR should carry out BIDs in the following situations:

1. to identify **durable solutions** for unaccompanied and separated refugee children;
2. to decide on **temporary care** arrangements for unaccompanied and separated children in exceptional situations;
3. to decide on the **possible separation** of a child from his or her parents against their will in cases where the child is exposed or is likely to be exposed to severe abuse or neglect.

**Family reunification** should generally not be delayed by a BID. However, if there are reasonable grounds to believe that reunification is likely to expose the child to abuse or neglect, UNHCR must verify through a BID whether it is in the child’s best interests.

#### BID and unaccompanied and separated children - pre-conditions

There are a number of pre-conditions that are essential for an effective determination of the best interests of unaccompanied and separated children. These pre-conditions include: proper identification; an adequate registration process, including documentation; tracing; the appointment of a guardian; provision of temporary care arrangements and the monitoring thereof; and the opening of an individual case file.

#### 2.2. Who undertakes the BID

A report including collected information, interviews and an assessment would be prepared by a **specialist on child protection, community services, or child welfare, and presented to a multi-disciplinary panel** capable of considering each child on a case-by-case basis.

#### 2.3. What procedural safeguards should be followed

**a)** Designation by the Head of Office of a UNHCR staff member responsible for setting up and supervising the formal BID process (**BID supervisor**). The BID supervisor shall develop or amend existing Standard Operating Procedures, organize training for and ensure that the Code of Conduct as well as the confidentiality oath are signed by those involved in the formal BID procedures.

**b)** In turn the BID supervisor shall identify a **child welfare officer** with child protection or community services expertise to undertake the gathering of the relevant information. The task of such a child welfare officer could, where possible, be implemented by an NGO. The child welfare officer will conduct interviews and gather information. He/she will then analyze the information collected and act as an advisor to a BID panel.

**c)** Formation of a **BID panel** by the BID supervisor, tasked to review the report and assessment made by the child welfare officer and to determine the best interests of the child. The panel should be **multi-disciplinary**, normally composed of **3-5 persons** with professional expertise in child development and child protection from international and national NGOs. An experienced community member may also be asked to sit on the panel if adequate safeguards can be put in place.

**d)** The process of **gathering information** 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, and the guardian;
- background information on conditions in the geographical locations under consideration for the durable solution; and
- the views of experts, as appropriate.

#### 2.4. How criteria should be applied to take a decision in a particular case

##### Balancing competing rights of the child

The best interests of the child will rarely be determined by a single, overriding factor. In most cases, the result of the formal BID will take into account the entire range of the child's rights. Decision-makers need to determine which of the available options better secures the attainment of the child's rights. In this regard, some key factors to balance are:

##### a) Views of the child

Article 12 of the Convention on the Rights of the Child (CRC) requires that the views of the child be given due weight in accordance with the age and maturity of the child.

##### b) Views of family members and others close to the child

The views of family members and other persons close to the child may be extremely important to understand the reasons behind the concerns, fears, and wishes expressed by the child. However, conflicts of interest need to be considered in the BID, such as in cases of an abusive relationship with the person(s) close to the child.

##### c) Safety as a priority

Fundamental international human rights norms to protect the right to life and physical safety set decisive parameters for a BID. Exposure or likely exposure to violations of fundamental human rights, including unlawful recruitment or use by armed forces or groups and trafficking, would normally outweigh any other factor.

##### d) The importance of the family and of close relationships

The interests of the child are generally best met when the child remains with his or her family. The parents have the joint responsibility of raising the child, and they are primarily responsible for the child's **upbringing and development**. For that reason the role of the family is crucial to the child's feelings of security, process of socialization and relation with external surroundings.

Therefore, for unaccompanied and separated children, all BIDs should ultimately address the extent to which **family reunification** is attainable.

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.

##### e) Nurturing the development needs of the child

The main factors that need to be taken into account when determining the development needs of the child 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);
- "the right 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).

#### 2.5. Final decision and follow-up

The panel will assess all the information and make a decision on how the case should proceed. The **panel's final determination** should be transmitted to the BID supervisor for necessary follow-up actions. He / she should then ensure that **the child and the family are informed** about the result. Likewise, it should inform the relevant staff in order to **follow-up** on other recommendations provided by the panel.

##### Reopening and reviewing the BID decision

The BID panel may defer a decision or recommend that it be reviewed within a specific timeframe. A BID can also be reopened either if there have been changes in circumstances that could alter the original decision or the initial decision could not be implemented within a reasonable timeframe. In addition, UNHCR must review the separation of a child from parents against their will if requested by the child's guardian or parents on the basis of new facts, evidence or legal considerations that may affect the initial decision.

#### FROM THE FIELD

**Thailand.** Since 2005, UNHCR's Regional Office Thailand has systematically incorporated the best interests analysis into its resettlement process given the prevalence of [informal] adoptions and kinship care arrangements among refugees from Myanmar. BID has been integrated as part of the larger child protection framework from 2007. A BID supervisor based in Bangkok oversees the implementation of procedures, ensures consistency and quality control and provides systematic training. The supervisor is supported by a field-based coordinator, who coordinates the daily activities of some 15 child welfare officers/BID clerks, whom have been trained in several elements of BID: general child welfare, interview techniques, writing skills and case assessment. A BID panel is based in Bangkok and is made up of 14 multi-disciplinary inter-agency members (national and international) who sit on the panel on a rotating basis and make the final decision based on the recommendations received from the BID clerks. (*UNHCR Regional Office in Thailand, Annual Protection Report 2005, 2006 and 2007.*)

##### Further reading

- UNHCR, *Guidelines on Determining the Best Interests of the Child*, May 2008, <http://www.unhcr.org/protect/PROTECTION/4566b16b2.pdf>
- ICRC, IRC, Save the Children UK, UNHCR, UNICEF, WVI, *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, 2004, <http://www.unhcr.org/protect/PROTECTION/4098b3172.pdf>
- UNHCR, *Refugee Children. Guidelines on Protection and Care*, 1994, <http://www.unhcr.org/protect/PROTECTION/3b84c6c67.pdf>
- *No Small Matter. Ensuring Protection and Durable Solutions for Unaccompanied and Separated Children*, Lutheran Immigration and Refugee Service, May 2007, <http://www.lirs.org/infores/PDFs/NoSmallMatter.pdf>
- *Determining the Best Interests of Unaccompanied and Separated Children. Lessons from Guinea*, International Rescue Committee, September 2007, <http://www.crin.org/docs/guinea.pdf>
- UNHCR Executive Committee Conclusion on Children at Risk, No.107 (LVIII) - 2007

