

Best Interests of the Child

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

- The best interests of the child shall be a primary consideration in all actions affecting children (Article 3).
- There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status (Article 2).
- Each child has a fundamental right to life, survival and development to the maximum extent possible (Article 6).
- Children should be assured the right to express their views freely and their views should be given “due weight” in accordance with the child’s age and level of maturity (Article 12).

The **principle of best interests of the child**, arising from article 3, should be applied in a **systematic manner during every step of the displacement cycle**. It must be present in any planning and policy-making (or decision and action), by any office that affects a child of concern to UNHCR and must permeate all protection and care issues involving UNHCR and implementing partners.

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

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

1. BEST INTERESTS ASSESSMENT

The best interests assessment is a **continuous process** that starts from the moment of identification, and continues throughout the displacement cycle until a durable solution is reached. The assessment regarding what **option is in the best interests** of the child should be conducted by the responsible officer, for any decision and action affecting children of concern to UNHCR. Measures shall be taken to ensure that the child participates in the decision.

2. BEST INTERESTS DETERMINATION

The BID is a **formal process** with specific procedural safeguards and documentation requirements that is conducted for certain children of concern to UNHCR. The decision-maker is **required to weigh and balance** all the relevant factors of a particular case, giving appropriate weight to the **rights and obligations** recognized in the CRC and other human rights instruments, so that a comprehensive decision can be made that **best protects the rights of children**. More than one person has to be involved in the process and each step has to be documented.

2.1. When to make a formal BID

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

More specifically, UNHCR should carry out BIDs in the following situations:

1. to identify **durable solutions** for unaccompanied and separated refugee or internally displaced children;

2. to decide on **temporary care** arrangements for unaccompanied and separated children in particularly complex situations;
3. to decide on the **separation** of a child from his or her parents against their will in cases where there is a serious risk of abuse or neglect of the child.

BID and unaccompanied and separated children - pre-conditions

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

2.2. Who undertakes the BID

The most appropriate mechanism for undertaking a BID is a report and an assessment made by a **specialist on child protection, community services, or child welfare, and presented to a multi-disciplinary panel** capable of considering each child on a case-by-case basis.

2.3. What procedural safeguards should be followed

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

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

c) Formation of a **BID panel** by the BID supervisor, tasked to review the report and assessment made by the welfare officer and to determine the best interests of the child. The panel should be **multi-disciplinary**, normally composed of **3-5 persons** with professional expertise in child development and child protection.

Gathering information

The process of gathering information by the welfare officer must include:



- A verification of existing and documented information on the child;
- Several interviews with the child using age and gender sensitive techniques and if appropriate observations;
- Interviews with persons within the child's network including caregivers, family (extended and siblings), friends, neighbours, guardian, teachers, etc;
- Background information on the conditions in the present location and in the location considered for the durable solution;
- Where appropriate or necessary, views of experts.

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

Balancing competing rights of the child

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

a) Views of the child

Article 12 CRC requires that the views of the child be given due weight in accordance with the age and maturity of the child. In this context, a distinction between younger children and adolescents can often be made.

b) Views of family members and other persons close to the child

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

c) Safe environment and risk of harm

Fundamental international human rights norms to protect the right to life and physical safety set decisive parameters for a BID. Any real risk of irreparable harm to the child, including unlawful recruitment or use by armed forces or groups and trafficking, shall outweigh any other factors.

d) Family environment and alternative care

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

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

The decisions to **separate a child from his or her parents** or primary care giver against their will in cases of abuse or neglect shall only be taken in the case of imminent risk of serious and irreparable harm to the child.

e) Development needs of the child

The main factors that need to be taken into account when determining the development needs of the child include:

- the "right to preserve his or her identity, including

nationality, name and family relations" (Article 8 CRC);

- the "desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (Article 20 CRC);
- the right of the child to the enjoyment of the highest attainable standard of health (Article 24 CRC);
- the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development (Article 27 CRC);
- access to education (Articles 28 and 29 CRC);
- the right of the child to rest and leisure, to engage in play and recreational activities appropriate to his or her age (Article 31 CRC).

2.5. Final decision and follow-up

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

Reopening and reviewing the BID decision

The BID can be reopened either *ex officio* or – in the case of separation due to abuse or neglect – upon request. The BID shall be reopened in the case of **changes in circumstances and new facts** that have the potential to alter the original decision or when the first BID decision – in the case of durable solutions – cannot be implemented within one year.

FROM THE FIELD

Thailand. During 2005, UNHCR's Regional Office in Thailand systematically incorporated analysis on the best interests of the child into its resettlement process given the prevalence of [informal] adoptions and foster care arrangements among the Myanmar refugees. Following the expansion of the resettlement operation from the camps, additional staff was deployed to the field offices to assist in the BID process. They received a basic training in BID and interview techniques. The office has also instituted a number of means of quality control for BIDs, e.g. Standard Operating Procedures for BIDs were drafted and a BID decision-making panel of 3-5 persons was formed and started operating in 2006. This Bangkok-based panel ultimately decides on whether or not to endorse the BID recommendations coming from the field. (*UNHCR Regional Office in Thailand, Annual Protection Report 2005 and 2006*)

Further reading

- UNHCR, *Guidelines on Formal Determination of the Best Interests of the Child*, provisional release, May 2006, <http://www.unhcr.org/protect/PROTECTION/4566b16b2.pdf>
- ICRC, IRC, Save the Children UK, UNHCR, UNICEF, WVI, *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, 2004, <http://www.unhcr.org/protect/PROTECTION/4098b3172.pdf>
- UNHCR, *Refugee Children. Guidelines on Protection and Care*, 1994, <http://www.unhcr.org/protect/PROTECTION/3b84c6c67.pdf>