



**UNHCR**  
The UN Refugee Agency



2021 UNHCR BEST INTERESTS  
PROCEDURE GUIDELINES:  
**ASSESSING AND  
DETERMINING THE BEST  
INTERESTS OF THE CHILD**



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# DEFINITIONS AND EXPLANATIONS OF KEY TERMS

The term **“ASYLUM-SEEKER”** can either refer to an individual whose refugee status has not yet been determined by the authorities but whose claim to international protection entitles them to a certain protective status on the basis that he or she could be a refugee, or to persons forming part of large-scale influxes of mixed groups in a situation where individual refugee status determination is impractical. For the purposes of these Guidelines, the same principles and procedures apply to refugee and asylum-seeking children, as both categories fall within UNHCR competence, *rationae personae*.<sup>1</sup>

The **“BEST INTERESTS PROCEDURE”** (BIP) is the UNHCR case management framework for asylum-seeking and refugee children. It may also be applied to other children of concern to UNHCR in certain circumstances. BIP includes the key steps of child protection case management as well as the UNHCR Best Interests Determination (BID) process and is implemented for individual children at risk who are in need of targeted, structured, systematic, sustained and coordinated support. It ensures that decisions and actions aimed at addressing protection risks and needs for children are in their best interests. BIP is embedded within, and linked to, refugee protection case management.

The Committee on the Rights of the Child has stated that ‘the best interests of the child’ is a rule of procedure as well as a substantive right and a fundamental, interpretative legal principle. This means that responsible actors must establish and implement procedural safeguards to guarantee the right of a child to have their best interests taken as a primary consideration in all decisions that affect them, including those not directly related

to individual case management. BIP, as set out in these Guidelines, is the set of procedures, rules and safeguards applied by UNHCR to comply with this directive when UNHCR and partners undertake individual case management for children of concern.

The procedures implemented by national actors such as legislators, social welfare workforce staff and judicial and immigration authorities to assess and determine children’s best interests will be referred to broadly as **“NATIONAL BEST INTERESTS PROCEDURES”**. Such national procedures can take various forms and the procedural safeguards for these national best interests procedures, as described by the Committee on the Rights of the Child, are outlined in [Section 2.1: International legal framework](#).

**“BEST INTERESTS ASSESSMENT”** refers to the second of the six steps in UNHCR BIP (see [Section 2.2: The Best Interests Procedure and Child Protection Systems](#)), often generically called “assessment”. The UNHCR procedural tool for undertaking this step is also called a Best Interests Assessment (BIA). The BIA is an assessment made by UNHCR or partner staff taking action with regard to individual children, except when a BID is required, designed to ensure that such action gives a primary consideration to the child’s best interests. The assessment may be done alone or in consultation with others by staff with the required expertise and requires the participation of the child.

An assessment of children’s best interests is also required within national systems. It can take various forms and may not necessarily be called a “best interests assessment”.

<sup>1</sup> UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, available at: <http://www.refworld.org/docid/5268c9474.html> (Note on UNHCR’s Mandate).



**“BEST INTERESTS DETERMINATION”** (BID) describes the formal UNHCR process, which has strict procedural safeguards designed to determine the child’s best interests when taking 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 and determine the best option. The UNHCR Best Interests Determination (BID) process is articulated in these guidelines. A child’s best interests must also be determined by other actors working in national systems taking decisions on behalf of children but, as noted above, this process can take different forms and may not necessarily be called a ‘best interests determination’.

**“CAREGIVER”** is someone who provides the daily care, protection and supervision of a child. This does not necessarily imply legal responsibility. Where possible, the child should have continuity in who provides their day-to-day care. A customary caregiver is someone that the community has accepted, either by tradition or common practice, to provide the daily care, protection and supervision of a child.

Throughout the Guidelines, “caregiver” refers to a child’s legal or customary primary caregiver, whether temporary or long-term, where this person is not a parent, and is stated alongside “parents” (“parents and caregivers”) when referring to persons providing care to individual children.

**“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”.

**“CHILDREN AT RISK”** means those children who are at heightened risk as a result of exposure to risks in the wider protection environment and/or risks resulting from individual circumstances.

Children at risk include unaccompanied and separated children (UASC), as well as other children who are at risk of, or have experienced violence, exploitation, abuse or neglect. A non-exhaustive list of risk categories is included in paragraph (c) of the UNHCR Executive Committee (ExCom) Conclusions, No. 7 of 2007.<sup>2</sup>

**“CHILDREN OF CONCERN TO UNHCR”** include all children who fall under the UNHCR mandate. This includes refugee, asylum-seeking, internally displaced, returnee and stateless children.

**“CHILD PROTECTION CASE MANAGEMENT”** is an approach to addressing the needs of an individual child and their family in an appropriate, systematic and timely manner, through direct support and/or referrals.<sup>3</sup>

**“COMPLEMENTARY PATHWAYS”** meet refugees’ international protection needs, where durable solutions are not achievable, by ensuring access to their rights, such as learning new skills, acquiring an education, and contributing as workers in the labour market. Complementary pathways are not meant to substitute the protection afforded to refugees under the international protection regime, but rather complement it and serve as an expression of global solidarity, international cooperation and more equitable responsibility sharing to meet the protection needs of refugees. Complementary pathways, which must not be conflated with resettlement, can help to widen the range of temporary solutions available to refugees with few prospects of attaining a durable solution, particularly in protracted and large-scale refugee situations. Complementary pathways may include humanitarian admission programmes, community sponsorship, humanitarian visas, family reunification, labour mobility and education visas.<sup>4</sup>

2 Detail described in UNHCR, ExCom Conclusions 107 para. (c), <https://www.unhcr.org/excom/exconc/4717625c2/conclusion-children-risk.html>

3 The Alliance for Child Protection in Humanitarian Action, *Minimum Standards for Child Protection in Humanitarian Action, 2019 Edition*, available at: [https://alliancecpha.org/en/system/tdf/library/attachments/cpms\\_2019\\_final\\_en.pdf?file=1&type=node&id=35094](https://alliancecpha.org/en/system/tdf/library/attachments/cpms_2019_final_en.pdf?file=1&type=node&id=35094)

4 For more information on complementary pathways, see <https://www.unhcr.org/complementary-pathways.html>

**“CONSENT”** means any freely given and informed indication of agreement by a person, which may be given either in a written or oral statement or by a clear affirmative action.<sup>5</sup> In the case of children, consent should generally be obtained from the child’s parent or guardian, as well as consent or assent from the child according to the child’s age and maturity.

**“Assent”** means the expressed willingness or agreement of the child. Consent from parents/guardians is not necessary where it is not in the best interests of the child to share information with their parents/guardians or where the parents/guardians are not reachable. The information provided and the way in which consent/assent is expressed must be appropriate to the age and capacity of the child and to the particular circumstances in which it is given.

**“FAMILY”** is “...the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children...” (preamble of the Convention).<sup>6</sup> The term **“family”** must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, members of the extended family or community as provided for by local custom (Art. 5).<sup>7</sup> The right to **“family unity”** is entrenched in human rights instruments and international humanitarian law.

**“GUARDIAN”** means an independent person who safeguards a child’s best interests and general well-being and complements the limited legal capacity of the child. The guardian is generally appointed by national jurisdiction, e.g. a court, and acts as a statutory representative of the child in all proceedings in the same way that a parent represents their child.<sup>8</sup> Caregivers, where these are not parents, may or may not be

formally appointed as guardians, depending on the national system.

**“INTERNALLY DISPLACED PERSONS (IDP)”** are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence and who have not crossed an internationally recognized state border.

**“MIXED MOVEMENTS”** describes the movement within and across national and international borders of different groups of people with different profiles and needs, including asylum-seekers and refugees, as well as migrants.

**“ORPHANS”** are children both of whose parents are known to be dead.

**“REFUGEES”** are persons who are outside their country of origin for reasons of well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion as defined in the 1951 Convention, or because of conflict, generalized violence or other circumstances that have seriously disturbed public order, and who consequently require international protection.

**“RETURNEES”** are former refugees who have returned to their country of origin spontaneously or in an organized fashion but have not yet been fully (re)integrated. UNHCR engagement with returnees is usually time-limited; its aim is to hand responsibility over to other actors, notably development partners. The term also applies to IDP who return to their previous place of residence.

5 Adapted from UNHCR, *Policy on the Protection of Personal Data of Persons of Concern to UNHCR*, May 2015, available at: <http://www.refworld.org/docid/55643c1d4.html>, p.9.

6 The right of the child to family life is protected under the Convention (Art. 16).

7 UN Committee on the Rights of the Child (CRC), *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1)*, 2013, available at: <https://www.refworld.org/docid/51a84b5e4.html>

8 European Agency for Fundamental Rights, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, June 2014, ISBN 978-92-9239-464-6, available at: <http://www.refworld.org/docid/53b14fd34.html>; UN Committee on the Rights of the Child (CRC), *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 2005, available at: <https://www.refworld.org/docid/51a84b5e4.html>



# ABOUT THE BEST INTERESTS PROCEDURE GUIDELINES

The United Nations High Commissioner for Refugees (UNHCR) protects and promotes the rights of all children under its mandate. In order to achieve this, UNHCR and its partners support the strengthening or establishment of comprehensive child protection systems, which includes providing individual children at risk with targeted, timely, systematic and coordinated support in their best interests.

The *2021 UNHCR Best Interests Procedure (BIP) Guidelines: Assessing and Determining the Best Interests of the Child* (BIP Guidelines) focus on this crucial element of the UNHCR child protection mandate. The **primary objective of the BIP Guidelines is to support UNHCR and partner staff in improving the protection outcomes for refugee children by:**

- i. situating the best interests of refugee children within a comprehensive child protection system and
- ii. strengthening child protection case management for all refugee children.

These Guidelines are primarily designed for asylum-seeking and refugee children. For ease of reference, both groups of children will be referred to broadly as ‘refugee children’ throughout the Guidelines. The Guidelines may also apply to other children of concern to UNHCR in certain circumstances; this includes internally displaced, returnee and stateless children. For further information on how the Guidelines relate to other children of concern, see the mandate section below.

The Guidelines replace both the 2008 UNHCR Guidelines on Determining the Best Interests of the Child and the 2011 Field Handbook for the Implementation of UNHCR BID Guidelines. The Guidelines build on the practice of domestic child protection systems and the first 13 years of implementation of the 2008 UNHCR Guidelines on Determining the Best Interests of the Child. The Guidelines were first released in provisional form in 2018 and were finalized following internal and external consultation in 2020.

## Best Interest Procedure Guidelines: Overview and Intended Audience

The BIP Guidelines are divided into two interlinked parts. Part I of the Guidelines explains the historical and legal foundation of the best interests principle and its application to children of concern to UNHCR. Further, this first part of the Guidelines seeks to clearly define the link between the best interests principle, BIP and child protection systems.

Part II of the Guidelines focuses on the implementation of BIP. Part II establishes the key guiding principles of BIP, as well as guidance on the operational considerations, approaches and responsibilities relating to supporting individual children through BIP. It covers the conditions under which a best interests determination (BID) is required and operationalization of the BID.



**TABLE 1: Key topics in the Guidelines**

<b>PART I: Background, Theory and Legal Framework of the Best Interests Procedure</b>	
<b>Chapter 1</b>	<b>An outline of the scope of the Guidelines and an overview of the history of UNHCR and its work implementing the best interest principle and developing BIP</b>
<b>Chapter 2</b>	The broad legal framework on which BIP is based
	An outline of why and how to integrate BIP with child protection systems
	A description of the procedural safeguards incorporated in BIP
	An overview of how to weigh different elements of a child's situation in order to assess and determine their best interests
<b>PART II: The UNHCR Case Management Framework: the Best Interests Procedure</b>	
<b>Chapter 3</b>	An overview of BIP, including the key foundational areas of work and principles, and the steps of BIP
	Guidance on operationalizing BIP, including managing resources, partnerships and information management, and on implementing BIP in evolving situations
	Guidance on working with children in particular situations, such as children in mixed movements and children in alternative care, and on working with young people.
<b>Chapter 4</b>	Guidance on why, when and how to undertake a Best Interest Determination (BID) in specific situations
<b>Chapter 5</b>	Guidance on strict procedural safeguards for BID and why and how to set up and implement BID process



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The Guidelines are **accompanied by an online [Toolbox](#)<sup>11</sup>**, which will serve as a repository for additional resources, including the BIP Standard Operating Procedures (SOPs) Toolkit, forms, case studies, checklists, reference materials, and other guidance.

## Audience of the Guidelines

The Guidelines have been written with and for UNHCR staff and partners working with refugee children across the globe.

**Within UNHCR**, the primary users of the Guidelines are staff working on child protection or on BIP steps in any capacity or location and at any level. This may include, but is not limited to:

- Child Protection staff
- Protection staff
- Community-based Protection staff
- Registration staff
- Refugee Status Determination (RSD) staff
- Staff working on solutions for refugees
- All managers supervising the staff listed above<sup>12</sup>

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11 The BIP Toolbox can be accessed at: [www.unhcr.org/handbooks/biptoolbox](http://www.unhcr.org/handbooks/biptoolbox)

12 As BIP is embedded within and linked to the other Refugee Protection Case Management components (Part II Introduction), coordination and collaboration between staff working on the different components is standard practice. These Guidelines are of relevance in this regard and can support more effective coordination and collaboration across components.



**Partner organizations** managing or supervising cases of refugee children are also intended primary users of the Guidelines. Partner organizations include, but are not limited to, funded and non-funded national and local government/State authorities, non-governmental organizations (NGOs), faith-based organizations (FBOs) and community-based organizations (CBOs). Within partner organizations, it is intended that the main users of the Guidelines will include all staff working on case management; primarily caseworkers and their supervisors. Broadly speaking, this could include all relevant social service workforce staff<sup>13</sup> and their supervisors working with refugee children and other children of concern to UNHCR.

The Guidelines were not written for a child audience. That said, some children, particularly older children, may request to see or understand information or content in the Guidelines. Where deemed relevant, the Guidelines may be shared in their current format or sections may be adapted for younger readers.

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<sup>13</sup> The Global Social Service Workforce Alliance defines the social service workforce as: “an inclusive concept referring to a broad range of governmental and non-governmental professionals and paraprofessionals who work with children, young people, adults, older persons, families and communities to ensure healthy development and well-being. The social service workforce focuses on preventative, responsive and promotive services that are informed by the humanities and social sciences, indigenous knowledge, discipline-specific and interdisciplinary knowledge and skills, as well as ethical principles. Social service workers engage people, structures and organizations to facilitate access to the services needed, alleviate poverty, challenge and reduce discrimination, promote social justice and human rights and prevent and respond to violence, abuse, exploitation, neglect and family separation.” For more details, see: <http://www.socialserviceworkforce.org/defining-social-service-workforce>





**PART I**

**BACKGROUND, THEORY AND  
LEGAL FRAMEWORK OF THE  
BEST INTERESTS PROCEDURE**



# INTRODUCTION

Part I establishes the historical, theoretical and legal foundations of the UNHCR Best Interests Procedure, and provides key considerations on how to apply the Guidelines as a whole in a given context. [Chapter 1 on the Scope and History of the UNHCR BIP](#) provides background information on the role and mandate of the UNHCR, as well as the evolution of the Best Interests Procedure in UNHCR policy and practice. It also specifies how to apply the BIP Guidelines in different settings.

[Chapter 2 on the Legal and Policy Framework for the BIP](#) outlines the international legal framework for best interests procedures in general. It also provides specific guidance for UNHCR on how to work to strengthen national best interests procedures, including using these BIP Guidelines. Finally, based on the best interests principle and international law as well as international and UNHCR-specific policy, it provides important normative guidance on the application of procedural safeguards and on balancing competing rights in decision-making within the BIP.



# CHAPTER 1. SCOPE AND HISTORY OF THE UNHCR BEST INTERESTS PROCEDURE

## 1.1. UNHCR AND THE BEST INTERESTS OF THE CHILD

### Section Summary

- UNHCR is mandated to protect and promote the rights of all children falling under its competence, including refugee, asylum-seeking, stateless, returnee and internally displaced children.
- Where the responsible State authorities are unable or unwilling to adequately protect the fundamental rights of a child of concern to UNHCR, the latter may, in the exercise of its international protection mandate, take measures to do so, including through oversight and implementation of BIP.
- The UNHCR publication *A Framework for the Protection of Children* (2012) establishes best interests procedures for children as part of a broader child protection programme. Best interests procedures, whether implemented by UNHCR, partners or governments, should always be integrated into broader child protection systems.

### 1.1.1 The UNHCR mandate

#### Refugees

UNHCR has been mandated to provide international protection to refugees and, together with Governments, to seek permanent solutions for the problem of refugees. Paragraph 8(a) of the UNHCR Statute and the Preamble to the 1951 Convention confer responsibility upon UNHCR to supervise the application of international conventions for the protection of refugees. Asylum-seekers also fall within UNHCR competence *ratione personae*, i.e. by their very nature. The refugee mandate applies to refugees globally, regardless of the location of the refugees.

Under its mandate and as provided for in International Law, UNHCR is *expressly* ascribed the function of providing international protection to refugees, universally and without regard to any requirement for treaty ratification by the host countries. In fulfilling its mandate responsibilities, UNHCR delivers protection activities by intervening on behalf of individuals or groups to ensure that their basic human rights are protected. This mandate responsibility is independent of whether the protection activities are delivered directly by UNHCR, through its funded partners or by third parties involved with persons of concern to UNHCR. In any case, UNHCR remains accountable and coordinates and monitors the activities of all of its partners. As such, UNHCR has a specific responsibility for the protection of refugee children, which includes the implementation of UNHCR-led BIP if the State is unable to implement best interests procedures for all refugee children, or to do so adequately (see [Section 2.2.1 The Best Interests Procedure and Child Protection Systems](#)).

It is important to note that a sustainable solution to refugee responses must be achieved with international, regional and national cooperation, through shared responsibility and working

in partnership with Governments, international organizations and other stakeholders. The Global Compact for Refugees (GCR), based on lessons learned through implementation of the Comprehensive Refugee Response Framework (CRRF), outlines a framework for more equitable responsibility sharing. The GCR and subsequent partnerships can form the broad basis of engagement to promote and implement best interests procedures in different settings.

In **mixed movements**, where refugees are moving with migrants, UNHCR maintains the responsibility for international protection of refugees, and as such the provisions for BIP will apply (see the [3.7.1 Best Interests Procedures for children in transit](#) on the application of BIP in mixed movements below).

## Returnees

UNHCR has a protection and solutions mandate for returnee former refugees. Paragraph (I) of ExCom Conclusion No. 40, which was endorsed by the General Assembly (GA), acknowledges the role of UNHCR on their behalf in connection with voluntary repatriation operations while recognizing its legitimate concern for the consequences of the return of refugees to their home countries. The UNHCR mandate in this area has been refined and extended, from an initial premise that their responsibility ended when refugees crossed the border into their country of origin, to providing reintegration assistance and monitoring their treatment after return. UNHCR regularly enters into tripartite agreements on return and reintegration with the country of origin and the country or countries of asylum. The role of UNHCR also involves making transitional arrangements with development actors to provide development assistance.

## Stateless persons

UNHCR has stipulated responsibilities for refugees who are stateless, pursuant to paragraph 6 (A) (II) of the Statute and Article 1 (A) (2) of the 1951 Convention, both of which specifically refer to stateless persons who meet refugee criteria. In 1995, the Executive Committee adopted a comprehensive Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons, which was endorsed by the General Assembly. This text consolidated the evolution of the UNHCR mandate with regard to non-refugee stateless persons and the prevention and reduction of statelessness more broadly. Subsequent Executive Committee Conclusions and General Assembly Resolutions have further developed and refined the UNHCR mandate and have referred to four distinct areas in which the Office is authorized to act: identification, prevention and reduction of statelessness and the protection of stateless persons.

## Internally Displaced Persons (IDPs)

UNHCR does not have a general mandate for internally displaced persons but has been authorized by the General Assembly to be involved operationally under certain circumstances in enhancing protection and providing humanitarian assistance to internally displaced persons through special operations. The requirements for UNHCR activities in favour of internally displaced persons are: a specific request/authorization from the Secretary-General or a competent principal organ of the United Nations; the consent of the state or other entities concerned; assurance of access to the internally displaced; availability of adequate resources and the particular expertise and experience of UNHCR; complementarity with other agencies; and adequate staff safety. UNHCR involvement with internally displaced persons is today largely defined by the inter-agency coordination approach of the Humanitarian Reform and the Transformative Agenda, which have been developed in the Inter-Agency Standing Committee context under the leadership of the Emergency Relief Coordinator

(ERC), albeit operating in full respect of the mandates of the respective entities. In this connection, it was agreed in mid-2005 that UNHCR would assume global cluster leadership for protection and co-leadership in the area of camp coordination/management and emergency shelter. Where IDPs and refugees reside in the same territory, the High Commissioner for Refugees and the Emergency Relief Coordinator jointly decide on whether to use the Cluster approach or the Refugee Coordination model – in either case, the UNHCR mandate for refugee coordination applies.

## 1.1.2 UNHCR Executive Committee Conclusion No. 107

UNHCR Executive Committee (ExCom) Conclusion No. 107 (2007) on children of concern calls on states and UNHCR to utilize best interests determination procedures and provides a foundation and framework for active engagement by UNHCR in best interests procedures. The Conclusion emphasizes child participation and the role of national child protection systems.

### Extract from ExCom Conclusion No. 107

g) *Recommends* that States, UNHCR and other relevant agencies and partners work in close collaboration to **prevent children from being put at heightened risk**, and respond, as necessary, through the general **prevention, response and solution measures** listed non-exhaustively below:

- (i) Within the framework of the respective child protection systems of States, utilize **appropriate procedures for the determination of the child's best interests** which facilitate adequate child participation without discrimination: where the views of the child are given due weight in accordance with age and maturity; where decision makers with relevant areas of expertise are involved; and where there is a balancing of all relevant factors in order to assess the best option;
- (i) In the case of UNHCR, **conduct best interests determinations respecting child protection systems of States** in cooperation with other relevant agencies and partners;

(h) *Further recommends* that States, UNHCR and other relevant agencies and partners undertake the following non-exhaustive prevention, response and solution measures in order to address specific wider environmental or individual risk factors:

- (i) Enhance the use of resettlement as a protection and durable solutions tool for children at risk; where appropriate, take a flexible approach to family unity, including through consideration of concurrent processing of family members in different locations, as well as to the definition of family members in recognition of the preference to protect children within a family environment with both parents; and recognize **UNHCR's role in the determination of the best interests of the child** which should inform resettlement decisions including in situations where only one parent is being resettled and custody disputes remain unresolved due to the unavailability or inaccessibility of competent authorities, or due to the inability to obtain official documents from the country of origin as this could jeopardize the safety of the refugee or their relatives;



### 1.1.3 The UNHCR Framework for the Protection of Children

A Framework for the Protection of Children, 2012, (the Framework)<sup>14</sup>, was shaped by ExCom conclusion No. 107, and recognizes both the centrality of children’s protection to the work of UNHCR and the growing body of practice and expertise in the child protection sector globally. The Framework broadened UNHCR understanding of and engagement in the protection of children. It also applied a child protection systems approach that includes actions for duty bearers at all levels—family, community, national and international—to mitigate and respond to the protection risks that children are facing. The Framework recognized the involvement of partners, parents or caregivers, other family members, community members and other relevant actors as essential for ensuring that best interest procedures take place within a comprehensive child protection system.

The Framework articulated six goals that encapsulate the commitment of UNHCR to protecting and promoting the rights of children of concern to them and offers practical guidance on how they can be achieved.

The Six Goals are:

1. Girls and boys are safe where they live, learn and play
2. Children’s participation and capacity are integral to their protection
3. Girls and boys have access to child-friendly procedures
4. Girls and boys obtain legal documentation
5. Girls and boys with specific needs receive targeted support
6. Girls and boys achieve durable solutions in their best interests

Best interests procedures, whether implemented by UNHCR, government or partners, support the operationalization of a number of the goals, and are specifically considered in Goals 5 and 6. However, as is emphasized by the Framework, UNHCR should look to ensure programming across all goals and within a child protection systems framework. Indeed, best interests procedures are most effective and efficient when they are embedded within a comprehensive child protection programme that works across all goals of the Framework. Furthermore, both preventive and responsive services are needed to achieve the best protection results for children of concern.

Another key aspect of the Framework is its focus on the role of the community and families in protecting children, including as part of community-based child protection mechanisms. A community-based approach to child protection programming and best interests procedures can help to ensure that children, their parents or caregivers and families are active agents in protecting children and understand the roles of staff working with children and how to report concerns or complaints.<sup>15</sup>

14 UNHCR, *A Framework for the Protection of Children*, 2012, available at: <http://www.refworld.org/docid/4fe875682.html>

15 For more information on this fundamental aspect of child protection programming, see UNHCR, *Child Protection Issue Brief: Community-Based Child Protection Mechanisms*, 2013, available at: <http://www.refworld.org/docid/531ec54f4.html>



## 1.2 SCOPE OF THE BEST INTERESTS PROCEDURE

### Section Summary

- These Guidelines provide standards and outline when and how UNHCR and its partners are required to undertake BIP to supplement national best interests procedures.
- These Guidelines have been written to support UNHCR and its partners in implementing BIP primarily for asylum-seeking and refugee children.
- While these BIP Guidelines primarily refer to refugee children, the best interests principle must also guide all actions and interventions that UNHCR or partners take on behalf of other children of concern to UNHCR.

### 1.2.1 Best Interests Procedure in different settings

UNHCR operates in a wide range of settings, including diverse legal, political, geographical, economic and cultural contexts. While there are similarities in protection risks for children of concern across different settings, the impact on children and their experience of these risks can also vary depending on the context. Irrespective of such contextual variation, UNHCR staff and partners must ensure that support to individual children at risk is based on and promotes each child's best interests. These Guidelines are designed to outline key standards and procedures that will be adaptable to different contexts and to a changing external environment over time.

Every day UNHCR and partner staff encounter situations where decisions that affect children need to be guided by the best interests principle as articulated in international, regional and national law. These include decisions that have an impact on all children in general, specific groups of children and individual children. Implementation of the best interests principle through appropriate national procedures is the responsibility of the State. 'Appropriate' national procedures for children covered by the UNHCR mandate have been defined by Member States in ExCom No. 107 and include the fact that such procedures should provide non-discriminatory access to all children under a State's jurisdiction (see [Section 2.3: Procedural Safeguards in the Best Interest Procedure](#)). In contexts where national procedures are accessible to children of concern to UNHCR, UNHCR and partners should support States to ensure that such procedures are in line with the best interests principle and the guidelines for appropriate procedures outlined above. Guidance on how UNHCR and partners can support national best interests procedures may be found in [Chapter 2: The legal and policy framework for the Best Interests Principle and Procedure](#). In other contexts, UNHCR and partners will support authorities by supplementing the national procedures and undertaking best interest procedures directly.

**The majority of these Guidelines focus on standards for situations in which UNHCR and partners are required to undertake BIP to supplement national best interests procedures.**

**These Guidelines have been written to support UNHCR and partners in implementing BIP primarily for asylum-seeking and refugee children.** The guidance included in these Guidelines may be adapted to support other groups of children of concern to UNHCR, including returnee, internally displaced and stateless children.

### Refugee children

The best interests principle should guide the refugee protection and solutions analyses and strategies of UNHCR and partners relating to children in general or specific groups of children. Country operations plans and programmes should adequately consider the best interests principle and the

needs of refugee children of different nationalities, gender and abilities alongside their peers. As described above, while the UNHCR mandate covers refugees, asylum-seekers, and returnees as well as Internally Displaced Persons and stateless children, these guidelines are primarily designed for asylum-seeking and refugee children; for ease of reference, they will be referred to broadly as ‘refugee children’ throughout the document (see [Definitions and Explanations of Key Terms](#)).

For individual children, the best interests principle should be a primary consideration in all actions and decisions taken by UNHCR and partners. This may include assessing and responding to the protection needs of a child at risk, alternative care arrangements for an unaccompanied or separated child, or identifying a durable solution. The UNHCR BIP Guidelines outline the specific procedures to ensure that this general principle is respected when providing case management to refugee children.

Where relevant national best interests procedures exist for host community children, the United Nations Children’s Fund (UNICEF), UNHCR and its partners should proactively advocate for the inclusion of refugee and asylum-seeking children in existing national child protection systems and procedures. Advocacy efforts should also consider their inclusion in case management services for children at risk and build the capacity of these systems to appropriately respond to the needs of all children in need, including refugee children (see [Section 2.2: Best Interest Procedure and child protection systems](#)).

Where appropriate State procedures to determine the best interests of the child do not exist, are not accessible, exclude refugee children or are not appropriate, UNHCR may, in partnership with the authorities, UNICEF and other actors, use these Guidelines to establish BIP to make important decisions for individual children. For more guidance on assessing and supplementing State procedures, see [Section 2.2: Best Interest Procedure and child protection systems](#). For UNHCR and partners working with refugee children, UNHCR BIP guidelines should be the primary reference and can be supplemented by the Interagency Guidelines for Case Management and Child Protection.

## Other groups of at-risk children

While these BIP Guidelines are primarily designed for refugee children, the best interests principle must also guide all actions and interventions that UNHCR or partners take on behalf of other children of concern to UNHCR, including internally displaced, returnee or stateless children. For all of these children, UNHCR’s level of involvement in national best interests procedures will depend not only on the existing national child protection system, but also on the nature of UNHCR engagement with internally displaced, returnee or stateless children in a particular operational context. In general, UNHCR should, with partners, advocate for the inclusion of all children of concern in existing national child protection systems and procedures, including case management services established for all children in the State who are at risk and in vulnerable families. Where national best interests procedures exist, UNHCR and partners should advocate for these procedures to apply to internally displaced, returnee and stateless children. In the absence of appropriate procedures to determine the best interests of the child or where such procedures exclude children of concern, UNHCR may, in partnership with the authorities, UNICEF and other actors, use these Guidelines to establish best interests procedures as part of the national child protection system, as well as the Interagency Guidelines for Case Management and Child Protection. In these settings, partners will generally use the Interagency Guidelines on Case Management and Children, although they may also wish to refer to UNHCR BIP Guidelines where helpful.

Best interests procedures for children of concern to UNHCR that are developed to supplement the national child protection systems should remain the exception. However, where appropriate procedures for assessing and determining the best interests of the child have not been established or where they exclude internally displaced, stateless and returnee children and where UNHCR is

engaging in individual case work involving these children, UNHCR should use these BIP Guidelines to make important decisions for individual children in consultation with national authorities and other partners, as appropriate. This will be determined on a case-by-case basis and depend upon an analysis of the context and UNHCR operational engagement in a given context; in particular, whether UNHCR is engaging in individual case work and whether other partners are present and have operational capacity.

In addition to the above, the sections below detail specific considerations for returnee, stateless and internally displaced children and children in mixed movements.

### **Returnee children**

Where refugee children are returning to their country of origin or place of habitual residence, UNHCR will generally have been operational prior to the children's return. While a decision to return a child to their country of origin or place of habitual residence or transfer them to a third country falls within the competence of States, UNHCR has a responsibility to inform the competent State authorities if they become aware of risks of violence, exploitation, abuse or neglect by State and other actors, including parents, caregivers and any other family members. This will involve working with the authorities of both the sending and receiving countries and ensuring that there are procedures for assessing and determining the child's best interests. Where the responsible State authorities are unwilling or unable to adequately implement national best interests procedures for returnee children, UNHCR may need to use these Guidelines to take important decisions for individual children. Additional guidance is provided in [Chapter 4: Best Interests Determination](#).

### **Internally Displaced Children**

Efforts to strengthen existing systems and advocate for the inclusion of internally displaced children should generally be led by UNICEF, in its capacity as the global lead for the Child Protection Area of Responsibility (AoR) under the Global Protection Cluster. In internal displacement contexts, particularly where the cluster approach is used, existing child protection working groups may determine, in consultation with protection working groups, whether and under what circumstances national child protection systems should be supplemented by child protection case management services. UNHCR may support and complement efforts to do so on the basis of the nature of its engagement with internally displaced persons, its experience in implementing best interests procedures for refugee children and its role as the Global Protection Cluster lead. In mixed contexts, e.g. where there are both refugees and internally displaced persons, it may be appropriate to advocate jointly with UNICEF and its partners for the inclusion of refugee and internally displaced children in national best interests procedures.

### **Stateless Children**

UNHCR may support and complement efforts to strengthen stateless children's access to national child protection systems on the basis of its mandate for stateless persons and its experience in implementing national best interests procedures for refugee children. It is important for UNHCR to work with the relevant authorities, UNICEF

and other partners, on the issue of statelessness within specific contexts. Where UNHCR is engaging in individual case work involving stateless children, these Guidelines may be adapted to make important decisions in consultation with national authorities and other partners.

### **Children in Mixed Movements**

Refugee children, asylum-seeking children, returnee children, stateless children and children at risk of statelessness are often part of complex and irregular flows in mixed movements including migrant children in an irregular situation. Where children of concern to UNHCR are identified in

mixed movements, UNHCR remains accountable for children that fall under its mandate; in particular, refugees. Given the complex operational realities in such settings, UNHCR should collaborate with other actors to coordinate the response to different children and identify synergies. Where possible, UNHCR, the International Organization for Migration (IOM), UNICEF and other actors should advocate for the non-discriminatory inclusion in national child protection systems and national best interests procedures of all children involved in mixed movements and build the capacity of those systems to respond to the specific needs of the various children involved. Where this is not possible, UNHCR should establish UNHCR-led BIP for refugee children and, where appropriate, other children of concern to UNHCR. In certain contexts, UNHCR and IOM may establish joint procedures for refugee and migrant children to respond to trafficking, family separation and other serious risks faced by children in mixed situations. In settings where children are in transit between countries or in circular movements between countries, the BIP should be adapted to this situation (for more information on how to adapt BIP to such movements, see [Section 3.7: Best Interest Procedure in Emergencies](#)).

The best interests principle applies to all children within the territory of the state, irrespective of their status. This includes children who, following evaluation of their claim by the competent authorities, are found not to be in need of international protection. UNHCR should therefore advocate for application of the best interests principle in the case of children who have applied for asylum but are not recognized as refugees.





## 1.3 UNHCR HISTORY: OPERATIONALIZING THE BEST INTERESTS PRINCIPLE

### Section Summary

- UNHCR has a long history of operationalizing the best interests principle for children of concern.
- Over time, the lessons learned from implementing best interests procedures have informed new guidelines and strengthened practices. These BIP Guidelines reflect both the lessons of the past and changes in the external and internal UNHCR operating environments.

### 1.3.1 The best interests principle in UNHCR

UNHCR policy documents and guidance, including the Conclusions adopted by its Executive Committee, systematically refer to the principle of the best interests of the child, and the need to use appropriate procedures to assess and determine a child's best interests.

In 1989, the Convention on the Rights of the Child (CRC) formalized the best interests principle as a primary consideration in all decisions affecting individual children or groups of children. Prior to that, the best interests principle had a long history in forced displacement as it was central to the work of the International Refugee Organization (IRO), the organization that predated UNHCR. In supporting children who were separated from their families during the Second World War, the International Refugee Organization was guided by a United Nations Economic and Social Council (ECOSOC) Resolution that instructed it to: (i) reunite children with their families wherever possible and (ii), in the context of orphans or unaccompanied children (UAC), to promote repatriation where this was considered to be in the best interests of the child or, where this was not the case, to resettle the child.

In the 1990s, UNHCR applied the best interests principle in its Comprehensive Plan of Action (CPA) for Vietnamese asylum-seekers and their dependants, which included Guidelines on Special Procedures for unaccompanied children and other persons of special humanitarian concern. One key feature of the procedure was assessment of the "best interests" of children in order to identify appropriate solutions.

In early 2000, the best interests principle was applied during the assessment of durable solutions for the so-called "Lost Boys" of Sudan living in the Kakuma refugee camp in Kenya. An initial set of guidelines on determining the best interests of the child were developed for use in Ethiopia (2003 to 2004), where Best Interest Determinations (BIDs) were conducted for unaccompanied and separated Sudanese refugee children. At the same time, some resettlement countries requested that UNHCR put in place adequate safeguards to determine whether resettlement was in the best interests of refugee children.

### 1.3.2 The 2008 Guidelines on Determining the Best Interests of the Child

In 2004 UNHCR began drafting guidelines on how to operationalize the best interests principle. This resulted in a provisional version of the Guidelines on Determining the Best Interests of the Child in May 2006. These provisional guidelines were field tested in Ethiopia, Guinea, Kenya, Malaysia, Tajikistan, Tanzania and Thailand and the final version of the *UNHCR Guidelines on Determining the Best Interests of the Child* (2008 BID Guidelines) was published in May 2008.

The development of the 2008 BID Guidelines demonstrated the continued commitment of UNHCR to implementing best interests procedures and to implementing ExCom Conclusion No 107 (2007) on children at risk.

In 2011, UNHCR and the International Rescue Committee (IRC) published the *Field Handbook for the Implementation of UNHCR BID Guidelines* (2011 BID Handbook)

. The 2011 BID Handbook sought to counterbalance the tendency to apply the Best Interests Procedure mainly in the context of resettlement. The handbook emphasized that BID process should not be established in isolation from other protection measures, but rather as part of a comprehensive approach to child protection services.

The 2008 BID Guidelines and 2011 BID Handbook established the best interests assessment (BIA) and BID processes as UNHCR individual child protection case management tools to operationalize the best interests principle when making decisions affecting individual children. The 2008 BID Guidelines and 2011 BID Handbook also outlined situations in which UNHCR and partners were required to make decisions that would have a significant and long-term impact on a child and thus where the safeguards of the BID were required.

### 1.3.3 The 2021 Best Interests Procedure Guidelines

In the 13 years since the publication of the 2008 BID Guidelines, external and internal operating contexts have changed. Many essential UNHCR and external legal, policy and guidance documents were produced or updated during this time. Furthermore, case management in humanitarian settings became a more professionalized area of work and inter-agency guidelines were developed.

In 2017 UNHCR began to revise the 2008 BID Guidelines to ensure their continued relevance in the context of evolving protection policy and guidance. The revision process included:

- (i) a field survey of UNHCR and partner staff working on child protection case management;
- (ii) consultations with partners, including the Case Management Task Force of the Alliance for Child Protection in Humanitarian Action; and
- (iii) oversight from an internal UNHCR Reference Group, whose members also served as drafters during the revision process.

The consultation process, informed by lessons from 13 years of implementing the 2008 BID Guidelines, led to the development of the 2021 *UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child*. The Guidelines were released provisionally in December 2018 for one year. During this provisional release year UNHCR and partner staff field-tested the guidance and provided recommendations for updates and changes based on practice across the globe through:

- (i) an online survey,
- (ii) bilateral consultations and
- (iii) a child protection expert workshop.



## What's different in the 2021 Guidelines on Assessing and Determining the Best Interests of the Child?

The 2021 *UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child* combine the conceptual structure of the original 2008 BID Guidelines with the operational guidance of the 2011 BID Handbook in order to provide one consolidated, practical frame of reference for staff in the field. It retains the core guidance from the previous Guidelines while providing stronger guidance on working with national child protection systems to ensure access to comprehensive case management and services for children at risk, reinforcing the BIP as the UNHCR child protection case management tool for children at risk. It also revises the situations when a BID is required by: i) relaxing the requirements for when a BID is needed for durable solutions for separated children, and ii) allowing for additional exceptional situations where children at risk may require a BID. The 2021 version also separated the BIP Annexes into an online [BIP Toolbox](#) with other key tools to allow them to be more regularly updated as needed.







# CHAPTER 2. THE LEGAL AND POLICY FRAMEWORK FOR THE BEST INTERESTS PRINCIPLE AND PROCEDURE

This chapter introduces the legal framework underlying the Best Interests Procedure and, in particular, application of the best interests principle. It provides an overview of the best interests principle as derived from the CRC and guidance issued by the Committee on the Rights of the Child and other relevant international law and standards. In addition, this chapter outlines the UNHCR mandate and policy framework for child protection as it relates to the implementation of the best interests principle and BIP in particular. It also provides an overview of the relationship between national child protection systems and national best interests procedures, and the appropriateness and accessibility of such systems to refugee children – as well as the relationship between national systems and UNHCR-led Best Interests Procedures. Finally, this chapter provides an overview of how key aspects of the best interests principle are operationalized as part of UNHCR BIP, the procedural safeguards and how competing rights are balanced when making a decision.

## 2.1 INTERNATIONAL LEGAL FRAMEWORK

### Section Summary

- The best interests of the child is a threefold concept: it is a substantive right, a fundamental, interpretative legal principle and a rule of procedure.
- The best interests principle applies to all children without discrimination, regardless of a child's guardianship or legal status. The best interests principle also applies to actions affecting children as a group and to all actions undertaken by public institutions and affecting individual children.
- The principle of the best interests of the child requires States to establish procedures and/or mechanisms with which to assess and determine the best interests of all children under their jurisdiction.
- Other international and regional instruments on general human rights, international humanitarian law, refugee law and child-specific instruments are also relevant in interpreting the principle of the best interests of the child.

### 2.1.1 The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly (UNGA) on 20 November 1989, is the main legal instrument protecting the rights of the child and brings together the children's human rights articulated in other international instruments.

The CRC provides for a number of fundamental rights which include, among others, the need for protection from abuse, exploitation and neglect, and the importance of children's physical, emotional and cognitive development. 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 following four articles have been identified as general principles and must be applied to all other articles:

- 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).
- The **best interests** of the child shall be a **primary consideration** in all actions affecting children (Article 3).
- 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).

## 2.1.2 Use of the term “best interests” in the Convention on the Rights of the Child

While the CRC does not offer a precise definition of the best interests of the child, the Committee on the Rights of the Child has explained that the concept of the child's best interests is “aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.”

The Best Interests of the Child are determined by a variety of individual circumstances, such as the age, gender, level of maturity and experiences of the child. Other factors also determine well-being, such as the presence or absence of parents, the quality of the relationships between the child and their family or caregivers, the physical and psychosocial situation of the child and their protection situation (security, protection risks, etc.). The interpretation and application of the best interests principle must conform to the CRC and other international legal norms, as well as to the guidance provided by the Committee on the Rights of the Child.

The principle of the best interests of the child is derived from Article 3, paragraph 1 of the CRC, which gives the child the right to have their best interests assessed and taken into account as a primary consideration in all actions or decisions that concern them, both in the public and private sphere: **“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”**

## 2.1.3 Committee on the Rights of the Child General Comment No. 14

The Committee on the Rights of the Child General Comment No. 14 provides additional explanation of the interpretation and application of the best interests principle. It defines it as a three-fold concept:

- A **substantive right**: the right of the child to have their best interests assessed and taken as primary consideration
- A **legal principle**: meaning that if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen
- A **rule of procedure**: whenever a decision is made that will affect a specific child, group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child concerned

## To which children does the principle apply?

The best interests principle applies to all children without discrimination. This means that it applies whether children are citizens of a State, foreign nationals (including asylum-seekers or refugees) or stateless. The principle also applies whether children are with their family members or are unaccompanied or separated.

## When and to whom does the principle apply?

The principle applies to “all actions concerning children”, which broadly means all decisions, actions, services, procedures and plans that impact directly or indirectly on children. The principle should be applied “by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”. CRC Comment 14 explains that this should be understood broadly to include all institutions whose work impacts directly and indirectly on children rights. For the purposes of these guidelines, key actors include government, civil society and other actors such as:

- Immigration and asylum authorities
- Civil registration authorities
- Judicial authorities, police and security actors
- Education, health and social welfare actors
- People who make decisions on a daily basis for children, such as parents, guardians and teachers
- Local authorities, media or private sector

## A rule of procedure

When the above-listed actors take decisions for individual children, the best interests principle should guide decision-making. Furthermore, States must establish formal processes, with strict procedural safeguards to assess and determine the best interests of the child. The Committee clarifies that actors who make decisions on a daily basis such as teachers, guardians and parents should respect the best interests of the child, but are not required to apply “strict procedural safeguards” when making these decisions. As such, not every action taken by State or other actors needs to incorporate a full formal process for assessing and determining the best interests of the child. The greater the impact a decision will have on the child and the child’s future development, the stricter the procedural safeguards that need to be put in place when making that decision. In the context of these guidelines, this means that actors working with children including legislators, judges, asylum and immigration authorities, social welfare authorities and UNHCR must develop transparent and objective processes for assessing and determining children’s best interests. The principle is flexible to permit it to be applied by different actors and diverse national systems and, as such, the Committee provides broad guidance on the procedural safeguards that should be in place for decisions relating to individual children. These include:

- The right of the child to express his or her own views
- Establishment of the facts
- Timely perception
- Qualified professionals

- Legal representation
- Legal reasoning
- Mechanisms to review or revise decisions

It is important to note that the CRC does not require these procedures to take specific forms, but rather to respect the above procedural safeguards and show clearly how they assess and determine the children's best interests (for more details see [Section 2.3: Procedural safeguards in the Best Interests Procedure](#)). The specificities of how the best interests principle and best interests procedures are implemented will vary between different national systems: within one State, different actors will operationalize the assessment and determination of a child's best interests in different ways. In many cases, the procedures established by governments are not referred to as best interests procedures. Rather they consist of specific steps in a decision-making process or procedure that should include the above-listed procedural safeguards.

### **Balancing elements and rights in decision-making.**

The Committee on the Rights of the Child has developed a non-exhaustive and non-hierarchical list of elements that could be considered by any decision-maker having to determine a child's best interests. The elements include:

The child's views

- The parents or caregiver's views, and those of the family (where appropriate)
- The identity of the child, including sex, sexual orientation, national origin, religion and beliefs, cultural identity and personality
- The family environment, family relations and contacts
- The care, protection and safety of the child, including the child's well-being and development
- Situations of vulnerability, including the risks that the child is facing and the sources of protection, resiliency and empowerment
- The child's rights and needs with regard to health and education

The CRC highlights relevant elements that need to be considered in the decision-making process and balanced against each other. It also states that the best interests must be a primary consideration, but not necessarily the sole consideration, and that the best interests of the child must be balanced against other rights (for more information on balancing elements in decision-making see [Section 2.4: Balancing competing rights when making a decision](#)).

## **2.1.4 Other Legal Sources for the Best Interests of the Child**

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 at international, regional and national level that may affect such decisions. In accordance with Article 41 of the CRC, the higher standard must always apply.

Relevant international and regional instruments include those concerning general human rights, international humanitarian law, refugee law and child-specific instruments. Soft law, such as the above-mentioned General Comments by the Committee on the Rights of the Child, and UNHCR Executive

Committee Conclusions, such as ExCom No. 107, are valuable interpretative sources (see [Section 1.1: UNHCR and the best interests of the child](#)).

National law and domestic jurisprudence may provide more specific guidance on the general principles set forth in international instruments. Traditionally, the best interests principle enshrined in domestic laws has been specific to custody disputes or petitions for adoption. The Committee on the Rights of the Child has consistently emphasized that the child's best interests principle, together with other general principles identified in the CRC, should be reflected in domestic legislation and be applied to all decisions affecting individual children or groups of children and thus is not limited only to decisions related to custody or adoption. The Committee states that the principle should be included in all relevant national legislation (education, health, justice and others), and that it should be incorporated in such a way that it can be invoked before the courts. The Committee has also indicated that proper implementation of the CRC requires a thorough review of domestic legislation and related administrative guidance to assess which laws and regulations must be revised in order to better reflect the principle of the best interests of the child.

In implementing best interests procedures, it is important to understand how the best interests principle is reflected in national legislation and policies. In making best interests assessments and determinations, UNHCR and its partners should also be guided by national legislation, provided that the provisions are aligned with international law.

## 2.2 THE BEST INTERESTS PROCEDURE AND CHILD PROTECTION SYSTEMS

### Section Summary

- Responsibility for implementation of the best interests principle, including procedures for assessing and determining a child's best interests, is first and foremost that of the State. This responsibility stems from its international legal obligations.
- As States establish and implement child protection systems in accordance with their international obligations, UNHCR is tasked to strengthen and where necessary supplement child protection systems. All children under a State's jurisdiction should have non-discriminatory access to its child protection system. Therefore, a best interests procedure developed outside the framework of national child protection systems should be the exception.
- On the basis of the UNHCR core protection mandate and legal responsibility for refugees, UNHCR is accountable for ensuring that the best interests procedures applied to refugee children have the necessary procedural safeguards. It should be noted that appropriate State procedures for assessing a child's best interests may not be standalone and/or may be called something different. Where appropriate State procedures are not in place, UNHCR should use these Guidelines to strengthen existing procedures and/or establish supplementary best interests procedures for refugee children.
- The role of UNHCR in establishing and/or strengthening best interests procedures will vary depending on the context and the nature of UNHCR engagement with the children of concern to it in that particular operational context.

## 2.2.1 The Best Interests Procedure and Child Protection Systems

### State responsibility for the best interests principle and associated procedures

As described in [Section 2.1: Internal Legal Framework](#), States have primary responsibility for implementing the best interests principle and establishing procedures for assessing and determining children's best interests.<sup>16</sup> In addition, in child protection systems, all important decisions made by different actors must follow an assessment and determination of the child's best interests and respect specific procedural safeguards. This section focuses specifically on national best interests procedures within the child protection system. UNHCR describes child protection systems as consisting of functions undertaken by a range of formal and informal actors to prevent, mitigate and respond to the risks faced by children including the following components: Legal and policy framework; Knowledge and data; Coordination; Human and financial capacities; Prevention and response activities; Advocacy and awareness-raising.<sup>17</sup>

Key procedures within a child protection system to assess and determine the best interests of refugee and at-risk children of concern to UNHCR are listed below. These elements can also be referred to collectively as national best interests procedures and are also often referred to as national child protection services:

- **Governmental or civil society social welfare case management procedures** to assess and provide individualized support to children and families. These services may be provided by social workers, case managers, child and youth care workers, youth workers or other social service practitioners. These are commonly referred to as case management services and may involve cross-border coordination between judicial or social welfare authorities
- **Care and protection procedures and services for unaccompanied and separated children**, including family tracing and reunification as well as various other forms of alternative care, including foster care
- **Procedures and services to address child victims of violence**, particularly: relevant social welfare, police and judicial proceedings, including but not limited to protection orders to limit access of the perpetrator to the child; removal of the child and placement in appropriate alternative care or shelter
- **Judicial procedures** to determine custody, or to rule on other matters relating to the care and well-being of children
- **Other relevant national procedures and services** that impact on specific child protection cases such as child marriage and other harmful traditional practices, child labour and children associated with armed groups or forces or who are victims of trafficking

In the case of refugee children, child-friendly refugee procedures should also be available, appropriately linked to national best interests procedures and child protection services. These must respect the principle of children's best interests. As such, **the link between the national child protection and refugee protection systems**, including reception arrangements, registration procedures, asylum and refugee status determination procedures and durable solutions should be considered.<sup>18</sup>

16 UN Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have her or his best interests taken as a primary consideration (Art. 3, para. 1)*, 29 May 2013, CRC/C/GC/14, available at: <http://www.refworld.org/docid/51a84b5e4.html> (CRC General Comment No. 14) and ExCom No. 107, para. g(i).

17 There are many different ways to describe a child protection system, and various critiques of the conceptualization and application of child protection systems. For more information see, UNHCR, *A Framework for the Protection of Children*, 2012, available at: <http://www.refworld.org/docid/4fe875682.html>

18 Informed by: UNICEF, *The Guidelines to strengthen the social service workforce for child protection*, 2019, <http://www.socialserviceworkforce.org/system/files/resource/files/Guidelines-to-Strengthen-SSW-Child-Protection.pdf>

In addition, best interests procedures involve the referral of children to multisectoral services, based on the specific needs of the child and their family. Key services or opportunities include:

- **Health**, including health services for child victims of violence and sexual abuse, as well as sexual and reproductive health services and alcohol and drug treatment
- **Education and vocational training** adapted to the specific needs of children of concern
- **Social protection and cash assistance** to vulnerable families
- **Birth registration** for children and other civil registration services that may have an impact on the protection of children (note birth registration is normally part of child protection systems, but for the purposes of these guidelines it is not considered part of the national equivalent of UNHCR BIP)
- **Safety and security** to protect children and families, including police services, camp security and shelters
- **Mental health and psychosocial services** including recreational, sports, arts and life skills opportunities and mental health services
- **Community, sports, arts and religious activities**
- Legal aid and access to justice

### Assessing refugee children's access to child protection systems

As UNHCR works in a wide range of situations, operational contexts will vary. In an ideal situation, refugee children and families would be supported and assisted through an existing child protection system by trained social welfare and/or judiciary officials with relevant expertise, including on refugee protection. In some situations, child protection, social welfare, justice and civil registration systems are strong and inclusive of refugee children, whereas in others these systems are under-resourced and may be limited in capacity and/or geographical scope. In still other situations, relevant child protection authorities are unable or unwilling to adequately provide services to refugee children and refugee response in its entirety may fall under the purview of a different branch of the government. In many cases, some aspects of the national system may be accessible to refugee children while others may not; as such, the degree to which authorities are willing and able to provide services should be seen as a continuum and often varies across specific services or elements of the system as well as different geographical locations.

The key aspects of national best interests procedures for refugee children can be categorized into two broad themes: accessibility and appropriateness.

#### Accessibility of national procedures

Access to national procedures may be limited by the following factors:

- Legal, policy or documentary barriers limiting refugee children's access to child protection services
- Limited availability of the services in the locations where refugee children and their families live
- Limited capacity of national services to respond to the scale of the needs of refugee children

#### Appropriateness of procedures and services

The extent to which national procedures and services are appropriate for refugee children may be limited by the following factors:

- Existing services and procedures are not able to respond appropriately to the specific needs of refugee children, for example due to lack of knowledge of refugee protection standards or more practical issues such as a lack of translation services or cultural mediators
- Services may exist but not be fully in line with the best interests principle (see below) or otherwise may not meet quality standards

Criteria for what constitutes an ‘appropriate’ procedure, as defined by Member States in ExCom No. 107<sup>19</sup> and the CRC<sup>20</sup>, include:

- a procedure that facilitates adequate child participation without discrimination
- a procedure where the views of the child are given due weight in accordance with age and maturity
- a procedure where decision-making is done with the involvement of persons with relevant expertise
- a procedure where all relevant factors are balanced in order to assess the best option
- a procedure where the best interests principle is applied in a manner that seeks to ensure full and effective enjoyment of all of the rights recognized in the CRC
- Although not specifically highlighted in the legal instruments, the capacity of the system or procedure to handle individual cases of children in a timely manner is also an important practical consideration, as delayed decisions can have a negative impact for the child

### Role of UNHCR and its partners

UNHCR and its partners should “utilize appropriate procedures for the [assessment and] determination of the child’s best interests” within the child protection system.<sup>21</sup> UNHCR is responsible both to strengthen existing child protection systems and to supplement these child protection systems when needed.<sup>22</sup> The UNHCR’s core protection mandate and legal responsibility for refugees means that UNHCR is also accountable for ensuring that the procedure applied to refugee children has the necessary safeguards in place and serves children’s best interests.

As a result, UNHCR, UNICEF and other partners will often work simultaneously to strengthen refugee children’s access to child protection systems while providing supplementary child protection services. Strengthening efforts include, for example, building the capacity of these systems, legal or policy reform, advocacy and/or providing financial and technical support to scale up national services. UNHCR and partners also support supplementary services to address gaps in access to quality, appropriate best interests procedures and other services. UNHCR and partners should strengthen and support child protection systems in a spirit of partnership “by building on each actor’s comparative advantages to reinforce the beneficial impact on the protection of children.”<sup>23</sup>

19 ExCom Conclusions No. 107, para. (g).

20 CRC General Comment No. 14, para. 4.

21 ExCom Conclusions No. 107, para. (g).

22 See ExCom No. 107, para. (b); CRC, Article 2.

23 ExCom Conclusions No. 107, para. b(iii).



UNHCR and its partners should undertake an assessment of the national procedures for assessing and determining the best interests of children.<sup>24</sup> The role of UNHCR and its partners in relation to each specific aspect of BIP will depend on the assessment. This assessment will determine which procedures can be utilized, what capacity building and/or advocacy should be undertaken to strengthen access to the national system and improve its appropriateness and where UNHCR and partners should provide supplementary best interests procedures. The accessibility and appropriateness of national procedures to assess and determine children's best interests may vary according to the factors below (which should be reflected in the assessment of national system):

- **Specific national service or procedure.** For instance, refugee children may be able to access social welfare case management services, but not formal foster placements
- **Location of the refugee children.** For instance, national child protection services may be available in capital cities but disadvantaged or rural communities often have limited access to services
- **The age, nationality, legal status, gender or other diversity characteristics** of refugee children. For instance, some nationalities may have more access to national systems than others or the national system may not be accessible to children with disabilities or may discriminate against LGBTI children

The scope of supplementary, UNHCR-led BIP will depend on what aspects of the national system are accessible to and appropriate for refugee children. For instance, if national systems to remove a child from an abusive care arrangement are accessible to refugee children, UNHCR will not need to undertake BID for such decisions ([Section 4.3: Possible separation of a child from parents against their will and custody issues](#)). However, where such procedures are not always appropriate, UNHCR may still undertake a BID to determine whether referral to national procedures is in the best interests of the child. Generally, over time, the aim is to strengthen the access of refugee children to national best interests procedures and improve the appropriateness and quality of those services, thus reducing the use of supplementary procedures. This process takes time and must be a gradual transition, closely monitored and adjusted as needed. It is often dependent on external factors such as resources, refugee movements and governmental policies and commitment.

A UNHCR BIP based on these Guidelines may complement child protection procedures in the following ways:

- As an exceptional procedure substituting State responsibilities, when national systems to assess and determine the best interests of the child cannot reasonably be made available or accessible to refugee children in a particular geographical area or at a particular point in time.
- As the UNHCR tool for actions under UNHCR leadership or which UNHCR undertakes as part of a broader refugee protection mandate, such as, for example, the decision whether or not to submit an unaccompanied child for resettlement or to support their voluntary repatriation.
- In cases where BID is required by the relevant authorities, for instance based upon agreements between individual resettlement countries and UNHCR, or where UNHCR has a specific role, under agreements with the relevant countries, to ensure the exercise of free and informed choice in the voluntary repatriation of refugees.<sup>25</sup>

<sup>24</sup> The tool for assessing national best interests procedures is available in the Assessment Tools folder of the BIP Toolbox: <https://www.unhcr.org/handbooks/biptoolbox/assessment-diagnostic-tools.html>

<sup>25</sup> UNHCR, *Legal Safety Issues in the Context of Voluntary Repatriation*, 7 June 2004, EC/54/SC/CRP.12, available at: <http://www.refworld.org/docid/4ae9acb3d.html>

Where UNHCR does undertake BIP, the involvement of the competent child protection authorities is still strongly encouraged provided that this does not increase risks to the child. All reasonable efforts should be taken to involve the competent State authorities in the implementation of BIP, for example through the participation of government social or child protection workers on BID panels or in case conferences. As a priority, the State authorities should handle or at least be involved in the following cases, where this does not present a risk to the child:

- BID undertaken to clarify cases of unresolved custody
- BID undertaken to consider possible separation of a child from biological parents or other legal guardian
- BID undertaken to formalize alternative care arrangements, particularly when it relates to permanent care arrangements. This can be of particular importance in situations where caregivers need legal authority in order to enrol children in schools or to authorize medical interventions.

### **Role of UNHCR in promoting procedures that are appropriate and accessible to refugee children**

As noted above, refugee children may have access to some procedures but not others within the child protection system and this may vary according to location. Where States have established some of all of the appropriate procedures mentioned above for consideration of the child's best interests, or are willing to do so, the role of UNHCR and partners will essentially focus on monitoring, capacity-building and advocacy. For example, UNHCR and partners 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 child protection systems to children of concern to UNHCR, or to address other gaps that are identified
- Strengthen the capacity of responsible State authorities, including judicial and social welfare authorities and national civil society organisations 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, and/or participate in best interests determination panels or equivalent case management forums

### **Where States have established appropriate procedures that are not fully accessible to refugee children**

Where States have established all or some of the above appropriate procedures, but they are not fully or partially accessible to refugee children and other children of concern to UNHCR due to legal or policy restrictions, UNHCR and partners should advocate with authorities to provide non-discriminatory access. In this case, UNHCR and partners should:

- Advocate for the inclusion of refugee and asylum-seeking children in existing, appropriate national procedures and mechanisms established for individual case management and for the assessment and determination of the child's best interests.
- Support legal, policy or procedural reform to remove barriers to refugee children's inclusion in national systems and services

Where such procedures exist but are not accessible, for example because they are not available at the geographical location at which the refugees are living or because the services cannot respond to the scale of the needs, UNHCR and partners should prioritize supporting local civil society and authorities to make services available in decentralized locations and/or scale up the capacity of these services. In parallel, UNHCR and its partners may undertake UNHCR-led BIP to supplement existing national services. For example:

- UNHCR and partners can provide technical and financial support to existing government and civil society child protection services to scale up or provide outreach services in relevant locations
- Where national child protection case management services exist – for instance, in social welfare sector services provided by authorities or NGOs – these service providers can be trained to provide best interests procedures
- Where needed, UNHCR and partners can also support UNHCR-led Best Interests Procedures to supplement the above services. The procedures and decisions should be guided by:
  - National legal and policy frameworks where these are aligned with international standards
  - These BIP Guidelines
- Over time, BIP provided by UNHCR and partners may be integrated into the national child protection system – for instance, BIP case workers receiving training and support to qualify as part of the national social welfare workforce or supporting NGOs providing BIP to register as national child protection service providers. This allows the capacity build under the refugee response to be gradually integrated into the national child protection system.
- Where national child protection services and UNHCR-led BIP are implemented simultaneously an interagency transition plan may be established to gradually increase the capacity of national child protection system and reduce use of UNHCR-led BIP over a number of years.

### **Where procedures are accessible but not fully appropriate or where procedures do not exist**

Where national procedures exist and refugee children have access to them but they are not fully appropriate, the role of UNHCR and partners will depend on the specific issue. If national procedures exist but do not meet general quality standards for all children, then UNHCR and its partners should build the capacity of these national procedures and use them for refugee children, provided that this would not present a serious protection risk for these children. For instance, where national best interests procedures for refugee children are handled by staff with no experience of the specific needs and rights of refugee children, capacity building should be the priority. Similarly, if national procedures exist but are not able to respond to the specific needs of refugee children, the solution may be to provide supplementary best interests procedures while building the capacity of the national system to respond to the specific needs of refugee children (as described above).

Where national procedures do not meet the standards for an appropriate best interests procedure as articulated by the UNHCR Executive Committee, the decision on whether to use existing national procedures or a UNHCR-led BIP would depend on the nature of the limitation. In some contexts, the involvement of government child protection authorities in the BIP can be associated with protection concerns for individual children or groups of children and their families.<sup>26</sup> When establishing or

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<sup>26</sup> For example, where the government is complicit with agents of persecution or where there are strong reasons to believe that they might share information resulting in additional security or protection risks for the child and/or their family.

developing best interests procedures in such situations, the best interests principle would dictate that mitigating protection risks needs to be a key consideration when determining if children should be integrated into the national systems and if so to what degree and in which way refugee children should be integrated into the national procedures, or whether a UNHCR-led BIP should be undertaken. For instance, a UNHCR-led BID may be used where a national custody decision would put a child at risk of violence, abuse or exploitation, or where the use of a national procedure may result in the refoulement of a child or their family. The use of the national procedure or the UNHCR-led BIP may depend on the specific circumstances of the child and the nature of the national procedure. Where a UNHCR-led BID is undertaken in such circumstances, careful consideration should be given to the involvement of national authorities (see [Chapter 5: Best Interests Determination Procedures and decision-making](#)).

**In contexts where States do not have appropriate procedures for any children**, the UNHCR role should focus on building capacity and strengthening systems, in order to establish national procedures in partnership with other relevant national and international actors, particularly UNICEF. In parallel, the BIP outlined in these Guidelines must be used for refugee children, with a view to transition and integration into the national system as soon as is reasonably possible.

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### **CASE STUDY: Working in partnership with the government, UNICEF and other partners integrate children of concern to UNHCR into specific elements of a national child protection system in North Macedonia.**

In North Macedonia, a core UNHCR focus has been to support the government (i) in mainstreaming child protection for refugees and asylum-seekers into the national system, and (ii) to strengthen the best interests procedures in the country in general.

During the 2015-2016 European Refugee Crisis, BIA forms were introduced and used by government and non-governmental partners as part of the initial decision-making process relating to children at risk. This practice continued after the emergency, but all stakeholders recognized the need for further improvements in the case management process and BIP. Following initial mapping of the national child protection system, UNHCR initiated a series of consultative sessions with the Ministry of Labour and Social Policy, UNICEF and several NGOs. These consultations assessed the needs of the child protection system for refugee and asylum-seeking children and identified areas for case management system strengthening. Stakeholders, including the relevant State bodies, concluded that there was a need for initial training on international standards and best practices associated with BIP. This was jointly organized by UNHCR and the Ministry of Labour and Social Policy, with participation of other relevant State bodies, UNICEF and key NGOs. Secondly, a lack of practical tools to deliver BIP for refugee and asylum-seeking children was identified. The Ministry of Labour and Social Policy initiated the development of a Handbook for Best Interests Determination in coordination with the Institute for Social Affairs -a body tasked to provide capacity building and supervise implementation of all social protection services in the country- and with the support of UNHCR. The Handbook included a set of tools for practitioners and a harmonized framework to be used within the child and social protection systems. The aim was to ensure implementation of the best interests principle in all relevant procedures. The Handbook was completed at the end of 2019. The planned next steps for UNHCR included working alongside UNICEF to support the Government and partners' use of the tools developed.

## 2.3 PROCEDURAL SAFEGUARDS IN THE BEST INTERESTS PROCEDURE

### Section Summary

- Procedural safeguards in the context of BIP are a set of measures that adhere to laws and standards, which protect children from harm. Procedural safeguards ensure that children's rights are respected and promoted throughout any processes that involve them. UNHCR BIP provides detailed guidance and standards for the assessment and determination of a child's best interests, in line with the procedural safeguards articulated by the CRC (see [Section 2.1.3: Committee on the Rights of the Child General Comment No. 14](#)).
- BIP incorporates specific procedural safeguards at each step to ensure that the best interests principle is respected. These safeguards ensure that decisions affecting children are made by those qualified to make them and in a manner that maintains confidentiality, promotes children's rights and considers their immediate and long-term well-being.
- The implementation of procedural safeguards is important throughout all the BIP steps. Due to the weight of decisions and actions taken through the BID process, procedural safeguards are stricter for BID than for the rest of BIP.

The principal procedural safeguards for both national best interests procedures and UNHCR-led BIP are:

**The right of the child to express their own views:** a vital element of the process of identifying the best interests of a child involves facilitating the safe and meaningful participation of the child, allowing the child to express their views, and clearly documenting the child's views.<sup>27</sup> See [Section 3.3: Participation of children and families in the Best Interests Procedure](#), including information on obtaining consent/assent.

**Involvement of staff with relevant expertise:** the assessment process needs to be carried out by staff who have relevant child protection expertise and experience in working with children and adolescents. When determining the best interests of the child, the involvement of a multidisciplinary team of professionals across the social service workforce (e.g. child protection, refugee protection, social work, psychologist, etc.) provides additional guarantees that the recommendations are based on the consideration of a wide range of aspects relevant to the case and that they are objective. See [Section 5.2: The Best Interests Determination panel](#) for details on how this safeguard is operationalized for BID.

**Priority processing:** delays or protracted decision-making procedures can have adverse effect on children, especially since their perception of time is different from that of adults. Therefore, decisions regarding children should be prioritized and completed within the shortest time possible, while still respecting the child's need for adequate time to gain trust and without compromising other procedural aspects (e.g. ensuring enough time to do a comprehensive assessment).

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27 Girls and boys of concern to UNHCR have the right to be heard on matters and decisions that affect them and to have these views taken into consideration according to their age, maturity and evolving capacities (see Footnote 79 for more information on the evolving capacities of girls and boys). The right to participate in decisions is enshrined in Article 12 of the Convention on the Rights of the Child. For more on the right of the child to be heard, see UN Committee on the Rights of the Child (CRC), *General Comment No. 12 (2009): The right of the child to be heard*, July 2009, CRC/C/GC/12, available at: <http://www.refworld.org/docid/4ae562c52.html>

**Written, reasoned decision:** recommendations and decisions made in the context of BIP need to be justified and explained. In addition to stating the factual circumstances, the elements and factors considered also need to be documented, indicating the weight each factor was accorded in the process and the rationale behind this. If the decision is not in line with the views of the child, the reasons need to be clearly explained and documented.

**Child-friendly approach:** information on the purpose and implications of a best interests procedure need to be conveyed to the child in an age-appropriate manner in a language understood by the child. The interviews should be conducted in a child-friendly manner. Interpreters who are engaged in interviews with children also need to be trained in communication with children. See [Section 3.3: Participation of children and families in the Best Interests Procedure](#) for more information.

**Review of decisions:** a BIP case can be re-opened if there are changes in circumstances (e.g. successful tracing of family members). A case can also be reviewed upon a request by the child's parent or legal guardian (or by the child in the case of an unaccompanied child) based on new facts, evidence or other considerations which may affect the initial decision. Requests for review by children accompanied by their parents or legal guardians should also be given due weight. See [Section 5.4: Reopening a best interests decision](#) for more information specifically on review and re-opening in the case of BIDs.

**Legal representative, guardian or support person:** children whose best interests are considered in the context of BIP, who are not being cared for by their parents or other legal guardian, may benefit from having an advocate or support person to accompany them throughout the process (for children accompanied by their parents, see below). Some national child protection systems already have measures in place to provide for legal representatives or guardians for unaccompanied children (see [Section 3.8.2: Working with guardians](#)). In situations where such legal representatives or guardians cannot be appointed or are not available, where UNHCR is responsible for BIP, a support person appointed by an organization or a trusted adult chosen by the child may be identified to accompany the child through the BIP process. In the latter case, caseworkers need to be vigilant that the accompanying person also has the best interests of the child in mind, is not exercising pressure of any sort on the child and that there are no conflicts of interest. Children who are in parental care may also be given the opportunity to be accompanied by an independent representative outside of the family, should they so choose. Identification of a support person does not confer any legal responsibility on this person vis-à-vis the child.

Other general safeguards will also apply to ensure the integrity and quality of the BIP, including the need for those involved to 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. BIP staff should not be involved in an individual case if there is a conflict of interest, such as in cases involving friends or relatives. Finally, in all aspects of the BIP, it should be remembered that a decision must aim to balance competing rights in order to identify a solution that ensures the enjoyment of all the child's rights (see [Section 2.4: Balancing competing rights when making a decision](#)).

The following table provides a breakdown of how the listed procedural safeguards can be applied for a UNHCR-led BIP (refer to [Section 3.2: The Best Interests Procedure: step-by-step](#) for more detail on the steps of BIP). It should be noted that the BIA does not require any particular formality and operations are free to develop their own forms, tools and procedures to operationalize the standards below. The BID, on the other hand, has a strict and globally standardized set of forms, tools and procedures, which are further detailed in [Chapter 5](#).

**TABLE 2. Applying procedural safeguards throughout the Best Interests Procedure**

Procedural Safeguard	Application for BIP steps, including BIA	Application for BID process
<b>Right of the Child to express their own views</b>	The child must be interviewed and consulted on all aspects of decisions as part of the BIA, action planning, follow-up and case closure. Appropriate weight must also be given to these views in accordance with the child's age and maturity. This can include, for example, asking children for their preferences in relation to different options, conducting participatory case planning exercises.	Same as for the other BIP steps. However, staff may need to spend more time ensuring that the child has real understanding of the decision and its consequences, given the weight of the decisions involved.
<b>Involvement of staff with relevant expertise</b>	All BIP steps, including BIAs, must be conducted by staff with relevant expertise. More specifically, they should have a relevant educational background and work experience. They should also have a minimum of skills and experience in working with children, skills in communicating with children, and case management. See <a href="#">Section 3.4.3: Staffing and resourcing</a> for more details.  Staff conducting BIP should consult other professional persons as relevant to the case, including their manager, but there is no requirement to involve others.	The competencies required of staff working on BID are the same as for other aspects of BIP. However, given the weight of the decisions considered, usually more experienced caseworkers would be assigned to BID. In addition, caseworkers for BID should have additional training on the requirements of BID and the BID process.  The BID panel also requires the involvement of staff with relevant expertise. For more on the qualifications and conditions relating to BID panel members, see <a href="#">Section 5.2: The Best Interests Determination panel</a> .
<b>Priority processing</b>	BIA and other actions for children in the most serious and time sensitive circumstances should be prioritized according to operation-specific prioritization criteria. See <a href="#">Section 3.2.2: Identification</a> , including prioritization.	There is not a set timeline for the completion of BID. However, a BID should never unduly delay action for the protection and well-being of children. The prioritization of BID is the responsibility of the BID Supervisor.



Procedural Safeguard	Application for BIP steps, including BIA	Application for BID process
<b>Written, reasoned decision</b>	There is no required form for the BIA or the other steps of BIP – operations may use the examples provided in the accompanying <a href="#">BIP Toolbox (Forms folder)</a> , develop their own, or use forms already in use in their setting. Regardless of the format of the documentation, the decision itself, as well as the facts of the child’s situation, the views of the child and those close to the child, and the subsequent analysis of the best interests of the child should be detailed.	A BID by UNHCR under these Guidelines must be documented using the BID form provided in the <a href="#">BIP Toolbox (Forms folder)</a> . The BID Supervisor is responsible for the quality of the information, analysis and options presented.
<b>Child-friendly approach</b>	Child-friendly interview techniques should be used (see <a href="#">Section 3.3: Participation of children and families in the Best Interests Procedure</a> for more details). In addition, the BIA as well as the entire BIP should be designed from a child-centred perspective, ensuring that it is supportive and protective in all aspects, not only the interview.	Like the BIA and other steps of BIP, child-friendly interviewing techniques should be employed. A child-centred perspective should be used throughout the process.
<b>Review of decisions</b>	There is no formal process for the review of BIP in general. A child, their parents or caregiver, or other staff involved in BIP for that child may request a review at any point.	A BID can be re-opened if there are changes in circumstances (e.g. successful tracing of family members). A case can also be reviewed upon a request by the child’s parent or legal guardian or by the child in the case of an unaccompanied child based on new facts, evidence or other considerations which affect the initial decisions. See <a href="#">Section 5.4: Reopening a Best Interests Determination decision</a> for more details.
<b>Legal representative, guardian or support person</b>	There is no requirement for the involvement of a legal representative, guardian or support person in BIP. If this person is already appointed by a national child protection system, it would be important to consult them as part of the BIA. See <a href="#">Section 3.8.3: Working with guardians</a> .	There is no requirement for the appointment of a legal representative, guardian or support person in a BID process. However, operations are encouraged to explore how guardianship, legal representative or support person arrangements could be developed in their context. Where legal guardianship/representative arrangements exist, the appointed person must be involved in the BID process.



## 2.4 BALANCING COMPETING RIGHTS WHEN MAKING A DECISION

### Section Summary

- Decisions made within BIP 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 are rarely determined by a single, overriding factor.
- Decision-making within BIP should keep in mind the indivisible nature of the rights enshrined in the CRC and the interdependence of all its articles and rights.
- Deciding what is in the best interests of the child involves identifying the best of several competing options.
- BIP decisions should base their analysis on the following four factors:
  - The views of the child, the parents or caregiver and the views of those close to the child
  - The child's situation in terms of family and close relationships
  - The child's development and identity needs
  - Considerations affecting the child's safety and protection

### 2.4.1 Considerations for decision-making

Deciding on or determining the best interests of the child in UNHCR operational contexts is a complex and sometimes difficult process. Decision-makers are often faced with a limited number of alternatives, significant uncertainty as well as the imperative to consider shorter- and longer-term options and consequences. Often solutions may not be indisputably "right", or other solutions that would clearly be in the child's best interest—such as family reunification—may not be possible. In some cases, it is necessary to assess the likelihood of certain options as well as their potential impact on the child based on available information: for instance, what is the likelihood of a lengthy asylum procedure and how does this impact on the recommended care arrangements for an unaccompanied child? In the final analysis, determination of a child's best interests requires judgment that considers a range of relevant and possibly competing factors within the realm of achievable possibilities. The primary consideration in making decisions within BIP is to determine which of the available options is in the child's best interests and best suited to securing the child's rights. Both the short- and long-term impact of each option needs to be weighed up before deciding which is most appropriate to the individual circumstances. Caseworkers and other UNHCR and partner staff engaged in BIP, including BID panel members, must be able to balance the options and make choices in a way that is both informed and objective, but that gives due consideration to the views expressed by the child and those close to them as well.

It is also essential to take an expansive and creative approach to options: binary choices, such as 'to reunify or not to reunify', are incomplete and do not reflect the reality of the possible measures that can be implemented. The options must be presented in a full and complete form outlining how they contribute to the enjoyment of rights for the child. For example, in a case of family reunification, the options should be presented as, for example, reunify with parents in the country of origin once the child has completed the school year and the security situation is considered safe; remain in the

country of asylum for the foreseeable future with supported contact with the parents; reunify with parents in a third country where both the safety the child and their prospects of continuing education can be assured. A decision may also combine options, with one course of action for the short term, while another is pursued in the longer term, or to take a decision based on information available at this point and review at a specific time in the future.

Decision-making (e.g. based on a BIA or BID) can be complex: various facts, factors and rights of the child need to be carefully balanced and weighed. The value of the decision will depend on the quality and relevance of the information collected in relation to the child's case, including the interviews conducted with the child, as well as on the quality and comprehensiveness of the information recorded. This again stresses the importance of engaging skilled child protection staff, social service workforce and BID panel members (where applicable) with experience in child protection or child welfare, to be part of the BIP (see [Section 5.2.2: Establishing the Best Interests Determination Panel](#) for more information on skills and competencies).

Where relevant, BIP and particularly BID processes 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 should first endeavour to rectify the decision through available domestic remedies wherever possible.

Determining the best interests of a child thus requires consideration of all relevant circumstances, while keeping in mind the indivisible nature of the Convention on the Rights of the Child and the interdependence of the rights enshrined therein. BIP decisions should build on the existence of any arrangements for child protection and care within communities, provided they conform to international standards. Weighing up these various factors can be a challenge - the following section provides further guidance.

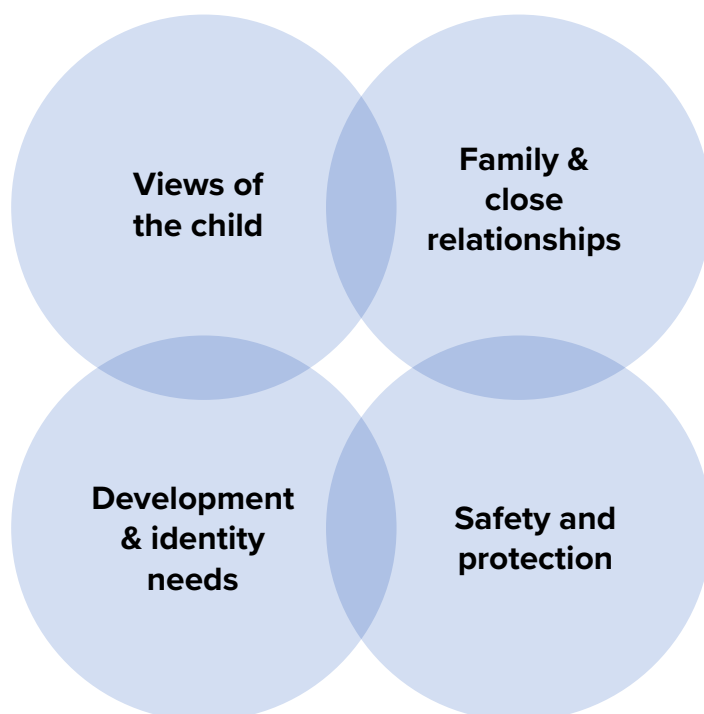


## 2.4.2 The Four Factor Analysis

Firstly, the foundation for decision-making in BIP is that of the four key rights groups that are considered in determining the best interests of the child. As shown in the diagram, the four key rights groups all overlap. They are as follows:

- The views of the child and those close to the child
- Safe environment
- Family and close relationships
- Development and identity needs

**FIGURE 1: The key rights groups forming the child’s best interests and their interlinkages**



### Considering the views of the child in decision-making

Article 12 of the Convention on the Rights of the Child<sup>28</sup> requires that the views of the child be given “due weight in accordance with the age and maturity of the child”. [Section 3.3: Participation of children and families in BIP](#) outlines how to ensure safe and meaningful participation in BIP and how to gather children’s views in a reliable and sensitive manner. When considering the views of the child:

- Employ a flexible attitude to age, taking account of relevant cultural and developmental factors.
- Consider the level of maturity, as well as the stated age of the child
- Involve experts if necessary, if dealing with children experiencing severe distress

28 CRC, Article 12.

- In cases of family reunification, carefully assess any reluctance on the part of the child or their family to be reunited
- Be aware that the views expressed by the child may wholly or partly be the result of manipulation by others
- Ensure that children are provided with all necessary information to enable them to form their own views and to express them

### **Considering family and close relationships (and their views) in decision-making**

As explained and referenced in detail in [Section 3.8.1: Family tracing and reunification in BIP](#), the right to family unity is entrenched in human rights instruments and international humanitarian law. The existing bond with the (extended) family, including parents, siblings and other people important to the child is a key factor in deciding on and determining the child's best interests. While individual circumstances and the quality of relationships must always be carefully examined, emphasis should be placed on the continuity of the child's relationship with the parents, siblings and other family members because:

- Continuity is vital to the child's feelings of security
- Identifying with parental figures is essential to the process of socialization, whereby a child learns the values and norms of society and develops the capacity to empathize with others
- Continuity of the child's contact with their external surroundings, including people and places, has an important psychological effect on developing and maintaining the child's social and emotional wellbeing

Thus, except for the safety considerations mentioned below, the interests of the child are generally best met when the child remains with or joins their family. It follows that, for UASC (i) family reunification is normally considered as being in the best interests of the child and (ii) the BIP should consistently address the extent to which family reunification is attainable (see [Section 3.8.1: Family tracing and reunification in BIP](#) for information on family tracing and reunification) and the support needed for the family to provide care and protection to the child.

Information gathered from family and others close to the child can be valuable for BIP. Specifically, this information can often help shed light on the nature of relations between the child and others close to them, the reasons behind certain preferences expressed by the child, as well as their strengths and skills. When considering the views of those close to the child:

- Give greater weight to the views of those with the more important and meaningful relationship to the child.
- Be wary of potential conflicts of interest, such as where there are indications that the relationship may be abusive, controlling or exploitative.

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

- A relative or a close friend of the family is required to confirm their willingness and ability to be the caregiver to an unaccompanied or separated child, since this care arrangement cannot be implemented without their consent
- A decision needs to be taken as to whether the child should remain with one or both parents. Caution is needed when attributing weight to the views of the parents in determining what is in the best interests of the child



## Considering the child's safety and protection in decision-making

The right to life and freedom from torture and other cruel, inhuman or degrading treatment or punishment as laid down in international human rights instruments<sup>29</sup> set important parameters for BIP. Furthermore, several articles 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.<sup>30</sup>

Therefore, if BIP, including the BID process, establishes 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 and where the child's safety is at imminent risk, 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 that the harm is of a less severe nature.

When considering the child's safety in decisions, the following guidance should be followed:

- Ensuring the child is safe from imminent risk must be prioritised and immediate action taken to mitigate risks
- 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 the country of asylum
- Regarding return to the country of origin, the principle of *non-refoulement* should always be upheld. For more information on voluntary repatriation, see [Section 4.1.4: Voluntary repatriation](#)
- For a child who is seriously distressed as a result of past events, such as through serious violations of their fundamental rights, no decision that could cause even more distress to the child can be considered to be in their best interests

## Considering the development and identity needs of the child in decision-making

Article 6 of the Convention on the Rights of the Child 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 BIP, in particular a BID decision. Continuity of contact with external surroundings, including people and places, has an extremely important psychological effect on the child's development and social and emotional stability.

29 See in particular ICCPR, Art. 7; UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.refworld.org/docid/3ae6b3a94.html>, as well as CRC, Article 37.

30 CRC, Articles 19, 34, 35, 36, 37 and 38.

Important factors to be considered when determining the development and identity needs of the child, as defined in the Convention on the Rights 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), it being understood that this should not lead to the acceptance of harmful traditional practices and that with maturity the child may make a free choice regarding her or his 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 their social and cultural network. A decision in BIP 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 their 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 their family and culture.

### **Balancing the rights of the individual child with those of others**

The best interests of the child can sometimes conflict with the interests of other persons or groups in society. The general principle contained in Article 3(1) of the Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions concerning children. The Convention on the Rights of the Child does not, however, exclude balancing other considerations, which, if they are rights-based, may in certain circumstances override the best interests considerations.

Once the best interests of the child have been determined by the BID Panel, UNHCR may be required to balance them with other legitimate concerns based on the rights of other persons. Exceptional cases in which UNHCR decides to override best interests considerations must be carefully analysed and documented.

**TABLE 3: Summarizing the key rights groups that determine a child's best interests: the 'four factor analysis'**

<p><b>1. Views of the child</b></p> <ul style="list-style-type: none"> <li>understand the child's wishes and feelings and whether these were obtained from the child directly</li> <li>weight needs to be given to the child's view in light of their age and maturity and their ability to comprehend and assess the implications of the options</li> </ul>
<p><b>2. Safe environment</b></p> <p>Safety is normally a priority. Exposure or likely exposure to harm usually outweighs other factors. Consider:</p> <ul style="list-style-type: none"> <li>safety in the geographical location/household under consideration</li> <li>availability of life-saving medical treatment for sick children</li> <li>past harm (frequency, patterns, trends)</li> <li>ability to monitor</li> <li>whether root causes of past harm persist</li> </ul>
<p><b>3. Family and close relationships</b></p> <p><b>General factors</b></p> <ul style="list-style-type: none"> <li>the quality and duration of the relationship and degree of attachment of the child to: parents, siblings, other family members, other adults or children in the cultural community and any potential caregiver</li> <li>potential effects on the child of separation from family or a change of caregivers</li> <li>the capacity of current and potential future caregivers to care for the child</li> <li>the views of persons close to the child, where relevant.</li> </ul> <p><b>Factors specifically relevant to durable solutions for UASC</b></p> <p>Possibility of family reunification (normally presumed to be in the best interests). Consider whether:</p> <ul style="list-style-type: none"> <li>tracing has been initiated</li> <li>efforts have been made to contact the parents/family directly</li> <li>the parents/family relationship to the child has been verified</li> <li>the child and family members are willing to be reunited and, if not, reasons for any reluctance</li> </ul> <p><b>Factors specifically relevant to temporary care arrangements</b></p> <ul style="list-style-type: none"> <li>retention of family and sibling relationships</li> <li>prospects for care in a family setting</li> <li>prospects of using community care systems (provided they are safe and effective)</li> </ul>



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

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- the views of both and the weight to be attached to them
- the quality of the relationship between the child and parents and likely effect of separation
- the capacity of the parents to care for the child
- the 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 to rights

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**4. Development and identity needs**

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- 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
  - physical or emotional needs
  - physical and mental health considerations
  - educational needs
  - prospects for successful transition to adulthood (employment, marriage, own family, etc.)
- 





## PART II

# THE UNHCR FRAMEWORK FOR CHILD PROTECTION CASE MANAGEMENT: THE BEST INTERESTS PROCEDURE



## INTRODUCTION

The Best Interests Procedure is designed to provide quality procedural standards for individual children at risk who need structured, systematic, sustained and coordinated support. The process of managing cases for individual children at risk will have a significant immediate and longer-term impact on the appropriateness, timeliness and quality of protection and solutions for them. Decisions and actions must therefore adopt a holistic approach and be guided by consideration of the child's best interests.

Building on the foundations established in Part I, Part II of these Guidelines provides practical, operational guidance on implementing the Best Interests Procedure. BIP is the UNHCR framework for child protection case management and includes the Best Interests Determination (BID) process. BID is used in specific situations where BIP requires the application of strict procedural safeguards. [Chapter 3: Best Interests Procedures: Case management for refugee children](#) provides step-by-step guidance for all of the BIP steps and situates BIP in the framework of refugee and child protection case management. It provides practical advice for the implementation of BIP, including on partnerships, operation-specific BIP SOPs, staffing and resourcing, monitoring, and information management. It also includes guidance on the participation of children and families and on working with young people aged 18-21. For separated and unaccompanied children, specific considerations relating to family tracing and alternative care are also included.

A BID may be required in specific situations, as outlined in [Chapter 4: Best Interests Determination by UNHCR](#), and is utilized for children for whom decisions can have far-reaching implications. [Chapter 5: Best Interests Determination procedures and decision-making](#) provides details for the implementation of the BID process, including in relation to simplified decision-making procedures that may be employed in specific situations.





# CHAPTER 3. BEST INTERESTS PROCEDURE: CASE MANAGEMENT FOR REFUGEE CHILDREN

## 3.1 OVERVIEW OF THE BEST INTERESTS PROCEDURE

### Section Summary

Why:

- When working with refugee children, BIP is an integral part of the broader refugee case management process.

How:

- The BIP is a child protection process for assessing or determining, managing and implementing decisions that are in the best interests of individual children. The BIP is a specific type of child protection case management that includes specific standards and procedures relevant to refugee children.
- BID is more frequently applied for children without parental care or a caregiver, as the formal procedure is essential to safeguarding the best interests of the child when parents or extended family members are not able to take these decisions, and for other children at heightened risk in exceptional situations.
- Implementation of the BIP be in line with the Guiding Principles for Best Interests Procedure outlines in [Section 3.1.4](#).

### 3.1.1 Refugee protection case management

Refugee protection case management is an integral part of most UNHCR operations around the world. It covers registration, refugee status determination (RSD), identification of durable solutions, and follow-up on protection concerns raised by refugees approaching UNHCR and partners. This includes systematic handling of the individualized protection response to children and their families. When UNHCR implements BIP, this will always be part of the broader refugee case management process.

Although there are similarities in the overall approach, the case management of each of the different components of refugee protection has its own standards, objectives, good practices and guidelines. Since refugee protection case management looks at all of the protection aspects of a child's experience, it is important that all of these case management processes be appropriately linked. At the same time, it is particularly important to manage the overlap and interrelations between different components of refugee protection case management and BIP, which are an integral part of this process. It may be necessary to maintain a degree of separation between BIP and other areas of refugee protection case management when dealing with different aspects of this process. The separation may include measures such as ensuring separate staff with distinct reporting lines complete the BIP elements, ensuring a review process by BIP staff and/or ensuring information firewalls between BIP processes and other procedures. For instance, information collected as part of BIP by UNHCR child protection staff should not be shared with staff undertaking Refugee Status

Determination without the informed consent of the child and/or caregiver.

In 2017, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers issued two joint general comments relating to the human rights of children in the context of international migration. The comments include several points relating to the best interests of the child in such contexts, many of which are relevant to refugee and asylum-seeking children. In particular, the comments reiterate the need for best interests to be a primary consideration in decisions relating to immigration law, policies and procedures, as they must be in asylum laws, policies and procedures. General Comment No. 22 also mentions that, in important decisions such as those relating to the return of children to their country of origin, best interests procedures “should be carried out by actors independent of the migration authorities in a multidisciplinary way, including meaningful participation by the authorities responsible for child protection and welfare and other relevant actors, such as parents, guardians and legal representatives, as well as the child”. It also highlights the importance of best interests determinations in any decision that would result in family separation. Furthermore, General Comment No. 23 highlights that immigration detention is never in the best interests of the child, and maintains that children’s personal data should be used for protection purposes.

These provisions, which are in line with the provisions of these Guidelines, are helpful in clarifying the linkages between BIP and other refugee case management procedures, including refugee status determination, resettlement, and repatriation. Essentially, as highlighted in [Chapter 2: The legal and policy framework for the Best Interests Principle and procedure](#), it is necessary for UNHCR to take the best interests of the child as a primary consideration in all decisions, affecting individual children in relation to registration, refugee status determination and solutions, amongst others; however, an independent assessment and determination of the best interests of the child, as per these Guidelines, is only necessary in some situations. Some considerations for each of these areas, when implemented by UNHCR, are listed below.

## Registration

- When registration is undertaken by national authorities, UNHCR should assess whether registration policies and procedures include sufficient safeguards for children, including respective the best interests principle and work with authorities to address any gaps.
- Registration SOPs should consider the best interests of children and specific groups of children and take steps to ensure these are promoted in all aspects of registration procedures.
- Independent BIP is not usually required in order to register individual children, unless there are particular risks associated with registration that must be assessed.
- BIP should be completed before adding or removing a child from a registration group, if this decision may impact their care and protection (e.g. adding a child to the registration group of their foster family). Usually, when BIP is conducted in relation to care or custody, it should include recommendations for registration to avoid the need for additional assessments.

## Refugee Status Determination

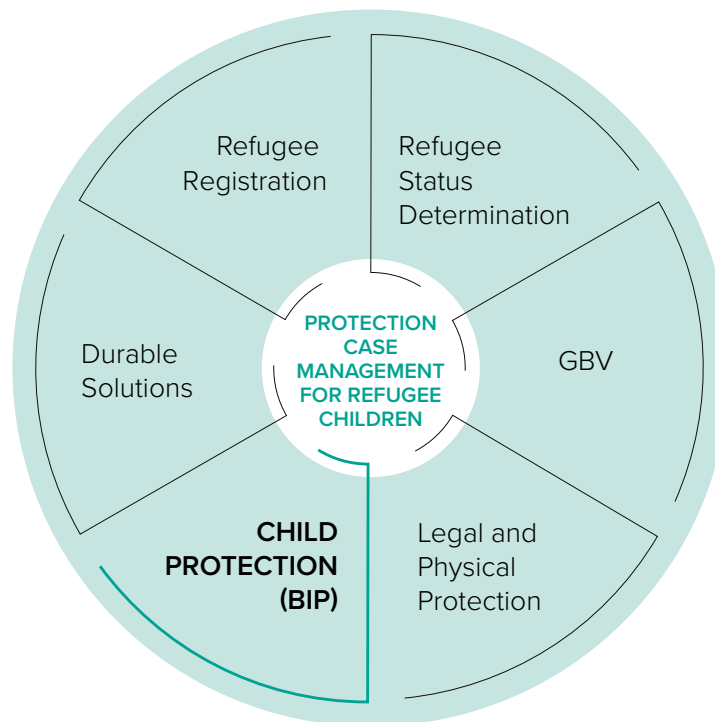
An independent BIP is not required for refugee status determination: RSD is not about making a decision for the child (i.e. choosing between different available options, such as appropriate solutions), but about determining whether they are a refugee, remembering that refugee status is declaratory in nature. Whether a child is a refugee is a factual and legal determination and is unrelated to the question of whether it would be in the child’s best interests to have refugee status.

In some cases, BIA may be completed before referring a child for refugee status determination or other national asylum procedures; in this case, the purpose of the assessment would be to determine the appropriate support that a child would need in the process (e.g. appointment of a guardian, need for fast-tracking, whether an interview is necessary, etc.). It is also important to note, as highlighted in [Chapter 2: The legal and policy framework for the Best Interests Principle and procedure](#), that the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the child's rights and that an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights. As such, the best interests of the child can never be used as a justification to deny access to asylum procedures.

- A BIA may also be completed to determine the appropriateness of interviewing a child applicant for asylum who is of a young age for RSD purposes, since it needs to be assessed whether such interview will be in the child's best interests, depending on the child's personal and contextual circumstances and the circumstances of the case. BIP in this case can also inform the selection of an appropriate interview environment and child-friendly and age- and gender-appropriate interviewing techniques and/or recommend the presence of a support person to facilitate the process of hearing the child's account.
- Within RSD procedures, the child's best interests must be taken into consideration in the following ways:
  1. The RSD procedure must consider the best interests of the child and be child-friendly in accordance with the child's age, maturity and specific needs. This includes ensuring: that staff who deal with children are trained; the provision of child-friendly information; the presence of a supportive adult or guardian; independent legal representation; adapted deadlines and appeals processes where necessary; an assessment of whether a child can be interviewed, etc. It is also important to ensure that the child's views are sought throughout the RSD process, and that any information regarding the child respects confidentiality.
  2. The RSD procedure must ensure that the best interests of the child are a primary consideration within the assessment of eligibility. This means that, when assessing eligibility, the best interests of the child need to be taken into account and given appropriate weight. This involves considering (and documenting in written decisions), *inter alia*, the potential for child-specific forms and manifestations of persecution, the appropriateness of internal flight/relocation alternatives and assessment of the potential for harm to child upon return.

## Durable solutions

- SOPs for repatriation, including those related to assistance, local integration, resettlement and complementary pathways should consider the best interests of children and specific groups of children and take steps to ensure that these are promoted in all procedures.
- For individual children, UNHCR should undertake independent BIP as per the provisions in [Chapter 4: Best Interests Determination by UNHCR](#) of these Guidelines.
- For all of the above areas, it is also important to note that, since the objectives and approaches are different, information from BIP should only be shared with other refugee protection processes if it is in the child's best interests and only with the consent/assent of the parent or caregiver and/or child (for more information on information sharing, see [Section 3.5.5: Information sharing](#)). In terms of refugee case management, while all aspects include protection of the child as a primary purpose, it is important that all documentation, systems and procedures aimed specifically at assessing and determining the best interests of the child should remain independent and objective.

FIGURE 2: **Components of Refugee Protection Case Management**

### 3.1.2 Applying the best interests principle for children in general or specific groups of children

For actions affecting children in general or specific groups of children, such as specific protection procedures, data collection, planning, resource allocation, project design and implementation, monitoring, or revision of existing or development of new guidelines and policies, the best interests of the child should be “assessed and determined in light of the specific circumstances of the particular group and/or children in general”. The best interests principle, as a collective right, may be implemented by UNHCR and its partners in a number of ways, for example:

- Regularly and systematically consulting with children to ensure their views are heard, in line with the age, gender and diversity approach.
- Collecting and analysing data disaggregated by sex and age.
- Establishing child-friendly mechanisms for accountability to affected populations including procedures for feedback and complaints to ensure that we provide and receive information on the impact of programmes and policies on children in general and on specific groups of children.
- Upholding the child’s best interests when allocating resources and setting programme priorities.
- Providing information to children in a language that they can understand.
- Ensuring that guidelines, policies, country operation plans, partnership agreements and standard operating procedures adequately reflect the situation of children and include adequate child protection programming.
- Undertaking child rights impact assessments for existing programmes and to predict the impacts of proposed policies, programmes and resource allocation, etc.



### 3.1.3 Applying the best interests principle for individual children

BIP is a specific form of child protection case management; as such, it aligns with overall case management approaches and standards, with additional specificities relating to the protection of refugee children (see below).

#### Child Protection Case Management

The Inter Agency Guidelines for Case Management and Child Protection (Inter Agency Case Management Guidelines) define child protection case management as **“a way of organising and carrying out work to address an individual child’s (and their family’s) needs in an appropriate, systematic and timely manner, through direct support and/or referrals, and in accordance with a project or program’s objectives.”** Child protection case management is a key component of a broader child protection programme. It provides the framework for identifying, assessing, planning, managing and ultimately addressing the protection needs of individual children at risk in a structured and systematic way. This may be achieved through direct interventions and/or referrals to additional services.

Child protection case management entails identifying children at risk and caseworkers taking action on issues affecting a child or family on a case-by-case basis. Managing cases in a structured way is a central function of any child protection or social-welfare system, whether in emergency or non-emergency settings, including through governmental and non-governmental structures. Support for a child protection case management system may be needed in situations where governments request temporary support during emergencies or where child protection case management systems are established by humanitarian actors in the absence of existing services or where these services cannot meet needs.

#### The Best Interests Procedure

For an individual refugee child, due application and consideration of the best interests principle is required before any action or decision is taken. An action or decision relating to a child’s protection can include, for example, the provision of appropriate alternative care and family tracing services for unaccompanied and separated children, intervention to address abuse, neglect, exploitation or violence, or to identify a durable solution for children at risk.

BIP is a child protection process for assessing or determining, managing and implementing decisions that are in the best interests of individual refugee children. BIP is a specific type of child protection case management that includes, in addition to the regular provisions of child protection case management outlined above, four additional aspects:

- Due to its specific focus on individual refugee children, and other children of concern to UNHCR in certain circumstances, BIP is embedded within, and linked to, refugee protection case management.
- Given its international protection mandate, UNHCR has specific accountabilities for BIP.
- BIP has specific standards for when a best interests assessment (BIA) must be carried out, and for when a best interests determination (BID) must be undertaken.
- BIP outlines specific procedural safeguards for assessing and determining the best interests of the child, including a strict process for conducting BID.

BIP ensures that the individual needs of the child and their parents or caregivers are identified and addressed through a systematic and coordinated process, ensuring the meaningful participation of children. The goal of BIP is to provide individual children with timely and appropriate support to overcome the risks identified. Similarly, a well-managed BIP ensures consistent intervention quality across cases. To achieve this, BIP requires strong leadership, teamwork and good coordination and a documented process.

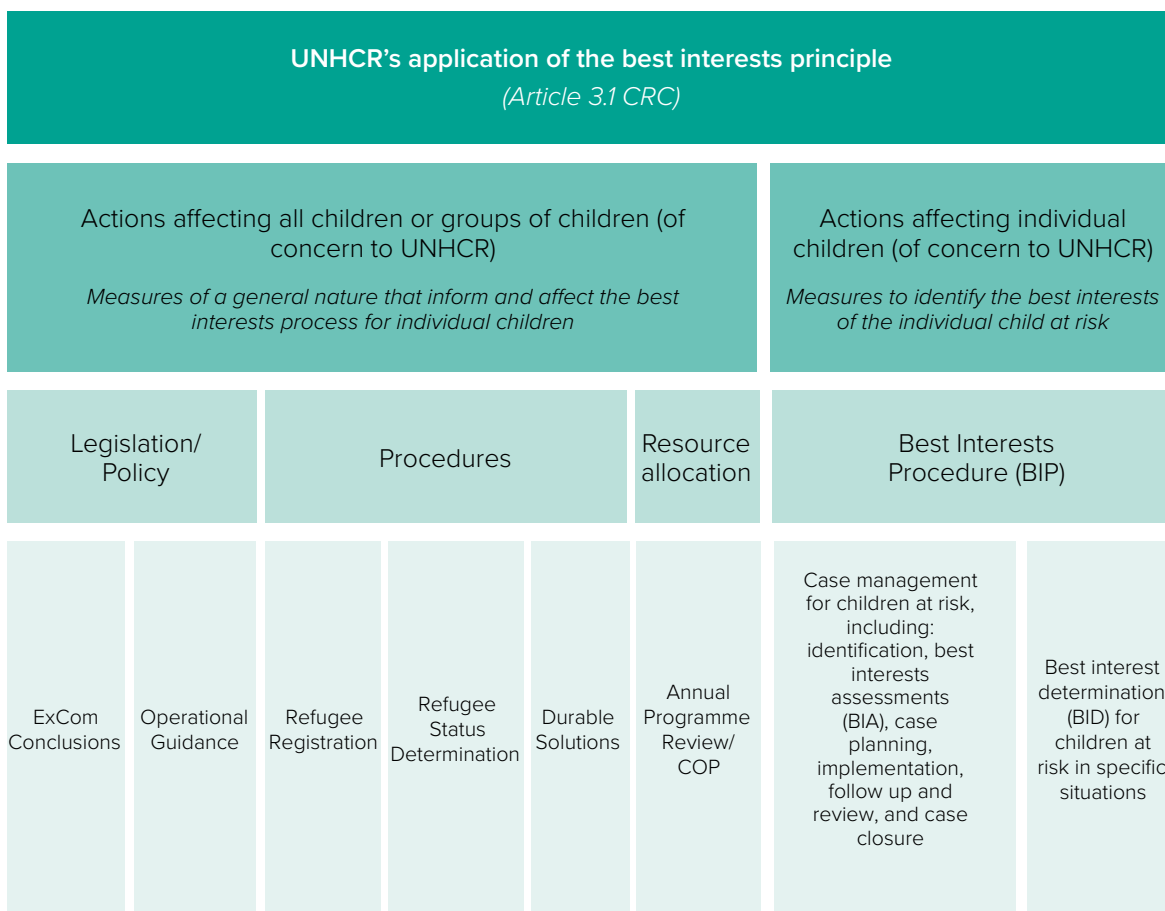
## Children at Risk

“Children at risk” are those children who are at heightened risk of violence, exploitation, abuse or neglect as a result of exposure to risks in the wider protection environment and/or risks resulting from individual circumstances. Children at risk require a range of protection interventions and services, and not all children at risk require BIP (see [Section 3.2.2: Identification](#)). Children at risk can include, but are not limited to:

- unaccompanied and separated children (UASC), particularly those in child-headed households, as well as those under the care of abusive or exploitative adults
- children at risk of or exposed to violence, in particular family violence, sexual and gender-based violence and peer violence
- children exposed to other forms of abuse and exploitation such as child labour, particularly the worst forms of child labour, child marriage, child parents and child trafficking and sexual exploitation
- child survivors of torture
- children associated with armed forces or groups or involved in armed violence such as gangs, and children in conflict with the law
- children in immigration detention
- children without appropriate documentation, including birth registration
- children who suffer from social discrimination
- children with mental or physical disabilities
- children living with or affected by HIV and AIDS and children suffering from other serious diseases or addiction
- children out of school particularly those with other protection needs

Not all refugee children at risk need individual follow-up and case management. This means defining and adopting a set of predictable criteria to decide which children are in need of case management services (see [Section 3.2.2: Identification](#)). For children who are at heightened risk – called children at heightened risk - and in need of sustained assistance and protection, a decision-making system with accountability and systematic management of their cases will be required. For children who are with their parent(s) or caregiver, considerations concerning a child’s best interests are primarily the responsibility of the caregiver. However, consideration of the best interests as part of a formal procedure is crucial when, for example, the separation of a child from their parent(s) is under consideration due to serious abuse or neglect or in relation to custody disputes.

FIGURE 3: UNHCR’s application of the best interests principle



### 3.1.4. Guiding Principles for the Best Interests Procedure

These Guiding Principles have been adapted from the Inter-Agency Guidelines for Child Protection and Case Management<sup>31</sup> and the UNHCR Framework for the Protection of Children<sup>32</sup>.

#### Best interests of the child

This concept is broadly understood to refer to the child’s well-being and is further described in [Chapter 2: The legal and policy framework for the Best Interests Principle and Procedure](#). The best interests principle should guide every action when implementing the provisions of these Guidelines.

#### State responsibility

States are primarily responsible for the protection of all children and should promote the establishment and implementation of child protection systems in line with their international obligations to ensure non-discriminatory access to all children under their jurisdiction. The State is ultimately responsible for protecting the rights of the child and ensuring appropriate case management and referral services for children at risk. Close engagement with the State is therefore vital. The State’s responsibility, resources and capacity should be a central consideration when operationalizing the Best Interests Procedure.

31 Inter-agency Guidelines for Child Protection and Case Management, available at: [http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM\\_guidelines\\_ENG\\_.pdf](http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM_guidelines_ENG_.pdf)

32 UNHCR, *A Framework for the Protection of Children*, 2012, available at: <http://www.refworld.org/docid/4fe875682.html>

**Family and community-based approach**

The family is the fundamental group of society and the best environment for the growth, well-being and protection of children. Communities also play a crucial role in the care, protection and opportunities that children need to develop and thrive. The implementation of BIP supports and builds upon existing family and community mechanisms that care for and protect children. In instances where protection risks for individual children originate in the family or community, UNHCR will work to address these risks through the application of BIP.

**Urgency**

The protection and care of children at risk must always be a priority. Timely services, interventions, and decisions in children's best interests are essential once a child has been identified through BIP as needing care and protection support. Where national systems are not accessible or appropriate, UNHCR and its partners must provide supplementary procedures to respond in a timely manner to the urgent protection needs of refugee children.

**Child participation**

The rights of all children to participate and express their views in all matters affecting them in accordance with their age and maturity should underpin each element of the BIP. Ensuring that children of different ages and abilities can meaningfully participate in decisions affecting them is to recognize children and adolescents as rights-holders, build their capacity and resilience and enable them to actively contribute to their protection.

**Non-discrimination and inclusion**

BIP should support non-discriminatory access to timely and appropriate protection intervention and services and to national child protection systems and services, regardless of a child's age, gender, ethnicity, religion, nationality or disability. This also means ensuring that the specific needs and capacities of all children are appropriately addressed to ensure that their rights are upheld without discrimination.

**Do no harm**

When implementing BIP, UNHCR and partners should consider the child, their parents (where relevant), family, culture and social situation and ensure that decisions and actions do not put the child, or others, at risk of further harm. Effective consideration of any potential risks or harm should be integrated into the assessment and decision-making processes and implementation of the resulting decisions. The participation of children in solutions should be planned and facilitated in a responsible and ethical manner.

**Accountability**

UNHCR is accountable to children and their communities from the outset of an emergency until durable solutions are achieved. In the context of BIP, UNHCR and partners are accountable to the child for whom BIP is being implemented, as well as to their family and other people they have close relationships with. This includes involving children and their parents or caregivers in assessments, case planning and the implementation of solutions in the children's best interests, informing children and parents or caregivers of all actions and services within BIP, including information sharing, and seeking their consent or assent. Accountability also entails responding in an appropriate and timely manner and ensuring that children and their parents or caregivers can provide feedback on the appropriateness and quality of the services provided.

**Confidentiality**

Confidentiality is linked to sharing information on a need-to-know basis. The term "need-to-know basis" limits the sharing of information that is considered sensitive to only those individuals who require it in order to protect the child and limits the information shared with them to only that which is required for them to provide their specific intervention or service. In order to respect confidentiality,



service providers need to protect information gathered about children and their families and ensure that it is maintained securely and is accessible only with the explicit permission of children and their families. Confidentiality may not apply when this is not in the child's best interests, for instance if caseworkers identify safety concerns and need to reach out to other service providers for assistance (e.g. healthcare workers). These limits must be explained to children and parents during the informed consent or assent processes. Supervisors and caseworkers should work together closely to take decisions in such cases where confidentiality needs to be broken.

## 3.2 BEST INTERESTS PROCEDURE: STEP-BY-STEP

### Section Summary

Why:

- BIP includes specific interrelated steps to ensure that the response to the individual child at risk is predictable and consistent. These are consistent with child protection case management steps.

How:

- BIP consists of the following steps: identification, best interests assessment, case planning, implementation, follow-up and review, case closure/transfer.
- The UNHCR assessment tool for the protection of individual children is referred to as a best interests assessment. This is the same as what other organizations may call a "child protection assessment". While a BIA has some procedural safeguards, it does not require the formality of a BID.
- Staff with the appropriate expertise, skills and knowledge in child protection should carry out the BIA and all steps of the BIP.
- BID is part of the BIP. The process can be initiated at any time but is not necessary for all children at risk who need case management.

### 3.2.1 Steps of the Best Interests Procedure

BIP includes specific interrelated steps to ensure that the response to individual refugee children at risk is predictable and consistent (see Figure 3). In most cases, implementation of BIP starts when a child at risk is identified and systematic follow-up is needed to address the child's case, and proceeds through all the steps of BIP. A BID may be initiated at any point, depending on the circumstances of the case, in specific situations as described in [Chapter 4: Best Interests Determination by UNHCR](#). Regardless of whether a BID is employed in specific cases, each case will require timely follow-up and review. In a best-case scenario, cases are closed when the outcomes described in the case plan have been achieved and the child's protection risk has been addressed.

FIGURE 4: Steps in the Best Interests Procedure



Being a systematic case management process for at-risk refugee children, BIP requires caseworkers to have a range of tools to (i) document the process and (ii) ensure that the child’s case is properly managed. The table below provides an overview of the key tools that are available in the [Forms](#) folder of the [BIP Toolbox](#).

TABLE 4: Key tools at each step of the Best Interests Procedure

Case management step <sup>33</sup>	Tools
Identification	Identification form; intake criteria; consent form; prioritization criteria
Best Interests Assessment	Best Interests Assessment forms: <a href="#">Short BIA form</a> ; <a href="#">Comprehensive BIA form</a>
Case Planning	Case planning form (part of the <a href="#">BIA form</a> ) <sup>34</sup>
Implementation	Referral form; services provided form <sup>35</sup>
Follow-up and review	Follow-up form
Case Closure	Closure form; child feedback form.
BID (can be initiated at any step)	<a href="#">BID report form</a> ; <a href="#">BID review form</a>

33 Note that the steps in BIP are the same as those outlined in the Interagency Case Management Guidelines.

34 Appendix 7 of the Inter Agency Guidelines for Case Management and Child Protection also includes a Sample Case Planning form. Inter-Agency Guidelines for Case Management and Child Protection, available at: [http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM\\_guidelines\\_ENG\\_.pdf](http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM_guidelines_ENG_.pdf)

35 The Inter-Agency Case Management forms are available in the [Forms folder of the BIP Toolbox](#)

## 3.2.2 Identification

### Identifying children at risk

Early detection of risks is vital for the protection of children; therefore, identification and referral mechanisms must be established. Identification of children at risk should start as soon as possible after displacement and must be a continuous process, particularly in situations where there is a population influx. Identification measures should remain in place throughout the displacement cycle as part of ongoing general child protection programming. Children may be exposed to abuse, violence, neglect, exploitation, separation and/or discrimination at any time.

Measures to identify children at risk and potentially in need of BIP may be employed in various situations and by all of the actors who are in contact with children and their families. Early identification includes ensuring that UNHCR staff (e.g. those responsible for Protection, Registration, Refugee Status Determination and Resettlement) and other stakeholders involved in contact with children at risk are trained in the identification, verification and initial documentation of children at risk. This includes identifying protection risks as well as specific vulnerabilities, including unaccompanied and separated children, married and/or pregnant children, victims of trafficking and survivors of violence and abuse. It is helpful to provide Protection and Registration staff and other stakeholders with training and a simple set of contextualized screening questions to help determine if a child should be referred to a specialized child protection actor.

In some cases, certain UNHCR staff (e.g. those responsible for Protection, Registration, Refugee Status Determination and Resettlement) can perform a detailed screening (e.g. using the Heightened Risk Identification Tool [HRIT]) or conduct simple BIA in relation to their respective refugee case management processes (see, for example, the case study from Ethiopia, below). In other cases, it may be more appropriate for staff to refer identified children to the child protection focal point within their unit or to specialized child protection focal points. Staff should also be aware that in some contexts parents or caregivers may deliberately instruct their children to register as unaccompanied, separated or orphaned, or as being at risk, in the hope of receiving extra food, material support or to benefit from resettlement options.

Measures to identify children at risk may include, for example:

- **Upon arrival in the country of asylum:** children at risk can be identified by protection staff from UNHCR or its partners, national authorities, child protection focal points<sup>36</sup> or trained community volunteers, in reception areas or at the pre-registration or screening point, where applicable.
- **During border or detention monitoring:** children at risk can be identified by child protection focal points and/or national authorities during border monitoring. UNHCR may also be involved in border monitoring together with the national authorities. In addition, UNHCR and other agencies such as the International Committee of the Red Cross (ICRC) may conduct detention monitoring. It is important that UNHCR and child protection partners train border and detention authorities, including the police and military, in procedures for cases involving children.

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36 The child protection focal points at the various points where children come into contact with service providers (e.g. Registration, RSD, Health Centres, etc.) should ideally be staff trained in child protection. However, where this is not feasible, staff members should be trained and assigned the role of child protection focal point, with responsibility for making an initial assessment and deciding whether the child should be referred to the specialised child protection actor.

- **During registration<sup>37</sup>:** registration staff, or child protection or protection focal points for registration, should be trained to identify and refer children at risk. Operations should have specific standard operating procedures for identifying and referring children with specific needs at registration, and for assessing the best interests of the child when adding or removing family members from registration groups.
- **During the Refugee Status Determination process:** identification of children at risk and in need of additional protection services may occur during RSD conducted by UNHCR and/or national authorities. Eligibility personnel should be aware of and trained in the available services and referral pathways and be able to counsel children and/or other persons involved in the process accordingly.
- **During participatory assessments with children and communities:** participatory assessments must be conducted with sensitivity, ensuring that individual children at risk are identified in a manner that does not publicise their identity and put them at risk of further harm.
- **At places where children learn and access services:** training for teachers, health service providers, Child-friendly Space animators and staff working at distribution centres can support the timely identification of children at risk.
- **Through community-based child protection mechanisms:** in most operational environments, the involvement of communities to identify children at risk is important. This includes community committees, women's and youth groups, religious or sporting associations and other community structures. For more information see the [UNHCR CBCP Mechanisms Issue Brief](#).
- **Through protection desks and self-referrals:** establishing dedicated protection desks with child protection focal points in large-population settings and during large influxes. Information campaigns can help to inform children and their families/communities about such protection desks and how to contact a specialized child protection actor.
- **Through referral by national or international government or NGOs providing services:** Non-child protection actors who interact with children and their families may identify and refer children at risk (e.g. water, sanitation and hygiene [WASH] actors, Livelihood programme providers, the police, etc.).

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37 In these Guidelines, "Registration" refers to UNHCR Registration of refugees and asylum-seekers. For more information on UNHCR Registration, please see: UNHCR's registration guidance, available at: <https://www.unhcr.org/registration-guidance/>

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## CASE STUDY: Ethiopia: Integration of Best Interests Assessment into proGres Registration Processes

UNHCR in Shire, Ethiopia, has trained its registration staff to complete a short BIA as part of the registration interview for unaccompanied and separated children, inserting relevant data directly into the proGres database. The process ensures that the 4,000 UASC registered per year: receive an initial BIA upon the first contact with the Office; only meet one UNHCR officer in a single seamless interview; have their data permanently captured in digital and hardcopy formats and are screened and referred for specific support where necessary. The process has proven efficient with the operation increasing its BIP screening rate from 30% to 100% of the population of UASC without additional staffing.



## Referral to Child Protection Actors

Children at risk are frequently identified by staff who are not specialized in providing BIP and other child protection services (e.g. registration staff, Refugee Status Determination staff, resettlement staff, health service providers, community social workers). UNHCR and child protection partners must identify and assign referral contact points at an early stage. Ideally, children at risk should be directly referred to the child protection actor responsible for BIP. However, in situations of large population influx, for example, referral may be made to the dedicated child protection focal point for additional screening and subsequent referral to the child protection actor. The child protection actor will then assign a caseworker to manage the child's case.

## Protection from Sexual Exploitation and Abuse

Those implementing BIP, either directly (caseworkers and case managers) or indirectly (for example, BID Supervisors, BID Panel members, Resettlement staff and other service providers who contribute to BID decisions or Case Plans) must abide by and uphold the strictest standards relating to the safety, protection and ethical practices of working with all children and people of concern to UNHCR. National laws and policies may exist in addition to international norms and standards to protect the children concerned. Adhering to ethical standards includes following the guidelines presented in this document. All partner organizations working with children and people of concern to UNHCR should have their own procedures in place for identifying and eliminating risks and responding to any sexual exploitation and abuse committed by partners and other service providers.



## What to do when a child at risk is found to be a survivor of sexual exploitation and abuse

Disclosures of SEA must be taken seriously and follow-up must be conducted in accordance with the relevant procedures within the operation. Staff must at least: “understand UNHCR policy on Protection from Sexual Exploitation and Abuse (PSEA) and realize that UNHCR and all UN agencies adopt a zero tolerance policy to SEA,”<sup>38</sup> read the Secretary-General’s Bulletin<sup>39</sup>, sign the Code of Conduct declaration and undertake the mandatory e-learning course on PSEA.<sup>40</sup>

When a child or their parents or caregivers disclose an incident of SEA during identification or subsequent best interests assessment, this incident must be reported to the designated focal point in accordance with the operation’s PSEA procedures and actions must be taken to prevent further harm. The child and their parent or caregiver must be informed of the procedure. Follow-up action must be based on informed consent/assent and the best interests of the child should be a primary consideration including when consent/assent is not provided.

BIP for the child will focus on addressing the protection risk resulting from the SEA, while actions regarding the perpetrator of SEA will be handled in accordance with the operation’s procedures for PSEA.

38 Please see UNHCR’s Emergency Handbook entry on Protection from Sexual Exploitation and Abuse (PSEA): <https://emergency.unhcr.org/entry/32428/protection-from-sexual-exploitation-and-abuse-psea>

39 UN Secretary-General (UNSG), Secretary-General’s Bulletin: Observance by United Nations Forces of International Humanitarian Law, 6 August 1999, ST/SGB/1999/13, available at: <https://www.refworld.org/docid/451bb5724.html>

40 The e-learning course on PSEA is available at UNHCR’s learning platform, Learn & Connect: <https://unhcr.csod.com/client/unhcr/default.aspx> (for UNHCR staff), and at Disaster Ready: <https://ready.csod.com/selfreg/register.aspx?c=quest> (for partners).

## Deciding whether a child requires a Best Interests Procedure

Not all children at risk will need BIP. Most children, and even most children at risk, will survive and thrive with access to basic services and the support of their families and communities. Other children at risk may need only one or two punctual interventions, but not need ongoing support. Most issues children face (e.g. school enrolment, obtaining documentation, accessing specific services, etc.) can be addressed through a one-off intervention, through the provision of information to the child and the family, establishing links with the relevant service provider, and strengthening community support systems. This could also be the case, for example, for children with disabilities who are well cared for by their parents and have appropriate access to available services in the community. However, it is important that such interventions are documented and analysed in order to identify risks and trends in the wider protection environment.

In broad terms, it is only necessary to initiate BIP:

### 1. For a child at heightened risk that needs sustained case management

Some children at risk require sustained interventions and support over time to prevent or respond

to incidents of violence, exploitation, abuse or neglect or to address multiple overlapping risks such as family separation. These children, for whom BIP is required, will be referred to as “Children at Heightened risk” in these Guidelines.

2. **Where UNHCR is required to make an important decision in the absence of, or contrary to the wishes of, the parent or legal/customary caregiver**

UNHCR may be required to make an important decision affecting an individual child in the absence of a parent or legal/customary caregiver, where there is doubt as to the relationship of the child with the presumed parent or legal/customary caregiver, or against the parent or legal/customary caregiver’s wishes. Some of these decisions may require the use of strict procedural safeguards through a BID.

Deciding whether a child at risk requires BIP should be based on evaluating vulnerabilities and risks.

## Vulnerability and Risk

The *Inter-Agency Case Management Guidelines* define the concepts of vulnerability and risk as follows:

**Vulnerability:** physical, social, economic and environmental factors that increase the susceptibility of a community or individuals to difficulties and hazards and that put them at risk as a result of loss, damage, insecurity, suffering and death.

**Risk:** the likelihood that a hazard will happen, its magnitude and its consequences; the probability of external and internal threats (e.g. armed attacks, natural disasters, sexual and gender-based violence, child-specific forms of persecution) occurring in combination with individual vulnerabilities.



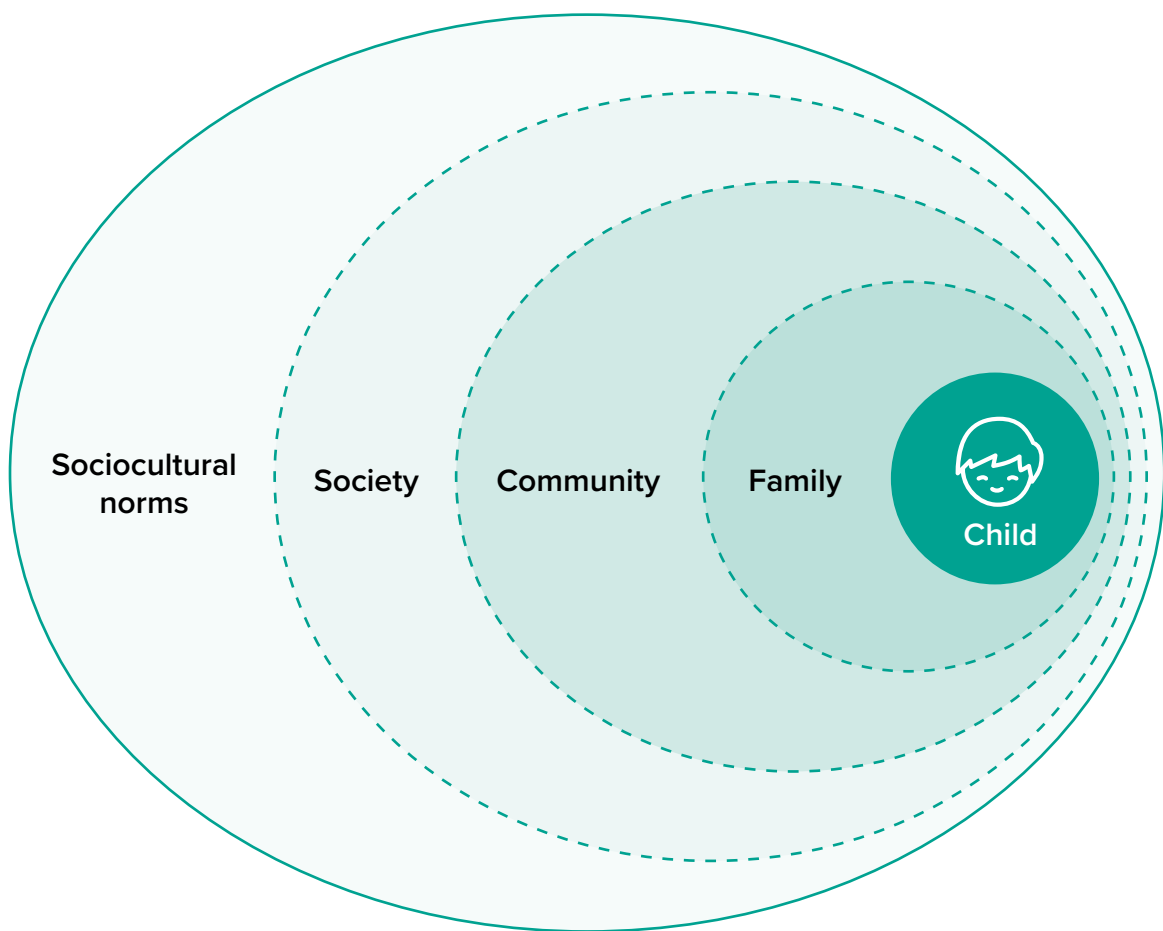
Children experience risks in the wider protection environment and risks resulting from individual circumstances. Together, these risks put children at heightened risk.

The UNHCR [Heightened Risk Identification Tool](#)<sup>41</sup> is another tool for identifying children (as well as other persons with specific needs) who are at heightened risk.

Risk is cumulative and the higher the number of risks a child is exposed to and the potential impact, the more urgent it is to respond. Risks need to be considered in the short, medium and long term.

Risks are usually balanced out by factors that protect a child. Protective factors are the physical, social, economic, legal, and environmental characteristics that reduce a child's susceptibility to difficulties and make them more resilient in the face of risk or harm. Risks and protective factors can be found at all levels of the socio-ecological model and should be assessed in all areas.

FIGURE 5: **The Socio-ecological model**



**Four levels of the child protection socio-ecological model**

41 UNHCR, *The Heightened Risk Identification Tool*, June 2010, Second Edition, available at: <http://www.refworld.org/docid/4c46c6860.html>



In order to determine if a child is at heightened risk and in need of BIP, both individual and environmental risk factors as well as the protective factors for the individual child must be considered. Operations should establish with partners a set of intake criteria<sup>42</sup> to guide decisions on which children require BIP in a specific context as part of the development of the BIP SOPs. Such intake criteria helps in considering whether intervention is required from UNHCR and its partners on the basis of the child's protection risk and level of vulnerability, the urgency of the issues faced by the child, risks inherent in the child's situation, the risk of further harm if unaddressed and the ability of the child and the family to address these on their own. A sample checklist is provided in the [BIP Toolbox](#).

## Developing Intake Criteria

Intake criteria should always be developed according to a given context and based on an analysis of risks and capacities. When developing the operation's intake criteria, it is important to recall that, generally speaking, certain categories of children at risk, due to the nature of the risks they face, tend always to be at heightened risk and thus require BIP. Depending on the context these may include: unaccompanied children; children at imminent risk of severe harm or abuse, including victims of sexual abuse; children living in the care of abusive, neglecting or exploitative adults; child victims of trafficking; child victims of torture; children associated with armed groups or forces and children in detention.

Other children may also be at heightened risk and may benefit from BIP depending on the context, other risks that they may face, the availability of services and existing protective factors. Usually for these children an initial best interests assessment would be required to determine whether they need full BIP or direct referral to other services. Depending on the nature of the risks, the numbers of children facing the various risks and the BIP capacity of a given operation, children needing screening for BIP may include: separated children; orphans without permanent care arrangements; married children or children at risk of being married; child parents and/or pregnant children; child victims of physical or emotional violence (other than those mentioned above); child carers; child labourers; children exposed to multiple adverse childhood experiences including repeated exposure to violence, family alcohol or drug abuse, etc. Where there are large numbers of children in such situations, UNHCR and partners should carefully consider how individual best interests procedures can be complimented by other services that may more effectively prevent and/or respond to the nature of the risks such children and/or their families face.

There are other categories of children at risk that should receive appropriate services or interventions and which, in general, would only need access to BIP if they also are exposed to other forms of violence, abuse and exploitation. For instance, these children may include: children without appropriate documentation including birth registration; children who suffer from social discrimination; children with mental or physical disabilities; children living with or affected by HIV and AIDS, children suffering from other serious diseases or addiction, and children out of school.

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42 Intake criteria are sometimes referred to as 'eligibility criteria' by child protection actors working outside the refugee context. In refugee contexts, the term 'eligibility' is specifically used in relation to assessing the international protection needs of asylum seekers, and hence should be avoided when referring to the criteria for deciding whether a child requires BIP. In some operations, a Screening Tool is used to decide which children are in need of BIP. Please see the BIP Toolbox (available at: [www.unhcr.org/handbooks/biptoolbox](http://www.unhcr.org/handbooks/biptoolbox)) for a sample Screening Tool.

## Prioritization

Even when a child is found to need BIP, large caseloads and resource limitations can pose challenges in providing timely BIP for children. While operations should undertake an analysis of the situation for children, foresee child protection needs and allocate appropriate funding to respond for all children who are found to be in need of BIP, regardless of the caseload size, a pragmatic approach necessitates the establishment of case prioritization criteria based on the local context as part of BIP SOPs<sup>43</sup>. Prioritization criteria support caseworkers in their day-to-day work, enabling them to respond to those children who are most in need in a timely manner.

When developing prioritization criteria, an assessment or situation analysis is necessary to ensure adequate understanding of child protection issues and risk factors, as well as coping mechanisms in the community. Regular review and in-depth analysis of the caseload can also provide information about, for example, the extent, frequency and root causes of child protection risks that both girls and boys are facing. Prioritization criteria must also reflect operational capacity to respond. In places where fewer caseworkers are available, prioritization criteria should be tighter in order to better manage the caseload and ensure that more urgent cases are prioritized (see [Section 3.4.3: Staffing and resourcing](#)).

Prioritization criteria should be applied with due care: each case remains unique and context-specific and a multidimensional approach towards children's protection needs to be maintained. UNHCR and partners should also bear in mind that some children face multiple child protection risks at the same time, which may make them more vulnerable.

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43 The BIP SOPs Toolkit is available in the BIP Toolbox: [www.unhcr.org/handbooks/biptoolbox](http://www.unhcr.org/handbooks/biptoolbox). Note that these Guidelines refer to BIP SOP. Some child protection actors may refer to these SOPs as Child Protection SOPs or Child Protection Case Management SOP, particularly where the SOP integrate both response and prevention aspects of child protection programming.

### Example of a prioritization process

Unaccompanied and Separated Children are identified in almost all UNHCR operations. Although in principle all UASC will require BIP to ensure alternative care, family tracing and reunification and additional protection services in the child's best interests including solutions, operations may consider prioritizing unaccompanied children who are younger than five years of age over older unaccompanied children. Similarly, a pregnant child who is who is caring for a sick parent may be prioritized over an unaccompanied child who is in a loving and caring household. Prioritization does not mean that addressing one protection risk is more important than the other or disregarding one child's experience of risk over those of another child. All children in these examples will require BIP, but the specific vulnerabilities and risks of some children and constraints on resources mean that those in situations of more imminent or severe risk will be given prioritized attention.

Cases may also need to be prioritized in the context of BID. The responsibility for prioritising cases for BID rests with the BID Supervisor (see [Section 5.1.1: Best Interests Determination Supervisor](#) for more on the responsibilities of a BID Supervisor). Case prioritization for BID should normally consider the existence of imminent protection risks for specific groups of children that may face heightened risks of abuse through trafficking, sexual exploitation, slavery or servitude. The existence of any serious health concerns, the age of the child and prospects for a durable solution should also be considered in prioritization.

In certain situations, when resettlement opportunities are specifically available for unaccompanied children, it may be wiser to give priority to those nearing 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 may face heightened risks (e.g. girls, children of a certain age, those heading a household or those with disabilities) and it may therefore be appropriate to prioritize these cases. Where BID Coordinators are designated, they would take on this role for their area of responsibility. See the [BIP Toolbox](#) for sample Terms of Reference for a BID Supervisor.

**TABLE 5: Roles and Responsibilities in case prioritization**

Roles and responsibilities in case prioritization			
	Caseworker	Caseworker supervisor	BID Supervisor
All BIP cases	<ul style="list-style-type: none"> <li>Prioritizes cases within own caseload in line with prioritization criteria</li> <li>Acts on cases within the appropriate time frames according to their priority level</li> </ul>	<ul style="list-style-type: none"> <li>Responsible for assigning cases to caseworkers in line with the prioritization criteria</li> <li>Ensures that caseworkers have a balance of cases at higher and lower priorities</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>
BID cases	<ul style="list-style-type: none"> <li>Alerts supervisor of any cases meeting criteria for BID</li> </ul>	<ul style="list-style-type: none"> <li>Alerts BID Supervisor to urgent and upcoming cases</li> </ul>	<ul style="list-style-type: none"> <li>Prioritizes cases referred to BID panel</li> <li>Convenes emergency BID panels if necessary</li> </ul>

### 3.2.3 Best Interests Assessment

#### When to conduct a Best Interests Assessment

Actions and decisions relating to children at risk for whom it is determined that the BIP is required, must be based on a thorough assessment of the child's protection needs. UNHCR assessment of the protection of individual children is referred to as a Best Interests Assessment (BIA). Other actors, including national authorities, may call this a child protection assessment or social welfare assessment. A BIA is essential before taking any action affecting an individual child at heightened risk.

The BIA should be conducted systematically in many circumstances that occur from the moment a child is identified as needing BIP until the child's vulnerabilities and risks have been addressed and/or a durable solution is implemented. It is important to remember that BIA is not a one-off event and the child's situation may evolve during the time the BIP is being implemented. A BIA is only one element of a multi-step BIP and should be followed by the development of a case plan, implementing this case plan, conducting follow-up and review and finally case closure. Caseworkers must continue to monitor and assess the child's protection situation, documenting and updating the BIA form and the child's case plan in accordance with the additional or new information gained during each step of the BIP.

The result of a BIA is a detailed appraisal of the child's protection situation, as well as their and the family's strengths and capacities, and a case plan or a set of recommendations on the appropriate protection and care interventions. However, the assessment can also result in a recommendation for BID. Even if a full BID will be required but is kept pending, for instance, to allow time for family tracing, BIA can be a first step.

## Conducting a Best Interests Assessment

A BIA should be carried out soon as possible after a child at heightened risk has been identified and found to need BIP. For a child at imminent risk of harm, the assessment should be carried out immediately, together with actions to ensure the safety of the child. Although BIA does not require any particular formality, the process must be completed by staff with the relevant training and competencies. The assessment of the child's situation and the recommendations deriving from the assessment need to be documented in order to facilitate monitoring and follow-up of the child. There is no need to use a standard format for the BIA provided that the key elements are documented – although a sample BIA is available in the [BIP Toolbox](#).

A BIA involves interviews with the child and their parents or legal caregivers and in most cases also includes home visits.<sup>44</sup> The assessment must encourage and support the child's participation in the process. This includes informing the child of the process and options, providing the child with the time and space necessary to form and share their opinions, including on how to address the risk, documenting the child's views and taking them into consideration. Note that BIAs can take different forms depending on the weight of the decision being made and/or the complexity of the child's situation. For example, an initial, shorter BIA may be conducted to determine if a child meets the intake criteria for BIP, or to take an urgent decision regarding an immediate aspect of the child's situation before conducting a full assessment. A more comprehensive BIA, on the other hand, may be undertaken for complex cases in order to establish a comprehensive action plan. A BIA should be carried out and a case plan drawn up for all children at risk for whom BIP is required. In some cases, an initial BIA with referral to services and/or mentoring by community mentors where these exist will be sufficient, while in others a full case management process will be required depending on the level of risk.

A BIA should be carried out for all children at risk for whom BIP is required, particularly for the following decisions:

- Developing initial action plans for children at risk
- Initiating family tracing for UASC
- Providing temporary care for UASC\*
- Initiating family reunification for UASC\*

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<sup>44</sup> See the various guidance notes on conducting interviews, available in the BIP Toolbox, which can be accessed at: [www.unhcr.org/handbooks/biptoolbox](http://www.unhcr.org/handbooks/biptoolbox)



- Implementing durable solutions for separated children\*
- Resettling a child with only one parent\*

\* Note that some of these cases may require BID (see Chapter 4. Best Interests Determination by UNHCR).

While BIA generally follows the identification of a child at risk for whom BIP is required, a BID may be initiated at this stage instead of conducting a BIA, if the specific circumstance of the child require BID as shown in [Table 7: Using different components for the Best Interests Procedure for different children](#) and described in [Chapter 4: Best Interests Determination by UNHCR](#).

To ensure systematic assessment of the child's case, the [BIP Toolbox](#) includes a Short BIA form and sample Comprehensive BIA form. These forms may be contextualized in accordance with the operational context: additional areas or questions may be included or the existing questions may be expanded. The BIA form is the recommended assessment form in refugee settings; however, in operations where multiple actors are already providing case management services, the inter-agency child protection coordination structure may decide on the most suitable assessment form, provided that the essential elements of the BIA form (including specific questions relating to refugee case management) are included. It is not necessary to complete two separate assessment forms if a detailed assessment form that meets BIA standards is agreed upon by the inter-agency child protection coordination mechanism. The information that is captured through the assessment is what is most critical, not the form itself.

The short BIA or similar inter-agency agreed initial assessment form may be used in situations of large population influx, in the case of urgent child protection cases, or cases that are low risk but require systematic BIP intervention. However, for complex cases, a comprehensive assessment will need to be done subsequently in order to ensure that the protection risks are thoroughly assessed and appropriate actions are developed.

BIA Interviews can be stressful for children. Their length and number of interviews should be reduced as much as possible, especially where there are limited options for support for the child. See UNHCR's Technical Guidance on Child Friendly Procedures<sup>45</sup> for more guidance on child friendly BIP.

### 3.2.4 Case Plan

Once a BIA has been carried out, the findings of the assessment need to be analysed before choosing the most appropriate set of options and actions to support the child. The analysis must take into consideration the child's views, safe environment, family and close relationships, and development and identity needs. It must also consider the strengths and capacities of the child and that of the child's caregivers and communities. Further information on this is included in [Section 2.4: The Four factor analysis](#).

Case planning must be consultative and involve the child and their parents or legal caregiver, as appropriate. Based on the assessment and analysis of the case, the case plan will outline the intended interventions, such as placement in interim care and family tracing and reunification (in the specific case of Unaccompanied and Separated Children), family mediation, protecting the child from further harm, enhancing the protective environment of the child within the child's home and community, actions to be undertaken by the child and their caregivers themselves and support and referral to appropriate services.

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45 UNHCR, *Technical Guidance: Child-friendly Procedures*, 2021, available at: <https://www.refworld.org/docid/61b7355a4.html>

The case plan should include **clear objectives with time frames for each action within the care plan** – for instance, the child is in a safe family care arrangement within a month and able to return to school within three months. It should identify which actor or organization is responsible for implementing each action, the role of the family and child in the plan, the referral services that the child (and their caregiver) require, and timelines for implementation. The case plan needs to indicate when the progress will be reviewed and by whom.

A separate case plan form may be used, or it can be integrated as a section of the BIA form. Participative methodologies can also be used to develop and agree a set of actions and follow-ups with the child and family to address a child's protection needs. When a BID is undertaken, the case plan or inputs to the case plan must be included in the section of the BID form, 'Follow-up Actions Required'.

The options available for case plans depend on the engagement and availability of a range of service providers, community support and the resources of the child and their family. Referrals should be made in accordance with the referral pathway established in the BIP SOPs (see [Section 3.4.2: Developing Standard Operating Procedures for best Interests Procedure](#)). Every effort should be made to identify solutions or responses within the national child protection system as well as the children's and families' own resources and support networks. However, where the system is not sufficiently robust or national actors or communities lack the will to provide appropriate responses, efforts should be made to engage other actors to provide necessary services. Where specific referral services are implemented by NGO partners, both UNHCR must be kept informed of progress in the implementation of specific actions set out in the case plan and the actions being implemented.

The community and the child's caregivers have a fundamental role in developing and implementing protection responses for children and ensuring a protective environment that enhances children's safety, well-being and development. It is therefore essential that caseworkers consult caregivers and members of the community on available options to address the risk for children and guide and support them in fulfilling their role in providing care and protection. However, it is also important to maintain confidentiality regarding individual children's cases. Any involvement of community members or service providers in responses for individual cases must be based on the child's consent/assent and consideration of the child's safety and their best interests.

The case plan should build on the child's own capacities and highlight the role of the child and their caregivers in their protection. Children should be encouraged to propose actions and interventions that they believe will address the protection risks they face, what they themselves, peers, caregivers and the community can do. For instance, the case plan can include actions that the child can take, such as: maintain social contacts with their friends, contribute to family chores, actively participate in psychosocial or educational activities or inform the case worker in case of changes in their situation. This will help strengthen the child's resilience and promote a sense of control over their situation. However, care must be exercised not to burden the child with responsibilities, which will undermine their overall response to their protection situation.

### 3.2.5 Implementing the Case Plan

Once the case plan has been developed, its implementation can begin. Implementing the case plan refers to operationalizing the individual actions set out in the case plan. For unaccompanied and separated children, this is sometimes called a care plan.

Implementing the case plan may entail the child protection actor providing services directly, mobilising and strengthening community action and referring the child and/or their family to other types of services that may not be part of the programmes implemented by the child protection actor – such

as providing appropriate alternative care, providing legal representation, enrolment in psychosocial support programmes, provision of cash assistance and non-food items or undertaking repair of the child's shelter. In some cases, the assessment, planning and implementation of the case plan needs to be an iterative process – for instance, where an immediate need is identified, such as need for shelter, action should be taken to address that need while in parallel continuing the comprehensive planning and assessment. As such, implementation of elements of the case plan should begin as soon as an urgent need and action has been identified.

In implementing the case plan, the role of the case worker should first and foremost be to support and empower to the child and family. As such, in the way the plan is implemented, the case worker helps the child and family to be active agents in implementation of the plan. This can involve providing information, ensuring that they are partners in decision-making on how the plan is implemented and adjusted and have an active role in implementing the plan, including where relevant identifying key actions they are responsible for. Helping children and families to identify, mobilise and build their own supports and skills should be an important part of implementing the plan and part of the direct services the case worker provides. In engaging the community to mitigate and address risks for children, caseworkers must be mindful of the community's own practices and approaches to supporting members in times of need and encourage and support their positive role in this regard. The care plan should not intentionally or unintentionally encourage harmful practices that can put children at risk of further harm. Community support may include, *inter alia*, accompanying a child at risk to school and other services, providing support for children and their caregivers to involve them in community activities, providing information and guidance to children and families, identifying, facilitating and monitoring alternative care and family tracing and carrying out community patrols.

When referrals for services are made to a different unit within the child protection organization or a different organization, the caseworker must ensure that only the information specifically required for delivering such services is shared with the organization in question. Organizations receiving the referral from the caseworker must not seek further information about the case from the caseworker or the child, except what is relevant and required in order to provide such services in the child's best interests.

Each actor responsible for an action must respond in a timely manner and with appropriate care and sensitivity to the child's needs. For example, the actor responsible for psychosocial support must work with the child to ensure they participate in sessions and track the child's process. Similarly, if the case plan indicates provision of shelter, the actor responsible for shelter should ensure that the shelter provided to the child is safe. This stage of BIP also needs to include the child, their parents or caregivers, the child's community and all actors in the case plan. The role of the caseworker is to coordinate services and ensure that the child receives the services outlined in the case plan and to be the link between the organizations providing services and the child.

In practice, BIP requires the coordination or action and collaboration of many different parties. The caseworker is responsible for ensuring that the child receives the services in time, and that each of the actions in the case plan are meeting their objective. This means maintaining regular contact with the child, the caregivers, the community and service providers, and ensuring that the support provided to the child is done systematically and in a timely manner.

For particular cases, this might mean gathering the involved parties in one location to ensure that actions are planned and carried out. There are different types of case meetings, including case planning or review meetings, case conferences and BID panels (for BIP panels, see chapter 5). Note: for information on inter-agency BIP coordination forums see [Section 3.4.1: Coordinating with Partners](#).



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### **Case Planning/Review Meetings**

This is an internal agency meeting that involves the case worker and, where appropriate, the child, parents/caregivers. In complex cases, the caseworker's supervisor may also participate. Case planning meetings are essential to facilitate the child (and their parents') meaningful participation in the case management process.

### **Case Conferences**

These formal multisector/inter-agency meetings are organized for very complex cases. The purpose of a case conference is to explore multisector/inter-agency service options, and to make formal decisions in the best interests of the child. Case conferences should be documented in a report/minutes that are then attached to the child's case file. The child and family may be invited to participate in some case conferences, as needed.

### **Best Interests Determination Panels**

BID panels analyse individual cases in order to assess available options and decide which are in the child's best interests, based on the assessment and recommendations of the caseworker, as reviewed by the BID Supervisor (or the BID Reviewing Officer, where this role exists). For more information on BID panels, see chapter 5.2.1.



TABLE 6: Types of case meetings

Types of case meetings <sup>46</sup>			
	Case Planning/Review Meetings	Case Conferences	BID Panels
<b>Purpose</b>	Develop/review case plans	Formal decision making Development/ review of case plan	Formal decision making with strict procedural safeguards
<b>Which cases?</b>	All cases	Complex cases where intervention is inter-agency, multidisciplinary, or multisectoral	Cases requiring BID (see <a href="#">Chapter 4: Best Interests Determination by UNHCR</a> )
<b>When?</b>	Could be done as part of the case planning stage or at the case review stage	Could be done after assessment stage as part of the case planning, or during implementation of case plan or review	Could be done after assessment stage; ideally after case plan stage
<b>Participation of child/family?</b>	Yes; ideally in person. Where this is not possible, the child's and the parents' views may be sought over the phone (it important not to discuss sensitive information regarding the case over the phone).	No	No
<b>Participation of other actors?</b>	If needed and appropriate	yes	Only trained panel members participate. Caseworkers and experts can be invited if needed to discuss specific cases.

### 3.2.6 Follow up and review

Implementation of the case plan needs to be monitored and followed up to ensure that the goals or objectives set out in the action plan are being achieved, actions are being implemented, the child and their family are receiving the support and services outlined in their case plan, and to check the extent to which the child and their caregivers are engaged in implementation. Follow up also includes monitoring the child's individual situation and ensuring that they are safe, for example through home visits or discussions with the child's teacher or other relevant persons (if they are part of the case plan and privy to protection information about the child). The review of a case plan supports caseworkers in measuring progress and adjusting intervention to changed circumstances. Where significant changes in circumstances are identified, the BIA and the case plan should be updated. In most cases, adjustment or refinement of the plan is required during the monitoring or follow-up – either because

46 Adapted from Inter-Agency Child Protection Case Management Guidelines, pp 65-66 [http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM\\_guidelines\\_ENG\\_.pdf](http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM_guidelines_ENG_.pdf)

new information has emerged or as the situation develops – which should either be recorded in the follow-up notes or in an updated plan if the changes required are significant.

Implementation of the case plan should be monitored in a timely manner. The actor responsible for implementing each action in the case plan should agree to share information in a safe way and in accordance with the frequency indicated in the case plan (and/or BID, if applicable). This commitment should be written into the BIP SOPs in order to give it the necessary weight (see [Section 3.4.2: Developing Standard Operating Procedures for the Best Interests Procedure](#)).

It is important to involve the child and their family in follow-up and review. The meaningful participation of the child in their own solutions by focusing on their and their parents', caregivers' or family's strengths and resources can positively impact the child's sense of self-worth, resilience and development. Children should be involved in deciding the frequency and location of follow-up visits and caseworkers should regularly check with the child on the timelines and appropriateness of the actions being undertaken. Caseworkers must support the child and their caregivers in carrying out the actions attributed to them as defined in the case plan; together with the child, caregivers and the community should identify any barriers they might encounter to their active role in addressing the protection risks. In some low risk cases, caregivers or older children who do not require regular monitoring can be provided with contact information so that the child can take the initiative to report back on their own status within an agreed time frame. It is important to establish this option during case planning or where important decisions are involved (such as judicial decisions on custody, asylum or resettlement decisions) when the child or caregiver is informed of the outcome of a decision relating to their case.

### 3.2.7 Case closure and transfer

Case closure procedures should be part of the BIP process and be outlined in the BIP SOPs. The decision to close a case must be authorized by the caseworker's manager or, in the context of BID cases, the BID Supervisor. Criteria for the closure of cases must be context specific. The following criteria for case closure may be used as a guide and adapted to specific situations:

- The necessary referrals and protection interventions have been carried out and documented, and the child is no longer at risk. This might include successful family reunification and follow-up monitoring or where the child is no longer at risk of violence, abuse or exploitation.
- The necessary referrals and protection interventions have been carried out and documented, and no further action is necessary or possible. The child and the caregiver agree to closure.
- The child and the caregiver both express their wish to end monitoring and follow-up and this is assessed to be in the child's best interests.
- The young person has reached the age of 18 and the case has been handed over to other competent authorities or partners, or no further action is necessary/possible (see [Section 3.6: Young people and the Best Interests Procedure](#));
- The child and the (foster) family have moved to another location; note that in these circumstances, the case may need to be transferred to either UNHCR or other partners in the new location, if possible (see below).
- The child's whereabouts are unknown and attempts to locate the child have been exhausted. This may include community tracing, direct follow-up, and home visits.
- There is enough evidence to believe that the child was incorrectly identified as being at risk.

- The child is deceased.

The child and their parents or caregiver need to be informed about closure of the case. In some instances, closed cases can be reopened for review. Where BID needs to be reopened, the procedures outlined in [Section 5.4: Reopening a Best Interests Determination decision](#) apply.

In particular situations, such as if the child moves or there is a change in the lead agency responsible for implementing BIP, cases are not closed but responsibility for management of the case is transferred to another organization or to another caseworker in a different location. The child and parent/caregiver's consent/assent to have the case transferred to another organization needs to be sought and taken into consideration and balanced with the child's best interests. Note that if the child/family initially refuses to give consent/assent, the caseworker should counsel them and explain the need for/benefit of continued support. Particular caution should be observed when considering transfers to organizations in the country of origin. Furthermore, case transfers need to follow clearly outlined steps to ensure that handover of the case file and related information is completed and that the case plan continues to be implemented (please see the tables on example data elements to be shared with UNHCR for further guidance). These steps should be outlined in relevant, context specific BIP SOPs (see [Section 3.4.2: Developing Standard Operating Procedures for the Best Interests Procedure](#)).

### 3.2.8 Responding to children in different situations with the Best Interests Procedure

As outlined above, in most cases, children in BIP will require BIA at different points in their case management in order to ensure that actions taken are in their best interests. For example, a separated child may have an initial BIA that considers family tracing as well as their current care arrangements and a subsequent BIA to assess family reunification once their parents have been found. In order to ensure that appropriate procedural standards are applied in accordance with the weight of decisions being considered for children at risk, it is also important to identify early on whether a child requires BID. The reference table below outlines the most appropriate ways to respond to and support children at heightened risk in different circumstances through BIP. This table should be read with reference to [Section 3.2.3 on BIA](#) and [Chapter 4 on BID by UNHCR](#).



TABLE 7: Using different components of the Best Interests Procedure for different children

Trigger/Context	Situations in which BIA and case management are required	Situations in which BID is required
Durable solutions and complementary pathways need to be identified for unaccompanied children, and separated children where there is a significant additional risk factor or protection concern.	<p><b>Durable solutions that do not involve family reunification for:</b></p> <p><b>Separated children</b> where no additional significant risk factor or protection concern has been identified.</p>	<p><b>Durable solutions that do not involve family reunification for:</b></p> <p><b>Unaccompanied children</b> who are not being reunified with a parent or caregiver.</p>
	<p><b>Durable solutions involving family reunification for:</b></p> <p><b>Unaccompanied or separated children</b> who are being reunified with a parent or caregiver (see <a href="#">Section 3.8</a>).</p>	<p><b>Durable solutions involving family reunification for:</b></p> <p><b>Unaccompanied or separated children</b> who are being reunified with a parent or caregiver in exceptional situations (see <a href="#">Section 4.2</a>).</p>
Children at risk in exceptional situations:  Family reunification for unaccompanied and separated children in exceptional situations  Temporary care for unaccompanied and separated children in exceptional situations  Other children at risk in exceptional situations on a case-by-case or context-specific basis.	<p><b>Family reunification (not in the context of durable solutions) for:</b></p> <p><b>Unaccompanied and separated children</b> who are being reunified with a parent or caregiver where no additional risk factors or protection concerns have been identified (see <a href="#">Section 3.8</a>).</p>	<p><b>Family reunification (not in the context of durable solutions) for:</b></p> <p><b>Unaccompanied children</b> who are being reunified with a parent or caregiver in exceptional situations (see <a href="#">Section 4.2</a>).</p>
		<p><b>Family reunification (not in the context of durable solutions) for:</b></p> <p><b>Separated children in exceptional circumstances</b> e.g. where there is an additional risk factor or protection concern that requires the safeguards of BID (see <a href="#">Section 4.2</a>).</p>



Trigger/Context	Situations in which BIA and case management are required	Situations in which BID is required
Children at risk in exceptional situations:	<p><b>Temporary care arrangements for Unaccompanied children with no additional protection risks.</b></p> <p>Decisions regarding placement in temporary care arrangements (whether assessing current care arrangements or deciding on new placements) where no additional risk factors or protection concerns are identified (see <a href="#">Section 3.8</a>).</p>	<p>Temporary care for <b>Unaccompanied children in exceptional circumstances.</b></p> <p>Decisions regarding placement in temporary care arrangements (whether confirming existing spontaneous arrangements or deciding on new placements) in exceptional situations (see <a href="#">Section 4.2.5</a>).</p>
	<p><b>Temporary Care Arrangements for</b></p> <p>Separated children with no additional protection risks.</p> <p>Decisions regarding placement in temporary care arrangements (including assessing current care arrangement) where no additional risk factors or protection concerns have been identified (see <a href="#">Section 3.8</a>).</p>	<p><b>Temporary Care Arrangements for</b></p> <p>Separated children in exceptional circumstances.</p> <p>Decisions regarding placement in temporary care arrangements where removal from the care of the current relative against their will is contemplated, or in other exceptional circumstances (see <a href="#">Section 4.2</a>).</p>
Family reunification for unaccompanied and separated children in exceptional situations	<p>Solutions for</p> <p>Children at heightened risk (not UASC).</p>	<p><b>Solutions for</b></p> <p><b>Children at heightened risk (not UASC) in exceptional circumstances.</b></p> <p>Children who are with their parents or caregiver, where: where there is an identified potential risk of harm to the child, where the solution risks long-term separation of the child from their parents or current caregivers, or the child has complex vulnerabilities and/or limited options that would require giving significantly more weight to one group of rights than another (see <a href="#">Section 4.2</a>), and married children being considered for solutions with their adult spouse and/or without their parents (see <a href="#">Textbox: Married children under consideration for resettlement or a complementary pathway</a>).</p>
Temporary care for unaccompanied and separated children in exceptional situations	<p>All children at heightened risk, including married children and children at risk of being married who are accompanied by their parents, require BIP (to be defined by context), starting with BIA. See <a href="#">Section 3.2.2</a> on whether a child requires BIP, risk assessment and prioritization.</p>	
Other children at risk in exceptional situations on a case-by-case or context-specific basis.		

Trigger/Context	Situations in which BIA and case management are required	Situations in which BID is required
<p>Children at risk in exceptional situations:</p> <p>Family reunification for unaccompanied and separated children in exceptional situations</p> <p>Temporary care for unaccompanied and separated children in exceptional situations</p> <p>Other children at risk in exceptional situations on a case-by-case or context-specific basis.</p>	<p><b>Other situations for Children at heightened risk.</b></p> <p>All children at heightened risk require BIP (to be defined by context), starting with BIA. See <a href="#">Section 3.2.2</a> on whether a child requires BIP, risk assessment and prioritization.</p>	<p><b>Other situations for Children at heightened risk in exceptional circumstances.</b></p> <p>Additional exceptional situations as defined by the operation on a case-by-case or systematic basis. These should be a limited number of situations in which UNHCR is required to make a decision that has a serious, long-term impact on a child (especially where parents are not present to provide consent).</p>
<p><b>Possible separation from parents or caregivers in the absence of national child protection systems or where referral to the national authorities presents a potential risk to the child.</b></p>	<p><b>Immediate action to protect child survivors of violence, exploitation, neglect or abuse.</b></p> <p>In order not to delay urgent action in cases where parents or caregivers are perpetrators of severe violence, exploitation, abuse or neglect or are unwilling to provide protection to prevent such harm from arising, and there is an imminent risk of severe harm to the child.</p>	<p><b>Possible separation of child survivors of violence, exploitation, neglect or abuse from caregivers.</b></p> <p>Where parents or legal/customary caregivers are perpetrators of severe violence, exploitation, abuse or neglect, or are unwilling to provide protection to prevent such harm from arising from the.</p>
		<p><b>Custody disputes.</b> In situations where custody is disputed and there is a need to determine with whom the child should stay/care arrangements in the absence of a legal custody decision.</p>

Trigger/Context	Situations in which BIA and case management are required	Situations in which BID is required
Children being resettled with one parent.	<p>Children undergoing a durable solution with one parent who does not have sole custody and where the other parent cannot be reached.</p> <p>Where a durable solution is being considered for a child with only one parent and there is no legal documentation of sole custody, no proof of death of the absent parent or no written consent provided by the other parent (See Operational Guidance Note<sup>47</sup> - note that no BIA is required if resettling parent has sole custody, there is a death certificate for the other parent or the parent who is not being resettled provides informed written consent).</p>	<p>Children undergoing a durable solution with one parent and children in disputed custody arrangements/ risk of abuse.</p> <p>Where a durable solution is being considered for a child with only one parent and: 1) the parent not remaining with the child refuses to give consent for the child to travel; or 2) there are indications that the child might be at risk in the family being considered for the durable solution.</p>

### 3.3 PARTICIPATION OF CHILDREN AND FAMILIES IN THE BEST INTERESTS PROCEDURE

#### Section Summary

Why:

- Children have a right to participate in each step of BIP. Moreover, the safe and meaningful participation of children and those close to them is essential for a successful and protective outcome.
- Parents or caregivers bear the primary responsibility for children. Unless their parental rights have been removed by a competent authority, they have a right to have their views considered in BIP.

How:

- Caseworkers need to consider a child's age and maturity when deciding how to ensure children's participation in BIP.
- Relevant information should also be collected from persons close to the child, as their in-depth knowledge of the child can be very valuable to the process and positive outcome of BIP. This is particularly the case with parents (if present), siblings, foster parents, foster siblings and guardians. Experts can also be consulted.

47 UN High Commissioner for Refugees (UNHCR), *Operational Guidance Note: Best Interests Assessments For Children being Resettled with Only One Parent*, April 2013, available as an internal document, and may be accessed through the intranet or requested from UNHCR, Division of International Protection (DIP).

- Consent and assent must be obtained from children and their parents or caregivers for their participation in BIP, except in situations where it is not in the child's best interests.
- People working as interpreters in BIP should have access to specific training for working with children and sign the Undertaking of Confidentiality.

### 3.3.1 General considerations for child participation

BIP requires a holistic approach in order to adequately understand the child's background, their needs, protection risks, capabilities, interests, and the capacities of adults willing to care for the child. The process needs to be child-centred, age, gender and diversity-sensitive and guarantee the participation of the child and those close to them.

Safe and meaningful participation in this context encompasses three fundamental elements:

- a. Providing children with information on the procedure as well as options and outcomes, including regarding how their views were considered and why they were or were not acted on.
- b. Ensuring that the child is supported to participate throughout BIP an age-appropriate and culturally sensitive way that promotes their resilience and family empowerment, in a format that is accessible to children with different abilities.
- c. Enabling the child to share their views and have these views taken into consideration in accordance with their age, maturity and evolving capacities.

Safe and meaningful child participation aims to make BIP a cooperative effort rather than an extractive exercise.<sup>48</sup> Children should be informed and empowered to express their views and ask questions at every step of BIP: from before or during their identification, through assessments, case planning, service provision, follow-up/review and case closure. Children can also play a role in implementing their own plan and protection, depending on their age, maturity and where it is in their best interests.

48 For more on communicating with children, please see UNICEF *Communicating with Children: Principles and Practices to Nurture, Inspire, Excite, Educate and Heal*, November 2011, available at: [https://www.unicef.org/cw\\_c/files/CwC\\_Web\(2\).pdf](https://www.unicef.org/cw_c/files/CwC_Web(2).pdf)





## Supporting safe and meaningful child participation in the Best Interests Procedure

The following actions will help caseworkers to support safe and meaningful child participation in BIP. A detailed list is available in the [BIP Toolbox](#).

**Provide information:** BIP should not be an extractive exercise, but rather a cooperative effort. Information needs to be provided in a child-friendly and accessible format.

**Be aware:** BIP is a procedure for individual children, and caseworkers should be alert to how a child's age, gender, ability or diversity factors may influence their participation.

**Be empowering:** Children should feel like active participants in BIP, with the right to express their views and with their own responsibilities as well as rights within the process.

**Take time – but not too much:** while urgent responses to a protection issue should not be delayed, some complex cases will require additional time to gain a child's trust, or for them to understand their options prior to jointly identifying the most appropriate follow-up.

**Be sensitive:** children at risk have often lived through distressing events, and decisions relating to BIP can in some circumstances be upsetting.

**Involve parents and caregivers:** care must be taken to ensure that parents and caregivers maintain responsibility for the child's protection, well-being and development, in accordance with their obligations, and in line with the best interests of the child.

**Be professional:** be aware of the power dynamics between caseworkers and children and ensure that professional boundaries are maintained while still providing empathy and an ethic of care.



## Child participation as a right

Effective participation recognizes children as rights-holders, builds their capacity and resilience and allows them to be involved in their own protection and in the protection of their peers. The right of children to participate and to be heard is outlined in several legal and UNHCR policy documents:

- The child’s right to participate is enshrined in the Convention on the Rights of the Child:
  - Article 12: children have the right to form their own views and to express those views freely in all matters affecting them, and the right to have those views taken into consideration in accordance with the age and maturity of the child.
  - Article 13: children have the right to freedom of expression, including freedom to seek, receive and impart information and ideas of all kinds.
- The Committee on the Rights of the Child, in its General Comment No. 5 of 2003, identified children’s right to be heard as one of four general principles that are fundamental to the enjoyment of all the rights enshrined in the Convention on the Rights of the Child.
- Article 8(3) of the *Convention on the Rights of Persons with Disabilities*<sup>49</sup> guarantees children with disabilities the right to express their views freely on all matters affecting them and to have these views taken into account in accordance with their age and maturity, on an equal basis with other children. The article also requires that children with disabilities be provided with age- and disability-appropriate assistance to realize that right.
- ExCom No. 107 calls on States parties and UNHCR to ensure the provision of child-friendly information, and the equal and meaningful participation of girls and boys without discrimination in decisions affecting them.
- Child participation is one of the six goals for children outlined in the UNHCR *Framework for the Protection of Children*, as well as a guiding principle underpinning the Framework.

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49 UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at: <http://www.refworld.org/docid/45f973632.html>

### 3.3.2 Seeking the views of the child

As outlined in the Convention on the Rights of the Child, all children have the right to express their views freely in matters that affect them. Furthermore, it is important to know the child’s wishes, feelings and opinions in order to properly assess the potential impact of a proposed action on their welfare. A child’s ability to express their views, and the type of information that can be solicited, will largely depend on their age and maturity as well as the information they receive from different sources. Interviews that are appropriate to a child’s age and maturity thus play a central role in BIP.<sup>50</sup> Moreover, a well-managed interview process—including the atmosphere and set-up, how questions are framed and asked and the way they are documented—will contribute to better quality decisions and outcomes

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50 A professional social service workforce will be able to assess which interview tools are most appropriate, e.g. drawings, toys and other tools can be used to facilitate conversation.

for children. This requires skilled child protection staff, social service workforce members and BID panel members to be part of BIP (see [Section 3.4.3: Staffing and Resourcing for the Best Interest Procedure](#) for more information on skills and competencies).

In addition to the general actions to foster safe and meaningful child participation listed above, some key points to consider when seeking the views of a child are listed below:

- **Children cannot be expected to give adult-like accounts of their experiences**  
The child's age and maturity at the time the relevant events took place and 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. An interviewer should consider the ability and competence of children as being different from, rather than inferior to, those of adults.
- **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 caregivers, foster parents and others may have a personal interest in the process and may prevent the child from freely expressing their views. Adults suspected of or complicit in 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**  
Children may have no emotional reaction at all or react to emotional cues from the interviewer. The interviewer should therefore 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**  
The caseworker should use child friendly interview methods and approaches, such as child friendly questioning, observation, games and drawing, to help the child to express distressing 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 one 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 considered and unless not in the children's best interests respected.
- **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 psychosocial support, especially if the information that may cause distress is likely to surface during the interview.**

### 3.3.3 Seeking the views of family members and other people close to the child

Relevant information should also be collected from people close to the child, as their in-depth knowledge of the child can be valuable for supporting the child through BIP. Specifically, information collected from people close to the child can often help understand nature of relations between the child and others close to them, the reasons behind certain preferences expressed by the child, as well as their strengths and skills. This is particularly relevant for parents or caregivers (if present), siblings, foster siblings and guardians. Similarly, where appropriate, relevant information may be collected from other people close to the child, such as neighbours, teachers, friends, community leaders/workers. 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 people who are close to them, as well as their relationship. One method is to ask the child, especially younger children, to draw the people they are in contact with and who they feel close to. When speaking to these people, the caseworker must exercise caution and preserve strict confidentiality. Information received from the child and their wishes should never be disclosed as this may put the child at risk and endanger the relationship with the caseworker. In suspected cases of trafficking or child abuse, the safety and security of the child must determine whether or not inquiries are made into persons closely associated with the child and guide choices regarding how such inquiries should be made.

Caution must be exercised when communicating with the parents of unaccompanied and separated children who remain in the country of origin. These contacts could reveal to home country authorities that the child is seeking asylum elsewhere, thereby potentially exposing the parents or the child to possible harm. Where tracing has been successful, the information provided by the International Committee of the Red Cross (ICRC) or other competent organization undertaking tracing and monitoring the situation of the family and its readiness to receive the child, will be sufficient for BIP.

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 BID panel. The same applies to decisions involving possible separation from an accompanying adult, when determining temporary care arrangements, and in cases of removal from foster parents which require a BID.

Examples of information to be collected from people close to the child include:

- nature and quality of the relationship between the child and the current caregiver and family
- relationship with other family members, including location and care arrangements of siblings
- views of the children including their wishes, concerns, and preferences expressed by the child
- areas in which there may be a possible conflict of interest between the child and their caregivers or others close to them
- the child's daily habits and interaction with other children and community members
- how the child is coping in school, including their ability to concentrate during lessons and to interact with other children and teachers
- information about the flight, the parents or other family members and the situation in the country of origin prior to the flight



## 3.4 OPERATIONALIZING THE BEST INTERESTS PROCEDURE

### Section Summary

Why:

- Effective operationalization of BIP requires engagement with a range of actors (local, national and regional) who bring different skills, experiences and geographic access.
- The very nature of BIP, and the sensitivity and potential impact on children means that staff must demonstrate the required skills, competencies and attitudes.
- Monitoring the quality of BIP implementation helps maintain standards and improve quality services to ensure that services are provided and actions are consistently in the best interests of children.

How:

- UNHCR should develop effective working relationships at local, national and cross-country levels. In a particular setting UNHCR can have both operational and funded (or implementing) partners and should coordinate with all relevant organizations through inter-agency child protection coordination mechanisms and as well as relevant bilateral coordination (for instance, for funded partners).
- Close coordination with actors working on gender-based violence (GBV) is crucial, particularly when it comes to responding effectively to child victims of sexual violence or child marriage.
- BIP SOPs, also called Child Protection Case Management SOPs, should be established at country level to ensure streamlined and efficient BIP processes across field locations, considering the national context and operational realities, while respecting these BIP Guidelines.
- It is important to consider the required roles for staff working on BIP and to allocate and support the human resources accordingly. Even where UNHCR is not responsible for most of the day-to-day casework for BIP, human resources should be considered for coordination of and capacity building on BIP.
- Procedural safeguards must be upheld throughout every BIP step.
- The Alliance for Child Protection in Humanitarian Action (CPHA) tools and guidelines can be used in conjunction with these Guidelines to inform quality assessment procedures.

### 3.4.1 Partnerships for Best Interests Procedure

States, UNHCR, and other relevant organizations and partners should “work in close collaboration to prevent children from being put at heightened risk”.<sup>51</sup> Child protection work including BIP requires a multisectoral and multi-stakeholder approach. This includes working in partnership with child protection actors and relevant actors in other sectors and sub-sectors, such as those working against sexual and gender-based violence. UNHCR has funded partners (organizations implementing UNHCR’s protection programmes on behalf of and with funding from UNHCR) and operational partners (where the relationship is based on mutual programmatic complementarity and joint work rather than funding).

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<sup>51</sup> ExCom Conclusion No. 107, para. (g).

Partnership offer mutual benefits for the partners in terms of resources, knowledge and skills and can strengthen a child protection programme, including by providing quality and timely protection services for children at risk, especially those at heightened risk. As emphasized in Chapters 1 and 2, UNHCR should work in close partnership with local and national authorities and civil society. Furthermore, UNHCR should look to develop partnerships with communities, children and national and international child protection organizations. Partnership and collaboration must be guided, inter alia, by the principle of best interests of the child consideration of the child's safety and confidentiality. This means that any decisions regarding how to involve any given actor, establish their capacity building needs and monitor them must be carefully considered: involving a partner must not lead to further harm to the child.

### Partners' mutual complementarity

In practical terms, NGOs and community-based organizations (CBOs) provide specific services and carry out timely monitoring of responses to children's protection needs. The knowledge and experience of these actors are fundamental to providing appropriate and community-based protection responses to children. At the same time, international and national agencies and organizations can contribute with technical expertise, guidance, funding and training as well as specific services according to their mandate, thus strengthening the protection of children as well as national child protection systems. Independent experts on children or the situation in general can also be important as they can provide valuable analysis on the context, expert opinion on protection issues, and help guide responses that are in children's best interests.

It is important to recognize that different levels of specialization are often required for appropriate and targeted case management. In many situations, for example, an organisation with less expertise in the management of complex child protection cases may be qualified to provide some types of support for low-risk and less complex cases. Individual experts or organizations with more extensive experience or a specific skill set may be required to ensure a more appropriate response for particular vulnerabilities or complex cases. For example, organizations or individuals with specific expertise will be more valuable for cases involving the removal of children from families, custody disputes and family violence situations. In some countries, national standards require accreditation of staff who deal with specific types of cases within government or civil society social welfare services – where this is the case all efforts should be taken to recruit staff with appropriate qualifications or where this is not immediately possible, recruit staff with similar or equivalent qualifications from their country of origin and/or train and qualify staff over time.



TABLE 8: Roles of different partners in the Best Interests Procedure

Overview of partners and their roles in BIP	
National Agencies & Authorities	Responsibility for implementing the best interests principle, including procedures for assessing and determining a child's best interests, is first and foremost that of the State. Where UNHCR is responsible for implementing BIP as the State is unwilling or unable to implement all components of BIP for refugee children, UNHCR should identify which if any elements of the BIP can be carried out by national authorities (for instance custody or removal decisions), as set out in Chapter 1. UNHCR should also involve local and national governments in UNHCR-led BIP as much as possible, for example, identifying which cases should be referred to authorities for which services and involving authorities as BID Panel members. Authorities may also assume more of an oversight role in the overall management and coordination of BIP and in capacity building for other partners implementing BIP.
UNHCR	Where UNHCR-led BIP is implemented, UNHCR will led and coordinate BIP within the UN system <sup>52</sup> , including management, oversight, implementation and coordination of BIP for refugee children. Where States are fully or partially responsible for implementation of best interests procedures that include refugee children, UNHCR is responsible for oversight, technical support and advocacy with States to align national standards and procedures to international law and standards relating to the best interests principle and procedure for refugee children, in coordination with other relevant national and international actors including UNICEF.
UNICEF	UNICEF plays an important role in national child protection programming and advocacy. Given its mandate, UNICEF may be able to well-placed to advocate with and provide technical support to national child protection and social welfare authorities, in collaboration with UNHCR as it relates to refugee children. UNICEF may, in coordination with UNHCR, also support implementation of UNHCR-led BIP with funding and capacity building to partners implementing child protection case management and through membership of the BID panel.
Child protection non-governmental organizations (NGOs)	<p>National NGOs with a child protection expertise can play a vital role in the BIP, as they have an in-depth understanding of the local situation and practices. These agencies often have a wide range of expertise in child protection and might already be involved in other aspects of child protection programming. NGOs can be responsible for direct implementation and management of BIP, under a funded or operational partner arrangement with UNHCR oversight. Child protection NGOs can also provide capacity building for staff involved in BIP.</p> <p>Both national and international NGOs can undertake a variety of functions in relation to BIP depending on needs and capacities. These include caseworkers and case managers, BIP reviewers and supervisors (noting that UNHCR will retain responsibility for overall coordination and oversight of BIP) and BID Panel members. NGOs can also support UNHCR, governments and other civil society partners to build capacity on some or all aspects of BIP.</p>

52 For example, the leadership role of UNHCR for BIP is highlighted in the UNHCR-UNICEF Partnership – Letter of Understanding Annex B: Guidance for Technical Areas: for the development of a country work plan and joint plan of action, January 2015, available at: <https://www.unhcr.org/handbooks/biptoolbox/guidance.html>

Overview of partners and their roles in BIP	
Community-based organizations (CBOs)	<p>CBOs can also be involved in BIP. There are many advantages to working with CBOs,; in particular, they may more easily integrate BIP into community practices and norms and have better access to and acceptance by vulnerable children and families. In some cases, parents or legal caregivers and children may be worried about confidentiality when reporting to CBO. An assessment of the capacity, strengths and risks of each CBO, and a corresponding mitigation/capacity building plan, should be undertaken before defining roles and responsibilities for BIP.</p> <p>Depending on the context and expertise/capacity, the case sensitivity criteria (see above) can be used to determine whether the case should be handled by community-level caseworkers or directly by the specialized organization implementing BIP (the later who are normally responsible for high risk/complex cases).</p>
Other NGOs	<p>NGOs involved in education, health, legal advice and representation, psychosocial care and/or other services may also provide valuable support to BIP by supporting the identification of children at risk and providing services for children in BIP.</p>
International Committee of the Red Cross (ICRC) and the National Red Cross and Red Crescent Societies:	<p>ICRC, with the National Red Cross and Red Crescent Societies, has a mandate for restoring family links (including for unaccompanied and other vulnerable separated children) for separations due to armed conflict, other situations of violence, disasters and migration. In the refugee context, ICRC and UNHCR coordinate closely to facilitate tracing and reunification where it is in the best interests of the child.</p> <p>Restoring family links (RFL) is a generic term used by the International Red Cross and Red Crescent Movement for a wide range of services aiming to prevent separations and disappearances, restore and maintain contact between families and clarify the fate of persons unaccounted for. Referral mechanisms for Restoring Family Links services are essential for BIP.</p> <p>ICRC and the National Red Cross and Red Crescent Societies might participate in BID Panels as observers, especially if they have followed the child, know them well and/or have a presence in the child's area of country of origin.</p>
Experts	<p>Specialized mental health, other medical, legal experts, host and refugee cultural mediators and anthropologists, among others, can provide necessary intervention, information and advice throughout BIP on a case-by-case basis.</p>
<p>Note: the term 'social service workforce' cuts across types of partner and refers to governmental and non-governmental professionals and paraprofessionals who work with children, young people, adults, older persons, families and communities to ensure healthy development and well-being.<sup>53</sup></p>	

53 For more information, visit <http://www.socialserviceworkforce.org/>



## Coordinating with partners

Partnerships will differ from context to context, depending on capacity, national regulations, frameworks and historical arrangements for cooperation and collaboration between actors. Where several partners are involved in the implementation of BIP, it is good practice to establish a BIP coordination group as part of or in addition to the overall child protection coordination mechanism. In many contexts, this BIP coordination group may be called a Case Management Task Force or a Case Management Sub-Working Group. This group would not discuss specific cases, but work to harmonize BIP across partners and geographic areas, contextualize and refine the tools used in BIP, analyse trends in child protection risks and challenges, and identify and address gaps in BIP coverage or implementation.

Where UNHCR implements BIP in partnership and coordination with other actors, the following tips may be useful:

- Whether a partner is a funded partner or an operational partner, **UNHCR should still lead and coordinate BIP for refugees within the UN system**. In such instances it may be necessary to sign a Memorandum of Understanding (MoU), Data Transfer Agreement and/or Information Sharing Protocol (ISP) in order to share information about children at risk and children being supported through BIP. This is particularly important where partners have not signed a funded Project Partnership Agreement (PPA).
- UNHCR should base BIP partnerships on an assessment of an actor's child protection and BIP/child protection case management expertise and capacity. Where there are gaps in BIP or general child protection case management expertise, UNHCR should plan for appropriate capacity building activities (both by UNHCR as well as allocating sufficient resources for the partners to strengthen their staff's capacity) in coordination with other child protection case management organisations.
- Working with local and national organizations may be more sustainable in the long term. However, in emergency or large-scale operations, it may also be appropriate to work with international organizations, which may be able to scale up more quickly and/or provide additional specialized expertise. Where this is the case, capacity building of national governmental and/or civil society actors and a transition plan should be developed wherever possible.
- It is advisable to ensure that there is no geographical overlap between partners working on BIP. While several child protection actors may undertake parts of child protection response, including some that utilize a case management approach such as psychosocial support and safe shelter, there should always be one partner with overall responsibility for BIP in a particular area.

In contexts where BIP is part of and is implemented by the national governments, coordination should aim to strengthen the procedure, including building expertise on addressing the specific needs of refugee children, referral pathways for refugee children and linkages to child friendly refugee procedures.

## Coordination with GBV actors

Child protection actors and actors working on gender-based violence (GBV) prevention and response must work in close collaboration to support child survivors of GBV, who have specific needs and rights that must be taken into consideration in response. It is important to note that child survivors of GBV often experience or are at-risk of other forms of violence, abuse, and exploitation.

Both GBV and child protection actors can provide support to child survivors of GBV, as long as they have the required skills, competencies and organizational procedures. This includes having case workers who are trained on caring for child survivors of GBV as well as having case management supervisors in place. Roles and responsibilities in providing case management to child survivors of GBV should be determined and clearly outlined in an interagency SOPs based on capacity and expertise. Specialist expertise and entry points for child survivors of GBV must be clearly marked on the CP and GBV referral pathways. Some key considerations are as follows:

- All Child protection caseworkers, who have the necessary knowledge and skills needed to work with children, should have basic training in GBV Guiding Principles, prevention and child-friendly response and caring for child survivors. This will enable them to provide initial support to child survivors of GBV within BIP. GBV case workers should receive basic training on BIP and child protection principles, approaches and skills for the same reason.
- Child Protection and GBV staff must work in coordination to provide a timely and safe response and case management to child survivors of GBV. It is essential that there is one case worker at any one time, who may still coordinate as requires, and who ensures that the child is not put through duplicative assessments or assessment questions. The BIP SOPs must clearly articulate the actions and responsibilities for providing BIP services to child survivors of GBV and should make links to the operation's SOPs for GBV.
- Case workers for child survivors should be indicated in BIP and GBV referral pathways and trained on both child protection and GBV case management as well as on caring for child survivors. Where child protection and GBV case management services exist in the same location the roles and responsibilities of both service providers in relation to specific forms of GBV against children and the gender and age of the child should be specified.
- In general, where a child is identified as experiencing GBV by the child protection or GBV case worker, if the organisation has the capacity to deal with this case, it is advisable to be managed by the organisation to whom the case was disclosed, as long they have case workers trained in caring for child survivors of GBV as well as the necessary supervisory structures. While SOPs should be developed with clear roles and responsibilities wherever possible, case by case decisions may also be needed for complex cases which should be done through a discussion between the two concerned organisations (without disclosing identifying details).
- If a child, who is already in the BIP process, is found to be a survivor of GBV, it is important to make referrals based on the best interests of the child, while continuing other BIP services.
- As with all cases, sensitivity to confidentiality and information sharing must remain strictly respected (see [Section 3.5: Information Management for Best Interests Procedure](#)).

### 3.4.2 Developing Standard Operating Procedures for Best Interests Procedure

BIP SOPs, also called Child Protection Case Management SOPs,<sup>54</sup> which incorporate BID process, are a set of written instructions that aim to guide actions and ensure that guiding principles, approaches and best practice are upheld when responding to the protection needs of individual children at risk. They are developed and agreed upon by actors providing direct and indirect child protection case management services in a specific geographical area. SOPs also help ensure the transparency of the process and promote efficiency and accountability.<sup>55</sup> SOPs should define roles, responsibilities and relationships between the different people involved in BIP and how to handle different types of child protection cases and they should reflect the relevant existing national legislation, procedures and available services where they are accessible and appropriate to refugee children. They should give details of the process involved in each step of BIP, the service mapping and referral pathways (see TEXTBOX on Identification of services and referral pathways, below), intake and prioritization criteria, the method and process for working with children and the system for managing information.

BIP SOPs should be established at country level to ensure streamlined and efficient BIP processes across field locations, considering the national context and operational realities, while respecting these BIP Guidelines. Building on the national BIP SOPs, field offices may wish to develop contextualized SOPs to ensure ease of use and applicability locally or use national SOPs and develop local referral pathways and service mapping. SOPs for BIP should not be established in isolation; instead, they should be part of a comprehensive child protection programme and refugee case management system. Procedures for BID must therefore be integrated into broader BIP or child protection case management SOPs.<sup>56</sup>

The first step of the process of establishing SOPs for BIP is to review the existing child protection case management and other SOPs (e.g. refugee registration, RSD, durable solutions), where applicable, to determine the extent to which children's best interests are adequately incorporated. Where inter-agency child protection case management SOPs and/or SOPs used by the national child protection systems already exist and are applicable to the context and area in question, these should be reviewed and updated to ensure that the specific issues relating to BIP for refugee children are outlined – either in the revised national procedures or in an Annex outlining the specificities related to refugee children. Where they don't exist, SOPs should be developed.

BIP SOPs should be developed, or existing SOPs should be revised, as part of a participative process with relevant actors, in particular national and local child protection authorities, and other child protection actors engaged in the implementation of BIP and provision of services. It also involves mapping or re-mapping services, those responsible for providing such services, and focal points for referrals, which are then clearly articulated in context-specific referral pathways.

Communities and children should also be consulted in the development of any SOPs, particularly in processes that will directly affect their well-being (e.g. assistance, feedback), as well as where they will play an active role (e.g. identification). Depending on the context, these community consultations may be held via representatives of community-based protection mechanisms - or separately in focus group discussions with different segments of the population.

<sup>54</sup> While these Guidelines refer to BIP SOPs, these are often referred to as Child Protection SOPs or Child Protection Case Management SOPs in the field. National systems may refer to SOPs by different names but can include elements that are part of SOPs.

<sup>55</sup> The BIP SOPs Toolkit is available in the BIP Toolbox: [www.unhcr.org/handbooks/biptoolbox](http://www.unhcr.org/handbooks/biptoolbox)

<sup>56</sup> Section 5 of the SOP Template in the UNHCR BIP SOP Toolkit focuses specifically on procedures for BID.

Given that BIP is used primarily in contexts where UNHCR is accountable for child protection, in refugee settings UNHCR should lead or co-lead the process of developing the BIP SOPs or updating the existing child protection case management SOPs, in coordination with other partners. In mixed settings or in mixed movements – that is where refugee and IDPs are present or where refugees and migrants are present – UNHCR will be responsible for articulating the procedures for managing refugee child protection cases in line with these guidelines. This can be done either within broader child protection case management SOPs or in specific BIP SOPs, depending on the context. Once the content is agreed and the SOPs are finalized, representatives of each organization may sign the document to indicate their commitment to adhere to the procedures therein.

Responsibility for disseminating the BIP SOPs and training relevant actors on the use of the SOPs, should be divided between participating actors. The SOPs should be translated into relevant languages as required. Furthermore, SOPs should be regularly reviewed (at least once a year) with engagement of child protection partners, authorities and UNICEF.

### Identification of services and referral pathways

A multi-agency approach to establishing and implementing BIP requires an inter-agency referral pathway. The referral pathway should be based on an understanding of the structure and capacity of the national child protection system (see [Section 2.2: Best Interest Procedure and child protection systems](#)), as well as local structures and organizations. A good way to develop a referral pathway is to begin with detailed actor/resource mapping<sup>57</sup> to identify key actors, types of services, and levels of expertise for children’s protection within the operational area. This should include the identification of independent experts in the community who are willing and able to participate in implementing BIP. The mapping exercise should also explore the gaps in the services and capacity among key actors.

57 The BIP SOPs Toolkit is available in the BIP Toolbox: [www.unhcr.org/handbooks/biptoolbox](http://www.unhcr.org/handbooks/biptoolbox)

### CHECKLIST: Is a Revision of the Special Operating Procedures Required

The following questions should be answered during the review process. If the answer to any of the questions is ‘yes’, then a revision process should be initiated.

- Are the SOPs not reaching stated objectives?
- Have there been any changes to the operational environment since the SOPs were last reviewed, which significantly impact child protection?
- Have there been increase or decrease in the number or nature of service providers in the area of operation?
- Have any of the service providers adopted a different strategy/approach that impacts service provision?
- Have any of the procedures proven unworkable in the current context?





### 3.4.3 Staffing and resourcing for the Best Interests Procedure

Implementing BIP in large operations with a high proportion of children at risk can require significant resources, especially in areas where government or civil society capacity is limited. However, UNHCR is rarely solely responsible for resourcing BIP, even where it leads the child protection coordination mechanism. Other actors, including government, other UN organizations and national and international organizations also seek and commit resources to the operationalization of BIP. UNHCR should always seek to build on the capacity of other actors and to work in a complementary manner, including in resource mobilization and allocation – see [Section 2.2: Best Interest Procedure and child protection systems](#).

#### CASE STUDY: **Cross border coordination for the Best Interests Procedure**

The Regional Safe Spaces Network is an inter-agency coordination mechanism that was established in the Americas Region in 2016<sup>58</sup>. In consultation with partners and communities, the Network focuses on improving access to services for children at risk, as well as other groups with protection needs, across and between countries. The Network has developed common standards and tools to promote cross-border coordination in the region. In 2019, more than 100 organizations were providing services in 14 different countries.

The Network has an online service and referral map that is complemented by national and local referral pathways. The organizations that are included receive cases from other Network members who have conducted BIA. BID are usually conducted by government institutions, which are also part of the network in some cases.

58 UNHCR, *Regional Safe Spaces Network: Lessons learned and toolkit* (2019), available at: <https://www.acnur.org/5c05b97d4.pdf>

## Estimating caseloads

Staffing is the primary resource required for BIP. For UNHCR specifically, even where UNHCR is not responsible for most of the day-to-day casework for BIP, human resources are needed for coordination of and capacity building on BIP. **The *Minimum Standards for Child Protection in Humanitarian Action* recommends a 1:5-6 supervisor: caseworker ratio, and a caseworker: active case ratio of no more than 1:25.**<sup>59</sup> In order to estimate a caseload, operations should first estimate the average length of time for a case to be closed or moved to less intensive support. For example, if an average child protection case can be closed or moved to less intensive support after approximately three months, with more complex cases taking longer, operations should plan for one caseworker to manage around 75 cases per year. However, this figure will vary significantly depending on the context; for example, if caseworkers have additional responsibilities within child protection programming, have to travel long distances or are dealing with mostly complex cases they will have less capacity and process fewer cases per year. Where some case management functions are carried out by other service providers (e.g. follow-up by psychosocial workers), complex cases are led by partners with specialized competencies; where cases are primarily more straightforward, caseworkers may have capacity to deal with more cases per year. Community volunteers can also supplement caseworkers, for example by conducting BIA and follow-up for lower risk cases.

Strategies to increase BIP capacity include:

- Increasing staffing for units or partners managing cases
- training existing organizations that have staff with capacity to conduct BIP
- analysing and adjusting the staff to case worker ratio across organizations and locations to ensure equitable caseloads
- investing in other services that may prevent or better respond to the needs of children at risk (for instance, parenting programmes to reduce violence against children, or drug and alcohol treatment programmes)
- conducting initial, shortened BIA to determine which children need comprehensive assessment and BIP and which ones can simply be referred to services
- revising the intake criteria for children who require BIP (see [Section 3.2.2: Identification](#))

59 The Alliance for Child Protection in Humanitarian Action, *Minimum Standards for Child Protection in Humanitarian Action*, 2019, Standard 15, available at: [https://alliancecpha.org/en/CPMS\\_home](https://alliancecpha.org/en/CPMS_home) (CPMS).





TABLE 9: Recommended roles for staff working on the Best Interests Procedure

Position	Responsibilities	UNHCR/ Partner
<b>Senior Protection Officer (or most senior protection staff member in UNHCR)</b>	Accountable for the implementation and oversight of BIP as a whole.  Appoints the BID Supervisor.	UNHCR
<b>BID Supervisor*</b>	Responsible for the implementation and oversight of the BID process.	UNHCR
<b>BID Coordinator (optional – in large operations) *</b>	In larger operations, coordinates the BID process in certain locations or for certain partners.	UNHCR or Partner
<b>BID Reviewer (optional – in large operations) *</b>	Reviews BID cases for submission to the BID Supervisor.	UNHCR or Partner
<b>Child Protection and/or Case Supervisor (optional – in large operations)</b>	Coordinates case managers and oversees caseload for BIP at a national or camp/local level.	UNHCR or Partner
<b>Case Manager</b>	Supervises 5-6 caseworkers and reviews cases, ensuring the prioritization of cases and the quality of work.	UNHCR or Partner
<b>Caseworker*</b>	Identifies children at risk, conducts BIA and BID, develops action plans with children and families, follows up on cases, recommends cases for closure.	UNHCR or Partner

*NB: all of the above positions can either be standalone or combined with other roles and responsibilities within a protection or child protection programme.*

*\* For more information on the specific terms of reference and BID-related responsibilities of these roles, please see Section 5.1: Roles and Responsibilities for Best Interests Determination Process.*



## Planning, developing and supporting child protection caseworkers

Caseworkers are responsible for all steps of BIP: from case assessment, to planning, follow-up and closure. Efforts must be made to “plan, develop and support” caseworkers in this process.<sup>60</sup> This includes (i) recruiting caseworkers with relevant competencies and skills (ii) providing training and mentoring, for example on working with children, skills in communicating with children, and case management, and (iii) supporting caseworkers whilst they deliver their work.

In planning for and recruiting caseworkers, the Inter Agency Case Management Guidelines describe the various caseworker skills in four competency categories:<sup>61</sup>

- **Personal competencies:** know and question yourself, manage stress, be flexible to change and cultural difference, analytical, critical and creative thinking, and have integrity.
- **Social competencies:** negotiate and manage conflict, work within a team, show genuine empathy, support and motivate others, and communicate and listen to others.
- **Methodological competencies:** promote participation and coordination in case management, and plan, implement and review the intervention.
- **Technical competencies:** know the theoretical framework and know the tools and processes for case management.

Minimum requirements for UNHCR and partner BIP case workers are articulated in TORs for case workers<sup>62</sup> and include:

- Good knowledge of child protection, including experience in working with children/child welfare, especially in refugee settings
- A good understanding of refugee protection, including prevention and response to sexual and gender-based violence and refugee protection case management
- Good knowledge of community-based protection, including understanding of the community’s role, structure and practices, including the community’s social, cultural and gender norms within the operation
- Knowledge of the national child protection systems, including roles of different actors, and processes for protection of children
- Excellent skills in communicating with children, and advocating on behalf of children
- Good analytical and report writing skills

60 For more information, see the *Framework for Strengthening the Social Service Workforce*, <http://www.socialserviceworkforce.org/framework-strengthening-social-service-workforce>

61 For more information on the roles and responsibilities and necessary competencies of caseworkers and caseworker supervisors, please see Interagency Case Management Guidelines, p. 41-44 and Appendices 1 and 2. For further guidance, also see the Alliance for the Protection of Children in Humanitarian Action, *Child Protection in Humanitarian Action Competency Framework*, which is included in the BIP Toolbox, accessible at: [www.unhcr.org/handbooks/biptoolbox](http://www.unhcr.org/handbooks/biptoolbox)

62 Terms of References are available in the BIP Toolbox: [www.unhcr.org/handbooks/biptoolbox/terms-of-references.html](http://www.unhcr.org/handbooks/biptoolbox/terms-of-references.html)



Where additional national standards and accreditation procedures exist for staff to work with specific types of child protection cases, UNHCR and partners should aim to recruit staff who meet these national standards as well as select based on the above criteria wherever feasible and/or refer these cases to partners with staff with appropriate qualifications.

Developing caseworkers' skills—and providing training and capacity building—are important considerations for planning and resourcing. While varying levels of knowledge and expertise will be available among the actors, it is crucial that relevant training on BIP is provided for caseworkers, case supervisors and BID Panel members in order to ensure quality and consistency in the process. The BID Supervisor, in consultation with the case supervisors and case managers from partners, should review training needs and organize refresher sessions.

Supporting caseworkers in their work involves establishing policies, systems and practice for staff inductions, orientation, supervision, mentoring, job satisfaction and retention.<sup>63</sup>

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63 For more information on supervision, see the *Framework for Strengthening the Social Service Workforce*, <http://www.socialserviceworkforce.org/framework-strengthening-social-service-workforce> and Interagency Case Management Guidelines, p. 41-44 and Appendices 1 and 2.

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## CASE STUDY: Recruiting different caseworkers in Uganda

UNHCR and partners in Uganda deploy two types of caseworkers. One group of case workers is employed by a partner and are responsible for case management for children at risk.<sup>64</sup> These caseworkers are recruited from the host community (Ugandan nationals) and are trained by the partner. Partners train newly recruited case workers on the Inter-Agency Guidelines for Case Management and Child Protection before deployment. UNHCR Child Protection focal points and Child Protection Officers from the partners continue to provide on-the-job training for case workers.

The second group of case workers is made up of UNHCR staff who are recruited and trained specifically to handle child protection cases requiring the formal BID process. These staff receive supervision and guidance from experts with years of experience in handling complex cases and managing the BID process.

UNHCR and partner caseworkers receive training on child protection case management that is based on the UNHCR Guidelines on Assessing and Determining the Best Interests of the Child<sup>65</sup>. In 2018, UNHCR conducted a series of Training of Trainer courses. Those trained, including UNHCR and partner staff from Uganda, have since conducted a series of training for the case management staff in the field. Their work is organized and managed through implementation of the Inter-Agency SOPs for implementing BIP for children at risk (i.e. Child Protection Case Management SOPs) which have been endorsed by the national agency responsible for child protection (Ministry of Gender, Labour and Social Development)<sup>66</sup>.

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64 The term Children at Risk is defined in the UNHCR Executive Committee Conclusion on Children at Risk, No. 107 of 2007, available at: <https://www.unhcr.org/excom/exconc/4717625c2/conclusion-children-risk.html>

65 UNHCR Guidelines on Assessing and Determining the Best Interests of the Child (Provisional Release), November 2018.

66 The inter-agency Child Protection Sub-Working Group in Uganda is co-chaired by UNHCR and UNICEF.

## Involving community-level caseworkers

Many organizations also work with community volunteer caseworkers to provide individualized support and follow-up to children receiving BIP support. Community-level caseworkers must be recruited with care, and they should be trained prior to being entrusted responsibilities as part of BIP. It is also crucial that operations clearly define and articulate which cases should/should not be handled by such community-level caseworkers. Decisions regarding which types of cases may be handled by community-level caseworkers should be determined at operational level using case sensitivity criteria (sample criteria are included in the [BIP Toolbox](#)). This recognizes that some cases will require a high degree of expertise and/or confidentiality or might pose a risk to the community-level caseworker. Case sensitivity criteria should serve as guidance only and the decision to delegate responsibility for each case to a community-level caseworker must be made on a case-by-case basis, with due consideration of the child's and the family's views.

## Other resources

UNHCR operations leading or supporting BIP should also consider budget allocation for office infrastructure (e.g. establishment of confidential, child-friendly interviewing spaces), filing and stationary materials, communication costs, and cash for one-off disbursements or purchases for children as required (if not provided in another programme area). For more information on resourcing in general, see the Inter-agency Case Management Guidelines.<sup>67</sup>

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<sup>67</sup> Interagency Case Management Guidelines, p.33-34.

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## CASE STUDY: Coordinating 'layered' recruitment with a cross-section of partners in the Middle East and North Africa Region

Given the large number of children at risk in the Middle East and North Africa (MENA) region and particularly in the countries bordering Syria, UNHCR, together with International Medical Corps (IMC), Save the Children, Step, and with the active engagement of the International Red Cross, developed the Community Support Volunteers for Unaccompanied and Separated Children (UASC) Toolkit<sup>68</sup>. The Toolkit includes guidance, tools (forms and checklists), and a training package for identifying, training and deploying community volunteers to serve as an extension of case workers and mentors for unaccompanied and separated children in the region.

When using and contextualizing this Toolkit, UNHCR and its partners use the identification checklist, profiling tool and reference check tool to identify members of the community who are suited to the role of community volunteer/mentor. Community volunteers/mentors are trained using the training package in the toolkit, which introduces them to the key concepts and approaches to child protection and referral pathways. Once trained, the child protection organization utilises the UASC/Community Support Volunteer matching tool to match the child to a volunteer, ensuring that the most suitable individual is assigned to support and mentor each child. The Risk Categorization Criteria tool is also used as an essential part of the matching process.

The Community Support Volunteer reports to the case worker by means of the Monthly Reporting Tool and through the periodic supervisor-Community Support Volunteer review meetings. The child's case worker also conducts regular home visits based on the child's case plan.

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<sup>68</sup> Community Support Volunteers for UASC Toolkit, available in the BIP Toolbox at: [www.unhcr.org/handbooks/biptoolbox](http://www.unhcr.org/handbooks/biptoolbox)

### 3.4.4. Monitoring to ensure the quality of the Best Interests Procedure

Implementation of BIP should be regularly monitored in order to ensure that this component of the child protection programme is providing children at heightened risk with an appropriate and timely response. One part of this monitoring process is for UNHCR and partners to regularly review the trends of child protection issues facing children and quality and scale of responses. Through inter-agency coordination, partners implementing BIP should review the extent to which the BIP/case management response meets the inter-agency agreed standards and the standards set out in these Guidelines and is able to address the scale of the needs. UNHCR also needs to specifically monitor the quality and implementation of BIP by funded partners.

In the context of UNHCR quality assurance monitoring of funded partners implementing BIP, UNHCR staff may use several methods, including conducting assessments, monitoring quality and performance indicators, and conducting case file audits. These approaches can also be used for inter-agency quality monitoring, depending on the agreement of those participating. Usually, in inter-agency contexts, the approach for collective and cooperative monitoring would be for each agency to self-assess and report or for there to be an organized peer-review process. However, UNHCR would not specifically monitor non-funded partners outside agreed inter-agency processes.

#### Quality assessments

Joint quality assessments with partners can be a collaborative and effective way to conduct monitoring. The Child Protection Humanitarian Alliance (CPHA) has developed a quality assessment framework (QAF) to assess how “a particular case management system operates and functions”.<sup>69</sup> QAF can be used in complement to the procedural safeguards setting standards and maintaining the integrity of the BIP, whilst the QAF can assess the quality and the extent to which they are being upheld. The CPHA quality assessment framework focuses on eight core dimensions and can be adapted to a particular context. If working with a funded partner, UNHCR staff should organise a joint assessment employing various methodologies for verification including discussions with partner staff, observation of daily activities (including interviews and other case management processes as appropriate), case file reviews (see below), and review of data. If working in an inter-agency coordination environment, agencies may opt to self-assess, to nominate an inter-agency assessment team, or to carry out peer-to-peer assessments.

#### Monitoring quality and performance indicators

The CPHA has a set of case management minimum indicators<sup>70</sup> (adapted here for BIP) which can be used to evaluate and measure the quality of BIP systems and procedures (QAF point 8).

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69 CPHA webpage on Quality Assessment Framework and Case Management Minimum Indicators, <https://casemanagement.alliancecpha.org/en/monitoring-evaluating-quality-case-management>

70 CPHA webpage on Quality Assessment Framework and Case Management Minimum Indicators, <https://casemanagement.alliancecpha.org/en/monitoring-evaluating-quality-case-management>

TABLE 10:

Indicators	Target	Notes
% of caseworkers trained and supervised in BIP who demonstrate improvement in knowledge and competence in applying BIP	80%	Caseworker Capacity Assessment Tool in the Caseworker Coaching and Supervision Package;  BIP Guidelines Caseworker Training Package  <i>Only caseworkers who are trained and supervised should be included in this measure</i>
% of children and caregivers who report satisfaction with direct services received and the response actions undertaken through BIP to address their needs/risks	90%	Measure % of children and caregivers separately
% of children and caregivers who report an increase in their well-being as a result of their urgent child protection (CP) needs/risks being addressed through BIP	90%	<i>Measure % of children and caregivers separately</i>
% of unaccompanied and separated children (UASC) and children at risk for whom a best interests procedure has been initiated or completed	100%	Disaggregate UASC and other children at risk
# and % of appropriate referrals of children to BIP services that are made by community members in target locations	80%	'appropriate' means that the needs of the child and/or caregiver are aligned with the services to which they are referred
# and % of appropriate referrals of children made by BIP staff to other sectors	80%	'appropriate' means that the needs of the child and/or caregiver are aligned with the services to which they are referred

Note that additional performance indicators can also be monitored per caseworker as well as per partner. Some common performance indicators are:

- Percentage of CP cases with BIA completed
- Percentage of CP cases with BIA completed that have at least one follow up completed
- Percentage of CP cases with BIA completed that have at least one intervention or referral
- Average number of cumulative days from BIA completed to at least one intervention or referral completed
- Percentage of CP cases closed because of 'positive reasons' (durable solution, no further protection concerns)
- Average number of cumulative days between case open and BIA completed
- Average number of cumulative days between case open and case closed
- Average number of cumulative days from BID open to BID panel decision date
- Percentage of BID reopened



## Case file audits

Case file audits are a valuable and important part of monitoring the quality of BIP, since they allow for discussion not only of documentation, but also of the actions taken in individual cases. If UNHCR is going to conduct case file audits of partners, this should be agreed in advance with the partner. To conduct case file audits, UNHCR staff who are responsible for child protection and BIP in a particular location will need to have access to non-identifiable information from electronic and paper case files in order to review the processes and documentation. In order for monitoring to be effective, it is important that UNHCR be able to select the files to be reviewed at random and that representatives of the funded partner be available to talk to UNHCR staff members during this process. The objective of this monitoring is for UNHCR and the funded partner to develop a common understanding of the process, the challenges and the successes of implementation of BIP and jointly identify strategies and approaches to address key challenges. In their review, UNHCR and funded partners should use these BIP guidelines and agreed in-country standards and SOPs as quality standards and adhere to the principles of confidentiality.

The exact modalities for case file audits should be agreed in-country between UNHCR and the funded partner, using the tips below as a guide.

- Partners should be informed in advance of any proposed monitoring visit or establish mutually agreed schedules for quality assurance monitoring visits
- In advance of the monitoring visit, the partner should share a complete list of its case identification numbers with UNHCR, including the type of protection risks for each case. UNHCR will, in turn, share a random set of case numbers covering the different types of cases, enabling the partners to redact identifiable information from files selected at random for review
- The redacted case files should be reviewed in the presence of the case workers and case managers. UNHCR staff shall not take any copies or photographs of the files
- At the end of the visit, discuss specific challenges and identify ways to enhance the quality of BIP. This discussion should be documented and shared with both UNHCR and its partners



## 3.5 INFORMATION MANAGEMENT FOR THE BEST INTERESTS PROCEDURE

### Section Summary

Why:

- Safe and ethical collection, storage, sharing and analysis of information on children during the Best Interests Procedure can enhance the response for individual children as well as child protection programming more broadly. However, the risks associated with information management for BIP must be identified and mitigated for each operation.
- Collecting accurate and comprehensive data on the child’s situation, views and relevant options is essential to a quality BIP.
- Collecting aggregate information about trends in identification and response of children for BIP, and protection risks for children gathered through BIP, informs broad child protection programmes as well as specific approaches to BIP.

How:

- In the case of children, consent should generally be obtained from the child’s parent or guardian, as well as consent or assent from the child according to their age and maturity. Consent from parents or caregivers is not necessary where it is not in the best interests of the child to share information with the child’s parents or caregivers or where parents or caregivers are not reachable.
- For each child in BIP, all information should be stored in one file. Files should be stored securely and be kept confidential. In some operations, this may mean storing files containing BIP documentation separately from the child’s overall individual UNHCR case file.
- ProGres is UNHCR’s institutional tool for protection case management. Where proGres is in use, essential information relating to BIP should be kept up to date in proGres. Where partners use other information management systems, UNHCR should work with these partners to establish information sharing protocols (ISPs) or Data Sharing Agreements that define what data should be shared with UNHCR, when and how.
- Information sharing on a “need-to-know” basis in the best interests of the child should be encouraged and facilitated. It is a good practice for UNHCR and partners to develop inter-agency information sharing protocols and/or agreements to ensure that BIP-related information flows regularly, safely and ethically.
- UNHCR and partners should dedicate sufficient time and resources to data analysis for BIP that will lead to concrete action that will benefit children and their communities.

### 3.5.1 Data protection

BIP involves processing the personal data, including highly sensitive personal information, of children and often that of parents, relatives or other caregivers as well. Consequently, UNHCR staff and funded partners need to respect the provisions of UNHCR’s Policy on the Protection of Personal Data of

Persons of Concern ([Data Protection Policy](#)).<sup>71</sup> Funded partners who are part of such procedures are bound by the UNHCR Project Partnership Agreement's general provisions on data protection in conjunction with the Annex on the Processing and Protection of Personal Data of POCs, which should ensure that a partner respects and implements the same or comparable standards and basic principles of personal data protection as contained in UNHCR's Policy. Where operational partners are involved in BIP, UNHCR and partners need to establish a Data Sharing Agreement.

The eight principles of the Data Protection Policy and their relevance to BIP and how to apply them and comply with them are described below. They should be read together with the Data Protection Policy and Guidelines:

- **Legitimate and fair processing:** the processing of children's personal data for BIP purposes will usually be based on para. 2.2 (ii) of the Data Protection Policy, which establishes the "vital or best interests of the data subject" as a legitimate basis for data processing. This essentially allows UNHCR to conduct BIP in the absence of consent from a parent or legal representative, where necessary. However, this does not mean that there is no need to seek assent from the child or the consent of parents or caregivers where they are present and it is safe and in the child's best interests to do so.
- **Purpose specification:** there should always be a specific and legitimate purpose for the processing of personal data. Within the context of BIP, personal data should only be collected if this is necessary in order to assess and determine the best interests of the child or provide associated services. Generally, the fact that BIP is being conducted to assess the protection issues experienced by children at heightened risk and to address these protection risks including providing necessary and timely assistance, including specific instances in which as BID is carried out, in itself sufficiently specific and legitimate in order to meet the purpose specification principle.
- **Necessity and proportionality:** since BIP, and in particular BID, tends to involve decisions that will have a greater impact on a child, interviews and documentation will normally be extensive. The necessity and proportionality principle means that the information shared should be necessary and proportional to the purpose for which it is collected; information that is not relevant for BIP or which cannot be used or acted upon should not be collected. Note, however, that the principle of necessity and proportionality should not be misinterpreted so as to limit or unduly restrict UNHCR or other partners legitimate grounds for obtaining a comprehensive view of a child's situation when needed to provide case management services in the context of BIP, or to take a decision in the context of BID.
- **Accuracy:** information should always be recorded accurately and kept as up to date as possible, ensuring that the child's own views and actual situation are recorded objectively, as well as the assessments of the caseworker.
- **Respect for the child's rights as a data subject:** the child and/or their parent or caregiver have the right to information about the use of their personal data and their other rights as data subjects (see para. 3.1 of the Data Protection Policy). Other rights include the right to access their data, to request its correction or deletion and to object to data processing. Whether and how access can be granted or a request for correction be accepted depends on the specific situation in each individual case. The Data Protection Policy contains provisions regarding the procedures for submitting requests and for restricting the individual data subject's rights. In the case of BID documents, the BID Supervisor is responsible for determining access. Last but not least, the child

<sup>71</sup> UNHCR, *Policy on the Protection of Personal Data of Persons of Concern to UNHCR*, May 2015, available at: <http://www.refworld.org/docid/55643c1d4.html> (Data Protection Policy).



and/or their parent or caregiver have the right to information about how to lodge a complaint about the processing of their personal data with the data controller concerned and with the Inspector General's Office.

- **Confidentiality:** confidentiality is one of the key data protection principles. Personal data should in principle remain confidential and not accessible to those who are not authorized to have access. UNHCR and partners should operate on a “need-to-know” basis – such that sensitive information is only shared with those who require the information in order to provide protection and assistance to the child. In the case of BIP, the people involved are usually authorized to do so by their respective organizations and identified in BIP SOPs. In practice, this means that access to BIP files should be limited to staff who are directly working on cases or overseeing those working on cases, who should have access as identified and agreed upon in SOPs and Information Sharing Protocols (ISPs).
- **Security:** appropriate measures should always be put in place to ensure the confidentiality and integrity of BIP data. In practice, this means storing physical files in locked cabinets, avoiding sharing identifiable information (i.e., including the child's and their families/caregivers' names, address and any other information that can lead to the child's identify being revealed) by email and using safe, secure electronic databases. In case of doubt, consult with Information & Communications Technology (ICT) staff in the operation.
- **Accountability and supervision:** UNHCR Data Protection Policy introduced the notion of a Data Controller who is responsible for establishing and overseeing the processing of personal data in her or his area of responsibility (para. 7.2). Usually, such authority rests with the UNHCR Representative, unless it is delegated. Senior protection staff (often a Senior Protection Officer) would normally assume the function of Data Protection Focal Point (DPFP) and may also be responsible for BIP. Where this is not the case, the staff member designated to be responsible for BIP should consult and involve the DPFP in data protection matters and ensure overall approval by the Data Controller. The BID Supervisor, if different, will support specifically on BID documentation.





## Principle of Confidentiality

“Confidentiality is linked to sharing information on a need-to-know basis. The term “need-to-know” describes the limiting of information that is considered sensitive and sharing it only with those individuals who require the information in order to protect the child. Any sensitive and identifying information collected on children should only be shared on a need-to-know basis with as few individuals as possible [...]. For agencies and caseworkers involved in case management, it means collecting, keeping, sharing and storing information on individual cases in a safe way and according to agreed-upon data protection policies. Workers should not reveal children’s names or any identifying information to anyone not directly involved in the care of the child. This means taking special care in securing case files and documents and avoiding informal conversations with colleagues who may be naturally curious and interested in the work. Importantly, confidentiality is limited when caseworkers identify safety concerns and need to reach out to other service providers for assistance (e.g. health care workers), or where they are required by law to report crimes. These limits must be explained to children and parents during the informed consent or assent processes. Supervisors and caseworkers should work together closely to take decisions in such cases where confidentiality needs to be broken.”

Source: *Inter Agency Guidelines for Case Management*<sup>72</sup>

72 Inter-Agency Guidelines for Case Management and Child Protection (2014), available at: [http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM\\_guidelines\\_ENG\\_.pdf](http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM_guidelines_ENG_.pdf)

### 3.5.2 Verifying existing information on the child

Collecting information for BIP should begin as soon as a child at risk is identified. The individual case file established at the outset will provide a useful starting point for the BIP, in particular if it reveals the child’s exposure to violence.

Findings need to be factual and based on reliable information as they will determine the outcome of the BIP. If information is incomplete or contradictory, 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.

At the beginning of the BIP (or at any point throughout) the caseworker should be given access to relevant information contained in individual files kept by UNHCR, implementing partners and NGOs, if they contain information that is relevant to assessing and determining the best interests of the child. Verifying this information is important to avoid subjecting the child to repeated interviews, especially in cases involving distressing events.

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 BIP process, in particular if it reveals exposure to violence or level of maturity. The individual case file established during registration will provide a useful starting point for the BIP process – in general relevant information collected through refugee registration should be accessible to the BIP case worker, where the information is relevant and necessary for the BIP.

In the case of BID, should the caseworker 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), they must seek the advice of their supervisor. The latter should normally authorize (or contact the authorising person within UNHCR or the relevant partner for authorization of) sharing the level of information required for an informed decision, minimizing any risk to the child and their family.

### 3.5.3 Collecting information for the Best Interests Procedure

#### Collecting information on individual children

Collecting accurate and comprehensive data on the child's situation, views and relevant options for care is essential to a quality BIP. Examples of ways to collect information include:

- Verification of existing documents providing information on the child
- Interviews with the child (see [Section 3.3: Participation of children and families in the Best Interests Procedure](#))
- Observations of the child's situation and home environment
- Interviews with persons within the child's network including, parents and caregivers (see [Section 3.3: Participation of children and families in the Best Interests Procedure](#))
- Interviews with extended family and siblings, friends, neighbours, teachers, community leaders and other social service workforce professionals
- Background information on conditions in the geographical locations under consideration and other external sources
- The views of experts, as appropriate

In some cases, it may be useful or necessary to seek expert medical and psychosocial views, particularly in assessing children who are showing signs of mental distress and those with mental or physical disabilities. In the absence of local expertise, access to the services of experts located in the capitals or elsewhere may be arranged.

In addition, standardization of the way that caseworkers for all actors involved in BIP are capturing and categorizing the information they collect is at the core of ensuring effective BIP in any operation. As much as possible, caseworkers should enter information in standardized forms, with standardized processes for determining values such as priority, vulnerability and risks affecting the child (see [Section 3.2.2: Identification](#)). Without a minimum level of standardization, information cannot be compiled and compared in order to ensure a broad situation overview, making it difficult to measure the efficiency and effectiveness of BIP in responding to the needs of children of concern.

#### Collecting background information for the Best Interests Procedure

Collecting information about trends in identification and processing of children for BIP, and background information related to protection risks for children gathered during BIP informs broad child protection programmes as well as specific approaches to BIP. Having current and reliable background information is important for effective BIP design and operationalization and requires only aggregate information. Information from external sources may be obtained and verified through

independent research. Depending on the circumstances, such information, gathered from public and internal sources, might include:

- the protection situation in the various geographical locations and risks to the child's safety, including potential international protection needs, different types of violence, abuse and exploitation as well as harmful traditional practices or negative coping mechanisms
- discrimination patterns against girls, children with disabilities, or children from minority ethnic, religious, economic or social groups in the various geographical locations
- feasibility of ensuring continuity in the child's upbringing and maintaining links with her or his own ethnic, religious, cultural and linguistic background
- availability and quality of health services in the various locations, with particular attention to any specific medical and psycho-social needs the child might have as a result of or associated with disabilities, HIV/AIDS, domestic violence, other forms of sexual and gender-based violence, etc.
- 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 community networks and supports for children, both before flight as well as in exile, and the resources available for such support, including opportunities for social integration into the community, and capacities to care for and protect children, particularly those with specific needs

### 3.5.4 Storing information

Information for BIP should be stored in the child's file. A file should be established for each child with originals or copies of all relevant information and documents, even where these are linked (e.g. for siblings). Note that all physical and digital BIP files are considered to be part of the child's individual case file and are therefore permanent records<sup>73</sup>.

For physical files, depending on the size of the operation and the number of people who have access, it may be necessary to create a separate physical BIP file for the child and to store this separately from the overall individual case file containing registration information. In this case, a note can be inserted in the individual case file to indicate that a BIP file has been opened. In smaller operations, however, where only relevant protection staff have access to the file and/or where access is controlled through a regulated and recorded request system, the BIP file can be stored directly in the individual case file. Where an operation or partner uses proGres,<sup>74</sup> all essential information as to the status of the case and minimum details of BIAs, BIDs, incidents, and information should be entered and kept up to date in the system; where a partner uses another information management system such as CPIMS+, key information should be entered into that information management system and the core information shared with UNHCR to ensure that proGres is up to date (see [Section 3.5.5: Sharing Information](#) below).<sup>75</sup>

73 UNHCR, *Policy on the Management of UNHCR Records and Archives*, January 2018, available at: [https://intranet.unhcr.org/content/dam/unhcr/intranet/policy-guidance/policies/2017/unhcr\\_hcp\\_2017\\_4/UNHCR\\_HCP\\_2017\\_4\\_Policy%20on%20Management%20of%20Records%20and%20Archives.pdf](https://intranet.unhcr.org/content/dam/unhcr/intranet/policy-guidance/policies/2017/unhcr_hcp_2017_4/UNHCR_HCP_2017_4_Policy%20on%20Management%20of%20Records%20and%20Archives.pdf) (Records and Archives Policy), Annex B.

74 UNHCR Profile Global Registration System (proGres) database is the organization's institutional tool for identity management and protection case management.

75 For more detailed guidance, please see proGres Version 4 User Guide for Child Protection. Note that the use of proGres is not mandatory for partners, but UNHCR has an obligation to ensure that key information is updated in the system.

Once information has been collected, it is vital to ensure and implement a high level of data security, particularly given the extremely sensitive nature of child protection and GBV-related information. All staff working on BIP must be made aware of the risks of this type of information being accessed by unauthorized persons and the potential severe consequences of this for the child.

When a BIP case is closed, records should be archived by the operation in accordance with the archiving policy for permanent records (please see the UNHCR Policy on the Management of UNHCR Records and Archives).<sup>76</sup> When the child's individual case file is also archived it is essential that the BIP file (e.g. completed BIAs, BIDs and reasons for closure) is included in the file. Where BIP files are maintained by partners, they should be submitted to UNHCR for archiving either within an agreed time frame after the closure of a case, or when a partner leaves an operation or there is a change in partners implementing BIP. This requirement should be articulated in the Annex on the 'Processing and Protection of Personal Data of Persons of Concern' to a Project Partnership Agreement<sup>77</sup>. In accordance with the principle of data minimization, a file for archiving may be reduced to include only essential information pertaining to the case and the BIP process.

The data subject, usually the child or a person who was supported with BIP while they were a child and has since transitioned to adulthood – an individual whose personal data is subject to processing, i.e. a person who's personal data was collected and processed as part of BIP – may object to data retention and may request deletion of data. Requests are to be submitted orally or in writing to the UNHCR office in the country where the data is being processed. Before complying with any request or objection, UNHCR should satisfy itself of the identity of the person making the request or objection. The individual is required to identify him or herself in an appropriate manner. In the case of a legal representative or legal guardian, proof of such legal authority needs to be supplied. Requests and objections from parents or guardians for children should be evaluated against the best interests of the child<sup>78</sup>.

### 3.5.5 Sharing information

#### Sharing aggregate information

UNHCR and partners should regularly share aggregate data about trends in the identification and processing of children for BIP and information relating to protection risks for children gathered through BIP. Sharing aggregate data from BIP creates a space and opportunity for joint analysis, which is crucial to ensuring strong, effective and prioritized BIP and service provision for children at risk. Sharing aggregate, non-identifiable information can be done at regular meetings and should be governed by an information-sharing agreement or protocol.<sup>79</sup> It should be recalled that there are dangers and protection risks in sharing even aggregate, non-identifiable information, including profiling of particular group or discrimination, and therefore a risk analysis should be conducted and appropriate information security measures put in place before commencing any sharing. This joint process of information sharing and analysis should help all partners to improve their BIP and child protection programmes.

<sup>76</sup> UNHCR, Records and Archives Policy.

<sup>77</sup> For more information, please see FAQs on Annex F and model template, available at: <https://intranet.unhcr.org/en/protection-programme/data-protection.html> (intranet).

<sup>78</sup> UNHCR Policy on the Protection of Personal Data of Persons of Concern to UNHCR, available at: <https://www.refworld.org/pdfid/55643c1d4.pdf>

<sup>79</sup> A model Information Sharing Protocol is being developed by the Inter-Agency CPIMS Steering Committee. It can be modified to support information sharing on protection risks.



## Sharing of personal data

In line with the UNHCR mandate to provide international protection and seek permanent solutions for persons covered by the UNHCR mandate, UNHCR generally requires specific personal data from partners implementing BIP for purposes such as providing protection services, assistance and the BID process as well as for reasons of maintaining data accuracy of its data sets and project monitoring. Similarly, partners implementing BIP will generally require specific information from UNHCR to respond to the needs of children at risk. UNHCR operations and partners should clearly state the specific purposes for which they require the data and the data elements requested should be adequate for and relevant to the identified purpose and should not exceed that purpose.

Information sharing is essential for effective BIP, especially where several agencies or individuals are involved in different aspects of BIP, child protection services, refugee protection case management and provision of assistance. It is also important to note that BIP will continue to be relevant for the duration of a child's time as a refugee. For example, where a BIA has been completed for a child living with foster parents, this BIA may be needed as part of a child's file during voluntary repatriation. Without documentation of the child's situation, the family's return may be unduly delayed as the process will need to be repeated.

In line with its Data Protection Policy, UNHCR will share information about children in the BIP context generally based on consent or the vital or best interest as relevant legitimate bases. As noted in [Section 3.2: Best Interests Procedure - Step-by-Step](#), consent needs to be received before any personal data about an individual child, or other individual, is shared, including in the case of referrals, unless – in exceptional cases – where consent cannot be obtained, and the sharing is in the best interests of the child. Consent should be obtained before making any referrals. UNHCR should also obtain consent from parents or caregivers before making a referral to a partner. Whether UNHCR process personal data based on consent or the best interest, assent of the child in question should be sought depending on his/her level of maturity.

Where UNHCR is responsible for BIP, children and parents or caregivers should normally be informed, upon initiation of BIP by a partner, of the purpose of sharing information with UNHCR and the type of information shared, and then asked for their consent. Where consent is not provided and processing based on the best interests of the child is not applicable, information cannot be shared, but UNHCR and the concerned partner should work together to analyse and address the issues giving rise to non-consent.

Sharing information between partners and UNHCR in refugee contexts is important for the protection of children and their families. In many refugee situations, UNHCR provides essential international protection services such as registration and documentation, protection case management, refugee status determination, and support for durable solutions. In settings where refugee assistance is dependent on UNHCR data, referral to UNHCR will also be important to ensure that children and their families receive appropriate assistance. UNHCR not only intervenes to provide immediate protection and assistance for children at risk but provides international protection and assistance for the duration of a person's time as a refugee. Family composition and the individual vulnerabilities of children are crucial issues in the provision of assistance and international protection in the short and long term. The services that are provided will vary over time, depending on what intervention and assistance is available; in many cases individual refugees can only be provided with available opportunities where information regarding family composition and children's vulnerabilities has been shared with UNHCR. The possibility also exists, of UNHCR retaining closed case files for future reference and access and to archive files.

TABLE 11:

Examples of specific and immediate protection services and assistance for which referrals to UNHCR can be made	Examples of protection services and assistance services that are provided either immediately or in the future, based on information known to UNHCR, for which referrals to UNHCR can be made
<ul style="list-style-type: none"> <li>• Best Interests Procedure, in particular BID, where this is managed by UNHCR</li> <li>• Emergency relocation</li> <li>• Registration and documentation</li> <li>• Issuing or updating of entitlement cards</li> <li>• Prioritization and special assistance for refugee status determination procedures</li> <li>• Family reunification and maintaining family unity during relocation, repatriation and other movements</li> <li>• Formalization of care arrangements for children outside of parental care, and/or ensuring linking of cases of foster parents with children under their care to avoid accidental separation</li> <li>• Emergency (or priority) consideration for resettlement</li> <li>• Voluntary repatriation</li> <li>• Direct case management for particularly vulnerable cases</li> <li>• Legal counselling and assistance</li> <li>• Consideration in assistance initiatives including cash, food, non-food items, scholarship programmes, health and nutrition programmes, and other initiatives depending on the context.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensuring continuity of procedures for children at risk and avoiding duplication of BIP over time</li> <li>• Inclusion in assistance programmes, especially those based on vulnerability and/or family composition</li> <li>• Prioritization for and special assistance during relocation, distribution, verification, and other large-scale protection and assistance interventions</li> <li>• Prioritization and special assistance during voluntary repatriation, such as individual counselling and referral to services in the area of return.</li> <li>• Prioritization and special assistance during local integration, such as individual counselling</li> <li>• Prioritization for resettlement and complementary pathways opportunities.</li> <li>• Prioritization and special assistance for refugee status determination procedures, where these take place at a later date, for example during the application of cessation clauses where refugee status has previously been on prima facie basis</li> <li>• Advocacy on behalf of individuals needing UNHCR assistance and intervention</li> </ul>

In general, where UNHCR-led BIP is being implemented, agreements should be reached with partners to share personal data relating to children undergoing BIP for the following specific purposes (applicable according to the context), noting that the specific elements and extent of data shared will vary depending on what is necessary for and proportional to the purpose:

- i. Referrals of open, active cases for a specific and immediate protection service and/or assistance (see table above for examples). This includes referral of all children meeting the criteria for a Best

Interests Determination, including separated and unaccompanied children, as well as disputed custody cases, or cases where a child may need to be separated from their parent or caregiver against their will.

- ii. Referrals of open, active cases for protection services and assistance that are provided either immediately or in the future, based on information known to UNHCR (see table above for examples). This includes updating information on children’s care arrangements, including for unaccompanied and separated children, for the purposes of assistance and preventing family separation. This information enables UNHCR to: 1) ensure that families receive assistance based on an accurate household composition; 2) ensure family unity and prevent unintentional family separation in relocations or durable solutions.
- iii. Feedback on service referrals made by UNHCR or a partner for a specific service, where UNHCR or the partner may request some feedback in order to coordinate protection and assistance service delivery. In the case of UNHCR, this is often important for the purposes of UNHCR internal refugee protection case management procedures. Such feedback could include information on the status of the referral itself (e.g. referral pending, referral acknowledged, referral accepted, referral declined, not able to locate the individual, BIA completed, etc.). Additionally, feedback could be requested on the type of services provided to the referred individual. In the latter case, to provide feedback partners must obtain consent/assent and/or it must be assessed as being in the best interests of the child.
- iv. Transfer of closed cases for access for future protection services and assistance.
- v. Archiving of BIP files as per UNHCR Policy on the Management of UNHCR Records and Archives.<sup>80</sup>

The key considerations are whether the sharing is protective and in the best interests of the child. The specific elements of data to be shared for different referrals should be agreed depending on the service for which the referral is made and according to the principle of proportionality. For example, if a referral is being made for prioritization of relocation or registration, it may only be necessary to provide an identification number and the specific needs code of the person. On the other hand, if a referral is being made for resettlement or a legal protection intervention, it may be appropriate at a particular juncture of the process to provide much more information to avoid a person having to retell their story.

It is essential that a minimum amount of information be shared on children at risk and children in BIP for whom UNHCR is responsible. Table 13 describes the specific elements of data to be shared and the “need-to-know” basis on which a minimum level of information should be shared in some common situations. Specific details of information sharing arrangements between UNHCR and its partners should be agreed based on the context and specificities of each operation, which are formalized either through Project Partnership Agreements and/or Inter-agency Information Sharing Protocols (ISP) – see below. Additional information may be shared depending on the situation and other situations—such as case transfers—are also possible.

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80 Please see UNHCR, *Policy on Management of Records and Archives* (2017) available at (UNHCR Intranet): <https://intranet.unhcr.org/en/policy-guidance/policies/unhcr-hcp-2017-4.html>

**TABLE 12: Example data elements to be shared with UNHCR by partners implementing Best Interests Procedures**

In all of the cases below, information should only be shared once the child and/or parents/caregivers have been informed about information sharing and given their consent/assent and/or where it is in the best interests of the child to do so. A specific purpose (see above) would also be necessary in each case and consent/assent needs to be obtained for each specific purpose.

Information	Description	Sharing upon identification of the child by the partner	Sharing upon identification of referral needs	Sharing for archiving
<b>Unique identifier for child, parents/ caregiver</b>	Any relevant identification numbers (e.g. proGres ID) held by the child and/or their family that can be used to support confidential information sharing. A unique identifier is important to use wherever possible to identify the child and avoid any potential confusion between individuals. Where UNHCR is responsible for BIP, sharing the identity of children in case management allows UNCHR to ensure effective coordination of case management with partners and avoid duplication of services and assistance.	✓	✓	✓
<b>Basic biodata of child, parents/ caregiver</b>	<p>Basic biodata includes: full name(s), age, sex, date of birth, place of birth, location of origin, current address.</p> <p>When working on a case, it is important that UNHCR and partners can cross-check the biodata to have up-to-date records for both UNHCR and its partners. Partners should share with UNHCR any changes to bio-data that impact UNHCR protection and assistance services – such as address or telephone details. Once this information has been shared and cross-checked, further sharing of information on the case can use only the unique identifier, therefore avoiding including other personal details. Where a unique identifier is not available, a minimum amount of information is required in order to ensure accurate identification of the child</p>	✓	✓ (if no unique identifier is available)	✓ (if no unique identifier is available)



Information	Description	Sharing upon identification of the child by the partner	Sharing upon identification of referral needs	Sharing for archiving
<b>Specific needs</b>	Applicable specific needs codes should be used and can be supplemented by locally agreed values as required. Specific needs codes are the basis for prioritization of assistance and protection interventions by UNHCR and many partners in both the short and long term.	✓	✓	✓
<b>Priority</b>	The priority level of the case according to local SOPs. The priority level, applied in accordance with SOPs, helps to ensure timely action and support from UNHCR and partners.	✓	✓	✓
<b>Care arrangement details</b>	For children not in parental care, the unique identifiers of caregivers, their relationship to the child and, where it is recommended that the child and caregiver be linked in terms of documentation/entitlements, details of the duration and circumstances of the care arrangements (this can be provided in BIA, see below). This information allows UNHCR to ensure that children are not accidentally separated from caregivers and that their cases are treated together as regards protection or assistance interventions.	✓ for children not in parental care	✓ for children not in parental care	✓ for children not in parental care
<b>Status of Best Interests Procedure</b>	Specifically, which steps of BIP have been completed (at a minimum, identification, BIA completed, closure) and whether the case is being referred for BID.	✓	✓	✓

Information	Description	Sharing upon identification of the child by the partner	Sharing upon identification of referral needs	Sharing for archiving
<b>Completed BIA forms (or other child protection assessment form)</b>	Where there is a need for UNHCR to have BIA information, this can be shared either systematically, or upon request (e.g. if a child is being considered for resettlement). When a partner leaves an operation, completed BIA forms, or summaries, can be provided to UNHCR to ensure that the child is not required to be reassessed in the event of future protection or assistance interventions.	 on a case-by-case basis if there is a need for that information to be shared	 on a case-by-case basis if there is a need for that information to be shared	 Summary only required
<b>Completed BID forms</b>	Where the child requires a BID and the partner is responsible for BID documentation. UNHCR will be responsible for BID and this responsibility cannot be delegated to partners. As such, BID reports will generally be submitted to the UNHCR BID supervisor for review prior to being submitted to the BID panel members.	 As soon as available		
<b>Reasons for case closure</b>	When a case is closed, UNHCR should be notified for the purposes of ensuring appropriate coordination of case management, protection and assistance services. The reasons for closure should be shared as this may have a bearing on reopening at a future point in time.			

UNHCR should also share information regularly and transparently with partners who are implementing BIP for children of concern to UNHCR. Partners should have access to all the information they need in order to provide timely and effective services to children at risk.

As above, the specific elements of data to be shared and the procedures for sharing should be decided on depending on the circumstances in the particular context, but the particular requirements listed below should be included. In the table below, the purpose of sharing information with partners is to provide BIP.

**TABLE 13: Example data elements to be shared with partners by UNHCR in Best Interests Procedure cases managed by that partner**

For all of the above, information should only be shared where the child and/or parents/caregivers give their consent and/or where it is in the best interests of the child to do so. A specific purpose (see above) would also be necessary in each case and consent/assent needs to be obtained for each specific purpose.

Information	Description	Sharing upon identification of the child by UNHCR	Sharing upon identified referral need
<b>Unique identifier for child, parents/caregiver</b>	Any relevant identification numbers (e.g. proGres ID) held by the child and/or their family that can be used to support confidential information sharing. A unique identifier is important to use wherever possible to identify the child and avoid any potential confusion between individuals.	✓	✓
<b>Basic biodata of child, parents/caregiver</b>	Basic biodata includes: Full name(s), age, sex, date of birth, place of birth, location of origin, current address. If UNHCR/partner already has this information, it can simply be cross-checked. It is important that UNHCR and partners can cross-check the biodata to have up-to-date records for both UNHCR and its partners. UNHCR should share with partners any changes to bio-data that impact on the partners ability to provide BIP – such as address or telephone details. Once this information has been shared and cross-checked, further information sharing on the case can use only the unique identifier, therefore avoiding including other personal details. Where a unique identifier is not available, a minimum amount of information is required to ensure accurate identification of the child	✓	✓ (if no unique identifier can be used instead)
<b>Specific needs</b>	Applicable specific needs codes should be used or mapped to partner equivalents and can be supplemented with locally agreed values as required. Partners need to know which specific needs codes UNHCR has applied in order to verify, deactivate or supplement them to ensure that children and their families benefit from appropriate assistance and protection.	✓	✓

Information	Description	Sharing upon identification of the child by UNHCR	Sharing upon identified referral need
<b>Care arrangement details</b>	For children not in parental care, unique identifiers for caregivers and their relationships to the child, as well as other details relating to family composition. This information enables the partner to better assess and verify the child's care arrangement.	✓ for children not in parental care	✓ for children not in parental care
<b>Priority</b>	The priority level of the case according to local SOPs. The priority level, applied in accordance with SOPs, helps to ensure timely action and support from the partner.	✓	✓
<b>Status of Best Interests Procedure</b>	Specifically, which steps of BIP have been completed (identification, BIA, case plan, implementation, follow-up and closure); and the BID status (e.g. scheduled for Panel), if applicable.	✓	✓
<b>Referral forms/ information and feedback on referrals</b>	Where UNHCR is referring a child to a partner for a specific service (including BID), the relevant information should be shared, for example in a referral form.  Where a child has been referred by a partner, feedback on the referral, such as the status of the referral and information on the type of service provided, should also be shared.	+	✓
<b>Completed BIA forms</b>	Where there is a need for a partner to have BIA information, this can be shared either systematically or upon request (e.g. where a BIA has been carried out at registration and the recommendation is referral to the partner for case management).	+	+
<b>Completed BID forms</b>	If BID has been started, or previously completed, and the partner is taking on the case, the existing forms should be shared.	✗	✓
<b>Reasons for case closure</b>	If UNHCR closes a child's individual case, UNHCR should share this information with the partner (e.g. where a child is known to have left the operation).	✓	✓

UNHCR and partners must document the type of information to be shared and the methods of sharing personal data for the different purposes, including the format and frequency – either through Project Partnership Agreement and/or interagency agency information sharing protocol. In the case of funded partners, UNHCR and its partners should develop, in accordance with Section 6 of the Annex on Processing and Protection of Personal Data of Persons of Concern of the Project Partnership Agreement. In the case of operational or non-funded partners, information sharing protocols or agreements should be developed to ensure that BIP-related information flows regularly, safely and ethically – see UNHCR model Data Sharing Agreement and the interagency child protection ISP template<sup>81</sup> and the inter-agency Data Protection and Information Sharing Protocol tools<sup>82</sup>. At the onset of developing such agreements, stakeholders should hold discussions to agree how and when information will be shared.

Where data transfer arrangements may negatively impact on the protection of personal data, before transferring data UNHCR needs to carry out a Data Protection Impact Assessment (DPIA). A DPIA is required where the collection and processing or transfer of personal data is likely to be large, repeated or structural (i.e. where data is shared with an Implementing Partner or third party over a certain period of time). A DPIA would contain a general description of the data sharing arrangement involving processing of personal data, and analysis of the risks to the rights of data subjects by virtue of the circumstances and the nature of the personal data processed, the safeguards, security and other measures in place or proposed to ensure the compliance with the UNHCR Data Protection Policy.<sup>83</sup>

### 3.5.6 Analysing data for Best Interests Procedure programming

Data analysis involves translating the collected information into relevant protection and prevention measures. The information collected for BIP represents a wasted opportunity for protection unless sufficient time and resources are dedicated to an analytical process that will lead to concrete action that benefits children and their communities.

Outputs and actions that can be supported with data analysis include, but are not limited to: supporting more effective targeting and prioritization, developing evidence-based advocacy messages and policies, supporting country operations' strategic planning, demonstrating the impact of programming, strengthening operationalization procedures, improving internal and inter-agency coordination and raising awareness in the community.

In order to provide successful analysis, information must be collected in a comparable way and compiled. It is therefore vital that data analysis be promoted from the onset of BIP and that all partners are provided with support for data analysis.

Specific topics for analysis that may be helpful for BIP operationalization are:

- Demographics, such as the percentage of girls and boys in different age groups requiring BIP
- How children are identified and, where necessary, integrated into BIP

81 Annex on Processing and Protection of Personal Data of Persons of Concern of the Project Partnership Agreement and Model Data Sharing Agreement available at: <https://intranet.unhcr.org/en/protection-programme/data-protection.html> (intranet).

82 The Alliance for Child Protection in Humanitarian Action, *Data Protection and Information Management (DPISP) Guidance and Template Package*, available at: <https://alliancecpha.org/en/child-protection-online-library/data-protection-and-information-sharing-protocol-dpisp-guidance-and>

83 UNHCR, *Policy on the Protection of Personal Data of Persons of Concern to UNHCR* (2015), available at: <https://www.refworld.org/docid/55643c1d4.html>



- Percentage of children identified at heightened risk who benefit from BIP services
- Percentage of cases in each priority level and in every step of BIP
- Percentage of cases requiring BID, by BID reason
- Average time between different BIP steps, e.g. between identification and assessment or between identification and closure
- Percentage of cases referred to the various services or interventions
- Percentage of cases referred to the various services or interventions that receive those services or interventions within a given time
- Most common specific needs for children in BIP
- Number/percentage of different types of child protection incidents recorded for children in BIP

All analyses should be disaggregated by sex and age and should be compared between different time periods, caseworkers/partners, population groups and geographical areas. It is important to remember throughout that data disaggregation is not just about collection and analysis: it is crucial for strengthening the outputs and actions listed above and it can be used to strengthen advocacy and programme work and ultimately achieve rights for particular groups of children.

## 3.6 YOUNG PEOPLE AND THE BEST INTERESTS PROCEDURE

### Section Summary

Why:

- While BIP is carried out for children at risk under the age of 18, there may be exceptional circumstances in which other young people (up to age 21<sup>84</sup>) are in need of additional support and safeguards, such as in situations where BIP was initiated before the young person turned 18 years of age (e.g. in the search for durable solutions) or where a young person serves as the primary caregiver for one or more children.
- Identifying solutions or outcomes in the child's best interests is particularly urgent for those who are nearing the age of 18, as there can be changes to their eligibility for protection and assistance services once they reach the legal age of adulthood.

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84 Under most jurisdictions, childhood legally ends when a person reaches 18 years of age. As such, the best interests of persons over 18 years of age cannot be determined for them. Where there is a need and young people consent to case management support, BIP may be used as the protection case management process to support them in making their own decisions in the following exceptional circumstances: (i) young people up to 21 years of age for whom an initialized BID was not finalized before they turned 18 years of age and (ii) young people who serve as the primary caregiver for one or more children, such as their younger sister(s) and/or brother(s). Extending BIP to young persons up to 21 years of age (with their consent) provides a transition period to support young people in making important decisions. While UNHCR considers 'youth'/young people' to include persons aged 15-24, it is not recommended that operations use BIP beyond 21 years of age; the three year period between 18 and 21 years of age should be sufficient to finalize any BIP commenced before a young person reached age 18 or to support young adults acting as primary caregivers.

How:

- Operations should include procedures for children ageing out of the different care systems in their BIP SOPs. This should include prioritized or accelerated provisions for children who arrive or are identified close to their 18<sup>th</sup> birthday.
- UNHCR should, in its assistance programming, avoid creating situations in which determining chronological age alone has immediate consequences for access to entitlements. The eligibility of a child or young person for special assistance should take into account an assessment of maturity, vulnerability, mental health, community integration, as well as age, gender and specific needs.
- Age assessment procedures should only be undertaken as a measure of last resort and must take the best interests of the child as a primary consideration. Medical age assessments should not be undertaken by UNHCR<sup>85</sup>.

### 3.6.1 Overview

BIP is usually implemented for children (under the age of 18) and is normally concluded by the time children reach adulthood. However, there might be exceptional instances where young persons are in need of additional support and safeguards, such as situations where the BIP was initiated before the young person turned 18 years of age (e.g. in the search for durable solutions) or where a young person serves as the primary caregiver for one or more children, such as their sister(s) and/or brother(s).

Childhood legally ends when a person reaches 18 years of age in most jurisdictions<sup>86</sup>. The transition to adulthood (in this context, the period preceding the age of 18) is one of physiological, cognitive and social development that girls and boys experience differently. How children experience this process is influenced by a range of factors, including their gender, social and cultural norms, expectations and practices, financial status and their family and care situation. While brain development and hence a person's cognitive and emotional development continues beyond 18 years of age, it also varies from person to person and young people frequently reach cognitive maturity before emotional maturity. Separation or other protection issues can result in considerable changes in brain development and can affect how young people respond and behave in relation to risks and challenges.<sup>87</sup>

As a result, the nature of the process for young people over the age of 18 differs from the BIP for children. The best interests of young adults cannot be determined for them, but where there is a need and the young adult consents to case management support, BIP may serve as a protection case management process that is available to support them in making their own decisions.

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85 The UNHCR, *Technical Note for UNHCR Operations on Age Assessment* is available as an internal document, and may be requested from UNHCR, Division of International Protection (DIP).

86 The Convention on the Rights of the Child, Article 1 states that “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”, and most national jurisdictions set 18 as the age of majority.

87 See: Somerville, L. H., *Searching for signatures of brain maturity: What are we searching for?* *Neuron*, 92, 2016, 1164-1167.

### 3.6.2 Procedures for children reaching 18 years of age during the Best Interests Procedure

For children who are engaged in BIP and who are due to “age out” before a final decision is taken, for instance, by the BID Panel, pose particular challenges as there are likely to be changes to their eligibility for protection and assistance services once they reach the legal age of adulthood. Every effort should, therefore, be made to ensure that decisions are taken and implemented for these children before they reach 18 years of age, as this in itself is in the best interests of the child. Note that where dates of birth are estimated, UNHCR should ensure that the most generous interpretation of age and dates is used for the purposes of BIP. For example, if a child only knows their year of birth, they should be treated as if their birthday is 31 December of that year.

When a child who is engaged in BIP reaches the age of 18, they should not automatically be excluded from the process. Especially in situations where young people with complex vulnerabilities are involved, the process may need to continue beyond the eighteenth birthday until a solution has been identified. Before a child reaches 18 years of age, caseworkers should plan an interview or home visit with the child in order to develop a plan of action. At this time caseworkers should explain to the child that they are about to reach the legal age of adulthood and will then be responsible for making their own decisions and may no longer be eligible for certain services. Once they reach the age of adulthood, if the young person feels a need for continued support, UNHCR and/or its partners can still provide guidance, counselling and referral to support services, including through BIP and/or other services. Procedures for supporting the transition to adulthood should also be included in the BIP SOPs.

### 3.6.3 Procedures for young adults at risk

In certain circumstances, with the consent of the young adult concerned (18 to 21 years of age), caseworkers can use BIP to support the young person to arrive at a decision regarding, for example, durable solutions. For example, BIP can be used for young adults up to 21 years of age who live in a group with unaccompanied children and share similar flight history and vulnerability. This can be decided on a case-by-case basis, particularly in consideration of the protection needs of the group of young people involved.

The files of siblings who are living together in groups, including those who are 18 or over, should be kept together (see [Section 3.5: Information Management for Best Interests Procedure](#)). In terms of BID, it is possible to create one joint BID report for siblings who are residing in the same location, although the specific circumstances and needs of each individual to be addressed must be clearly outlined. Siblings over 18 should be consulted about decisions concerning their younger brothers and sisters, as is the practice with other adult family members.

UNHCR and partners may continue to include young adults in BID (with their consent) in the following exceptional circumstances:

- Young adults for whom an initialized BID was not finalized before they turned 18
- Young adults who serve as the primary caregiver for one or more children, such as their younger sister(s) and/or brother(s).

## Recommended actions for children in Best Interests Procedures nearing the age of 18

- As a child approaches 18 years of age, caseworkers must assess the risks and the child's best interests in conjunction with their age and maturity and gauge the timeframe for identifying an appropriate solution and implementing follow-up. Where a child meets BID criteria (see [Chapter 4](#)), but a BID has not yet been carried out, the BID should be prioritized.
- While promoting the child's participation in every stage of the process is important regardless of their age, it is particularly important in the case of children transitioning to adulthood. Children should therefore be given the opportunity and support to propose solutions and be involved in implementing follow-up, insofar as this is in their best interests and does not pose a risk of further harm.
- The BIP case plan for children transitioning to adulthood should also include actions and support specific to the transition away from the additional support and protection that is afforded to children. Plans should ideally be developed 12 months prior to the child's 18<sup>th</sup> birthday and should identify measures to support the child's independence, focusing on fostering their own strengths and capabilities as well as their social support network.
- Decisions taken in BIP, while considering what is in the child's immediate best interests, should also take into account the implications of the child reaching adulthood. Proposed support/follow-up should not automatically cease upon the child turning 18 but should instead be provided until the young person reaches sufficient self-reliance. It is nevertheless important that this support is not offered in such a way that it stifles independence or creates dependency.
- For young people who are survivors of gender-based violence, follow-up and monitoring services must continue in accordance with the operation's GBV SOPs.
- When assessing the best interests of unaccompanied children in particular, it is important to bear in mind that these young people may find it difficult to navigate the new responsibilities associated with becoming an adult and may face formidable obstacles if they are not adequately prepared as part of the case management process.

### 3.6.4 Age Assessment

In State asylum procedures, the determination of chronological age can have legal consequences including *inter alia* the need for guardianship arrangements and reception conditions. ExCom No. 107 calls on States, UNHCR and other relevant agencies and partners to work in close collaboration to: "Ensure that age assessments are only carried out in cases when a child's age is in doubt, and take into account both the physical appearance and the psychological maturity of the individual; that they are conducted in a scientific, safe, child and gender-sensitive and fair manner with due respect for human dignity; and that they consider the individual as a child in the event of uncertainty."<sup>88</sup>

UNHCR and partners should not, as a matter of course, conduct age assessments. This, if it happens at all, remains the responsibility of the State. Furthermore, UNHCR should, in its assistance

<sup>88</sup> ExCom Conclusions No. 107, para. (g).

programming, avoid creating situations in which the simple determination of chronological age alone has immediate consequences for access to entitlements. The eligibility of a child or young person for special assistance should take into account an assessment of their maturity, vulnerability, mental health and community integration, as well as age, gender and specific needs. A holistic assessment of capacity, vulnerability and needs that reflect the actual situation of the young person is preferable to reliance on age assessment procedures aimed at estimating chronological age. A BIA may be used to conduct this assessment for (presumed) children at risk.

### 3.6.5 Children seeking to amend their registered age

In certain situations, children may seek to have their age, as recorded in registration and identity management data, changed. This request may stem from error at the time of registration, errors on existing identity documents, desire to access specific services or opportunities that are otherwise not available to children, or the provision of inaccurate information based on perceived benefits. Regardless of the circumstances for such a request, there may be potential risk factors for the child and/or programmatic concerns.

When such requests are made, it is important to evaluate the request and the expressed or probable reason for the request. It is important to explain the potential risks to the child. If evidence is presented in line with the operation's Registration SOPs that allows for the change in registered age, it is important to ensure that the young person is briefed on the difference the change in age will have in relation to the services available to them.

While BIP generally does not apply in the case of adults, efforts must be made to consider decisions in the context of the person's rights and vulnerability and extend the follow-up and support until they have reached a sufficient level of self-reliance. This consideration also applies to young people who were initially identified as children, but later found to be over the age of 18.

#### A principled approach to age assessment<sup>89</sup>

Where States conduct age assessment, UNHCR should advocate for a principled approach to the assessment of chronological age. For further guidance on age assessment, for UNHCR operations, please see *UNHCR's Technical Note for UNHCR Operations on Age Assessment*.<sup>90</sup> Additional guidance may be found in UNICEF's *Age Assessment: A Technical Note*<sup>91</sup> and for guidance for States, please see the *Position Paper on Age Assessment in the Context of Separated Children in Europe*.<sup>92</sup>

89 In exceptional circumstances where UNHCR operations assess that it is necessary to conduct age assessment, the considerations below (which are the same as those that apply in State procedures) should govern the age assessment procedure.

90 The UNHCR, *Technical Note for UNHCR Operations on Age Assessment* is available as an internal document, and may be requested from UNHCR, Division of International Protection (DIP).

91 UN Children's Fund (UNICEF), *Age Assessment: A Technical Note*, January 2013, available at: <http://www.refworld.org/docid/5130659f2.html>

92 Separated Children in Europe Programme, *Assessment in the Context of Separated Children in Europe*, 2012, available at: <http://www.refworld.org/docid/4ff535f52.html>



## 3.7 BEST INTERESTS PROCEDURES IN EMERGENCIES

### Section Summary

Why:

- In emergency settings, including where children are moving rapidly, in need of evacuation or located in areas that are hard to access, some adaptation of a country's and/or region's standard approach to BIP may be required.

How:

- Approaches to identification, registration, BIA, the BID process, information management, service referrals and inter-agency coordination can be adapted to deliver BIP as effectively as possible in emergency situations.

UNHCR defines a humanitarian emergency as any situation in which the life, rights or well-being of refugees and other persons of concern to UNHCR will be threatened unless immediate and appropriate action is taken; and which demands an extraordinary response and exceptional measures because current UNHCR capacities at country and regional level are insufficient.<sup>93</sup> Emergency situations will vary in size and setting, they cannot be quantified in terms of numbers of children or types of situation as the urgency will depend on capacity and available resources, among other things.

The UNHCR [Emergency Handbook](#) includes specific guidance on implementing BIP in emergency situations and contexts:

- Review the existing national child protection system, assess its accessibility and appropriateness to refugee children and work with national counterpart to ensure that refugee children benefit from available services.
- Establish BIP as part of the overall child protection programme during the first phase of the emergency response.
- Implement capacity-building activities for UNHCR staff, government counterparts and partners on BIP.
- Develop context-specific intake and prioritization criteria and ensure that they are part of the BIP SOPs. Contextualize the short BIA form for use during the emergency.
- Take steps to establish a BID Panel, using simplified procedures if necessary (see [Section 5.3: Simplified decision-making procedures for Best Interests Determination](#)).
- Develop a plan to transition from emergency to implementation of comprehensive BIP for children at heightened risk, including strengthening the national child protection case management system

### 3.7.1 Best Interests Procedures for children in transit

In some settings children may move quickly internally within a country or across borders. Such movements may involve refugees and migrants travelling on similar routes (see [Section 1.2.1: Best Interests Procedures in different settings, including mixed movements](#)) and may involve some children transiting through certain locations for short periods of time and/or attempting to avoid identification.

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93 UNHCR Emergency Handbook.

Where refugee children are moving rapidly, the BIP process may be adapted to ensure that children at heightened risk are identified and supported in a timely and appropriate manner. UNHCR operations should consider:

- Conducting continuous joint situational analysis of the diversity of children’s situations and length of stay. This may help UNHCR and partners to identify trends in movements and be better prepared
- Expanding or establishing safe spaces or multisectoral service centres at key locations on transit routes
- Supporting mobile outreach services
- Building the capacity of staff, communities and partners on child protection in mixed movements
- Accessing previously available data from UNHCR and partners in the country of origin and countries of transit, e.g. registration data, assessments and case plans
- Establishing coordination and information sharing agreements among operations and partners in different countries on transit routes to facilitate situation analysis and programme planning, information provision to children and families about services available in different locations and coordination and information sharing on individual cases where needed.
- Keeping cases accessible in information management systems in transit countries even after children are known to have departed the country: open cases can be checked at/after registration to avoid duplication
- Using a short BIA and/or simplified BID (see [Section 5.3: Simplified decision-making procedures for Best Interests Determination](#)) may be necessary and appropriate
- It may be useful to have a range of services that are quickly accessible so they can be provided without delay to children who may move onwards quickly. This could include, for example, establishing a ‘fast track’/speedy service delivery system with specific criteria as part of the local and cross-border SOPs or drop-in women and children centres along the route<sup>94</sup>.

### 3.7.2 Best Interests Procedures in evacuation settings

“Humanitarian evacuations are only a measure of last resort, when other options to provide life-saving assistance have failed or are unattainable”.<sup>95</sup> In settings where it is necessary to evacuate children it may be necessary to adapt the BIP to ensure that children at heightened risk are identified and supported, or to ensure that implementation of BIP continues for those who are already being supported through the procedure. BIP should never unduly delay life-saving action for a child and in many circumstances there may not be time to conduct BIP. However, wherever possible, UNHCR operations should consider, as a minimum:

- Ensuring that processes for identifying children at risk are integrated into the evacuation procedures. Once a child at risk has been identified, BIP should be initiated as soon as possible: the main objective is to do as much as is safely possible at the earliest point and to ensure that children receive the support they require during the evacuation process

94 See for example the ‘Blue Dots’ centres for women and children established in Europe: <https://www.unhcr.org/news/press/2016/2/56d011e79/>, the Regional Safe Space Network in the Americas: <https://www.acnur.org/5c05b97d4.pdf> and the Support Spaces for Venezuela Situation: <https://reliefweb.int/sites/reliefweb.int/files/resources/72707.pdf>

95 UNHCR, *Humanitarian Evacuations in Violence and Armed Conflict*, 2016, <https://www.refworld.org/pdfid/57fe09284.pdf>

- Ensuring that documentation is as thorough as the situation allows. When completing a BIA form or BID report, it is important to note that this could be the main, or only, information source for important decisions and that opportunities for further assessments may be unknown or not possible
- Checking the family composition of all children travelling. It is important to check existing family links at the child's location before an evacuation to avoid unintentional family separation
- Conducting BIAs at least for children travelling without adult family members. Where BID is necessary, but it is not possible to go through the full BID process, at least a BIA should be carried out before any evacuation or other significant action
- Ensuring follow-up and service provision and care within the BIP are continued once an evacuation or significant action has taken place

### 3.7.3. Best Interests Procedures in settings with limited access

Some settings, including emergency situations, fragile and conflict settings, non-presence locations, and situations of restricted movement for children and their families and infectious disease outbreaks can limit access to refugee children. Such situations require that BIP be adapted to the specific context, provided that certain conditions are fulfilled. This includes the ability to ensure the child is safe from further harm and the principle of confidentiality can be maintained. UNHCR operations should consider:

- Identifying and training national NGOs and community-based organizations present in the location to provide BIP and provide remote support through safe communication means. Training may be organized through webinars and other online methods where possible, and must cover all aspects of BIP including confidentiality, the Code of Conduct and protection from sexual exploitation and abuse (PSEA)

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#### CASE STUDY: Integrating BIP with an evacuation programme for exceptional cases in Libya

UNHCR has implemented BIP, with case management services provided by its designated child protection partner, CESVI, which operates its core services through a community day centre (CDC) in Tripoli. Children at risk identified at registration, through referrals from partners, community volunteers or self-referral, undergo regular a BIA to assess their protection risks and needs. They have access to appropriate services, including psychosocial support, basic needs assistance, alternative care where relevant and durable solutions. The BID process for refugee children is supported by UNHCR staff and in the future the partner and presented before the BID Panel, which is attended by IOM, UNHCR and UNICEF as part of the wider coordination of children on the move in need of durable solutions.

Alongside advocacy efforts by UNHCR for the immediate release of children in detention, the Emergency Transit Mechanism (ETM) serves as an exceptional evacuation programme and provides the operation with an additional avenue for the quick and efficient processing of very vulnerable children for evacuation to a third country for resettlement. Children at risk identified for evacuation, including those who are unaccompanied, undergo a rapid BIA with consideration of the child's specific vulnerabilities and essential information on existing family links, which is shared with the ETM child protection focal points at the time of evacuation. A BID is conducted once children are evacuated in the ETM in either Niger and Rwanda in order to identify durable solutions in their best interests.

- Identifying existing services and assessing their quality, safety, and ability to maintain confidentiality. This can be done by the national NGO or community-based organization with appropriate guidance
- Developing, agreeing and using SOPs specific to such a context and ensuring that they are concise and specific to the situation
- Strengthening mobile outreach where limited or time-limited access can be secured
- Using remote modalities for case management for low or medium risk cases and working with community workers particularly for case monitoring and follow-up. Where remote modalities or collaboration with community workers are used, clear SOPs should be developed to ensure appropriate safeguards are in place.
- Using a short BIA adapted to the situation for assessment and ensuring that the case plan is documented
- Exploring and establishing remote case conferencing options to decide on actions when needed
- Collecting and storing only the most essential information and documents relating to the case, using electronic documentation systems where possible and establishing mechanisms for the quick destruction of files should the need arise
- Where BID is necessary, establishing a remote panel
- Once access has been established, reviewing all cases in order to ensure additional support is provided if needed
- Where implementing BIP in safety and confidentiality is not feasible, exploring the possibility of moving the child to a location where service and support can be provided

For more information on adapting BIP to settings with limited access see UNHCR Guidance on Protecting Children during COVID-19<sup>96</sup>.

## 3.8 CONSIDERING CHILD CARE OPTIONS WITHIN THE BEST INTERESTS PROCEDURE

### Section Summary

Why:

- As prescribed in the Convention on the Rights of the Child, primary responsibility for the protection of children rests with their parents or caregivers. When children are without parental care, this responsibility is transferred to the state in which the child finds itself. Where necessary and appropriate, UNHCR and partners support the state in implementing this responsibility.
- For unaccompanied and separated children, family reunification is normally considered as being in the best interests of the child and BIP should consistently address the extent to which family reunification is attainable.

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<sup>96</sup> UNHCR Guidance on Protecting Children during COVID-19 Pandemic: Prevention and Response, available in the BIP Toolbox accessible at: [www.unhcr.org/handbooks/biptoolbox/guidance.html](http://www.unhcr.org/handbooks/biptoolbox/guidance.html)

- Unaccompanied children need to be provided with temporary alternative care that is in their best interests until they are reunited with their family or previous caregiver, or a new permanent solution is identified, while the existing care arrangements for separated children should be assessed to ensure that children are not at further risk.

#### How:

- Family tracing should start as soon as possible after identification.
- A range of alternative care options should be available and the best interests procedure should determine for each child which available temporarily alternative care option would be in their best interests
- UNHCR and/or partners should monitor all temporary care arrangements (long and short term) to ensure the protection and well-being of the child and that their best interests are respected.
- A permanent formalized alternative care solution should only be sought “when all tracing efforts have been exhausted”.<sup>97</sup>
- A guardian may be appointed to represent and/or support a child through national child protection proceedings or UNHCR procedures<sup>98</sup>. A guardian assumes the legal capacity of a parent but is not necessarily the child’s caregiver.

### 3.8.1 Family Tracing and Reunification and Best Interests Procedure

The United Nations Guidelines for the Alternative Care of Children state: “As soon as an unaccompanied or separated child is taken into care, all reasonable efforts should be made to trace his/her family and re-establish family ties, when this is in the best interests of the child and would not endanger those involved.” In practice, in the case of unaccompanied and separated children:

- family reunification is normally considered to be in the best interests of the child
- BIP should consistently address the extent to which family reunification is attainable.

The International Committee of the Red Cross (ICRC) and the National Red Cross and Red Crescent Societies play a key role in restoring family links (RFL), including through a range of services aiming to prevent separations and disappearances, restore and maintain contact between families and clarify the fate of persons unaccounted for. In refugee contexts, ICRC and UNHCR coordinate to facilitate tracing and reunification where it is in the best interests of the child. UNHCR and partners can also facilitate family tracing by supporting community-based tracing strategies and using proGres and/or other databases as a matching tool.

#### Key considerations on family tracing and reunification within Best Interests Procedures

There are key parameters for family tracing and reunification planning and procedures within BIP:

97 UN General Assembly, *Guidelines for the Alternative Care of Children*, 2010, available at: <https://www.refworld.org/docid/4c3acd162.html>

98 UNHCR, *Technical Guidance: Child-friendly Procedures*, 2021, available in the BIP Toolbox, accessible at: <https://www.refworld.org/docid/61b7355a4.html>



- Family tracing should normally continue for a minimum of two years alongside implementation of the other elements of the case plan. In many cases it is one of several activities described in the case plan
- UNHCR should conduct a BID within two years of identifying an unaccompanied child for whom family tracing and reunification has not been successful during this period. There may be situations, particularly in the case of younger children, for whom a two-year framework is too long. In such cases, BID should build on earlier individual casework, including BIA
- A permanent formalized alternative care solution should only be sought “when all tracing efforts have been exhausted”.<sup>99</sup> It may be useful to establish, at operational level, a set of criteria for when family tracing should be considered to “have been exhausted”, taking into consideration the operational realities of tracing as well as considerations such as the length of separation
- If there are reasonable grounds to believe that reunification exposes, or is likely to expose, the child to severe harm, or when it is opposed by the child or the parents, UNHCR must verify through BID whether family reunification is in the best interests of the child or not (see [Section 4.2.4: Exceptional situations for family reunification](#))

In addition, the considerations on family reunification listed below will be useful to guide an approach and practice that aim to uphold the best interests of the child:

- The length of time to wait for a tracing result will depend on various factors, including 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
  - When considering family reunification for a child, UNHCR and partners must adopt a flexible approach, and should take into account social norms relating to concepts of family, non-discrimination or other specific circumstances. This will involve recognition of the right of children to reunify with same-sex couples, common-law spouses, couples who have entered into a customary marriage or customary caregivers. Similarly, adoptive parents, as well as other caregivers should be considered for reunification<sup>100</sup>
  - The initial assessment should identify parents as well as other family members, including in the country of arrival/asylum, in the country of origin, in countries the child transited through and in third countries. The assessment should also identify whether the child wants to reunite with their parents or family elsewhere
  - Upon a successful tracing outcome, and prior to supporting reunification, an assessment needs to be made as to whether it exposes or is likely to expose the child to abuse or neglect. This assessment should include the child and family member and be based, *inter alia*, on any verifications already undertaken by the competent authorities of the State receiving the child
  - Any reluctance on the part of the child (or their family) to be reunited must be carefully assessed. (See [Section 2.4: Balancing competing rights when making a decision](#) and [Section 3.3: Participation of children and families in BIP](#))
- If it is determined that the child’s preference is to reunify with a family member in another country, an assessment should be conducted of the capacity of the family member to receive

99 UN General Assembly, *Guidelines for the Alternative Care of Children*, 2010, available at: <https://www.refworld.org/docid/4c3acd162.html>

100 UNHCR, *UNHCR RSD Procedural Standards - Processing Claims Based on the Right to Family Unity*, 2016, available at: <http://www.refworld.org/docid/577e17944.html>

the child. This includes the family member's current legal status and whether it is regularized and stable; the potential for the child to receive the appropriate emotional support and the nature of the relationship between the child and the family member(s); and an assessment of the living conditions of the family member. The current and past relationship between the child and the family member, and how they have supported the child prior to and during separation, should also be considered. The assessment of the family should be done, where possible through national social welfare actors (government or NGOs) or UNHCR. Remote telephone interviews with family members can supplement this information but wherever possible, should not be the sole source of information about the family. Where reunification is pursued, the child's case plan should be updated before reunification takes place. The case plan should be monitored and followed-up until the child is well integrated within the family, whether by UNHCR or another organization in the destination country

- In some instances, the child may have forged a strong bond with their foster family or other alternative care providers, and as such forcing the child to move away from them could be as disturbing to the child as the initial separation from their parents. Phased reunification may be preferable if possible, for example arranging visits by the parents during a transitional period before reunification and allowing for ongoing contact with foster families post-reunification
- In situations where family reunification is not possible, the child has a right to maintain direct contact with their parents. This may entail considering practical matters and the costs of maintaining contact so as not to undermine the possibility of family reunification in the future

### 3.8.2 Alternative care and Best Interests Procedure

The UN Guidelines for the Alternative Care of Children prescribes that, "where the child's own family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care, with or through competent local authorities and duly authorized civil society organizations".

The provision of temporary alternative care for unaccompanied and separated children and where necessary other children at risk, is often a core decision that must be taken, monitored and managed as part of the BIP. Unaccompanied and separated children need to be provided with temporary care that is in their best interests until they are reunited with their family or previous caregiver or a new permanent solution is identified.

#### Key Considerations on Alternative Care within the Best Interests Procedure

There are key parameters for alternative care planning and procedures within BIP:

- Where possible, 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
- Foster care arrangements are preferable to institutional care. Institutional care should be considered only as a last resort and for the shortest time possible

## Third country solutions: family reunification, family separation and the Best Interests Procedure

There are connections between third country solutions, family reunification and family separation, which need to be thoroughly assessed during BIP and, where necessary, the BID process.

In line with the principle of family unity, UNHCR seeks to ensure that the refugee's family members, including dependent non-nuclear family members wherever possible, have access to third country solutions together. In conducting case management for durable solutions, UNHCR must assess and minimize the risk of permanent family separation for unaccompanied children as well as separated children (from their parents or siblings). Risks associated with the fact that the third country solution will normally remove the child from their community and cultural context must also be taken into due account when assessing all of the available options and determining what is in the child's best interests.

However, third country solutions are often instrumental in reunifying children with families, for both nuclear and extended family members. Family reunification may be achieved through resettlement when this is the only means to reunite refugees with family members who are already in a resettlement State. However, given the limited number of resettlement places available, States are expected to provide additional legal avenues (i.e. complementary pathways) for refugees to reunite with their family members where more effective protection, long-term solutions and family support are possible.

As a cross-cutting issue of paramount importance, family reunification is dealt with in several sections of this guidance:

- Whenever family reunification involves a third country solution supported by UNHCR, the checklist in [Section 4.2](#) should be reviewed to identify whether BID is necessary. The criteria in [Section 5.3](#) can also be reviewed to see if a simplified procedure may apply.
- For more information on family tracing and reunification within BIP, see [Section 3.8.1](#).
- For more information on BIP in the context of resettlement, see [Section 4.1.6](#).
- For more information on BIP in the context of complementary pathways, see [Section 4.1.7](#).

- For older children, especially children nearing adulthood, supervised independent living arrangements may be considered, provided that all options for the child's safety, development and available support systems are in place or can be established<sup>101</sup>
- Care systems existing within the community should be used, provided they respect children's rights including that they do not expose the child to risks
- The decision on care arrangements should stipulate which mechanism(s) should be in place to monitor the recommended temporary care arrangement, as well as its frequency and time frame

101 UNHCR, *Guidelines on Supervised Independent Living for Unaccompanied Children* 2021, available in the BIP Toolbox accessible at: [www.unhcr.org/handbooks/biptoolbox/guidance.html](http://www.unhcr.org/handbooks/biptoolbox/guidance.html)

- A permanent alternative care solution should only be sought “when all tracing efforts have been exhausted”<sup>102</sup>
- If temporary care arrangements have been made by a State authority, UNHCR and partner organizations do not have to be involved, unless there is a need to support the government entity in undertaking and implementing the process according to the best interests principle
- Where possible and deemed to be in the best interests of the child, alternative care—particular long-term or permanent care—should be formalized. Where possible, in the best interests of the child, efforts should be made to formalize care arrangements prior to the implementation of durable solutions

In addition, the alternative care considerations listed below will be useful to guide an approach and practice that aims to ensure the best interests of the child:

- For temporary care arrangements a BIA is normally sufficient and can be complemented with a written agreement or community process as appropriate (see [Section 4.2.5: Exceptional situations for temporary care](#) to determine if a BID is required);
- If, after a maximum of two years and efforts to trace the child’s family have not been successful or have not been found to be in the child’s best interests, action should be taken to formalize the care arrangement (if this has not been done already). A BID can consider whether formalization of the child’s care arrangement on a long-term basis is in their best interests (see [Section 4.1.1: Purpose of the Best Interests Determination](#) in relation to durable solutions and complementary pathways for unaccompanied and separated children);
- Decisions regarding permanent care arrangements such as Kafala or adoption should be led by national authorities. While a BID can help in determining whether the care placement is in the child’s best interests and whether formalisation of the care arrangements would be in the best interests of the child, a BID by UNHCR does not confer any legal custody rights on the caregiver. Note that, where an adoption or Kafala process has been completed by the national authorities, the child would no longer be considered unaccompanied or separated;
- If it is not possible to determine through the BID process which durable solution or complementary pathway is in the best interests of the child (see chapter 4) and the child has been integrated into their community, the temporary care arrangements should be maintained. The case should, however, be reviewed in the event of a change of circumstances, or within one year at the latest (see [Section 5.3: Reopening a Best Interests Determination decision](#)), and efforts should be made towards formalizing the child’s care arrangement basis where this is in their best interests (see the section below for more information on formalizing care arrangements);
- The frequency and method of monitoring care arrangements should be outlined in the child’s case plan. Monitoring should include listening to the views of the child and a confidential reporting and response mechanism.

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102 UN General Assembly, *Guidelines for the Alternative Care of Children*, 2010, available at: <https://www.refworld.org/docid/4c3acd162.html>

## Formalizing alternative care

The formalization of alternative care should be completed in accordance with national law or custom. UNHCR does not have the legal authority to formalize care arrangements and formalization can only be recommended when formalization would be in the child's best interests. Procedures to formalize a placement vary between countries but normally involve four core steps:

- i. Vetting and training caregivers: where necessary this includes assessing the ability and willingness of caregivers to continue to care for the child
- ii. The caregiver signing an agreement to care for the child under certain conditions and for a period of time
- iii. The caregiver agreeing to regular monitoring of the placement by child protection organizations or the relevant national authority
- iv. The child being informed of, counselled on and agreeing to the care arrangements, in accordance with their age and maturity

It is good practice to consult with and involve children, families and communities in determining for what reasons and under what circumstances the formalizing care arrangements would be appropriate. In some settings formalisation of long-standing informal patterns of childcare by extended family members may have both benefits and unintended consequences and engagement with communities can help with understanding and acceptance of formalisation processes where they are available and in the best interests of children.



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### 3.8.3 Working with guardians

The Guidelines for the Alternative Care of Children state that, “[as] soon as an unaccompanied child is identified, States are strongly encouraged to appoint a guardian or, where necessary, representation by an organization responsible for their care and well-being to accompany the child throughout the status determination and decision-making process”.<sup>103</sup>

A guardian is generally appointed by national jurisdictions to safeguard a child’s best interests and general well-being. Legal guardians are defined by the law of the country where the unaccompanied or separated child has been identified. In this definition, a guardian is someone who assumes the legal capacity of a parent but is not necessarily the child’s caregiver—although in some legal systems or cases the legal guardian may also be the caregiver. The precise role and manner of appointment of a guardian varies from country to country—they may include ministry of social affairs personnel, children’s shelter personnel, child judges, staff of registered child welfare NGOs or extended family members. While a guardian should always be consulted when collecting relevant information, the guardian’s role in BIP will vary depending on their function. Those appointed by the authorities to represent the child during judicial proceedings should normally be asked to attend planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution, including BID panel sessions where relevant. If an assigned guardian is unable or does not have the necessary expertise to adequately represent the child’s best interests in all spheres and at all levels of the child’s life—for instance, on legal matters—a separate advisor or legal representative should be appointed.<sup>104</sup>

In settings or in cases where the national child protection system is unable to assign a guardian, UNHCR and/or a partner will undertake BIP through a case worker. This will include supporting identification of appropriate care arrangements for unaccompanied children arriving alone or assessing and confirming the care arrangements for children accompanied by a relative or a caregiver from the child’s community. Where unaccompanied children are living independently (alone, or with siblings or peers), UNHCR and/or partners may assign a support person or mentor (often a member of the community) to provide guidance and support to the child/children throughout the BIP process. In such cases, it is crucial that a person being assigned as a support person or mentor is thoroughly screened and trained. The role of the support person or mentor does not imply any legal authority over the child.<sup>105</sup> In settings where this is feasible, UNHCR and/or partners may also consider assigning an advisor or legal representative specifically for the purpose of supporting the child through BIP.

In UNHCR-led BIP, there is no requirement for the appointment of a legal representative, guardian or support person in a BID process or the best interest assessment. However, operations are encouraged to explore how guardianship/representative or support person arrangements could be developed in their context. Where legal guardianship or legal representative arrangements exist, the appointed person must be involved in the UNHCR-led BID process and should be consulted during the Best Interests Assessment and other case management steps (see [Section 2.3: Procedural Safeguards in the Best Interests Procedure](#)), provided they are not also the child’s caregiver.

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103 UN General Assembly, *Guidelines for the Alternative Care of Children*, 2010, available at: <https://www.refworld.org/docid/4c3acd162.html>

104 General Comment No. 6, para. 34.

105 See: UNHCR, *Guidelines on Supervised Independent Living for Unaccompanied Children 2021* and the Community Support Volunteers for UASC Toolkit, available in the BIP Toolbox, which can be accessed at: [www.unhcr.org/handbooks/biptoolbox/guidance.html](http://www.unhcr.org/handbooks/biptoolbox/guidance.html)

# CHAPTER 4. BEST INTERESTS DETERMINATION BY UNHCR

## INTRODUCTION

### **What is a Best Interests Determination and how does it fit into the Best Interests Procedure?**

A best interests determination (BID), describes the formal process with strict procedural safeguards designed to determine the child's best interests for particularly important and life-changing decisions affecting the child.

A BID is a component of the BIP that is employed under specific situations described in this chapter. Chapter 3 described the steps of the BIP process in detail. Chapter 4 outlines when and for which particular cases the additional step of a BID is required. Following the identification of a child at risk who meets the criteria for a BID, a BID process will involve two main steps: (i) completion and review of the BID report, and (ii) a BID panel decision. Once the panel has reached a decision on the recommendation, the process will follow the subsequent steps of the BIP: implementing the BID recommendation (corresponding to implementation of the case plan), follow-up and review, and case closure (once the recommendations have been implemented and the specific child protection issue has been addressed). Where necessary, BID reports and cases can be reviewed and reopened. As with the BIA, decisions throughout the BID process should be made on the basis of the four-factor analysis for assessing best interests. A BID can be initiated at any step of the BIP. In exceptional or urgent cases, a BID may be needed and used instead of, or before, a BIA.

### **Procedural safeguards and decision-making**

Due to the importance of the decisions, a BID process requires particularly strict procedural safeguards, as outlined in [Section 2.4: Balancing competing rights when making a decision](#). The decision-making process, as outlined in [Section 2.4.2: The Four Factor Analysis](#), must also ensure that different rights are considered and weighed. There is no hierarchy of rights in the Convention on the Rights of the Child (CRC); all the rights provided for therein are in the "child's best interests". However, when making decisions in the child's best interests, it can be necessary to assign some rights a more significant weight than others given the particular situation. It should also be recalled that determination of the child's best interests must ensure the full enjoyment of all the child's rights. An adult's judgement of a child's best interests cannot override the obligation to respect all of the child's rights under the CRC.

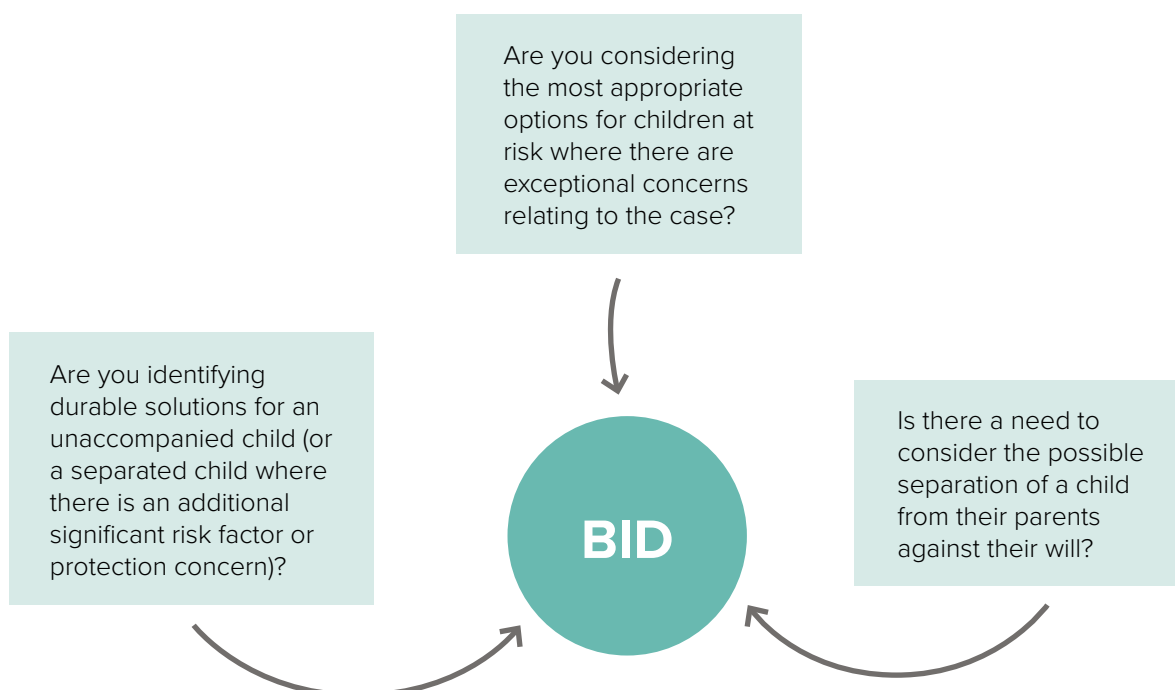
### **Why is a Best Interests Determination needed?**

Where UNHCR is responsible for BIP, a BID is required for particularly important and life-changing decisions facing children in any of the three situations below:

1	Durable solutions and complementary pathways need to be identified for unaccompanied children, and separated children where there is an additional significant risk factor or protection concern.	Explained in <a href="#">Section 4.1</a>
2	<p>The most appropriate options for children at risk in exceptional situations need to be determined, including:</p> <p>Family reunification for unaccompanied and separated children in exceptional situations</p> <p>Temporary care for unaccompanied and separated children in exceptional situations</p> <p>Other children at risk in exceptional situations on a case-by-case or context-specific basis</p>	Explained in <a href="#">Section 4.2</a>
3	Possible separation of a child from parents against their will.	Explained in <a href="#">Section 4.3</a>

Recognizing the above three situations, it is also important to recognize that deciding whether or not to carry out a BID is not always straightforward. Each case must be assessed individually and decisions must be based on the context. A BID process can be used for any case where the BID Supervisor deems the additional safeguards to be necessary and appropriate.

FIGURE 6: **When to carry out a Best Interests Determination?**



## The role of the State and the UNHCR mandate regarding Best Interests Determination

As outlined in chapter 1 and 2, the level of UNHCR involvement in procedures to determine children's best interests and to identify durable solutions for refugee children will vary according to the capacity of State procedures and the role of UNHCR in a specific context. In general, if State authorities have established best interests procedures that are accessible and appropriate for refugee children, no BID is required by UNHCR (for more information on working with national best interests procedures, see [Section 2.3: Procedural Safeguards in the Best Interests Procedure](#)). For each of the three triggers above, an analysis must be done to determine if national procedures are available, accessible to and appropriate for refugee children. For instance, State procedures for the separation of a child from their parents or caregivers may be available and accessible to refugee children, but procedures may not be in place for determining an unaccompanied child's best interests in the context of voluntary repatriation. UNHCR will therefore carry out BID in any of the above three situations where national procedures are not accessible or appropriate for refugee children and UNHCR is involved in best interests procedures for these children, either directly or through its partners.

## 4.1. DURABLE SOLUTIONS FOR UNACCOMPANIED AND SEPARATED CHILDREN

### Section Summary

Why:

- Decisions relating to durable solutions for unaccompanied and separated children, including resettlement, local integration, voluntary return and third country admissions through complementary pathways, have significant and long-term consequences, including in relation to family unity.
- Where national authorities do not undertake best interests procedures in relation to durable solutions, the BID process is the means to achieve a well-informed and objective decision for refugee children.

How:

BIDs are necessary for:

- Unaccompanied children who are not being reunified with a parent or legal customary caregiver
- Separated children where there is an additional significant risk factor or protection concern that requires the safeguards of a BID
- Unaccompanied or separated children who are being reunified with a parent or legal/customary caregiver in exceptional situations only (see [Section 4.2: Children at Risk in Exceptional Situations](#)).
- If a BID is necessary for durable solutions it should be initiated as soon as possible and completed no later than two years after identification of the children at risk.
- A BID process for durable solutions should consider a variety of options simultaneously.

- Where a BID for durable solutions is required, if it is not possible to determine which solution is in the best interests of the child within the two-year period, for example due to a lack of options, the temporary care arrangements should be maintained. The case should be reviewed in the event of a change of circumstances or within one year at the latest. Where it is unlikely that a solution will be identified within a reasonable period, a BID can be conducted to support the formalization of care arrangements for the child.
- Some resettlement countries may still require a BID to identify durable solutions for separated children. Under these revised Guidelines, UNHCR only requires a BID for separated children where there is an additional significant risk factor or protection concern. However, wherever a BID is needed for State procedures, it should nonetheless be completed.

### 4.1.1 Purpose of the Best Interests Determination

Decisions on durable solutions, including voluntary repatriation, resettlement, local integration, or admission to a third country through a complementary pathway are likely to have a fundamental and long-term impact on the child. When considering the best interests of an unaccompanied or separated child in the context of durable solutions, including through complementary pathways, the caseworker and the BID panel, should ideally be able to consider a variety of options simultaneously. A comprehensive solutions package in which various options are examined is preferable. It should also be recognized that one or more of the durable solutions options may not be available.

For all durable solutions including complementary pathways for unaccompanied and separated children, once the solution has been identified on the basis of the four-factor analysis for assessing best interests (see [Section 2.4: Balancing competing rights when making a decision](#)), continuity of care is of particular importance. This should include particular attention to:

- The assessed ability and willingness of caregivers to continue to care for the child in the context of the durable solution and complementary pathway. This is particularly relevant where a solution may involve an immediate or eventual reduction or end to assistance provided.
- The presence of child protection authorities or organizations that can provide monitoring and support for children once a durable solution has been implemented. While the absence of such authorities does not automatically mean that a particular solution is not in the best interests of the child, every effort should be made to ensure that competent authorities provide follow-up and monitoring for unaccompanied and separated children.

Where the prospects of identifying durable solutions are limited, a BID can be conducted for the purpose of advocating for the formalization of care arrangements for the child ahead of an eventual durable solution. This may be the case where, for example, there are currently no options for durable solutions, including complementary pathways available for a child, and no concrete developments with regards to the availability of solutions are likely to occur in the foreseeable future. In such cases, the BID can consider whether the formalisation of the child's care arrangement on a long-term basis is in their best interests, as part of the consideration of durable solutions (see [Section 3.8.2: Alternating care and the Best Interests Procedure](#)). Where a care arrangement for an unaccompanied child has been formalized, a BIA would normally be sufficient before implementation of the durable solution or complementary pathway, provided that the care arrangement is maintained and no other significant risks or protection concerns are identified.



## 4.1.2 When is a Best Interests Determination Required?

When a durable solution for a child, including via a complementary pathway, is pursued by State authorities in the absence of any involvement by UNHCR, no BID is required by UNHCR. In the absence of State procedures, in the context of durable solutions, UNHCR must complete a BID for:

- unaccompanied children who are not being reunified with a parent or legal customary caregiver
- separated children where there is an additional significant risk factor or protection concern that requires the safeguards of a BID
- unaccompanied or separated children who are being reunified with a parent or legal/customary caregiver in exceptional situations only (see [Section 4.2: Children at Risk in Exceptional Situations](#)).



## Checklist for the best interests determinations for durable solutions for separated and unaccompanied children

A BID is required if any of the following statements applies (please tick relevant boxes) in situations where UNHCR is responsible for BIP:

### Unaccompanied children:

- The child is being considered for a durable solution that does not involve family reunification with a parent or previous legal or customary caregiver (for cases involving family reunification, see the checklist in [Section 4.2: Children at Risk in Exceptional Situations](#))

### Separated children where there is an additional significant risk factor or protection concern:

- The child is being considered for a durable solution without their current caregiver(s), except in situations of family reunification.
- The child is being considered for a durable solution with the caregiver but initial

assessment indicates present or potential risk of violence, abuse, exploitation or neglect within the care arrangement.

- The durable solution under consideration may significantly increase the risk of permanent separation from parents or previous customary caregiver.
- The child expresses significant concerns about, or objections to, the durable solution proposed.
- Any other circumstances that give rise to serious concerns or cases where additional safeguards provided through the BID process are warranted.
- A resettlement country or complementary pathway programme, including family reunification, requires a BID for separated children.

A BID is not usually required for family reunification where no additional significant risk factors or protection concerns are identified, even in the context of durable solutions, including complementary pathways, unless it is a requirement of State procedures (see [Section 4.2: Children at Risk in Exceptional Situations](#) for the checklist on when BID is required for family reunification). As established in [Section 3.8: Considering Child Care Options within the Best Interests Procedure](#), family reunification, whenever feasible, should generally be regarded as being in the best interests of the child. Once the family is traced, family relationships are verified and the willingness of the child and the family members to be reunited has been confirmed, the process should not be unduly delayed by a BID. However, prior to supporting family reunification, a BIA needs to be conducted by UNHCR or a partner as to whether it exposes or is likely to expose the child to abuse or neglect (see [Section 4.2: Children at Risk in Exceptional Situations](#)).

It is also normally in the best interests of a separated child living in a kinship care arrangement with their relatives to remain with them in the context of durable solutions, including complementary pathways, provided their parents or previous caregiver has not been located or is dead. The need for continuity of care within the care arrangement and for potential for reunification with parents at a later stage must be both carefully considered in these situations. In general, unless assessed otherwise, it is considered that a child's relatives are capable of providing consent for the child in matters relating to durable solutions and third country admission through complementary pathways. That said, given the absence of parents or previous caregivers, a BIA, as part of the BIP for separated children, should assess whether a specific durable solution or complementary pathway is in the child's best interests, and if any additional significant risk factors or protection concerns are identified, a BID should be conducted (see below). Note that in cases where a separated child's parents have been found, and where it is in the child's best interests, the parents should also provide consent.

## Additional significant risk factors or protection concerns for separated children

Given the absence of parents or previous legal/customary caregivers, BIAs should be conducted for all separated children being considered for any durable solution, including third country admission through other complementary pathways. The BIA will generally be sufficient to recommend a particular durable solution where:

- a separated child’s parents have not been found after tracing efforts have been undertaken or
- the child’s parents have provided their consent and
- no additional significant risk factors or protection concerns have been identified

Where additional significant risk factors or protection concerns are identified, the BIA should recommend a BID. Typical examples of what could be considered additional significant risk factors or protection concerns in this context include the following scenarios:

- There are reasonable grounds to believe that a child is exposed to or likely to be exposed to violence, exploitation, abuse or neglect by an accompanying adult
- Return to the country of origin potentially presents a particular risk to the child’s rights to family unity, survival and development, and/or a safe environment
- The child has additional protection concerns that may require a more developed care plan as part of the implementation of the durable solution (e.g. child survivor of gender-based violence, child associated with armed forces or armed groups, child in the worst forms of child labour, etc.)
- The child expresses reluctance to participate in the proposed durable solution, including a complementary pathway
- The proposed durable solution significantly exacerbates the risk of permanent separation from parents or customary caregivers (e.g. where a country of resettlement does not allow family reunification, or where the parents have been located in a country other than that in which the durable solution is proposed and consent has not been obtained)
- The proposed durable solution would result in separation from their current caregivers (except in cases of family reunification with a parent or customary caregiver)

### 4.1.3 When to start a Best Interests Determination

The Committee on the Rights of the Child<sup>106</sup> has specified 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 BIP should be initiated as early as possible in the displacement cycle. UNHCR and partners should not wait until prospects of a durable solution emerge.

The results of tracing are a key factor in determining the most appropriate durable solution for unaccompanied and separated children and, consequently, when to start a BID as outlined in [Section 3.8.1: Family Tracing and Reunification and Best Interests Procedure](#). A reasonable amount of time must be allowed for tracing. 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 the areas of origin.

106 CRC, General Comment No. 6, para. 79.

In any event, UNHCR should conduct a BID within two years of identification of an unaccompanied child, or sooner for very young children or children with serious protection concerns. A case-by-case approach is essential. There may be situations, particularly in the case of younger children, for whom a maximum two-year time frame is too long. As such, BIDs should build upon individual casework conducted earlier during the displacement including through initial BIA forms undertaken soon after identification of the child at risk. The BIA form and other BIP documentation should be regularly reviewed and updated by caseworkers, and available durable solutions and complementary pathways should be regularly examined. Regular monitoring and follow-up of the child also guides UNHCR and partners as to when to initiate a BID.

In some instances, a BID might be deemed necessary upon identification, instead of, or before, a BIA. Importantly, whenever a BID is initiated it must be fully integrated into BIP. Other BIP steps should inform the BID process and case planning and follow-up from a BID should be integrated into the ongoing case management of that individual case.

If, when undertaking the BID, it is not possible to determine which durable solution is in the best interests of the child, but there are likely to be more options in the near future, the BID may be postponed. This may be the case where, for example, refugees are starting to avail themselves of voluntary repatriation, when tracing results are overdue or when UNHCR is engaged in discussions with the government regarding local integration that could lead to a durable solution for the foster family, and potentially the unaccompanied and separated child. This should be determined on a case-by-case basis, with consideration as to whether the child is facing any other protection concerns that would merit a BID. The case should be reviewed in the event of a change of circumstances or within one year at the latest.

## Considerations for Best Interests Determinations for Durable Solutions

Some key factors to consider when making decisions relating to durable solutions, including complementary pathways, within BIP and specifically through the BID process, are:

- A durable solution is normally in the best interests of the child if it leads to family reunification (see [Section 4.2: Children at Risk in Exceptional Situations](#)).
- Every effort should be made to keep siblings together and to keep children with caregivers (except in situations of family reunification).
- 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 or in independent living arrangements. In these cases, it is recommended that the children be considered for a durable solution together.
- Parents, former caregivers and other close relatives in the country of origin should be interviewed as part of the BID unless there are strong reasons not to involve them in the process (e.g. prior abuse, mistreatment, etc.) and whenever possible parents should give written consent for the durable solution in question.
- A durable solution in 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 that cannot be addressed in the country of asylum. Where this is the case, the durable solutions, including complementary pathways, must, as far as is possible be implemented in a manner that does not undermine future prospects for family reunification. For example, the parents must be consulted and informed as to the whereabouts of the child unless





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this would endanger the family or the child. Furthermore, the extent to which the child will be able to maintain contact and a relationship with their parents once a durable solution has been implemented should be examined and considered in the decision-making process.

- The child may have forged such a strong bond with their foster family that forcing the child to move away from them for a durable solution would be as distressing to them as their initial separation from their parents. The risks of such situations need to be analysed thoroughly in the BID process and careful consideration given as to which option is in the child's best interests.

#### 4.1.4 Voluntary repatriation

Voluntary repatriation, whether as part of a larger scale exercise or on a case-by-case basis, has serious consequences for children. For unaccompanied children and separated children in exceptional situations, the absence of the child's parents means that the additional safeguards of the BID are needed before a decision related to voluntary repatriation is taken. The principles of voluntariness, safety and dignity and *non-refoulement* apply to children as much as to adults and must be upheld.

Throughout the voluntary repatriation process, the focus must be on facilitating and supporting "safety and dignity in repatriation"<sup>107</sup>. For example, 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."<sup>108</sup> Similarly, return may not be in the child's best interests if adequate care arrangements are not available upon return. In situations where the child would be returning to be reunified with parents or other close family members the benefits of reunifying the child with family need to be carefully weighed against any risks associated with return and other options available to the child and the family.

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107 UNHCR, Voluntary Repatriation Handbook (forthcoming).

108 CRC, General Comment No. 6, para. 84.



## Principle of non-refoulement

The principle of *non-refoulement* applies to children as well as adults. The UNHCR note on the Principle of Non-Refoulement states that the principle “reflects the commitment of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment and to liberty and security of person. These and other rights can be threatened when a refugee is returned to persecution or danger”.<sup>109</sup>

For unaccompanied children in foster care, the BID should consider:

- The nature and durability of the relationship between the child and the family to help to determine whether they should remain together. A foster family may be accustomed to additional assistance provided in the country of asylum and expect it to continue in the country of origin
- The area of origin of the unaccompanied child in relation to the intended destination of the foster family. If the child is from a different area, they need to be carefully counselled about the fact that the foster family intends to return to a different area and about the distances and any other relevant factors involved. The attachment of the child to the foster family should also be balanced against the fact that repatriation to an area far from their area of origin may decrease the chances of being reunified with their family

For unaccompanied children returning on their own:

- Make every available effort to coordinate with partners at the destination and ensure that a guardian or caregiver for the child is identified, in collaboration with the competent child protection authorities in the country of origin, wherever possible
- Prior to their voluntary repatriation, develop an individual case plan for the child’s sustainable reintegration, drawn up in collaboration with the child and their pre-identified guardian or child protection service provider in the country of origin
- Identify any members of the existing support system in the community for the child, such as friends or neighbours, who may be returning to the country of origin and, where possible and in line with the child’s best interests, facilitate return with those close to the child

For all unaccompanied children:

- Access to food, housing, health services, education and reintegration services to avoid increasing the vulnerability of the child and ensure that family tracing continues where necessary
- Any specific needs such as children formerly associated with armed forces or armed groups (CAAFAG), children at risk of child marriage, survivors of sexual violence and other children who may need continuing support and services upon return.<sup>110</sup> For many children with additional vulnerabilities, repatriation could raise issues of acceptance by their family and the wider community, thereby creating additional challenges to their reintegration<sup>111</sup>

109 UNHCR, *Note on the Principle of Non-Refoulement*, 1997, <https://www.refworld.org/docid/438c6d972.html>

110 See: UNHCR, *Child Protection Issue Brief: Child recruitment*, 2013, available at: <http://www.refworld.org/docid/529ddb574.html>

111 See: UNHCR, *Handbook – Voluntary Repatriation: International Protection*, 1996, available at: <http://www.unhcr.org/publications/legal/3bfe68d32/handbook-voluntary-repatriation-international-protection.html>

## 4.1.5 Local integration

Local integration has four separate dimensions: legal, socio-cultural, economic and civil-political. Granting refugees a secure legal status and a residence permit allows them progressively to enjoy the same rights as nationals, including equal access to institutions, facilities and services, as well as to family reunification in the country of asylum.

Local integration may be the preferred durable solution for some unaccompanied and separated children. For example, this is true in cases where:

- Repatriation is not appropriate or feasible
- Refugees are unwilling to return for specific reasons, despite improvements in the overall situation in their country of origin
- Refugees have established close family, social, cultural and/or economic ties with the country of asylum

Local integration may also be appropriate for refugee children who are born in countries of asylum, who have no ties with their parents' country of origin and who may risk becoming *de facto* or *de jure* stateless.

Where prospects for effective local integration exist, a determination that local integration is the most appropriate durable solution for unaccompanied children and separated children in exceptional situations must be based on a BID. For other separated children, a BIA will be sufficient. This process should also include assessment of possible additional support needed for the safety and well-being of the child and to facilitate successful local integration. A specific strategy must be established as part of the BID to ensure adequate integration of unaccompanied and separated children. Careful consideration should be given to the child's rights to their own identity, especially in the case of those who are unaccompanied or separated, as these rights might be placed at risk as a result of the local integration process.

## 4.1.6 Resettlement

Resettlement is the transfer of refugees from a country of asylum to another State that has agreed to admit them and ultimately grant them permanent settlement. UNHCR is mandated by its Statute<sup>112</sup> to undertake resettlement. Resettlement ensures protection against *refoulement* and provides a resettled refugee and their family or dependents with access to civil, political, economic, social and cultural rights similar to those enjoyed by nationals.

Resettlement is geared primarily towards the protection of refugees whose life, liberty, safety, health or fundamental human rights are at risk in their country of refuge. UNHCR may submit refugees for resettlement consideration based on a number of categories, such as legal physical protection needs or medical needs, and other categories that can be applied to children with protection needs, including "children and adolescents at risk", "family reunification", and "women (and girls) at risk".

Among the cases to be referred for resettlement, priority attention should be given to refugees with acute legal or physical protection needs. This can also include children at risk, such as unaccompanied and separated children and children at risk of or victims of violence, abuse or exploitation or children with needs that can't be addressed in country of asylum such as mental health,

112 UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <https://www.refworld.org/docid/3b00f0715c.html>

medical or children with disabilities.<sup>113</sup> Protection and other needs, as well as the special programmes offered by resettlement countries that address their specific needs upon arrival for resettlement, should be considered as part of the BIP.

The fact that resettlement normally means that the child is separated from their own community and cultural context should be given special consideration, especially regarding the longer-term impact on the child. Resettlement can also make family reunification more difficult once the child is in their new country; therefore, it is important that the country of resettlement is selected carefully and that the operation submitting the cases for consideration is aware of the rules and regulations of the proposed country of resettlement.<sup>114</sup> The BID must carefully balance the child's rights vis-a-vis their situation in the country of asylum and identify whether resettlement is the best durable solution for the child in question.<sup>115</sup> It is also important to include parents or other family members in the process, wherever possible and in the best interests of the child. In some cases, resettlement may be in the best interests of a child and may therefore be deemed the most suitable form of protection. For certain categories of children at risk, including unaccompanied and separated children, the recommendation should benefit from the additional safeguards of a BIP. Resettlement should not automatically be considered to be in the best interests of the child; rather, resettlement recommendations should be subject to individual best interests assessment and determination.

The following points relating to specific BIP tools and procedures should be considered in the context of resettlement:

- The decision that resettlement is the most appropriate durable solution for unaccompanied children must be based on a BID.
- The decision that resettlement is the most appropriate durable solution for separated children with an additional significant risk factor or protection concern must be based on a BID. For other separated children a BIA will be sufficient.
- Some resettlement countries may require a BID to identify durable solutions for separated children. UNHCR only requires a BID for separated children where there is an additional significant risk factor or protection concern. If a State requires a BID for resettlement purposes, it should be completed.
- In some cases, such as the resettlement of a child with one parent, the BIA can be carried out by resettlement staff if they have had the requisite training and are competent in “child protection issues, and child-friendly interview techniques”.<sup>116</sup> However, since BIA is fundamentally a child protection process, the process should be supervised by staff responsible for child protection, as opposed to resettlement, even when a BIA is carried out by resettlement staff.

113 See: UNHCR, *Resettlement of Children and Adolescents at Risk*, June 2016, available at: <http://www.refworld.org/docid/58344f244.html>

114 See: UNHCR, *Resettlement Handbook and Country Chapters*, 2011, available at: <https://www.unhcr.org/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-country-chapters.html> (UNHCR Resettlement Handbook and Country Chapters)

115 *ibid.*

116 UNHCR, *Operational Guidance Note: Best Interests Assessments For Children being Resettled with Only One Parent*, 2013, available as an internal document, and may be accessed through the intranet or requested from UNHCR, Division of International Protection (DIP).

## Children considered for admission to a third country through resettlement or a complementary pathway, with one parent

The UNHCR Operational Guidance Note on BIA For Children Being Resettled with Only One Parent confirms that a BIA is not required for children being considered for resettlement with only one parent if: (i) the resettling parent has legal documentation granting sole custody, (ii) proof of the death of the absent parent is available, and there is no person with a custody arrangement over the child other than the parent resettling with the child, or (iii) the parent not resettling provides informed written consent for the resettlement of the child.

A BIA must be conducted for children being resettled with one parent and included with the submission when a child is considered for resettlement with only one parent who does not have sole custody and the other parent cannot be reached.<sup>17</sup>

In addition, a BID is required for children being considered for resettlement with one parent if: (i) the parent not resettling is contacted and refuses to give consent for the resettlement of the child, or (ii) there are indications that the child might be at risk within the family being considered for resettlement.

See [Section 4.3.4: Parents' and custody rights](#) for specific considerations relating to custody in the context of resettlement.

The same considerations are valid for children considered for complementary pathways with one parent.

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<sup>17</sup> UNHCR, Operational Guidance Note: Best Interests Assessments For Children being Resettled with Only One Parent, 2013, available as an internal document, and may be accessed through the intranet or requested from UNHCR, Division of International Protection (DIP).

### 4.1.7 Complementary pathways of admission for refugees in third countries

Complementary pathways are safe and regulated avenues by which refugees and other persons in need of international protection are provided with lawful stay in a third country in which their international protection needs are met, while being given opportunities such as learning new skills, acquiring an education and/or contributing as workers in the labour market. When durable solutions are not achievable for all refugees, particularly in large-scale and protracted refugee situations, complementary pathways can be used to access protection and sustainable solutions and widen the options for those with few prospects of attaining a durable solution. Complementary pathways are not meant to substitute the protection afforded to refugees under the international protection regime; they complement it and serve as an important expression of global solidarity, international cooperation and more equitable responsibility sharing to meet the protection needs of refugees and to support them in achieving sustainable solutions. In fact, although complementary pathways may not always automatically lead to a durable solution, it is particularly important that they do so for unaccompanied children.

Complementary pathways can take different forms.<sup>118</sup> These pathways may include opportunities for family reunification for refugees who are eligible under a State's family reunification criteria (see [Section 4.2: Children at Risk in Exceptional Situations](#)), for humanitarian admission programmes, humanitarian visas to access asylum, community or private sponsorship, education opportunities such as private, community or institution-based visas, scholarships, traineeship and apprenticeship programmes and employment opportunities in third countries, including through labour mobility schemes, among others.

As part of the UNHCR statutory responsibilities in supporting States to achieve protection and solutions for persons of concern, UNHCR works together with refugees to collaborate with States, international and national non-governmental organizations, civil society actors, unions, international financial institutions etc., to identify, establish and expand viable complementary pathways to protection and solutions that will meet the continuous international protection needs of refugees.

For unaccompanied children, and separated children in exceptional situations, for whom the use of a complementary pathway for admission to a third country is considered and where UNHCR is involved, a BID is required and should consider whether:

- Other sustainable solutions are available to the child, such as resettlement, humanitarian admission, voluntary return to the country of origin or local integration in the host country or country of asylum
- Protection against *refoulement* is provided in the third country. This should include the possibility of the child seeking asylum and remaining in the third country after completion of their education or other programme if they cannot return to the first country of asylum or to their country of origin, and the right to legal assistance
- The child will have access to a legal status and documentation in the third country
- The child will be provided with or is in possession of a valid travel document such as the Refugee Convention Travel Document or other travel documents, adapted to international standards to address biometric and security imperatives.<sup>119</sup>
- The child will have access to simplified visa and entry programmes to facilitate entry to the third country.
- Re-entry procedures will be available to the child following short-term mobility opportunities in third countries, so that they can return to countries of first asylum or to reunite with family and community.
- The third country's admission policies and procedures in relation to family reunification might create or increase the risk of permanent family separation for the child.
- Institutional mechanisms and procedures that support access to justice and to freedom from discrimination, exploitation or from other risks associated with third-country mobility, irrespective of legal status, are available for refugees in the third country.
- Necessary support will be available, such as in health, education, legal, shelter, counselling and psychosocial services, language support and contact with the diaspora and broader communities in the third country.

<sup>118</sup> See: UNHCR, *Complementary Pathways for Admission of Refugees to Third Countries: Key Considerations*, April 2019, available at: <https://www.refworld.org/docid/5cebf3fc4.html>

<sup>119</sup> UNHCR, *Conclusion of the Executive Committee No. 114 (LXVIII), 2017, on Machine-readable travel documents for refugees and stateless persons*, paras. 1 and 5, available at: <http://www.refworld.org/pdfid/59df19bc4.pdf>



- Refugees without defined nationality will have access to birth registration and citizenship acquisition systems in the third country.
- The needs, interests and specific situation of the child, including their cultural context, their specific educational and learning needs, disabilities or inability to provide required documentation has been taken into account by the third country.
- Access to information on complementary pathways as well as services, and administrative support has been provided in a clear, timely, transparent and non-discriminatory manner, including selection and eligibility criteria.

The BID is also essential for ensuring that the child has been properly counselled on all aspects of the complementary pathway and that their age and maturity in making a decision has been properly weighed against any identified risks.

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### **CASE STUDY: Using the BID process to inform the safe passage of unaccompanied children from Greece to other EU Member States**

Since 2018, UNHCR and other partners have supported the government of Greece in establishing best interests procedures to relocate unaccompanied children at heightened risk to the UK under section 67 of the 2016 UK Immigration Act (the “Dubs” scheme). A Memorandum of Cooperation was established between the Greek child protection authority (EKKA, falling under the Ministry of Labour and Social Solidarity), the Ministry of Migration Policy and UNHCR, establishing an institutional framework for best interests procedures. The framework established a multidisciplinary panel to review and process BID reports. UNHCR provided technical support and capacity development throughout the process.

The BIP process included the following steps:

- A BIA was carried out by child protection actors for all unaccompanied children
- unaccompanied children at heightened risk who would benefit from transfer to the UK were identified based on eligibility criteria established by the Dubs scheme and local vulnerability criteria established by UNHCR and endorsed by EKKA. They were then referred to EKKA using a standardized referral form
- Cases were reviewed jointly by EKKA and UNHCR and prioritized based on the eligibility and vulnerability criteria
- A BID was initiated for prioritized cases to determine whether transfer to the UK would be in their best interests; BID reports were submitted to a multidisciplinary panel chaired by EKKA
- Following the decision of the BID panel, UNHCR ensured that the case was fully documented and submitted to the relevant authorities for their consideration and further processing, such as the Public Prosecutor (who acts as temporary guardian for unaccompanied children in Greece) and the Greek Asylum Service
- Once official state approval for the transfer of the child was issued, UNHCR submitted cases to the UK Home Office, including a child information form and accompanying documents such as birth certificates, asylum cards and medical/ psychological reports. UK counterparts used this information to process and facilitate relocation, including identifying appropriate care arrangements and access to required services

## 4.2 CHILDREN AT RISK IN EXCEPTIONAL SITUATIONS

### Section Summary

Why:

- Children at risk, including unaccompanied and separated children, may also require a BID in exceptional situations. Exceptional situations are those in which a decision is required and a solution that adequately balances between core groups of rights is not easily found. Cases include those in which all of the options, or the suggested option, give more significant weight to one right or group of rights at the expense of another and this has long-term and severe consequences for the child.

How:

- A BIA form will often help to determine whether a decision for a particular child requires BID. Other measures that may be appropriate before resorting to BID are intensive follow-up and case conferences.
- A BID should only be carried out for children at risk in exceptional situations if this is necessary and/or beneficial to identify the correct course of action for a child. A BID can aid decision-making where the situation and risks facing the child are particularly complex when decisions need to be taken regarding: 1) family reunification for unaccompanied and separated children; 2) temporary care arrangements for unaccompanied and separated children; 3) durable solutions, including complementary pathways, for children at risk (for unaccompanied and separated children, see [Section 4.1: Durable Solutions for Unaccompanied and Separated Children](#)); and 4) exceptional situations for other children at risk.

### 4.2.1 Purpose of the Best Interests Determination

While any child, regardless of their family, environmental or personal characteristics could be exposed to violence, exploitation, abuse or neglect, children in some specific situations are commonly at heightened risk (see [Section 3.1.3: Applying the best interests principle for individual children](#)). These include, among others: unaccompanied and separated children, children who are married, children in the worst forms of child labour, child survivors of gender-based violence and children associated with armed forces or armed groups.<sup>120</sup>

In most cases, children at risk who require support through BIP—including BIA, case action planning, and follow-up—do not require a BID (see [Chapter 3](#)). However, where a decision affecting children at heightened risk in refugee settings is particularly complex and significant, the additional safeguards of a BID may be necessary. The purpose of the BID is to ensure that no action is taken that will result in a significant negative consequence or increased vulnerability for the child.

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<sup>120</sup> See [Section 3.2.2: Identification](#) for more information on categorizing risk and on categories of children with different vulnerabilities.

## 4.2.2 When is Best Interests Determination required?

A BID is required for significant decisions for children at risk, where the best interests of the child may not be immediately obvious but the consequences may be profound. These decisions for a child at risk are normally required in exceptional situations where there is a significant conflict between the options that would fulfil the different rights of the child. A decision that requires giving significantly more weight to one of the four key rights groups (see [Section 2.4: Balancing competing rights when making a decision](#)) than another, such as prioritizing family unity over a child's developmental needs, may fall into this category. These may include decisions around durable solutions or pursuing complementary pathways such as family reunification or potential separation from persons close to the child (without the consent of the parent/caregiver— see [Section 4.3: Possible Separation of a Child from their Parents against their Will and Custody Issues](#) for situations where separation is against their will).

A BID should only be carried out for children at risk in exceptional situations if this is necessary and/or beneficial to identify the correct course of action for a child. A BID can aid decision-making where the situation and risks facing the child are particularly complex, particularly where parents are not present to provide consent. The BID panel in this case can help to ensure that all different options have been considered, provide guidance on how to maximise the best interests of the child and provide the additional safeguards required for decisions of this nature.

Based on this, some common exceptional circumstances for decisions related to children at risk are defined below:

- **Exceptional situations for family reunification for unaccompanied and separated children** exist, for example, where there is an identified potential risk of harm to the child, or serious credibility concerns, or where reunification separates the child from another person with close ties to the child (see [Section 3.8.1: Family tracing, reunification and the Best Interests Procedure](#))
- **Exceptional situations for temporary care arrangements for unaccompanied and separated children** exist, for example, where there is a risk to the child's identity needs in an existing care arrangement, or where a change in temporary care arrangements would separate the child from a person with close ties to the child. (See [Section 3.8.2: Alternative care and the Best Interests Procedure](#))
- **Exceptional situations for durable solutions, including complementary pathways, for other children at risk** exist, for example, where there is an identified potential risk of harm to the child, where the solution risks long-term separation of the child from their parents or current caregivers, or the child has complex vulnerabilities and/or limited options that would require giving significantly more weight to one group of rights than another;
- **Exceptional situations for other children at risk** can be defined on a context-specific or case-by-case basis. However, BIDs in situations other than those described in these Guidelines should remain the exception rather than the rule.

## 4.2.3 When to start a Best Interests Determination

A BID for children at risk in exceptional situations should be started as soon as the situation is identified. In many cases there may be other steps to take before deciding to open a BID process for cases in this category. A BIA is normally the first step in making a decision as to whether a BID is necessary. The BIA may identify other steps which could be taken before a BID would be required. For example, where a BIA finds that a child at risk with complex needs would benefit from a service that is not working or not available, using multidisciplinary case conferencing may be sufficient to

identify the correct course of action. Additional follow-up or counselling sessions for the child or family members may also be important before initiating a BID, especially in cases where the complexity arises from differences of opinion between children and parents/caregivers and/or service providers.

#### 4.2.4 Exceptional situations for family reunification for unaccompanied and separated children

Family reunification is normally considered as being in the best interests of the child. [Section 3.3: Participation of children and families in the Best Interests Procedure](#), on the importance of including family in decision-making, details the legal basis for a right to family unity. In addition, [Section 3.8.1: Family tracing, reunification and the Best Interests Procedure](#) provides practical details on how to approach family tracing and reunification throughout BIP. It is established in [Section 3.8.1](#) that under normal circumstances a BIA is sufficient to assess and make decisions on family reunification. This section focuses on the exceptional situations for family reunification that require a BID process.

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 best interests of the child. To enable UNHCR to make a swift decision as to whether or not to support the family reunification, a simplified BID process may be applied in some situations (see [Section 5.3: Simplified decision-making procedures for Best Interests Determination](#)).

The list below can help determine if a family reunification decision for separated or unaccompanied children may need a BID and these criteria applies to family reunification in the country of arrival/ asylum, in the country of origin, in countries the child transited through, and in third countries. Note that in the latter case, State resettlement or family reunification procedures may also require BID to be carried out either by UNHCR or by relevant agencies in the host country, if available (see [Section 4.1.6: Resettlement](#) for more information on BIP in the context of resettlement and [Section 4.1.7: Complementary pathways of admission for refugees in third countries](#) for BIP in the context of complementary pathways). The BID process should establish whether reunification is in the best interests of the child.



## CHECKLIST: BEST INTEREST DETERMINATION FOR FAMILY REUNIFICATION

This checklist should be completed before facilitating family reunification for unaccompanied or separated children. A BID is required if any of the following statements applies (please tick relevant boxes) in situations where UNHCR is responsible for BIP:

- The child has disclosed, or there are indications of, past or current child abuse or neglect within the household that the child will join.
- After all reasonable efforts, information gathered on the child and their family remains insufficient to make an informed decision as to whether family reunification could lead to violations of rights of the child.
- Doubts exist as to the legitimacy of the family relationship.
- Family members or the child have provided significant inaccurate information or there are significant discrepancies or inconsistencies about essential facts relating to the reunification (e.g. identity of family members).
- The family member or relative that the child will join lives in an environment (in detention, in an area affected by armed conflict, etc.) that is likely to expose the child to physical or emotional harm.\*
- The family member in question has been refouled.
- There is any other reason to believe that reunification will or is likely to expose the child to abuse or neglect.
- The family member that the child will join is not their father or mother or previous caregiver.<sup>121</sup>
- The child is reluctant to be reunited with the family member(s) or the parent or caregiver expresses reluctance or reservation about reunification with the child.
- The child and the family member that they are joining have never lived together or have not lived together for a significant period.
- Reunification will result in the child being separated from a family member or other caregiver who is close to the child or with whom the child has developed a strong bond, and/or could affect custodial rights or contact with a family member (see [Section 3.8.1: Family Tracing and Reunification and Best Interests Procedure](#)).
- The reunification is facilitated through resettlement or a complementary pathway programme where the State (either sending or receiving) requires the BID (see [Section 4.1.2: When is a Best Interests Determination Required?](#)).

\* Where this is the only statement that applies, simplified decision-making procedures can be applied (see [Section 5.3: Simplified decision-making procedures for Best Interests Determination](#)).

<sup>121</sup> Where this is the only statement that applies, simplified decision-making procedures can be applied. See [Section 5.3: Simplified decision-making procedures for Best Interests Determination](#).



## CASE STUDY: 3. Family reunification pilot programme for children at risk in the central Mediterranean situation

In July 2019, the Office of the Special Envoy for the Central Mediterranean Situation launched a family reunification project which aimed to assist children and youth at-risk by facilitating family reunification to third countries, cross-border family reunification and family reunification back in the country of origin, when determined to be in the child's best interests. The project was implemented in Libya, Egypt, Sudan and Ethiopia, where large numbers of children whose families had initiated or wished to initiate family reunification with one or both biological parent(s) had been identified by UNHCR and partners. The project provided a mix of direct case management through BIP as well legal support to families in third countries.

While many of the children and families who qualified for family reunification had been profiled by partners, or identified through UNHCR proGres data, most did not have an assessment or BIA on file. In the vast majority of the cases identified for family reunification, the child or children (in the case of siblings) were joining at least one biological parent and initial screening interviews suggested that there were no additional protection concerns. However, the length of separation was often several years, mainly due to the fact that many of the parents took long journeys to Europe through Libya, moved onward in Europe and had to wait until their asylum applications were positively adjudicated. During initial screening interviews with children, the Family Reunification checklist was reviewed and in the vast majority of the cases the long separation period deemed it necessary to proceed with a BID instead of a BIA. The question of whether family reunification was in the best interests of the child was explored through the BID process. For cases in which an initial BIA had not already been completed, a BIA prior to the BID was not conducted as this was perceived as duplicative work in operations that had limited child protection resources and high numbers of children at-risk.

### What if the parents have been refouled or have spontaneously returned?

When considering whether a child should be reunified with parents when those parents were *refouled* to their country of origin, a BID should be undertaken to determine the most appropriate 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.

In some cases, parents, foster parents or caregivers spontaneously return to their country of origin without the assistance of UNHCR when conditions for voluntary return are not in place. In such situations, where children remain in the country of asylum, BIDs should be conducted to determine whether reunification would be in the child's best interests.

## 4.2.5 Exceptional situations for temporary care

Unaccompanied and separated children need to be provided with temporary care until they are reunited with their family or previous caregiver or a new permanent solution is identified, as outlined in [Section 3.8.2: Alternative care and Best Interests Procedure](#). Usually, decisions relating to temporary care should be swift and not be delayed by a BID process.

There are, however, exceptional situations in which an assessment alone is not sufficient. In such cases a wide range of factors and rights need to be reviewed by more than one person and each step of the process needs to be documented. In some cases, it may also be necessary to remove children from foster care or other types of care arrangement for their protection. Actions to remove children from alternative care arrangements must be guided by local legislation and policies, where they exist, and the local authorities need to be involved whenever possible. If temporary care arrangements are made by States, there is no call for UNHCR to undertake a BID, although it may undertake monitoring or an advisory role.

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### CHECKLIST: BEST INTERESTS DETERMINATION FOR TEMPORARY CARE

This checklist should be completed before facilitating a temporary care placement, or when assessing an existing placement. A BID is required if any of the following statements applies in situations where UNHCR is responsible for BID:

The child has disclosed, or there are indications of, past or current child abuse or neglect within the household that the child is to be placed with/ is already placed with.

- Doubts exist as to the legitimacy of relationship between the child and the caregivers.
- Family members or the child have provided inaccurate information or there are significant discrepancies or inconsistencies about essential facts relating to the placement (e.g. how long the child has known the family, how the child came into their care, etc.).
- The family that the child will join lives in an environment (in detention, in an area affected by armed conflict, etc.) that is likely to expose the child to physical or emotional harm.
- The placement could result in the child being deprived of access to education, health, protection or other essential services.
- The family that the child will join is of a different ethnic or religious group, nationality, or legal status from the child.
- The child is reluctant to be placed with the family.
- The proposed placement is in a residential or institutional care facility.
- The placement will result in the child being separated from sibling or other family members or other persons who are close to the child or with whom the child has developed a strong bond.
- The placement is, for whatever reason, unlikely to be sustainable in the long-term and thus could result in significant disruption to the child at a later stage.
- There is any other reason to believe that the care placement will, or is likely to, expose the child to abuse or neglect.

The BID process 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 their 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 procedures themselves 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 4.3: Possible Separation of a Child from their Parents against their Will and Custody Issues](#).

## 4.2.6 Durable solutions for other children at risk

Given the UNHCR mandate, exceptional situations for children at risk who are not separated or unaccompanied may arise in relation to durable solutions, including through complementary pathways. Examples of what could be considered exceptional situations that would require a BID include:

- Where the child's family's wishes contradict those of the child. For example, the parents plan to return to the country of origin, but the child does not want to accompany them.
- Where a durable solution, including a complementary pathway, proposed by a child's family would deprive the child from receiving a specialized service that the child requires on the basis of their specific needs (e.g. medical or mental health service). For example, the family wishes to relocate a child receiving necessary, specialized medical care to an area where this care is not available.
- Where a referral to State procedures may put a specific child or their family members at risk.
- Where a proposed durable solution, including a complementary pathway, for the child or their parents/caregivers would result in long-term separation.



## Married children under consideration for resettlement or a complementary pathway

In principle UNHCR does not submit cases of married children<sup>122</sup> for resettlement in child marriages because child marriage has no legal effect under international law, is widely treated as a form of gender-based violence<sup>123</sup> and is punishable by law in many resettlement countries.

Any married child whose parents or customary caregivers are not present should be treated as unaccompanied (see [Section 4.1: Durable Solutions for Unaccompanied and Separated Children](#)). Key guidance includes:

- All married children, even those accompanied by their parents as well as their spouse, should have a BIA conducted (unless they require a BID – see below). For instance, two married children who are being resettled with both their parents/caregivers and for whom no other protection concerns are identified would require a BIA.
- If the child’s adult spouse is considered for resettlement with the child and their parents/caregivers, however, a BID may be required depending on the age and views of the child concerned. This includes situations in which the child is below the legal age of marriage in the country of asylum and/or country of resettlement, where there are indications that the child did not assent to the marriage, or where the child was married under 15 years of age.
- BIDs are always required in the following situations: when a married child is being considered for resettlement with their adult spouse without the parent/caregiver of the child, where two married children are being considered without their caregivers/parents, or where there are indications that the child is subject to violence, abuse or exploitation by their spouse or people with which they will be resettled.

Resettlement may be considered for a married refugee child when:<sup>124</sup>

- a married refugee child has a compelling protection need or vulnerability; or
- a member of the refugee family upon which the married refugee child is dependent has a compelling protection need or vulnerability and
- resettlement may be the most appropriate option for addressing the specific protection need or vulnerability and
- the married refugee child wishes to be resettled together with their spouse.
- The same considerations apply when UNHCR engages in facilitating access to complementary pathways for married children.

122 For guidance on child marriage, see, *UNHCR Child Marriage Guidelines*, 2021, available in the BIP Toolbox accessible at: <https://www.unhcr.org/handbooks/biptoolbox/guidance.html>

123 UNHCR, *Resettlement assessment tool: married children*, 2011, UNHCR, Division of International Protection, p4. (internal) <http://swigea56.hcrnet.ch/refworld/docid/4dc7a79f2.html>

124 UNHCR, *Resettlement assessment tool: married children*, 2011, UNHCR, Division of International Protection, p7. (internal) <http://swigea56.hcrnet.ch/refworld/docid/4dc7a79f2.html>

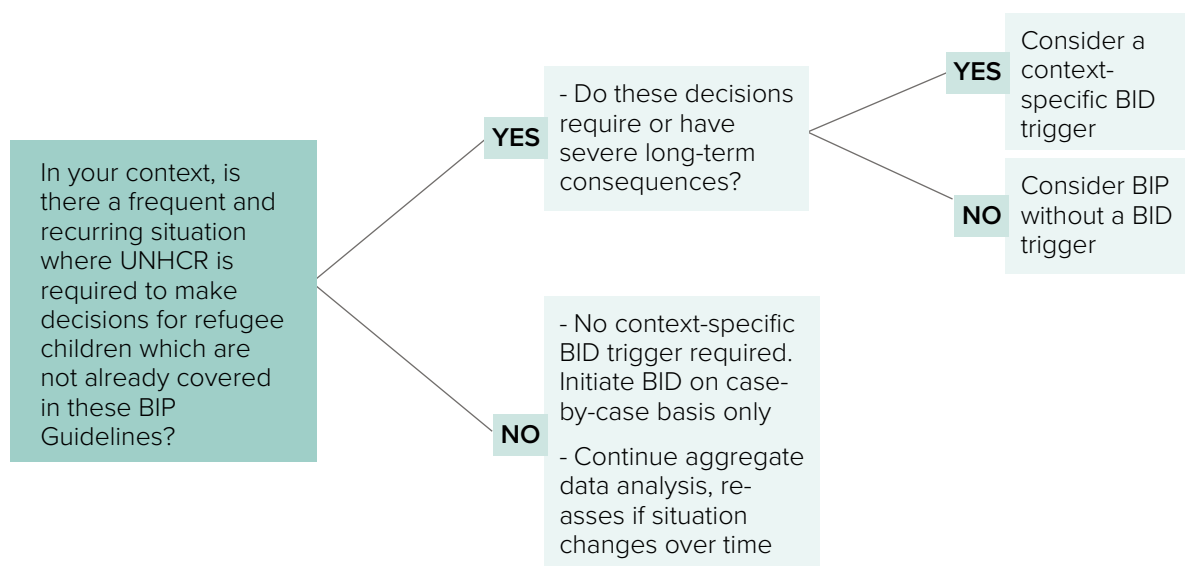
## 4.2.7 Other exceptional situations for children at risk

BID for children at risk in exceptional situations other than those outlined in these guidelines should be rare. Operations are advised to consider the guidance outlined in the introduction to this chapter, which sets out the reasons for which BIDs are required. It should be recalled that for children who are with their parents or other caregiver, considerations for a child's best interests primarily lie with the parent or caregiver. Operations should also consider that most children at risk can be supported through the other steps of BIP outlined in [Section 3.2: Best Interests Procedure - Step-by-Step](#), without the need to resort to a BID.

Exceptional situations where children at risk may benefit from a BID other than those outlined elsewhere in these Guidelines can be identified either on a case-by-case basis or defined as a more systematic trigger.

- For situations arising on a case-by-case basis, the caseworker should alert their supervisor when they identify a case that may require a BID, and the case should be approved for submission to the panel by the BID Supervisor.
- For situations where an operation would like to conduct BIDs on a systematic basis due to the specificities of their context, operations should consider whether the additional safeguards of the BID are strictly necessary for this type of case, and whether there are other processes that might meet the identified children's needs without resort to a BID. The operation should also consider whether there are other mechanisms in the national child protection system that may be used instead. The decision to use a context-specific BID trigger should be approved by the most senior protection officer in the operation. Before formalizing a context-specific BID trigger, it is recommended that the operation contact their Regional Bureau and the Division for International Protection (DIP) at UNHCR Headquarters for discussion.

**FIGURE 7: How to decide if a context-specific Best Interests Determination is required**





## 4.3 POSSIBLE SEPARATION OF A CHILD FROM THEIR PARENTS AGAINST THEIR WILL AND CUSTODY ISSUES

### Section Summary

Why:

- Article 9 of the Convention on the Rights of the Child and relevant national laws “require that a child shall not be separated from her or his 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”.

How:

- A decision to separate a child from their parents falls within the competence of States. If UNHCR becomes aware of serious situations of abuse or neglect by the parents or other caregivers, UNHCR and partners should, wherever possible, inform the competent State authorities, and support them in carrying out their responsibilities under Article 9 of the Convention on the Rights of the Child. When national authorities are handling such cases in relation to children of concern, UNHCR may monitor the process and provide support with other partners as appropriate.
- While this section deals with the separation of children from their parents, it may also apply to children cared for by people who are not their biological parents. The term “family” should be interpreted in a broad sense in line with local customs, and can, depending on the context, include extended family members or other people in the community with whom the child is living.
- Where the responsible State authorities are unable or unwilling, 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, and in the absence of national authorities, this may possibly involve separating the child from their parents. Any intervention by UNHCR to separate the child from their parents will be of an exceptional and provisional nature to provide the child with a safe care arrangement and does not impact on parental rights and responsibilities. The right to make a decision on parental rights or responsibilities is limited to the competent State authorities.
- Given the gravity of the impact of separation, even if only a temporary arrangement, a BID must be undertaken for all situations where separation of a child from their caregiver due to risk of imminent harm is considered (where the separation is not undertaken by duly authorised authorities). Separation of children from parents/caregivers against their will should be a last resort and should never be done if other less intrusive measures can protect the child.
- The situations where UNHCR would conduct a BID linked to the separation of a child from their parents against their will and custody include:
  - severe harm from parents or
  - unresolved custody disputes
- As UNHCR does not have the legal competence to determine legal custody, a BID decision can only determine which parent the child should stay with based on the best interests principle. After the BID, UNHCR should support the parent to obtain a formal determination of legal custody through the competent state authority wherever possible and in the best interests of the child.

### 4.3.1 Purpose of the Best Interests Determination

The Convention on the Rights of the Child limits decision-making on the separation of a child from their parents against their will to “competent authorities subject to judicial review”.<sup>125</sup> UNHCR does not have the legal competence to determine legal custody or to permanently remove a child from their parents. Any intervention by UNHCR to separate the child from her or his parents can thus only be of a provisional nature to provide the child with a safe care arrangement, reserving the right to make a decision on parental rights or responsibilities to the competent State authorities. A BID in relation to possible separation of a child from their parents against their will, whether in relation to severe harm from parents or custody disputes, is undertaken in order to facilitate decision-making as to with whom a child should stay with based on the best interests principle. A BID provides a basis for UNHCR actions in terms of protective measures and assistance for the child and parents/caregivers. A BID should also facilitate interventions to bring about a formal resolution in the best interests of the child. However, a BID does not substitute for a formal custody decision through the competent State authority.

If the child is to be placed in other care arrangements, the BID decision should also stipulate what monitoring arrangements need to be established to facilitate contact between the child and the caregivers when in the child’s best interests to do so and to ensure that any restriction of contact between the parent(s) and the child is respected. The frequency and type of contacts with the parent(s) 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 organization to monitor and assess the impact of the visits on the child.

The Convention on the Rights of the Child also prohibits unlawful interference with the child’s family<sup>126</sup> and their family relations as recognized by law.<sup>127</sup> The term family has to be interpreted in a broad sense including parents or, where applicable, members of the extended family or community as per local custom.<sup>128</sup> Although this section refers to separation from parents, there are other relationships that require a careful balance to be struck 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 caregiver.
- Removal from a caregiver (e.g. family member or 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 caregiver must be assessed on a case-by-case basis.

### 4.3.2 When is a Best Interests Determination required?

Separation of a child from their parents should be considered only when there are reasonable grounds to believe that the child is, or is likely to be, exposed to severe abuse or neglect by the parents, such as serious physical or mental harm or sexual exploitation and abuse. Any intervention, whether in separation due to harm or due to custody disputes, should be combined with efforts to support the family through mediation and counselling for the involved family members, with the help of relevant social service workforce actor, child protection staff or, where this is in the child’s best interests, the support of an elder or other respected family or community member.

125 CRC, Article 9.

126 CRC, Article 16.

127 CRC, Article 8.

128 CRC, Article 5.

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 respect of which a separation against their will is being considered.
- Cases where parents are or may become separated and there is a unresolved custody dispute and as such there is a need to determine with whom the child should stay.

### 4.3.3 When to start a Best Interests Determination

Any barriers to undertake and complete a BID should not delay interventions to prevent further harm to a child – for instance, removal of a child from a family environment where they are at risk of abuse, exploitation, violence and neglect. In such cases, removal of the child should be quickly followed by a BID.

In cases that are custody-related and being submitted for resettlement or another durable solution in the short-term, a BID should begin as soon as the issue is identified. In other custody-related cases, a BID should only be initiated when a BIA indicates that a child is at risk of abandonment or harm, or if it has already occurred and the child is still at risk, and other avenues (e.g. legal counselling, social work support) have already been exhausted.

In cases of separation from parents due to the risk of severe harm to a child, 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<sup>129</sup> need to determine whether there are reasonable grounds to believe that the child is at imminent risk of severe abuse or neglect such as physical injury, sexual abuse or death. In such situations, a decision must be taken to remove the child immediately from the family and provide temporary care. The same assessment is required if 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 for the child not to be returned must be endorsed by the BID Supervisor (or, in their absence, by another senior UNHCR staff) prior to the emergency removal. If a situation is so urgent that it is not possible to get supervisory endorsement prior to removal, this must be received 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 time frame must be recorded in writing and included in the child's file. The BID Supervisor should inform the national authorities accordingly, provided that this does not present a further risk to the child.

If the child is removed or not returned, the parent(s) and child 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 with the parents at this stage and visits should be arranged, if safe and appropriate. If visits are not immediately appropriate, alternative options for maintaining communications may be sought, such as phone calls, ensuring that communication is achieved in a manner that does not put the child at risk of further harm.

129 In contexts where national standards exist, it is particularly important to recruit staff with the requisite experience.

## b. Supporting the family:

Regardless of whether or not the child stays with their parent(s), the parent(s) should be provided with support 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 provided 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 parent(s) are illiterate, the agreement should be clearly explained to them in a language that they understand. The agreement must specify all of the tasks and obligations of the parent(s) regarding care of the child, as well as timelines for compliance. If the parent(s) agree(s) 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 or its partners. For example, if the agreement establishes that the parent(s) must take the child to school every morning, it is essential that the teacher or another school staff member report to the relevant organization whether the parent(s) is/are carrying out this task and whether the child is going alone, 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 the agreement is not successful, or the parent(s) 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 BIP Guidelines.

### 4.3.4 Severe harm from parents

The first situation where a BID is necessary for separation of a child from parents or other caregivers includes cases of severe forms of abuse or neglect within the family. UNHCR should undertake BID only in those situations in which the responsible State authorities are unwilling or unable to take action. UNHCR involvement will primarily, if not exclusively, concern refugee children.

Instances of abuse include physical violence (i.e. injury to a child that is not accidental), mental violence (i.e. liable to cause psychological harm), as well as sexual abuse. Neglect involves intentionally depriving a child of their essential needs (e.g. food, clothing, shelter and medical care), when such needs are attainable.

Removing 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.



## CHECKLIST: BEST INTERESTS DETERMINATION FOR SEPARATION OF A CHILD FROM THEIR PARENTS AGAINST THEIR WILL

A BID is required in cases of separation of a child from their parents against their will, if any of the following statements applies (please tick relevant boxes) in situations in which UNHCR is responsible for BIP:

- The State authorities are unwilling or unable to take action in cases of severe forms of abuse or neglect within the family;<sup>130</sup>
- The child is, or is likely to be, exposed to **serious physical or emotional injury** caused, for example, by, severe beating, death threats, maiming, lengthy confinement by the parents/ or legal/customary caregivers, as punishment, coercion to engage in the worst forms of child labour, continuous exposure to severe domestic violence within the home;
- The child is, or is likely to be, exposed to **sexual abuse or exploitation** by the parents or legal/customary caregivers, for example: rape or sexual assault; 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, etc.
- The child is, or is likely to be, exposed to severe abuse or neglect by a relative, neighbour or friend of the family and the parents/legal/customary caregivers are unwilling to provide protection and to prevent such harm from arising.

130 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).

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.

As indicated above, the BID should also consider support to the child and family, regardless of whether separation occurs. A holistic plan for support should be considered. If the child is to be placed in other care arrangements, the BID decision should also stipulate what monitoring arrangements need to be established to ensure that any restrictions on contact between the parents and the child are respected. The 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 organization to monitor and assess the impact of the visits on the child. 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.

### 4.3.5 Parents' Separation and Custody Rights

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





## CHECKLIST: BEST INTERESTS DETERMINATION FOR UNRESOLVED CUSTODY ISSUES

A BID is required in cases of unsolved custody issues, if any of the following statements applies (please tick relevant boxes) in situations where UNHCR is responsible for BIP:

- The parents have separated and the child is abandoned.
- The parents have separated and each wants the child to stay with them.
- The resettlement of one parent is based on a protection risk emanating from within the family (e.g. domestic violence cases).
- Resettlement or another third country solution is being considered for a child, with only one parent, and the other parent, who is not resettling, refuses to give consent for resettlement of the child; or there are indications that the child might be at risk within the family being considered for resettlement.
- The two parents will be submitted for resettlement separately and do not agree which of them should be submitted with the child for resettlement or another third country solution.
- The third country's national legislation forbids polygamy and this would lead to the children of the other spouses being separated from their father/mother.
- The parents agree on a solution 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.
- The child is to be transferred to a third country without the consent of the parents or of any other person, institution or body holding custody rights.<sup>131</sup>
- Use of the national custody procedures may lead to harm for the child and is not in line with the best interests principle (for instance, custody procedures that are not based on an individual assessment of what is in the best interests of the specific child for whom custody is being decided)

<sup>131</sup> 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 caregiver of the child for an extended period of time.

Primary responsibility for the child rests with their parents or caregivers. A BID is therefore not carried out unless the child is at risk from one or both parents, or if parents are unable to agree on what is in the best interests of the child and this results in potential harm to the child, such as in the case of unresolved custody disputes in which national procedures are not available, not accessible or not in line with the best interests principle. This also includes custody issues in the case of resettlement of one parent, where this is a necessary protection measure.

Unresolved custody issues can prolong ongoing conflict between the child's parents, causing distress for the child and negatively affecting their emotional well-being. In some cases, violence may be perpetrated against the child by one or both parents or the parents may try to use or involve the child in their conflict. Conflicting parents may neglect the child's own physical, emotional and other protection needs. Unresolved custody disputes can also delay durable solutions.

In its general protection programming, UNHCR should therefore ensure that legal aid services and counselling are available to parents and families to provide advice on procedures for resolving custody disputes in the country of asylum. It is important that these services are available throughout the displacement cycle. Families may also be advised and/or supported to obtain custody decisions from courts in countries of origin where this is possible and can be done safely.

Determination of legal custody falls squarely within the competence of States. This responsibility generally rests with the State in which the child is residing<sup>132</sup>, including for refugee children. UNHCR should therefore make all efforts to involve the relevant authorities in the country of asylum. If the State is unwilling or unable to take measures, or if the custody decisions are not in line with the child's best interests, then UNHCR and partner NGOs working directly with children or legal partners should try to mediate and provide guidance and counselling to the family. If, after these interventions, the custody arrangements remain unresolved, a BID must be conducted, especially in cases where resettlement has been identified as a desirable and feasible durable solution. Since UNHCR does not have legal competence to determine legal custody, the BID decision would solely determine which parent the child should stay with based on the best interests principle. If parents are adequately involved, the BID could also be a useful process for the parents in reaching an agreement between themselves. However, even after the BID, efforts to obtain a formal ruling on legal custody from the competent state authority must continue, including in the third country of admission or the country of return, where necessary.

Where UNHCR is involved in BID for custody, the current and previous custody arrangements should be documented throughout BIP and refer to (and preferably include copies of) legal documentation relating to custody. The documentation should also reflect the frequency and nature of contact between the child and the parents, including whether the custody-holding parent has exercised their custody rights and for how long. Thus, the circumstances of the child—the care arrangements, tracing prospects and overall family situation—need to be considered and documented.

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<sup>132</sup> For the purpose of these guidelines, this generally refers to the country of asylum. As noted above, it may also be possible to obtain custody decisions from countries of origin. Where parents live in different countries and there are potentially competing jurisdictions involved in child custody disputes, or where there are competing custody decisions from different countries, legal advice on international custody disputes should be sought.



## Key points regarding custody of children

- UNHCR does not have the legal authority to decide on custody issues.
- Custody issues should be clarified as early as possible, in order to allow for legal proceedings in national courts or with relevant local authorities where such procedures are accessible and appropriate.
- If the relevant authorities are unwilling/unable to determine custody, UNHCR and partners need to conduct a BID to make recommendations in the best interests of the child.
- A primary consideration is not only whether a parent holds legal custody, but also whether they have exercised the custody rights.
- UNHCR should engage in advocacy with other key partners to address custody issues in a country where there is gender-insensitive legislation (for example, legislation that grants custody to either the father or mother by default) or where custody decisions are taken in a manner that does not prioritize the best interests of the child in the decision-making process. In such cases, where national custody procedures are discriminatory and not in line with children's best interests, UNHCR may need to conduct a BID to make recommendations in the child's best interests.
- 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 caregiver. This letter may be helpful to determine custody in the country of return or in the third country.

## Specific considerations relating to custody in the context of resettlement

In the case of separation of parents and custody disagreements, in addition to situations where custody issues put the child at risk of abandonment or harm, UNHCR has been asked by its Executive Committee to take actions for the resettlement of women and children at risk and to facilitate the speedy departure of women at risk and their dependants<sup>133</sup>. In the context of resettlement, complex custody issues may arise. Field guidance regarding resettlement with one parent can be found in UNHCR *Operational Guidance Note: Best Interests Assessments for Children being Resettled with Only One Parent*.<sup>134</sup> The Operational Guidance Note outlines when BIA or BID is necessary for resettlement procedures.

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<sup>135</sup> 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 been in contact with the child or caregiver of the child for an extended period of time, without any reason. In 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 their parents. In cases in which, in the exercise of its international refugee protection functions, UNHCR concludes after comprehensive review that resettlement of one parent is the only or most appropriate solution to prevent further exposure to serious protection risks, UNHCR should take the following precautionary measures as regards the child:

- Obtain informed written consent for the child’s departure for resettlement from the parent who is not travelling with the child where possible and when doing so would not put the child or the parent with whom they are travelling at risk.
- Note that where sole custody decision have been awarded to the parent who is travelling with the child, the consent of the parent is not required prior to travel. However, as noted above, where a sole custody decision was clearly not in the best interests of the child, a BID can be used to determine the appropriate course of action.
- If the parent is absent or if they refuse, 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 capacity building for the competent authorities in the asylum country, potentially including the introduction of a special procedure for urgent cases.

133 ExCom Conclusion on Women and Girls at Risk, No. 105 (LVII), 2006, at p (ii); ExCom No. 107 at h (xviii)

134 UNHCR, *Operational Guidance Note – BIA for Children being Resettled with Only One Parent*, , 2013, available as an internal document, and may be accessed through the intranet or requested from UNHCR, Division of International Protection (DIP).

135 Hague Conference on Private International Law, *Hague Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, Hague XXVIII, Art. 3(1), available at: <https://www.refworld.org/docid/3ae6b3951c.html>



- If the competent national authorities will not or cannot clarify custody rights (for instance, due to the unavailability or inaccessibility of competent authorities, or the impossibility of obtaining official documents from the country of origin), or where existing national procedures for doing so are clearly not in line with children's best interests for cases where one parent is being resettled and custody disputes remain unresolved UNHCR should undertake BID to determine if resettlement with one parent is in the best interests of the child.<sup>136</sup> All reasonable efforts should be made to include representatives of the asylum country in the BID process in order to give it the strongest possible legitimacy.
- All efforts must be made to obtain correct documentation and complete necessary procedures in the country of asylum. 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 Article 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 caregiver. This documentation may be helpful to determine custody in the country of return or resettlement.

The same considerations would apply to custody in the context of a complementary pathway. For more information on BIP in the context of complementary pathways see [Sector 4.1.7: Complementary pathways of admission for refugees in third countries](#).

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136 ExCom Conclusion No. 105, p. ii; ExCom No. 107, p. xiv





# CHAPTER 5. BEST INTERESTS DETERMINATION PROCESS AND DECISION-MAKING

## INTRODUCTION

As discussed in Chapter 4, a BID is required in situations where a decision is likely to have far-reaching implications for the child. It is therefore crucial that the process be based on strict procedural safeguards that are underpinned by child protection principles.

This chapter will provide specific guidance on setting up a BID process and assigning roles and responsibilities to those involved, including the BID panel. Furthermore, the chapter covers simplified decision-making procedures and when a BID decision should be reviewed or reopened.

## 5.1 ROLES AND RESPONSIBILITIES FOR THE BEST INTERESTS DETERMINATION PROCESS

### Section Summary

Why:

- The BID process requires that individual staff be designated specific responsibilities in order to ensure that Best Interests Determinations are implemented in a timely, child sensitive and coordinated manner.

How:

- UNHCR operations need to designate a staff member as BID Supervisor who is responsible for setting up and supervising the BID process. Partner organizations may also have BID Supervisor positions. Larger operations with several field offices undertaking BID may also designate BID Reviewing Officers (responsible for case review) and BID Coordinators in a branch or regional office, who are responsible for ensuring that procedures are consistent across various locations and providing ongoing support and coordination for the BID process.
- The roles of BID Supervisor, Coordinator and Reviewing Officer are not necessarily stand-alone positions, but rather functions that should be assigned to particular staff members. An appropriate percentage of time should be allocated to these functions within relevant staff work plans.
- Caseworkers should usually work on BIP as a whole and not be designated specifically for BID. However, it may be that not all caseworkers are able to work on BIDs.
- A Terms of Reference should be in place, including a relevant technical profile, for the BID Supervisor, Reviewing Officer and BID Coordinator. These roles are assigned to staff with child protection expertise or training and are not a specific function or position unless otherwise determined at operational level.

## 5.1.1 Best Interests Determination Supervisor

An important step for an office working with children who require a BID is to identify a staff member within the operation who will be responsible for setting up and supervising the BID process. In this context, said staff member will be referred to as the BID Supervisor.

The BID Supervisor should be designated by the Head of Office or the most senior protection officer in the operation. This staff member should have a strong protection background, including child protection or child welfare/social work expertise, and should be identified from among the office's protection team. Depending on the size of the operation, the BID Supervisor role may be assumed by the office's child protection officer or child protection focal point. Another protection staff member may also be given this responsibility under the supervision of the child protection officer or focal point. Once a BID Supervisor has been designated, they will be responsible for setting up, overseeing, coordinating and operationalizing the BID process with UNHCR, government and other partners.

In the event that a BID Supervisor is designated from within a partner organization for that organization's BIDs, this person can either act as a counterpart, within that organization, of the UNHCR BID Supervisor or can assume some of the coordination responsibilities with other organizations. However, the UNHCR BID Supervisor remains accountable for the process.

Useful tips for BID Supervisors (and Coordinators where designated):

- Promote BIP as a child protection tool for all children at risk and not just as a tool for durable solutions.
- In planning and resourcing, keep in mind that the protection programme should include sufficient capacity not only for processing BID interviews but also for the full case management, including monitoring and follow-up of children who have been involved in BID.
- Involve suitable child protection partner NGOs in the BID process whenever possible.
- Develop and implement a child protection training strategy that includes BID Panel members and child protection staff. If additional resources are needed for capacity building, seek assistance, for example through regional or global UNHCR staff and through partners in country or through deployment schemes.
- Incorporate the BIP process into the overall child protection strategy.
- Advocate for adequate resources (human, financial, material) for effective BID implementation.
- Use available stand-by agreements between UNHCR and partners to strengthen implementation of the BID and child protection strategies through capacity-building and technical support.
- When appropriate, promote the establishment of BID panels in field locations (especially where there are large numbers of children requiring BID).

## 5.1.2 Best Interests Determination Coordinator

Large operations with several field or sub-offices undertaking BIDs may wish to appoint a BID Coordinator at Country Office or Regional Office level. This will help ensure consistency between procedures across the various locations and ongoing support and coordination for the BID process. The role of the BID Coordinator is especially important when it is decided to establish a single BID panel at national level, instead of several panels in various field locations. In this case, the tasks of the BID coordinator resemble those normally assigned to the BID supervisor.

BID Coordinators are normally designated by the Senior Protection Officer, with the guidance of the BID Supervisor. BID Coordinators can also be staff of partner organizations. It is not necessary to have a UNHCR BID Coordinator in every sub- or field-office; BID Coordinators should be designated on the basis of efficiency considerations in each operation. See the [BIP Toolbox](#) for sample Terms of Reference for a BID Coordinator.

### 5.1.3 Best Interests Determination Reviewing Officer

Another important element within the BID process is the responsibility of reviewing cases prior to submission to the BID Panel. In operations/offices with few cases at any given time, the BID Supervisor/Coordinator may be called upon to perform this role. However, in operations with large numbers of cases, staff should be identified to perform the role of BID Reviewing Officer. BID Reviewing Officers are normally senior caseworkers or caseworker supervisors and must have expertise in child protection.

BID Reviewing Officers perform the role of ensuring additional quality checks for cases submitted by caseworkers and provide guidance on information gathering and follow-up. As in the case of other specific roles within the BID process, the BID Reviewing Officer is not a stand-alone function, but instead is performed by staff with appropriate child protection and refugee protection case management training and background. BID Reviewing Officers are identified by the BID Supervisor and confirmed by the Head of Office or Senior Protection Officer. See the [BIP Toolbox](#) for sample Terms of Reference for a BID Reviewing Officer.

### 5.1.4 Caseworkers

The task of collecting all information needed for the BID process should be entrusted to one or more caseworkers, either by the BID Supervisor within UNHCR or by a delegated partner. The term ‘caseworker’ is used in these Guidelines to designate the person responsible for specific actions within BIP. A caseworker may be recruited by UNHCR or a partner specifically for this purpose. Caseworkers should usually work on the BIP as a whole and are not designated specifically for BID. See the [BIP Toolbox](#) for sample Terms of Reference for a Caseworker for more information on the roles, responsibilities and qualifications of caseworkers. However, it may be that not all caseworkers are able to complete BIDs without additional capacity-building. It is recommended that the necessary qualifications and skills required to complete BIDs be clearly outlined, and that efforts are made to ensure all caseworkers reach this level of competency. In some cases, selected case workers may be identified as specialised in BIDs, although all child protection case workers working with refugee children must have basic understanding and ability to complete BIDs – this is because BIDs should be part of the continuum of case management and therefore best completed by the child’s case worker who is most familiar with the child’s case and able to ensure follow-up and monitoring. For the purposes of BID, the caseworker reports directly to the BID Supervisor/Coordinator or the BID Reviewing Officer, as determined at operational level, regardless of the standard reporting line for other functions.

In some cases, where there is a gap in caseworker capacity or where there is a surge in numbers of BIDs to be completed, dedicated BID staff may be deployed. Where UNHCR deploys staff to conduct BID, it is essential that their work be coordinated with regular BIP staff from UNHCR and partners who will need to continue to provide support to the child and/or their family, conduct ongoing follow-up and monitoring.

In the context of BID, caseworkers are responsible for collecting information relevant to the child's case by interviewing the child, their family or other caregivers and others who may be relevant to the child's case. Caseworkers are also responsible for preparing the case report and submitting it to the BID Reviewing Officer for further action, while continuing to monitor and follow-up on the child's protection situation. Relevant guidance information needed for the BID process is provided in [Chapter 4: Best Interests Determination by UNHCR](#). The caseworker should also analyse the information collected and draft recommendations for decisions (see also the checklist provided in Annex 11).

Considering the complexity of the issues that are likely to arise in BID cases and the sensitivities that need to be respected, it is recommended that a caseworker for the purpose of BID should not be a member of the child's immediate community. Caseworkers for BID can be refugees themselves if this is allowed by the national legal and policy framework. However, refugee caseworkers need to have or obtain equivalent levels of training, qualifications and contractual obligations as are required of nationals for equivalent roles (for more on staffing considerations in general see [Section 3.4.3: Staffing and resourcing for the Best Interests Procedure](#)). Whether refugee or otherwise, it is vital that the caseworker has the necessary understanding of the community's role, structure and practices, including the community's social, cultural and gender norms. If the option is available in the specific context, all reasonable efforts should be made to allow the child to choose the gender of their caseworker.

## 5.2 THE BEST INTERESTS DETERMINATION PANEL

### Section Summary

Why:

- The purpose of the BID panel is to provide expert evaluation of a children's individual case based upon the recommendations of the caseworker, by balancing competing protection priorities and ensuring that decisions are reached in accordance with the child's best interests.

How:

- The panel should be multidisciplinary, and gender balanced. Members of the panel should be drawn from a wide range of expertise, including from the national child protection system/ relevant state agencies and key national and international partners.
- The BID Supervisor is responsible for establishing and coordinating the BID panel. For the panel to function efficiently and effectively, proper preparation by both the BID Supervisor and the panel members is required.
- Decisions of the BID panel are generally reached by consensus, following careful consideration of the available options.

### 5.2.1 Purpose of the Best Interests Determination panel

The purpose of the BID panel is to analyse individual cases in order to assess available options and decide which is in the child's best interests, based on the assessment and recommendations of the caseworker, as reviewed by the BID Supervisor (or the BID Reviewing Officer, where this role exists).

The BID panel is composed of UNHCR staff, partner staff and government officials with different backgrounds and expertise in child protection and other related areas. Partner involvement in

the BID panel has proven to be key in the success of the BIP, including in BID process. Entrusting decision-making to a multidisciplinary panel contributes additional safeguards, as the panel members' varying perspectives will offer a wide spectrum of expertise. It is advisable to have a minimum of two disciplines relevant to the case, preferably more, represented in the panel. Where there are no other relevant BID panel participants in the immediate operational area, alternative BID panels can be developed (see below). This variety enriches the BID analysis and helps ensure that the final determination is in the child's best interests and strengthens collaborative and coordinated action for children in need of protection and care.

The conduct of the BID panel must be in line with the guiding principles of the CRC; all decisions must be made in the spirit of the CRC. BID panel members should consider the following principles during the decision-making process: (i) the child is a rights holder; (ii) the child's view should be given due weight in the decision; (iii) BID Panel members act as an advocate for the child; and (iv) BID panel members are objective and neutral.

### 5.2.2 Establishing the Best Interests Determination panel

The BID Supervisor is responsible for establishing the BID panel within the operational area. The BID Supervisor should, in consultation with other key members of the UNHCR office and other protection or child protection organizations, identify and vet potential members of the BID panel.

The composition of the BID panel depends on the context in which the BID process is implemented. As a general rule, national child protection authorities and other child protection partners should always be approached for panel membership. It is the responsibility of the BID Supervisor to make sure that, in each situation, an optimal panel composition is achieved so that the panel members are able to make the best possible BID decisions for individual children. It is also recommended that senior staff of UNHCR oversee the establishment of the BID Panel and, when necessary, help with formally inviting suitable BID panel members who have relevant child protection expertise.





## Competencies and qualities of Best Interests Determination panel members

It is important that BID panel members have the necessary competencies to participate in panels effectively. The personal, social and methodological competencies for caseworkers listed in [Section 3.4.3: Staffing and resourcing for the Best Interests Procedure](#) are also relevant to BID panel members and should be referred to. Technical competencies are required but, due to the multidimensional nature of BID panels, specific technical skills and competencies for the various relevant professions are not listed here. In addition to these competencies, specific necessary qualities for BID panel members are listed below:

- Panel members should have professional backgrounds and related qualifications (or equivalent experience) in child protection and related disciplines, including social work, family tracing and reunification, durable solutions, education, mental health and psychosocial work, and gender-based violence (GBV).
- Panel members should have a solid understanding of child and youth development and the physical and psychosocial well-being of children, including protection and educational issues.
- Panel members should also have an understanding of the legal, cultural, religious, political and socio-economic context of the children they consider. Where specific decisions require expertise in legal issues or durable solutions, panel members with that expertise may be involved.
- Panel members should be able to assess possible safety implications of BID decisions for the individual child.
- BID panel members should have reasonable decision-making power within their organization, granted by their management.
- BID panel involvement of child protection agencies that are working directly with/providing services to the communities and children of concern should be encouraged.
- The identification of BID panel members should enable the BID panel to be multidisciplinary and gender balanced.
- BID panel members should not have connections with the child or family members that might create a conflict of interest.

Even if the members of the BID panel have previous child protection expertise, it is important to provide them with training on the BID process, this includes those who are alternate members and members of sub-BID panels. International and national agencies that are specialized in child protection can assist in providing such training for the BID panel members or for persons otherwise involved in the BID process. Should there be a need for increased child protection expertise within UNHCR or partner organizations, external resources can also be sought to build capacity, for example, through support by regional advisers, the Child Protection Unit in the Division of International Protection or deployment schemes. In addition to providing orientation for new panel members, it is a good practice to provide trainings on BIP to panel members at least once per year. All BID panel members must also sign the UNHCR Code of Conduct or a similar undertaking of their organization as well as an Undertaking of Confidentiality.

While there is no limit to the number of individuals who may be identified and vetted to participate in the BID panel, the BID panel should be composed of at least three to five persons with significant professional expertise in child protection, social work or psychosocial work. In general, the BID Panel should not exceed seven members, because a larger group may delay the decision-making process and may also put confidentiality at risk. Some operations may find it useful to officially appoint alternate members familiar with the BID process, who can replace regular members if necessary.

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 their safety can be put in place.

**TABLE 14: Overview of Possible Partners in the Best Interests Determination Process**

Government and National Authorities	Representatives of the national child protection authorities and other relevant national authorities should, as a general rule, always be approached for BID panel membership. They have knowledge about local laws and available services, and they can play an important role in advocacy. Government officials can advise and may have the authority to take measures, especially related to custody issues, separation of children and parents against their will following allegations of abuse, placement in foster care, and durable solutions, notably local integration. It should be noted that decisions made by officials from state agencies/authorities as part of the BID panel may require additional procedures to be undertaken in order to be considered legally binding in accordance with the country's legal or policy framework. In some cases it will not be possible or advisable to involve the national authorities (e.g. in situations where the relevant authorities are not willing or able to be involved in BID process or in countries where the involvement of the government could compromise the protection of refugees).
UNHCR	UNHCR should always be represented on the BID panel. UNHCR is responsible for ensuring protection and assistance for children of its concern, including registration, monitoring and follow-up, advocacy, and identification of durable solutions, such as resettlement. In general, UNHCR will assume the role of BID Supervisor. The BID Supervisor is normally considered a chairperson or coordinating member of the panel and should therefore not normally have the right to vote. Other UNHCR staff may be invited to be a member of the BID panel provided they possess the qualities of a BID panel member listed above.

International and/or national organizations and NGOs	<p>International and/or national organizations and NGOs that are working directly with/providing services to communities and children of concern, should be considered for invitation as members of the BID Panel.</p> <p>National NGOs with a child protection profile can play a vital role in the BID process, because they have an in-depth understanding of the local situation, practices and services. These agencies have a wide range of expertise in child protection and might already be involved in family tracing and reunification, protection and care of unaccompanied, separated and other children at risk. In some cases, international or national NGOs are responsible for direct implementation and management of the BID process, under an implementing partner arrangement and with BID Supervisor remaining UNHCR staff and UNHCR providing oversight. Child protection NGOs can also provide child protection training support for staff involved in BID. Given its mandate, UNICEF may be able to provide greater leverage with national child protection and social welfare authorities. Organizations that may have a conflict of interest, such as those involved in aspects of the care and maintenance of children or in the resettlement processing for UNHCR, should disclose their involvement and excuse themselves from the final decision-making process.</p>
Caseworkers	<p>Caseworkers are not normally asked to attend the BID panel. If BID documentation has been well-prepared and reviewed, there should not be a need for the caseworker to take time out of their schedule for the BID Panel. However, if it is considered desirable and feasible for caseworkers to attend, it is good practice to ensure that caseworkers are only present during consideration of the cases they have prepared. Where the caseworker participates, they should present the case, act as an advocate for the child, and answer any questions that BID panel members may have. The caseworker is not a voting member of the BID panel.</p>
Other Experts (Observers)	<p>Individuals, including host and refugee community members, may be invited to participate as observers in BID panels for individual cases as needed. In such situations, for example, an expert is not part of the BID panel, but has particular expertise relevant to a specific case. In such cases, the BID Supervisor must ensure that the individual is briefed of the process and has signed the Code of Conduct and Undertaking of Confidentiality prior to participating in the BID panel.</p> <p>For more information on community members participating in the BID panel, see below.</p>

### Including community members in the Best Interests Determination panel

Community members including refugee and host community members may be invited to be part of a BID panel to provide a better understanding of the community. A community member would be able to participate in the panel if they have the requisite skills, competencies and qualities (see textbox above), and if objective analysis shows that there is no conflict of interest in their participation.

A community member would attend as an observer and ‘other expert’. As an observer, the role of the community member will be to represent the child’s community in the BID process, and to provide inputs based on the community’s own protective mechanisms, and social and cultural aspects of the specific risk faced by the child. The community will usually include individuals with knowledge and expertise on child development, and child protection. As ‘experts’ the member of the community who

is invited to participate in the BID Panel meeting may be called upon to provide such expert view on the child's case and BID recommendation.

With community member participation, safeguards in addition to those listed in [Section 5.1: Roles and Responsibilities for the Best Interests Determination process](#) would need to be put in place to uphold the integrity and confidentiality of the process and to ensure the participant's safety. These include:

- Anonymous BID process, i.e. the child's name and any other personal data is removed from the BID report so the child cannot be identified.
- Consultation undertaken to understand how the wider community, and children, view community participation in the BID panel and consequently what options might be most appropriate.
- There is a balance in terms of gender, religious and ethnic background for identified community members who participate and this balance is reflective of the caseload.
- Reference checks undertaken for proposed panel members.

If it is deemed inappropriate for a community member to participate in the BID panel, or if they do not have the requisite skills, competencies and qualities, their expertise can be included through the submission of a written statement for the consideration of the panel members. The written statement would aim to provide information on country context that is lacking from the existing panel but deemed necessary for informed decision-making. Views of community members and analysis of cultural considerations can also be included in the BID report itself, where relevant to the decision.

### **Involving colleagues from other units within UNHCR in Best Interests Determination panels**

The multidisciplinary nature of BID panels is fundamental to their purpose; therefore, in many cases it is necessary and valuable to have staff from functional units of UNHCR other than child protection or protection participate in the panels. This is especially the case where the decision in question is relevant to their areas of expertise. As with any BID panel member, other UNHCR staff participating in BID panels must have the requisite training, competencies and qualities. They must also follow the principles established in [Section 5.2.1: Purpose of the BID panel](#), including that they must be objective and neutral and holistically consider the best interests of the child rather than advocate for one particular solution. It is important in order to maintain these safeguards and standards to ensure that all BID panel members provide an objective and neutral contribution and assessment of the best interests of the child based on their areas of expertise and that any potential conflict of interest is avoided. Background on the need for separation between BIP, including BID, and other refugee protection processes are clarified in [Part II: Introduction](#).

### **Alternative Best Interests Determination panels**

In certain operational contexts, it may not be possible to establish a Panel based on the criteria listed here. For example, there may not be enough skilled BID panel participants from diverse disciplines in one operational area. In order to create a robust panel, multi-country or regional BID options can be explored and representatives from different operational areas or countries can participate remotely in joint panel discussions. It is more important to uphold the multidisciplinary skilled staff procedural safeguard than for a BID panel to meet face-to-face. At the same time, where possible, a remote BID panel should be a temporary solution, a transition strategy being outlined that moves towards a local solution.<sup>137</sup>

137 For more information, see *UNHCR Emergency Handbook*, <https://emergency.unhcr.org/entry/43381/child-protection>

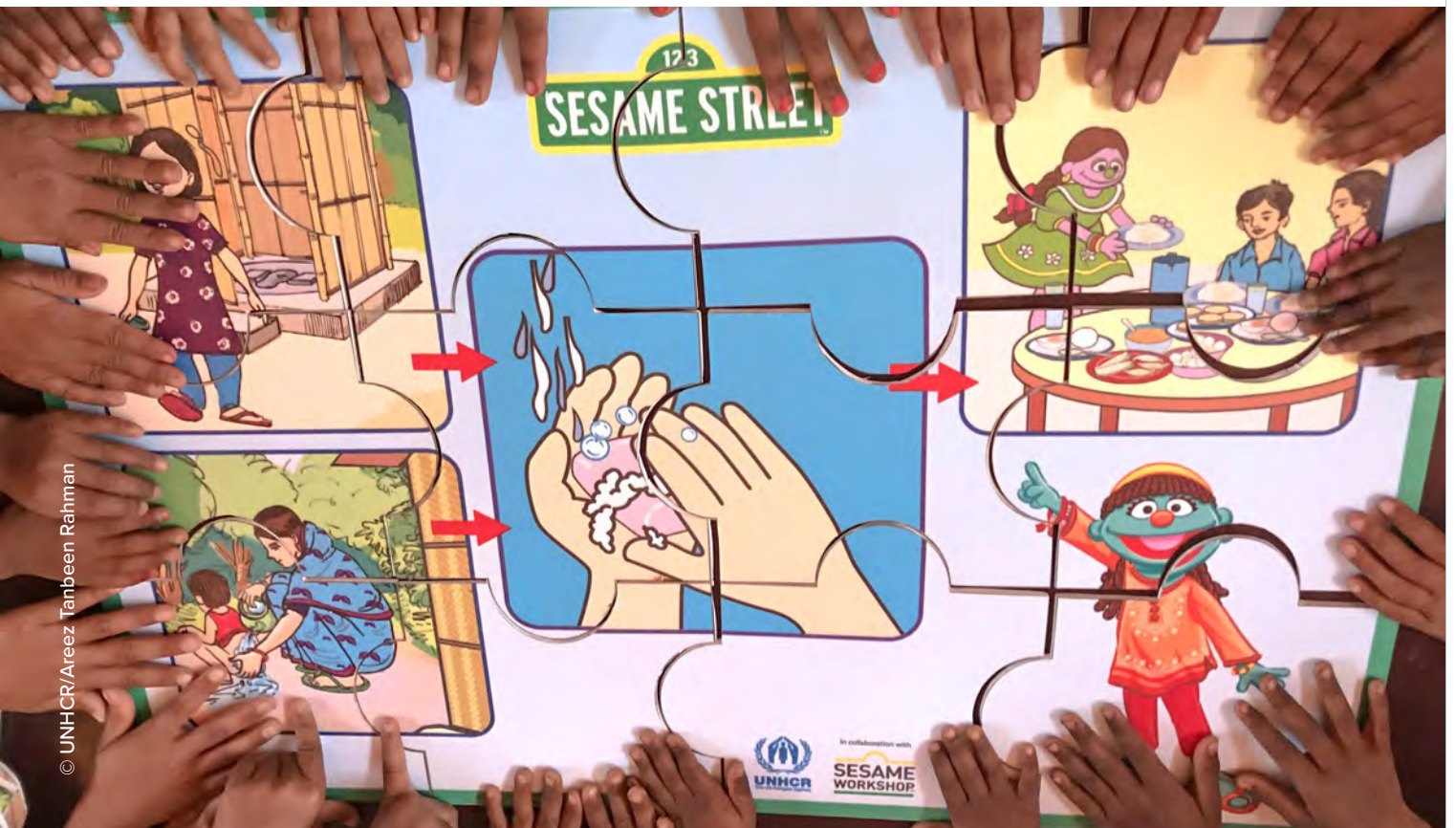
In certain situations, a simplified decision-making procedure, resulting in a reduced or modified BID Panel, may be required in order to ensure timely action in the child's best interests (see [Section 5.3: Simplified decision-making Procedures for Best Interests Determination](#)).

### 5.2.3 Best Interests Determination panel procedures

The BID panel's procedures should be defined in operation specific BIP SOPs (see [Section 3.4.2: Developing Special Operating Procedures for Best Interest Procedures](#)). To the extent possible, a case should be reviewed by the same Panel members from its submission to the BID panel up until such time as a decision is reached.

When the BID Reviewing Officer or BID Supervisor has completed the review of cases submitted by the caseworker and concludes that the cases are to be submitted to the BID panel, they should send out an invitation requesting the participation of BID panel members. A good practice is for BID Panel invitations to be sent at least two weeks in advance of the panel meeting. A shorter time frame may be decided upon by panel members depending on the operational context, while in other contexts a fixed schedule may be agreed upon with scope for extraordinary meetings in case of emergency cases.

The BID Supervisor should share (ideally anonymized) copies of the BID Reports to be tabled at the meeting for review by Panel members at least one week prior to the BID panel meeting (see [Section 3.5: Information management for Best Interests Procedure](#) for more information on safe and ethical information sharing). BID panel members are requested to review all individual BID Reports in their entirety prior to the BID panel meeting. In general, no more than six to eight cases should be considered per panel meeting, with meetings not exceeding two hours. However, operations may choose to consider more cases or to hold extended meetings depending on operational or logistical constraints.





## Steps for Decision-Making in Best Interests Determination panel Meetings

1. **Present the case:** for each case, a brief summary of the options and recommendation should be presented by the case worker or the BID Supervisor, provided they are familiar with the case. As they are not involved in case management, BID panel members (decision-makers within the BID process) have a particular responsibility to make themselves familiar with each case so as to be in a position to make a sound decision.
2. **Discussion by panel members:** the panel should discuss the options and the recommendations made by the caseworker in the BID Report. It is important that each Panel member has the opportunity to share their views on their basis of their own expertise. In most cases, discussion should not last more than 10-15 minutes.
3. **Decision by panel members:** the panel arrives at its final decision to approve or reject the recommendation, as well as the follow-up actions, by consensus. If no decision can be reached due to insufficient information, questions of credibility or disagreement amongst panel members on the best option for the child, this must be recorded in the “Comments by panel” section of the BID report, and the decision deferred. Where a BID decision is deferred, the panel should establish a timeline for additional information to be gathered and for the revised BID report to be re-panelled. In exceptional circumstances, where no consensus can be reached, the case should be referred to the UNHCR Senior Protection Officer<sup>138</sup> who has the authority to endorse and oversee the implementation of a BID recommendation. If the Senior Protection Officer does not have a child protection background, they can consult with the regional child protection representative or DIP in UNHCR Headquarters for additional technical support.
4. **Signature:** Once a decision is taken by the panel members on the BID recommendation, the panel members must sign the BID Report signature page. Before the closing of the BID panel meeting, the BID Supervisor should ensure that Section 3 of the BID report has been completed in full with all recommendations documented and the signatures of the BID panel members.

138 In operations where there is no Senior Protection Officer, the case should be referred to the most senior protection staff, such as the Assistant Representative (Protection).

### 5.2.4 Establishment of Best Interests Determination panels in multiple locations

Depending on the operational context, BID panels may be coordinated by one central panel in the Country Office or in a Sub-Office, or in multiple sub-BID panels in field locations. This is particularly relevant when dealing with large numbers of children requiring a BID. Where sub-BID panels have been established, it is the responsibility of the BID Supervisor of the main BID Panel or the BID Coordinator to ensure consistency in and coordination of the BID process. The establishment of sub-BID panels is advisable only when staff members with the relevant expertise in child protection are available, whether from UNHCR or from partners. Sub-BID panels should receive regular guidance and support from the BID Supervisor/Coordinator of the main BID Panel. Depending on the operational context and BIP SOPs, the caseworker’s BID reports may either be reviewed by the BID Supervisor in the field/sub office or sent for review by the BID Coordinator at the Branch Office.

## 5.3 SIMPLIFIED DECISION-MAKING PROCEDURES FOR BEST INTERESTS DETERMINATION

### Section Summary

#### Why:

- In some instances, a simplified decision-making procedure may be required to ensure timely action in the child's best interests. Simplified decision-making procedures may only be employed in specific situations.

#### How:

- All key safeguards of the BID process must be maintained in cases employing simplified BID process, with one exception: the decision-making process is simplified.
- The decision-making process may be simplified by: (i) reducing or adapting panel membership or (ii) by replacing the panel with a reviewing officer with child protection expertise.
- The simplified BID process should be accompanied by additional protection safeguards to minimize risks for the child.

### 5.3.1 When to use simplified decision-making procedures

Simplified decision-making procedures should only be used in exceptional situations where practical and time constraints limit the capacity of UNHCR and/or partners to conduct a full BID. Simplified decision-making procedures for BIDs may apply when deciding on 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 cases, the risk levels and vulnerability criteria detailed in [Section 3.2.2: Identification](#), the Heightened Risk Identification Tool (HRIT),<sup>139</sup> operation-specific checklists or other processes should be put in place to determine which children, such as those at heightened risk, may require a full BID and for which children a simplified procedure would be appropriate.

Where a BID is required, a simplified BID should be limited to the following situations:

- Family reunification, depending upon the complexity of the case (see [Section 3.8.1: Family Tracing and Reunification and the Best Interests Procedure](#)).
- Situations that require urgent action in order to prevent further harm to the child, for example due to medical or protection emergencies.
- For sudden movements of large numbers of unaccompanied and separated children over a short period of time, where practical constraints limit the capacity of UNHCR and its partners to undertake full BIDs.
- Other exceptional situations, subject to the agreement of the UNHCR Division of International Protection.

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<sup>139</sup> The Heightened Risk Identification Tool.

Typical situations in which simplified procedures are appropriate include, for example, the following: voluntary repatriation or family reunification is being considered as a durable solution, in a short time frame, for large numbers of unaccompanied children for whom BIDs have not already been done; or an unaccompanied child has a protection or medical emergency that requires an urgent resettlement response. Simplified procedures may also be used for urgent cases in emergency operations where no full BID process have yet been established. As a general rule, simplified decision-making procedures should only be used in exceptional situations where practical and time constraints limit the capacity of UNHCR and/or partners to conduct a full BID.

### 5.3.2 Establishing simplified procedures

Establishing a simplified procedure begins with agreeing on a set of criteria to establish when a simplified procedure may be employed and the format of the simplified procedure. The ‘levels of risk’ and ‘vulnerability’ criteria described in [Section 3.2.2: Identification](#) will be an important reference point. Proposals for the establishment of a simplified procedure should be submitted to the Head of Office or Senior Protection Officer (in the case of country-level processes) by the BID Supervisor and shall be based on consultations with caseworkers, UNHCR Protection staff and other relevant partners. The decision to establish a simplified procedure will be taken by the UNHCR Representative or Assistant Representative based on the recommendation of the Head of Office or Senior Protection Officer.

Simplified procedures may take two forms: (i) reduction or adaptation of the panel membership; or (ii) replacement of the panel with a reviewing officer with child protection expertise.

Reducing or adapting panel membership may consist of reducing the panel to two members (which may include one or more UNHCR staff) or in remote participation by panel members. One of these two (or more) staff members should be appointed as BID Supervisor and will chair the BID meetings. In the event that BID is being conducted for a large number of children with a similar case background (e.g. group voluntary repatriation of unaccompanied and separated children to country of origin), the cases may be summarized and presented to the panel in tabular form.

Once agreement is reached on establishing a simplified procedure using reduced or adapted panel membership, the BID Supervisor will identify panel members who are readily available to convene at short notice, explain the procedure and, where relevant, identify the appropriate means of communication for remote participation of panel members in meetings. In consultation with caseworkers and Protection staff, the BID Supervisor will also develop an operation-specific checklist for when to employ a simplified BID process and a case list table for summarizing the cases to be presented to the panel (large number of cases with similar case background).

Where it is not feasible to convoke a reduced or adapted BID panel, UNHCR may replace the panel with a reviewing officer with child protection expertise. This should be the most senior protection staff member in the office and they must have child protection expertise.

The caseworker is responsible for the case assessments and documentation and submits the BID Report and recommendations to the BID Supervisor (of the reduced BID Panel) or to the reviewing officer(s). The reduced BID Panel/reviewing officer(s) must provide feedback on the cases to the caseworker staff in accordance with an agreed upon timeframe. The members of the reduced panel or the reviewing officer(s) will be responsible for finalizing BID decisions and the BID Supervisor will oversee implementation of the decisions. It is important to recall here that as BID is part of BIP, existing BIP services, including BIA forms, may have been established and functional prior to the change in situation that necessitated a simplified BID process. Any pre-existing information or procedures can inform decision-making and the development of simplified procedures.

The simplified procedure must be defined and articulated in the BIP SOPs.

## Steps for employing a simplified procedure in the case of individual children/urgent cases

- A caseworker identifies a child whose specific protection situation is urgent and requires the use of the simplified procedure and refers the case to the BID Supervisor. The UNHCR Representative or Head of Office decides to establish a simplified procedure.
- The BID Supervisor reviews the case against the checklist and confirms whether or not to proceed.
- If the decision is not to proceed, the case will then follow standard BID process.
- If the decision is to proceed with a simplified procedure, the caseworker prioritizes the collection of any additional information required to complete the BID Report. The BID Report should be submitted no later than 48 hours after the decision to proceed with the simplified procedure.
- The BID Supervisor simultaneously alerts those panel members able to participate in the meeting to review the case. In the event that the panel meets remotely, the BID Supervisor ensures that the means of communication is agreed upon and the necessary arrangements have been made to facilitate the meeting.
- Once the caseworker has submitted the BID Report, the BID Supervisor prioritizes review of the Report and submission to the panel, ideally within 24 hours of receiving the report.
- The BID Panel (or reviewing officer, if a reduced or adapted BID Panel is not feasible) makes a decision on the recommendations.
- The BID Supervisor, through the caseworker, initiates follow-up.

## Steps for employing a simplified procedure in the case of large numbers of children

- A decision is made by the BID Supervisor that large numbers of children require BID based on the checklist to be developed at operational level. The UNHCR Representative or Head of Office decides to establish a simplified procedure
- Caseworkers are quickly mobilized to collect information on each child's case and assess the specific implications of a proposed plan. The caseworkers must carefully check and assess other potential issues that might require a full BID
- The BID Supervisor, or a designated caseworker or Protection Officer, should compile the case information for each child into a summarized case list table. It is important that special attention be paid to cases with particular protection issues, as such cases should be referred for full BID
- The BID Supervisor invites the panel, presents an overview of the context, and distributes the summarized table
- The BID Panel (or reviewing officer, if a reduced or adapted BID Panel is not feasible) makes a decision on the recommendations

## Additional safeguards for the simplified Best Interests Determination process

The simplified BID process should be accompanied by additional protection safeguards to minimize risks for the child. Key safeguards and procedures to be maintained in these exceptional situations are:

- A formal decision to allow for simplified BIDs should be taken by the UNHCR Head of Office based on the recommendation of the BID Supervisor (and, if applicable, partner staff with experience in child protection) and on the best interests principle
- The decision to use a simplified BID must be based on an assessment or situation analysis outlining the situation of the UASC and other children at risk. This analysis determines which children need a full BID and which may appropriately have a simplified BID process
- Operation-specific checklists may be used to determine which children may require a full BID, and to identify those for whom a simplified procedure would be appropriate
- One staff member of UNHCR or a partner organization is responsible for overseeing the caseload of children requiring a BID
- Each child should be interviewed and individual information should be collected and documented in a BID report by a child protection staff with relevant child protection expertise
- Each BID report, including the decision and recommendations and other associated documentation, should be kept in an individual file
- A minimum of two staff members, preferably from different agencies (UNHCR, child protection organization staff and/or the social welfare/child protection authorities), should be involved
- Staff should develop a coordinated response for monitoring and implementation of the decision, including monitoring arrangements upon arrival in the country of return or in the third country, 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 in the third country
- Staff should regularly monitor and evaluate the simplified BID process, identifying possible gaps and reviewing the strategy as needed

## 5.4 REOPENING A BEST INTERESTS DETERMINATION DECISION

### Section Summary

Why:

- It may be necessary to reopen a BID decision after it has been endorsed. The main reasons for this include:
  - Material changes in circumstances that could change the original decision, such as successful tracing or the emergence of new evidence
  - Initial BID decisions could not be implemented within a reasonable time frame. In the context of durable solutions, including complementary pathways, this should not extend beyond one year after the initial BID decision
  - Following separation of the child from their parents, upon request of the child or the child's parent or guardian



How:

- When determining if a BID should be reopened, a Best Interests Assessment should be conducted to assess the current situation of the child and whether any changes warrant a BID.
- If the BID Supervisor determines that a new BID should be conducted, then the case shall be reopened and a new BID report will be prepared by the caseworker and presented for deliberation by the BID panel.

### 5.4.1 Reviewing the Best Interests Determination decision

Changes in the material circumstances of a case or delays or inability to implement a BID decision due to unforeseen circumstances may require the initial decision to be reviewed. This will help ensure that the present situation of the child is taken into account and the child's best interests are correctly determined.

#### Material Changes in circumstances

Material changes in the circumstances surrounding the child's situation may impact the original BID decision taken by the BID Panel. Material changes that might be considered to merit reopening a BID include:

- Changes in the views of the child, their parents or the caregiver. This is particularly important to reassess since the maturity of a child can evolve significantly over the course of a year as the child develops and the relationship between the child and the parent, caregiver or family can change over time.
- Any departure or arrival of family members or other persons close to the child, in the country of asylum or the proposed third country of admission. In the context of resettlement, particular attention should be given to those who are listed in the Refugee Resettlement Form (RRF).
- Changes in the protection risks affecting the child, or any new protection incidents that have occurred since the BID decision was endorsed, e.g. an incident of sexual abuse or assault, incidents of physical violence in the family, etc.
- Care arrangements that differs from the original BID (e.g. the caregiver indicated in the initial BID is no longer the adult responsible for the child or intends to relinquish responsibility for the child).
- Any significant change in the child's access to other durable solutions, e.g. access to national services that make local integration a greater possibility or change in resettlement opportunities.
- If family tracing has been successful and family reunification can be considered as an available option.

#### New Information or discrepancies

A BID may also be reopened with the discovery of new information that had not been obtained during the initial BID assessment. This includes any new information, or reassessment of existing information, which indicates that the BID decision will not be possible to implement within a reasonable time frame.

Furthermore, discrepancies in the BID may be discovered. For example, in some circumstances, the child or other relevant family/community member may have initially withheld relevant information from the caseworker. Inconsistent information must be investigated, confirmed and corrected, with

explanation of the inconsistencies documented. In instances where a child has been referred for resettlement, and a resettlement interview has been conducted, the information documented in the BID interview might be inconsistent with that in the Resettlement Registration Form (RRF). If the caseworker becomes aware of significant discrepancies between the two documents, it is the responsibility of the child protection caseworker (upon referral from Resettlement staff) to re-interview the child and caregivers to clarify the inconsistent information. The new information should be addressed in a new BID Report.

It is important to note here that minor factual inconsistencies are normal and caregivers or children may discover new or remember additional information during the course of the BID. They can be clarified and updated in the RRF. It would only be necessary to fully reinterview the child if substantial inconsistencies are identified that would potentially change the outcome of the BID. A substantial discrepancy would be one that represents a material change in circumstances, such as the presence of or contact with a relative who had not previously been mentioned.

### **Durable Solution including complementary pathway decisions not implemented**

In the context of durable solutions, including complementary pathways, a BID decision should be considered for review if:

- There is any significant change in the child's access to other solutions
- There is any departure or arrival of family members or other persons close to the child either in the country of asylum, the proposed third country, or country of return that may impact upon the recommendation contained in the BID decision; and/or
- More than one year has passed since the date of the original BID Panel decision

### **Reopening a Best Interests Determination decision on the request of the child or parent, caregiver or guardian**

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 and on the basis of new facts, evidence, or legal considerations that may affect the initial decision. It is recommended that BIP 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.

## **5.4.2 Procedures for reopening a Best Interests Determination**

Reopening a BID decision is normally the responsibility of the BID Supervisor. A BID decision can be reopened if the recommendations have not been implemented within a reasonable time period (one year is a reference point for durable solutions in particular). When determining if a BID should be reopened, a case assessment should be drafted examining the current situation of the child. The child's updated circumstances should be documented in the BID report format, or alternatively in the

operation's BIA template.<sup>140</sup> This report shall be used to review whether a BID needs to be reopened or whether the initial recommendations should be maintained.

In assessing whether there has been a change of circumstances that would require reopening the BID, the caseworker should re-interview the child, foster family/guardians, and parents/relatives again, and—wherever possible—conduct a home visit. It is preferable that the original staff member who drafted the initial BID Report undertake the updated case assessment. The assessment should be shared with the BID Supervisor, who will determine whether the BID should be reopened.

There is no need to reopen the BID if the BID Supervisor considers that:

- There are no material changes in the child's situation, views or circumstances since the BID decision, nor in those of the persons with whom the child is resettled and/or the parents/relatives that the child will join; and/or
- There is no reason to believe that it will not be possible to implement the BID decision within a reasonable timeframe

If the BID Supervisor determines that a new BID should be conducted, then a new BID report should be prepared and presented to the BID panel for deliberation.

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140 The BIP Toolbox can be accessed at: [www.unhcr.org/handbooks/biptoolbox](http://www.unhcr.org/handbooks/biptoolbox)



