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**GUIDELINES ON
ASSESSING AND
DETERMINING**

**THE BEST INTERESTS
OF THE CHILD**

2018 Provisional Release



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A FEW DEFINITIONS

A CHILD

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

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 can include, but are not limited to: unaccompanied and separated children, particularly those in child-headed households as well as those accompanied by abusive or exploitative adults; stateless children; child parents; child victims of trafficking and sexual abuse, including pornography, paedophilia and prostitution; survivors of torture; survivors of violence, in particular sexual and gender-based violence and other forms of abuse and exploitation; child spouses, particularly those under the age specified in national laws and/or children in forced marriages; children who are or have been associated with armed forces or groups; children in detention; 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; and children out of school.

UNACCOMPANIED CHILDREN

are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Please note that some States still refer to these children as “unaccompanied minors” in their legislation and policies; UNHCR uses the term unaccompanied children.

SEPARATED CHILDREN

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

ORPHANS

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

THE BEST INTERESTS PROCEDURE (BIP)

describes UNHCR's individual case management procedure for children of concern. It is a multi-step process that goes through identification, assessment, case action planning, implementation, follow-up and case closure. It includes two important procedural elements: the Best Interests Assessment (BIA) and the Best Interests Determination (BID).

A BEST INTERESTS DETERMINATION (BID)

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

A BEST INTERESTS ASSESSMENT (BIA)

is an assessment made by 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 can be done alone or in consultation with others by staff with the required expertise and requires the participation of the child.

A SOLUTION

is achieved when a durable legal status is obtained which ensures national protection for civil, cultural, economic, political and social rights.

CONSENT

is any freely given and informed indication of an agreement by a person, which may be given either by a written or oral statement or by a clear affirmative action.¹ 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" is 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 the child's parents/guardian or where 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.

COMPLEMENTARY PATHWAYS

are safe and regulated avenues by which refugees are provided with lawful stay in a third country where their international protection needs are met, while they are given opportunities 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; 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 support them to achieve durable solutions. While resettlement must remain a protection tool guided by protection and humanitarian imperatives and must not be conflated with migration pathways, complementary pathways can help widen temporary options available for refugees with few prospects of attaining a durable solution particularly in protracted and large-scale refugee situations.

¹ 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.

1.

HISTORY AND SCOPE OF UNHCR'S BEST INTERESTS PROCEDURE

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

Such systems should include child protection case management mechanisms which assess, determine and support the best interests of the child. Depending upon the impact that the action taken will have, mechanisms may range from an assessment of which option is in the best interests of the child to a formal determination process with strict procedural safeguards.

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

A best interests determination (BID) describes the formal process, with strict safeguards, that UNHCR has established for decisions of a similar magnitude. Where appropriate state procedures do not exist, UNHCR will conduct a BID for refugee children, although in certain circumstances BIDs may also need to be carried out by UNHCR for other children.

The strict procedural safeguards of a BID are not required for other actions by UNHCR that concern individual children. UNHCR must, nevertheless, ensure that staff in charge of such actions have the



knowledge and skills required to undertake a Best Interest Assessment (BIA) to assess whether the action to be taken is in the best interests of the child.

Building on the practice of domestic child protection systems and on the first 10 years of implementation of UNHCR's Guidelines on Determining the Best Interests of the Child, these updated Guidelines on Assessing and Determining the Best Interests of the Child (BIP 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, and offer:

- **Chapter 1:** An overview of the history and scope of UNHCR's work on the Best Interests Procedure.
- **Chapter 2:** Guidance on how to apply the best interests principle in practice.
- **Chapter 3:** Explanation of how to undertake child protection case management within the framework of the Best Interests Procedure, including the systematic use of the BIA.
- **Chapter 4:** A definition of the three situations in which UNHCR must undertake a BID. These include (i) the identification of the most appropriate durable solution or complementary pathway for unaccompanied children (and separated children² where there is an additional significant risk factor or protection concern); (ii) the identification of the most appropriate options for children at risk in exceptional situations; and (iii) decisions which may involve the separation of a child from parents against their will.
- **Chapter 5:** Guidance on how to set up and implement BID procedures.

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

² Note that some resettlement countries may still require a BID to identify durable solutions for separated children, but under these revised Guidelines a BID only needs to be undertaken to identify the most appropriate durable solution or complementary pathway for separated children where there is an additional significant risk factor or protection concern.

1.1 UNHCR's history of operationalizing the best interests principle

1.1.1 Core guidance

- UNHCR has a long history of operationalizing the best interests principle for refugee children and is committed to institutionalizing the best interests principle, through:
 - supporting States to develop and strengthen national child protection and asylum systems;
 - implementing UNHCR's own Best Interests Procedure and reporting regularly on implementation, including through UNHCR's Global Strategic Priorities;
 - building the capacity of UNHCR staff on the best interests principle;
 - ensuring that children are meaningfully engaged in the programme cycle and provided with appropriate and accessible mechanisms to provide feedback and make complaints; and
 - ensuring that UNHCR's policies and procedures are developed and reviewed having regard to the best interests principle and full respect for the rights contained in the Convention on the Rights of the Child.

1.1.2 UNHCR and the evolution of the best interests principle

International, regional and national law dictates that all actions concerning children shall be guided by the principle of the best interests of the child. The principle applies to all children – including refugee, returnee, internally displaced, stateless, and asylum-seeking children. Everyday, UNHCR and partner staff encounter situations where decisions that affect children need to be guided by the best interests principle. These include decisions that have an impact on children in general as well as specific groups of children or individual children. For example, the best interests principle should guide UNHCR's protection and solutions strategy, and strategies and country operations plans should adequately consider the needs of children of different nationalities, gender and abilities. For individual children, such decisions may involve arranging alternative care for an unaccompanied or separated child, assessing the protection needs of a child at risk, or identifying a durable solution for an unaccompanied child.

Over the years, UNHCR has gained important experience in operationalizing the best interests principle in its work protecting children of its concern. UNHCR policy documents and guidance, including Conclusions adopted by UNHCR's Executive Committee, systematically refer to the principle of the best interests of the child, and for the need to utilize appropriate procedures for the determination of a child's best interests.

Although the *Convention on the Rights of the Child* (CRC),³ and its formalisation of the best interests principle as a primary consideration in all decisions affecting individual or groups of children, was only formally adopted in 1989, the best interests principle was central to the work of the International Refugee Organization (IRO), the organization that predated UNHCR, in addressing the needs of the large number of

³ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> (CRC).

children who became separated from their families during the Second World War.⁴ The IRO was to be guided by an ECOSOC Resolution that instructed the IRO to reunite children with their families wherever possible, and in the context of orphans or unaccompanied children, the IRO was to promote repatriation where it was considered to be in the best interests of the child, or where it was not, to resettle the child.⁵

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 the assessment of the “best interests” of children in order to identify appropriate solutions.

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

1.1.3 The development of UNHCR’s 2008 Guidelines on Determining the Best Interests of the Child

Despite the fact that the principle of the best interests of the child had been the subject of extensive consideration in academic and operational circles, there was limited guidance available on how to operationalize the best interests principle, in particular in situations of forced displacement. In order to assist UNHCR and partner agencies to operationalize the best interests principle in their everyday work, UNHCR began drafting global guidelines for the determination of the best interests of the child in 2004. This resulted in a provisional version of Guidelines on Determining the Best Interests of the Child, released in May 2006. The field-testing of the provisional Guidelines in Ethiopia, Guinea, Kenya, Malaysia, Tajikistan, Tanzania and Thailand resulted in valuable feedback from field staff and important lessons learned. Following a revision process to incorporate this feedback, the final version of the *UNHCR Guidelines on Determining the Best Interests of the Child* (2008 BID Guidelines)⁶ was published in May 2008.

The development of the 2008 BID Guidelines, and their implementation by UNHCR Country Operations, demonstrated UNHCR’s commitment to the implementation of ExCom Conclusion No. 107 (2007) on children at risk (ExCom No. 107).⁷ ExCom No. 107 calls on states and UNHCR to utilize best interests determination procedures, and provides a foundation and framework for UNHCR’s active engagement in best interests procedures. The Conclusion emphasizes in particular child participation and the role of national child protection systems.

⁴ See E.D. Pask, “Unaccompanied Refugee and Displaced Children: Jurisdiction, Decision-Making and Representation” (1989) 1(2) *International Journal of Refugee Law* 199, p. 201, citing Children Deprived of a Normal Home Life, E/CN.5/271 (1952) 7-8 as cited in J.M. Pobjoy, *The Child in International Refugee Law*, 2016, Cambridge University Press, p.203.

⁵ UN Economic and Social Council (ECOSOC), *Resolution 157 (VII): Progress and prospect of repatriation, resettlement and immigration of refugees and displaced persons*, 24 August 1948, E/RES/157 (VII), available at: <http://www.refworld.org/docid/3ae69edd8.html>; see also L.W. Holborn, *The international Refugee Organization: A Specialized Agency of the United Nations – Its History and Work, 1946-1952*, 1956, p.499.

⁶ UNHCR, *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008, available at: <http://www.refworld.org/docid/48480c342.html> (2008 BID Guidelines).

⁷ UNHCR, *Conclusion on Children at Risk No. 107 (LVIII) – 2007*, 5 October 2007, No. 109 (LVIII) – 2007, available at: <http://www.refworld.org/docid/471897232.html> (ExCom No. 107).

UNHCR and IRC published the *Field Handbook for the Implementation of UNHCR BID Guidelines* (BID Handbook)⁸ in 2011, as part of a joint UNHCR-IRC project to roll out the 2008 BID Guidelines. The BID Handbook sought to counterbalance the tendency to apply best interests procedures mainly in the context of resettlement, and to emphasize that BID mechanisms should not be established in isolation from other protection measures intended to benefit children of concern to UNHCR, but rather as part of a comprehensive child protection system.

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;

(ii) 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:

(viii) 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 her/his relatives;

The 2008 BID Guidelines and BID Handbook established the BIA and BID as UNHCR's child protection individual case management tools and described the procedure to be followed to operationalize the best interests principle with regards to decisions affecting individual children of concern. The BIA is the standard UNHCR child protection assessment for children of concern to UNHCR, carried out for all children of concern at risk before any action is taken.

The BID describes the formal process with strict procedural safeguards designed to determine a child of concern's best interests for particularly important decisions affecting him or her. The 2008 BID Guidelines

⁸ UNCHR *Field Handbook for the Implementation of UNHCR BID Guidelines*, November 2011, available at: <http://www.refworld.org/docid/4e4a57d02.html> (BID Handbook).



and BID Handbook also outlined situations where UNHCR and/or partners were required to undertake a BID, whereby decisions that would have a greater impact on the child and the child's future development required the greater procedural safeguards dictated by the BID procedure.⁹

1.1.4 The 2018 Revision of UNHCR's Guidelines on Determining the Best Interests of the Child

In the almost ten years since the publication of the 2008 BID Guidelines, UNHCR operations have continued to identify areas of work that require additional elaboration and clarification. Many operations have developed their own or used other guidance documents, training materials and tools to fill these identified gaps. These field-level initiatives include many excellent pieces of work, but also contribute to a wide variation in the application of best interests procedures from operation to operation. Since the issuance of the 2008 BID Guidelines and BID Handbook, many essential UNHCR and external legal, policy and guidance documents had been produced or updated since 2008 and 2011.¹⁰

As a result, in 2017, UNHCR undertook a process of revising the Guidelines to ensure that they continue to be relevant in the context of evolving protection policy and guidance. The revision process was based upon the following consultative process: (i) a field survey of UNHCR and partner staff working on child protection

⁹ 2008 BID Guidelines, p.22; BID Handbook, p.9.

¹⁰ For example: UNHCR, *A Framework for the Protection of Children*, June 2012, available at: <http://www.refworld.org/docid/4fe875682.html>; 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>; UNHCR and UNICEF, *Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, available at: <http://www.refworld.org/docid/5423da264.html>; 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>; Alliance for Child Protection in Humanitarian Action, *Interagency Guidelines for Case Management & Child Protection*, 2014, available at: http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM_guidelines_ENG_.pdf

case management;¹¹ (ii) consultations with partners, including the Case Management Task Force of the Alliance for Child Protection in Humanitarian Action; and (iii) an internal UNHCR Reference Group, whose members also served as drafters during the revision process.

As a result of these consultations and the lessons learned from 10 years of implementing the 2008 BID Guidelines, UNHCR has issued these revised ***UNHCR Guidelines on Assessing and Determining the Best Interests of the Child (BIP Guidelines)***, which replace both the 2008 BID Guidelines and the BID Field Handbook. In addition, UNHCR and IRC have developed a training package for caseworkers implementing UNHCR's Best Interests Procedure, responding to a gap identified by UNHCR and partner staff.

These revised BIP Guidelines represent the operationalization of UNHCR's commitment to the protection of children of concern, and to ensuring that a child's best interests are a primary consideration in decisions about what actions are in an individual child's best interests. They aim to better situate the Best Interests Procedure within a holistic approach to child protection case management and to explain how a best interests procedure fits within a comprehensive child protection system. The revised BIP Guidelines aim to strengthen child protection case management for UNHCR's children of concern, and, ultimately, achieve improved protection outcomes for all children of concern.

What's different in the 2018 Guidelines on Assessing and Determining the Best Interests of the Child?

The 2018 BIP Guidelines on Assessing and Determining the Best Interests of the Child (BIP Guidelines) combine the conceptual structure of the original 2008 BID Guidelines with the operational guidance of the BID Handbook in order to provide one consolidated, practical frame of reference for staff in the field.

The core guidance remains the same, with the exception of the following important changes:

- The BIP Guidelines strengthen guidance on working with national child protection systems to ensure access to comprehensive case management and services for children at risk.
- The BIP Guidelines reinforce that the Best Interests Procedure (BIP) is UNHCR's tool for child protection case management for children at risk, and not a separate or parallel process. The Best Interests Procedure guidance thus includes identification, assessment (BIA), case planning and implementation, follow-up and closure of child protection cases in addition to BID for those cases that require it.
- It revises the situations when a BID is required in two ways:
 - i. A BID remains necessary for durable solutions and complementary pathways for unaccompanied children, but is only required for separated children where there is an additional significant risk factor or protection concern.
 - ii. The requirement for a BID for temporary care arrangements and family reunification for UASC in exceptional situations has been expanded to recognise that there may be situations affecting other children at risk that necessitate the procedural safeguards of a BID. As such, the BIP Guidelines recommend BIDs for all children at risk in exceptional situations, *including but not limited to* those related to temporary care and family reunification for UASC.
 - iii. The requirement for a BID for possible separation of a child from parents against their will remains unchanged.

¹¹ UNHCR, *Workforce Survey Report – Review UNHCR's Guidelines on Determining the Best Interest of the Child*, 2017, available at: <https://bit.ly/2LrELDE>

1.2 Application of the 2018 UNHCR Guidelines on Assessing and Determining the Best Interests of the Child in different contexts

1.2.1 Core Guidance

- UNHCR's *A Framework for the Protection of Children* (2012) clearly 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, and especially national child protection systems.
- The responsibility to implement the best interests principle, including procedures for assessing and determining a child's best interests, is first and foremost that of a State, stemming from its international legal obligations.
- As States establish and implement child protection systems in accordance with their international obligations, UNHCR is tasked to supplement and strengthen these national child protection systems to which all children under a State's jurisdiction should have non-discriminatory access. Therefore, a best interests procedure developed outside of the framework of national child protection systems should be the exception.
- On the basis of UNHCR's core protection mandate and legal responsibility for refugees and refugee children, UNHCR is accountable for ensuring that the best interests procedure that is applied to refugee and asylum-seeking children has the necessary safeguards (noting that appropriate State procedures for assessing a child's best interests may not be a standalone procedure or may be called something different). Where this is not the case, UNHCR should use these Guidelines to establish or strengthen child protection case management for refugee children.
- In the absence of appropriate procedures for the determination of the child's best interests implemented by the responsible State in relation to internally displaced, returnee or stateless children, UNHCR may work with relevant authorities and partners to establish such procedures as part of the national child protection system. UNHCR's role in establishing and/or strengthening best interests procedures will vary depending on the context and the nature of UNHCR's engagement with the children of concern in that particular operational context.
- Where UNHCR implements best interests procedures for internally displaced, returnee or stateless children, these Guidelines should be adhered to.

1.2.2 UNHCR's Framework for the Protection of Children and BIP

A Framework for the Protection of Children (Framework),¹² represents an evolution in terms of UNHCR policy and practice, recognising both the centrality of children's protection to UNHCR's work and the growing body of practice and expertise in the child protection sector globally. The Framework broadens UNHCR's understanding of and engagement in the protection of children. It also applies 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 children are facing. The Framework articulates six goals that

¹² UNHCR, *A Framework for the Protection of Children*, 2012, available at: <http://www.refworld.org/docid/4fe875682.html> (Framework).

encapsulate UNHCR's commitment to protect and realise the rights of children of concern to the Office, and offers practical guidance on how to achieve them.

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; and
- ⑥ Girls and boys achieve durable solutions in their best interests.

Best interests procedures, whether implemented by UNHCR, partners or governments, support the operationalisation of a number of the goals, and are specifically considered in Goals 5 and 6. However, as is emphasised by the Framework, UNHCR should look to ensure programming across all goals and within a child protection systems framework (see [Section 1.2.3](#) on the linkages between national child protection systems and best interests procedures). If UNHCR and partners do not also work to strengthen programming as a whole, the impact of best interests procedures will be diminished because of a limited ability to respond to the protection and care needs of individual child protection cases. Assessing the strength of these six areas of work in an operation's child protection programme will indicate where capacity may need to be built in order to effectively implement best interests procedures.

Best interests procedures should therefore not be looked at as a stand-alone activity, but rather as one thread in the fabric of child protection programming. Indeed, best interests procedures are most effective when embedded within a comprehensive child protection programme that works across all goals of the Framework, because it requires the support of both preventive and responsive services in order to achieve the best protection results for individual children. BIP is supported by child protection programming in several ways. Children at risk will normally be identified through other child protection programmes such as recreational activities and community-based child protection mechanisms. Where children are included in best interests procedures, caseworkers need a range of options and services to address their needs and reduce their vulnerabilities. Some of these are services outside of the child protection programme, like medical services, but some child protection-specific services may also be required, such as life skills training, group or individual psychosocial support, and alternative care placements. A mechanism to identify children at risk of abuse, neglect, exploitation and/or violence – and those children who are particularly vulnerable to such risks – and to refer them for best interests procedures is a crucial element of a child protection programme.

Another key aspect of the Framework is its focus on the role of the community as a key actor in the child protection system, including as part of community-based child protection mechanisms. Community members can provide essential support for best interests procedures, for example through outreach and monitoring programmes to ensure ongoing, timely identification and referral of children at risk. A community-based approach to child protection programming and to best interests procedures can help to ensure that children and families understand the role of staff working with children, and how to report concerns or complaints. For more information on this fundamental aspect of child protection programming, see UNHCR's Child Protection Issue Brief: Community-Based Child Protection Mechanisms.¹³

¹³ UNHCR, *Child Protection Issue Brief: Community-Based Child Protection Mechanisms*, 2013, available at: <http://www.refworld.org/docid/531ec54f4.html> (CBCP Mechanisms Issue Brief)

1.2.3 BIP and national child protection systems

The responsibility to implement the best interests principle is first and foremost that of a State, stemming from its international legal obligations. *CRC General Comment No. 14* clearly states that the scope of this obligation includes the establishment of concrete procedures and/or mechanisms that allow for assessment and determination of a child's best interests.¹⁴ UNHCR and its partners should therefore seek to support national child protection systems in a spirit of partnership, rather than replace them, "by building on each actor's comparative advantages to reinforce the beneficial impact on the protection of children."¹⁵

Within the framework of their respective child protection systems, States should utilize appropriate procedures for the consideration of the child's best interests.¹⁶ In many cases, the procedures established by governments are not referred to as a best interests procedure, but can consist of specific steps in a decision-making process which requires explicit consideration for the child's best interests, specifying the specific elements pertaining to a child's situation which have been considered or weighed in the process.

As States establish and implement child protection systems in accordance with their international obligations, UNHCR is tasked to supplement and strengthen these national child protection systems to which all children under a State's jurisdiction should have non-discriminatory access.¹⁷ A best interests procedure developed outside of national child protection systems should remain the exception. UNHCR should therefore "utilize appropriate procedures for the determination of the child's best interests", within the framework of the national child protection system, rather than create parallel structures.¹⁸ However, given UNHCR's core protection mandate and legal responsibility for refugees and refugee children, UNHCR is also accountable for ensuring that the procedure that is applied to refugee and asylum-seeking children¹⁹ has the necessary safeguards in place and serves children's best interests. Criteria for what constitutes an 'appropriate' national procedure, as defined by Member States in ExCom No. 107, include:

- a procedure that facilitates adequate child participation without discrimination;
- a procedure where the views of the child are given due weight (while considering age and maturity);
- a procedure where decision-making is done with the involvement of persons with relevant expertise; and
- a procedure where all relevant factors are balanced in order to assess the best option.²⁰

In accordance with the CRC, an additional criteria would also need to be considered:

- a procedure where the best interests principle is applied in a manner that seeks to ensure the full and effective enjoyment of all the rights recognized in the CRC.²¹

¹⁴ 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).

¹⁵ ExCom No. 107, para. b(iii).

¹⁶ ExCom No. 107, para. g(i).

¹⁷ See ExCom No. 107, para. (b); CRC, Article 2.

¹⁸ ExCom No. 107, para. (g).

¹⁹ 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 him or her 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 revised 2018 BIDP Guidelines, the same principles and procedures apply to refugee and asylum-seeking children, as both categories fall within UNHCR's competence *rationae personae*. 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).

²⁰ ExCom No. 107, para. (g).

²¹ CRC General Comment No. 14, para. 4.

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, e.g. in urgent cases of abuse.

As UNHCR works in a wide range of situations, the operational contexts will vary. In an ideal situation, refugee children and families would be supported and assisted through existing child protection and social welfare systems and programmes, and thereby attended to by trained staff with relevant expertise. As this is not always the case, UNHCR needs to adopt a flexible approach when determining how the best interests procedure should be established and implemented in a specific context. In some situations, the national child protection and social welfare systems are strong and inclusive of refugee children whereas in other situations these systems are under-resourced and may be limited in capacity and/or geographical scope. In other situations, relevant national child protection authorities are unable or unwilling to provide services to refugee children, as refugee response in its entirety falls under the purview of a different branch of the government.

Where States have established appropriate procedures that are accessible to refugee children²²

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

- Monitor the application of procedural safeguards as defined in the CRC and international law;
- Determine jointly with the competent authorities, UNICEF and other partners, including relevant NGOs operating in the country, the support required from the international community in order to extend national child protection systems to children of concern to UNHCR, or to address other gaps that are identified;
- Strengthen the capacity of responsible state authorities, and in particular child welfare structures, to implement their obligations under the CRC (this may include training, advice on international law, interpretation and translation services); and
- Provide advice on individual cases, as appropriate, and/or participate in best interests determination panels or equivalent case management fora.

UNHCR's Best Interests Procedure, based on these Guidelines, may help complement national procedures in the following ways:

- As an exceptional procedure in substitution of 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; and
- As UNHCR's tool for actions under UNHCR's leadership or that UNHCR undertakes independently, such as, for example, the decision whether or not to submit an unaccompanied child for resettlement or support her or his voluntary repatriation. The involvement of competent national child protection authorities is, however, still strongly encouraged. This may be particularly relevant where state authorities are responsible for issuing exit visas and performing other formalities required for departure from the country of asylum. The rationale for a BID in these cases is a procedural requirement based upon agreements between individual resettlement countries and UNHCR, and UNHCR's specific role in voluntary repatriation of refugees, in particular to ensure the exercise of a free and informed choice.²³

²² This guidance is specifically with reference to refugee and asylum-seeker children. See [Section 1.2.4](#) for guidance on use in non-refugee settings.

²³ 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 States have established appropriate procedures that are not (fully) accessible to refugee children

Where States have established appropriate procedures that are not at all or are not fully accessible to children of concern, for reasons of capacity or policy, UNHCR's role should focus on advocacy and support to extend national procedures to refugee and asylum-seeking children. At the same time, UNHCR should also ensure the implementation of the Best Interests Procedure (for aspects where children do not have access). For example, UNHCR may:

- 1 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.
- 2 With partners, establish or strengthen existing case management practice with Best Interests Procedures. The procedures and decisions should be guided by:
 - a. National legal and policy frameworks where these are aligned with international standards; and
 - b. These BIP Guidelines.

All reasonable efforts should be taken to involve the competent State authorities in the implementation of the Best Interests Procedure, such as through participation of government social or child protection workers in BID panels or in case conferences.

- 3 With partners, always work towards integration. As a priority, State authorities should handle or, at a minimum, be involved in the following cases:
 - a. Best interests determinations undertaken to clarify cases of unresolved custody.
 - b. Best interests determinations undertaken to consider possible separation of a child from parents or other legal guardian.
 - c. Best interests determinations undertaken to formalize alternative care arrangements on a permanent basis. This can be of particular importance in situations where caregivers need legal authority in order to enrol children in schools or to be competent to authorize medical interventions.

Where States have not established appropriate procedures

In contexts where States do not have appropriate procedures for any children, UNHCR's role should focus on capacity building and systems strengthening, in partnership with other relevant national and international actors. The Best Interests Procedure outlined in these Guidelines must be used for refugee children, with a view to absorption into the national system as soon as is reasonably possible.

In some contexts, the involvement of government child protection authorities in best interests procedures can be associated with protection concerns for individual children and their families.²⁴ When establishing or developing best interests procedures in such situations, the best interests principle would dictate that the mitigation of protection risks needs to be a key consideration that will determine how refugee children are integrated in the national procedures or how the government would be engaged in a UNHCR-led Best Interests Procedure.

²⁴ 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.



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1.2.4 Applicability of the Guidelines on Assessing and Determining the Best Interests of the Child in non-refugee settings

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, such as internally displaced, returnee or 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 and other actors, use these Guidelines to establish best interests procedures as part of the national child protection system. This will depend not only on the existing national child protection system, but also the nature of UNHCR's engagement with internally displaced, returnee or stateless children in that particular operational context. Best interests determination procedures developed outside national child protection systems should remain the exception. Where UNHCR implements the Best Interests Procedure for other children of concern, these BIP Guidelines must be adhered to.

In mixed migration contexts, UNHCR may use these Guidelines to establish best interests procedures in the absence of appropriate procedures established by the responsible State. In certain contexts, UNHCR and IOM may establish joint procedures for refugee and migrant children.

Internally Displaced Children

Together with partners, UNHCR will proactively advocate for the inclusion of internally displaced children in existing national child protection systems and procedures, including case management services established for children at risk and vulnerable families. Where best interests procedures exist for host community children, UNICEF, UNHCR and partners should advocate for these procedures to be applied to internally displaced children.

In the absence of appropriate best interests procedures implemented by the responsible State in relation to internally displaced children, UNHCR may work with relevant authorities and UNICEF,²⁵ to establish best interests procedures as part of the national child protection system. Efforts to strengthen existing systems and advocate for the inclusion of internally displaced children should generally be led by UNICEF, as the global lead for the Child Protection Area of Responsibility under the Global Protection Cluster. In internal displacement contexts, particularly where the cluster approach is used, existing child protection working groups (normally led by UNICEF) may determine in consultation with protection working groups, whether and under what circumstances national child protection systems should be supplemented by best interests procedures based on these Guidelines. 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, i.e. where there are both refugees and internally displaced persons (IDPs), it may be appropriate to advocate jointly with UNICEF and partners for the inclusion of refugee and internally displaced children in national best interests procedures.

Where appropriate procedures for determining the best interests of the child have not been established or where they exclude internally displaced children, and where UNHCR is engaging in individual case work involving internally displaced children, UNHCR should use these BIP Guidelines in order 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's operational engagement with internally displaced persons, in particular whether UNHCR is engaging with individual case work and the presence and operational capacity of UNICEF and other partners.

Stateless Children

UNHCR will proactively advocate for the inclusion of stateless children in existing national child protection systems and procedures, including case management services established for children at risk and vulnerable families. Where appropriate procedures exist for assessing determining the best interests of the child at the national level, UNHCR and partners should advocate for these procedures to be applied to stateless children.

In the absence of appropriate procedures for assessing and determining the best interests of the child implemented by the responsible State in relation to stateless children, UNHCR may work with relevant authorities and partners,²⁶ to establish best interests procedures as part of the national child protection system. UNHCR may support and complement efforts to strengthen stateless children's access to national child protection systems and national best interests procedures on the basis of its mandate for stateless persons and its experience in implementing best interests procedures for refugee children.

Where appropriate procedures for assessing and determining the best interests of the child have not been established or where they exclude stateless children, and where UNHCR is engaging in individual case work involving stateless children, UNHCR should use these BIP Guidelines in order 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's operational engagement with stateless persons.²⁷

²⁵ UNICEF works with States to promote the strengthening of all components of child protection systems, see: UNICEF Child Protection Strategy, E/ICEF/2008/5/Rev.1, available at: <http://undocs.org/E/ICEF/2008/5/Rev.1>. This may, in certain contexts, include best interests procedures.

²⁶ UNICEF and UNHCR collaborate through the Coalition on Every Child's Right to a Nationality to raise awareness about and combat the hidden problem of childhood statelessness. As such, UNICEF may, depending upon the operational context, be a key partner in establishing best interests procedures for stateless children.

²⁷ To determine whether the relevant decision requires UNHCR to undertake Best Interests Procedures for an individual child, UNHCR operations should consult with the Child Protection & Youth Unit and the Statelessness Section at UNHCR Headquarters.

Returnee Children

UNHCR will proactively advocate for the inclusion of returnee children in existing national child protection systems and procedures, including case management services established for children at risk and vulnerable families. Where best interests procedures exist for host community children, UNHCR, UNICEF and partners will proactively advocate for these procedures to be applied to returnee children.

In the absence of appropriate best interests procedures implemented by the responsible State in relation to returnee children, UNHCR may work with relevant authorities and partners to establish best interests procedures as part of the national child protection system. UNHCR may be engaged in strengthening child protection systems for returnee children on the basis of its mandate for returnees²⁸ and its experience in implementing best interests procedures for refugee children.

Where appropriate procedures for assessing and determining the best interests of the child have not been established or where they exclude returnee children, and where UNHCR is engaging in individual case work involving returnee children, UNHCR should use these BIP Guidelines in order 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's operational engagement with returnees, in particular whether UNHCR is engaging with individual case work and the presence and operational capacity of UNICEF and other partners.

It should be noted that where refugee children are returning to their country of origin or place of habitual residence, UNHCR will generally have been operationally engaged prior to return. While a decision to return a child to her or his country of origin or his place of habitual residence or to transfer him or her to a third country falls within the competence of States, UNHCR has a responsibility to inform the competent State authorities if UNHCR becomes aware of risks of violence, exploitation, abuse or neglect by State and non-State actors, including parents, caregivers and any other family members, and should offer support to identify appropriate solutions in accordance with the child's best interests. This will involve working with the authorities of both the sending and receiving countries, and ensuring that there are procedures to assess and determine the child's best interests. When the responsible State authorities are unwilling or unable to take action, UNHCR may need to use these BIP Guidelines in order to take important decisions for individual children. Additional guidance is provided in [Chapter 4](#).

²⁸ UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, p.7, available at: <http://www.refworld.org/pdfid/5268c9474.pdf>

2.

THE BEST INTERESTS PRINCIPLE

This chapter briefly introduces the legal framework underlying the best interests principle. It provides an overview of the best interests principle as derived from the Convention on the Rights of the Child and guidance issued by the Committee on the Rights of the Child. It also briefly outlines other relevant legal sources at the international, regional and national level that may impact upon the operationalization of the principle of the best interests of the child.

2.1 International legal framework

2.1.1 Core guidance

- 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 or private institutions and affecting individual children.
- The principle of the best interests of the child obligates States to establish concrete procedures and/or mechanisms that allow for the assessment and determination of a child's best interests for 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 of relevance in interpreting the principle of the best interests of the child.

2.1.2 The Convention on the Rights of the Child

The *Convention on the Rights of the Child* (CRC), adopted by the United Nations General Assembly on 20 November 1989,²⁹ is the main legal instrument on the protection of children, bringing together children's human rights articulated in other international instruments.

The CRC embodies four general principles:

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

²⁹ The CRC is the most widely ratified human rights treaty. It has been ratified by all UN member states except for the United States of America: <https://bit.ly/2zMXhFf>

In addition to these four principles, 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 the physical and intellectual development of the child. It gives particular attention to the role of the family in providing care to the child, to the special protection needs of children deprived of their family environment and those of asylum-seeking and refugee children.

2.1.3 The use of the term “best interests” in the CRC

The term **best interests of the child** broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as the age, gender, level of maturity and experiences of the child, as well as other factors such as the presence or absence of parents, quality of the relationships between the child and family/caretaker, physical and psychosocial situation of the child, and her/his protection situation (security, protection risks, etc.). Its interpretation and application must conform with the CRC and other international legal norms, as well as with the guidance provided by the Committee on the Rights of the Child.³⁰

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 her or his best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, 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.

Article 3 states that the best interests must be a primary consideration, but not necessarily the sole consideration. It applies to all actions affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

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.”³¹

The best interests of the child in the CRC

As one of the four principles of the CRC, the concept of the best interests of the child is woven throughout the convention and is explicitly referred to in the following articles:

- Article 9: separation from parents;
- Article 10: family reunification;
- Article 18: parental responsibilities;
- Article 20: deprivation of family environment and alternative care;
- Article 21: adoption;
- Article 37(c): separation from adults in detention; and
- Article 40, paragraph 2 (b) (iii): procedural guarantees, including presence of parents at court hearings for penal matters involving children in conflict with the law.

³⁰ The Committee on the Rights of the Child issues General Comments in order to provide authoritative guidance to States regarding the interpretation and implementation of the CRC.

³¹ CRC General Comment No. 14, para. 4.

2.1.4 CRC General Comment No. 14

The Committee on the Rights of the Child defines the best interests of the child in CRC General Comment No. 14³² as a three-fold concept:

- A **substantive right**: the right of the child to have her or his best interests assessed and taken as a 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.

The best interests principle applies to all children without discrimination. This means that it applies whether children are citizens of a State, are foreign nationals, including asylum-seekers or refugees, or are stateless. The principle also applies whether children are with their family members or are unaccompanied or separated.³³ The best interests principle also applies to actions affecting children as a group, such as when a State drafts legislation and policies or allocates resources, and to all actions undertaken by public institutions and affecting individual children.

The need to establish a procedure for operationalizing the best interests principle also stems from Article 3, paragraph 1. The Committee on the Rights of the Child has indicated that not every action taken by a State needs to incorporate a full and formal process of assessing and determining the best interests of the child.³⁴ However, where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures is appropriate. This is understood to imply that the greater the impact a decision will have on the child and the child's future development, the greater the procedural safeguards that need to be put in place when making that decision.

In order to support States, civil society, the private sector and persons working with and for children, including parents and caregivers,³⁵ 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 identity of the child, including sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality;
- The family environment, family relations and contact;
- 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; and
- The child's rights and needs with regard to health and education.³⁶

³² CRC General Comment No. 14, para. 6.

³³ UN Committee on the Rights of the Child, *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, <http://www.refworld.org/docid/42dd174b4.html>. See also ExCom No. 107.

³⁴ CRC General Comment No 14, para. 20.

³⁵ CRC General Comment No 14, para. 12.

³⁶ CRC General Comment No 14, paras. 52-78.

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

International and regional instruments of relevance include those on general human rights, international humanitarian law, refugee law and child-specific instruments (see box below). Soft law, such as the above-mentioned General Comments by the Committee on the Rights of the Child, and UNHCR Executive Committee (ExCom) Conclusions, such as ExCom No. 107, are valuable interpretative sources.

National law and domestic jurisprudence may provide more specific guidance on general principles set forth in international instruments. Traditionally, the best interests principle included in domestic laws has often been specific to custody disputes or petitions for adoption.³⁷ The Committee on the Rights of the Child has consistently emphasized that the best interests of the child principle, together with other identified general principles in the CRC, should be reflected in domestic legislation.³⁸ 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.³⁹ 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.⁴⁰

Other child-specific international and regional instruments:

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

³⁷ 2008 BID Guidelines, p.15.

³⁸ UN Committee on the Rights of the Child, *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, available at: <http://www.refworld.org/docid/4538834f11.html> (CRC General Comment No. 5).

³⁹ CRC General Comment No. 5, para. 24; UNICEF, *Handbook on the Implementation of the Convention on the Rights of the Child, third version*, New York, 2007, Art. 3, p.39.

⁴⁰ CRC General Comment No. 5, para. 18.

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

2.2 UNHCR's application of the best interests principle

2.2.1 Core guidance

- UNHCR is committed to protecting and promoting the rights of children falling under its competence.
- UNHCR must ensure that the best interests principle is applied to decisions that affect children in general as well as specific groups of children. This can be done through, for example, including children in planning programme cycle management activities, providing child-friendly information and feedback mechanisms, and undertaking impact assessments of policies and practices on children.
- The Best Interests Procedure is the mechanism by which UNHCR ensures respect for the best interests principle for decisions that affect individual children.

2.2.2 UNHCR's application of the best interests principle for actions affecting children in general or specific groups of children

For actions affecting children in general or specific groups of children of concern, 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 children should be “assessed and determined in light of the specific circumstances of the particular group and/or children in general” considering the full respect for the rights contained in the CRC and its Optional Protocols.⁴¹

The best interests principle, as a collective right, can be implemented in UNHCR operations by, for example:

- Regular and systematic consultation with children to ensure their views are heard, in line with the age, gender and diversity approach;
- Collection and analysis of data disaggregated by sex and age;
- Establishing mechanisms and procedures for feed-back and complaints to ensure that we receive information on the impact of programmes and policies on children in general and specific groups of children;
- Upholding the child's best interests in the allocation of resources and in setting programme priorities;
- Providing information to children in a language they can understand;
- Ensuring that guidelines, policies, country operation plans, and partnership agreements and standard operating procedures adequately reflect the situation of children; and
- Undertaking child rights impact assessments of existing programmes and to predict impacts of proposed policies, programmes, and resource allocation etc.⁴²

⁴¹ CRC General Comment No. 14, para. 32.

⁴² [CRC General Comment No. 14](#), para. 35.

2.2.3 UNHCR's application of the best interests principle for actions affecting individual children

For actions and decisions affecting an individual child of concern to UNHCR, such as the provision of appropriate alternative care, family tracing services, or durable solutions, consideration for the child's best interests requires UNHCR to assess what is in her or his best interests, before the action is taken, and to make this a primary consideration. **For children who are with their parents or other legal caregiver, considerations for a child's best interests primarily lies with the caregiver.** However, consideration for the best interests as part of a formal procedure can come to play if separation of a child from the parent(s) is considered due to serious abuse or neglect, or in relation to custody disputes.⁴³ In refugee contexts, the best interests procedure is more frequently applied for children without parental care or a legal caregiver, as the formal procedure is essential to safeguard the best interests of the child.

For decisions regarding individual children, the child's best interests need to be assessed and determined on a case-by-case basis with due consideration of the specific situation of the child. It requires an assessment and determination of the relevant elements in a case and to assign weight to each element based on the specific context of the child. The views of the child will always be a key element which will be assigned weight according to the age and maturity of the child.

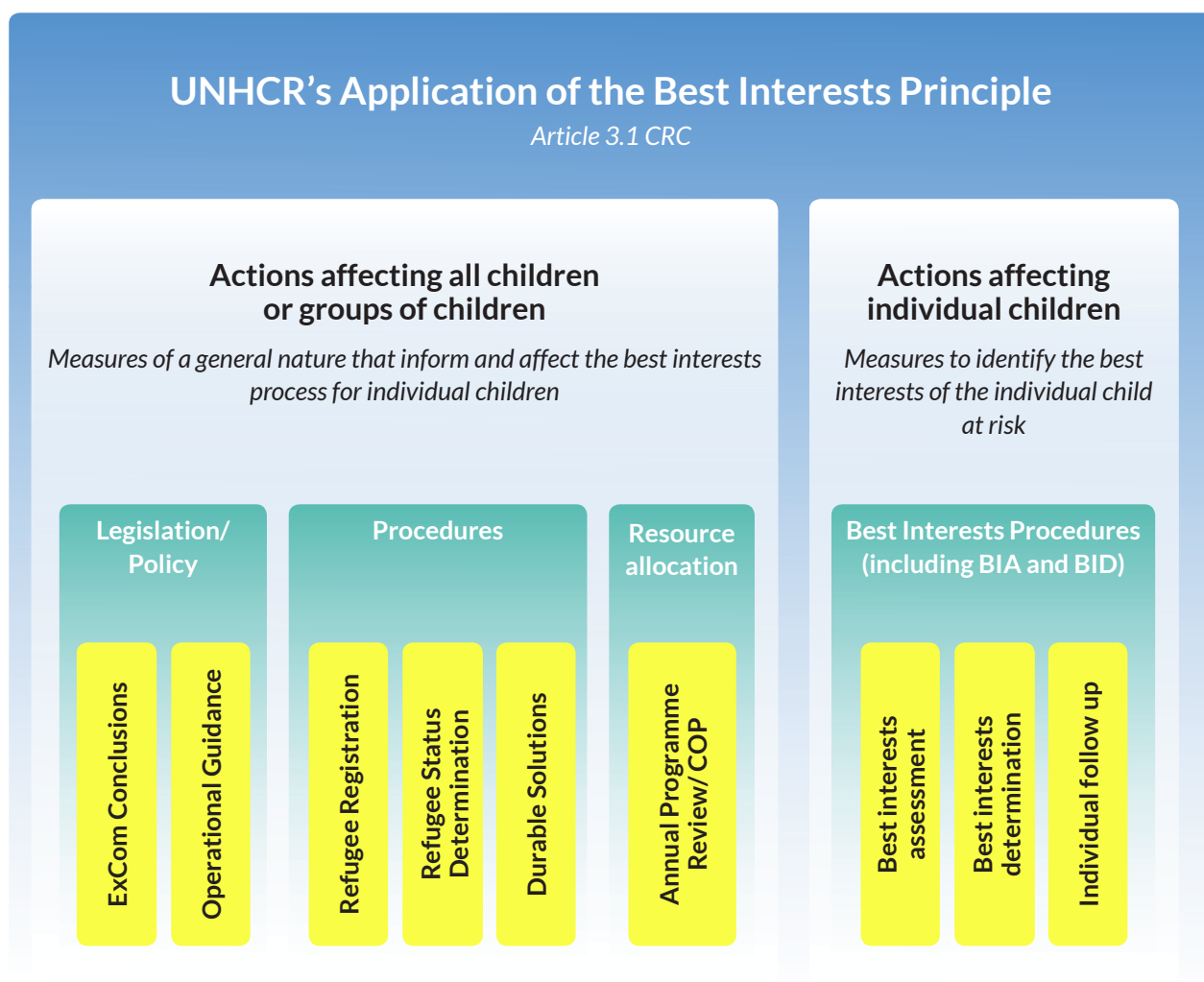
A best interests assessment (BIA) is essential before any action affecting an individual child of concern to UNHCR is taken, unless a BID is needed. It does not require any particular formality, and should be conducted systematically in many circumstances that occur between the moment a child is identified as unaccompanied or separated or otherwise at risk, until a durable solution is implemented.

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

There are three situations that require UNHCR to undertake a BID for actions affecting children falling under its competence: (i) the identification of the most appropriate durable solution or complementary pathway for unaccompanied children (and separated children⁴⁴ where there is an additional significant risk factor or protection concern); (ii) the identification of the most appropriate options for children at risk in exceptional situations; and (iii) decisions which may involve the separation of a child from parents against their will. [Chapter 4](#) provides further details on each of these three situations.

⁴³ See [Section 4.3](#) regarding Separation from Parents.

⁴⁴ Note that some resettlement countries may still require a BID to identify durable solutions for separated children, but under these revised Guidelines, a BID only needs to be undertaken to identify the most appropriate durable solution or complementary pathway for separated children where there is an additional significant risk factor or protection concern.

Figure 1: UNHCR's application of the Best Interests Principle

The rationale for the additional procedural safeguards of a BID include:

- A BID ensures that specific protection and care is provided to a child who is or may become deprived of the protection of her or his family;
- A BID enables UNHCR staff and partners to review the situation of the child in a comprehensive manner, ensuring that decisions are in line with the provisions and spirit of the CRC and other relevant international instruments;
- A BID allows the child's opinion to be heard, and ensures that her or his views are given due weight according to her or his age, maturity and evolving capacities;
- By means of a child-focused approach, a BID helps to identify protection gaps affecting individuals or groups of children of concern to the Office, to monitor the effectiveness of past measures, to address gaps identified, and to enable follow-up remedial action if needed; and
- Through the involvement of persons with varying expertise, a BID avoids decisions which have a fundamental impact on the child being taken by one individual in isolation.

3.

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

This chapter provides an overview of the Best Interests Procedure (BIP)⁴³ – UNHCR's framework for child protection case management. Given that the outcomes of a case management process will have significant impact on girls and boys, decisions must be guided by considerations of the child's best interests (see [Chapter 2](#)). UNHCR has therefore established the Best Interests Procedure as set out in these Guidelines to ensure that, where UNHCR is responsible for child protection case management, adequate procedural safeguards are in place.

This Chapter provides an overview of how UNHCR operations can set up and manage a Best Interests Procedure, with particular emphasis on the Best Interests Assessment (BIA) and related actions. Specific details on the procedural aspects of the Best Interests Determination (BID) are described in [Chapter 4](#) and [Chapter 5](#).

3.1 Child protection case management and UNHCR's Best Interests Procedure in refugee settings

3.1.1 Core guidance

- Child protection case management is “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.” The Best Interests Procedure is UNHCR's framework for child protection case management.
- Refugee protection case management is an integral part of UNHCR operations around the world, and covers registration, refugee status determination, identification of durable solutions, or follow-up on protection concerns raised by refugees approaching UNHCR or partners. In refugee settings, the Best Interests Procedure will always be an integral part of the broader refugee case management process.
- Implementing the Best Interests Procedure is not a stand-alone activity. Instead, it must be viewed and implemented as part of a broader child protection programme that represents a comprehensive approach to protecting children from abuse, neglect, exploitation and violence, and ensuring non-discriminatory access to services and solutions.
- Implementing the Best Interests Procedure should be grounded in coordinated and comprehensive services for children at risk. This means taking a multi-sectoral, multi-stakeholder approach to child protection programming, where BIP is one component of a larger child protection strategy, as reflected in UNHCR's Framework for the Protection of Children.

⁴³ UNHCR's use of the term Best Interests Procedure to describe the process of child protection case management is founded on its long-standing practice of assessing and determining children's best interests through a rights-based procedure. For more information on UNHCR's history with the Best Interests Procedure, see [Chapter 1](#).



3.1.2 Child protection case management

The *Interagency Guidelines for Case Management & Child Protection* (Interagency Case Management Guidelines)⁴⁶ defines 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 programme’s objectives.” Case management is a key tool in child protection work. It provides the framework for assessing, planning and managing the protection needs of individual children at risk in a structured and systematic way. Not all children will be in need of individual follow-up and case management. However, immediate and long-term interventions for children with identified protection risks requires a system of decision-making that is underpinned by accountability and consideration of the child’s best interests.

The case management process entails that a caseworker identifies and, on a case-by-case basis, takes action on issues (the case) that affect a child or family. Managing cases in a structured manner is a central function of any child protection or social-welfare system, whether in emergency or non-emergency settings, including government and non-government 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 structures.

When UNHCR is responsible for refugee child protection case management (see [Section 2.2](#)), the Best Interests Procedure (BIP) outlined in these Guidelines should be used. For the remainder of this document, the term “Best Interests Procedure” or “BIP” will be used to refer to UNHCR’s framework for child protection case management; otherwise, “child protection case management” will be used to refer to this area of work

⁴⁶ Alliance for Child Protection in Humanitarian Action, *Interagency Guidelines for Case Management & Child Protection*, 2014, available at: <https://bit.ly/2zWjNeO> (Interagency Case Management Guidelines).

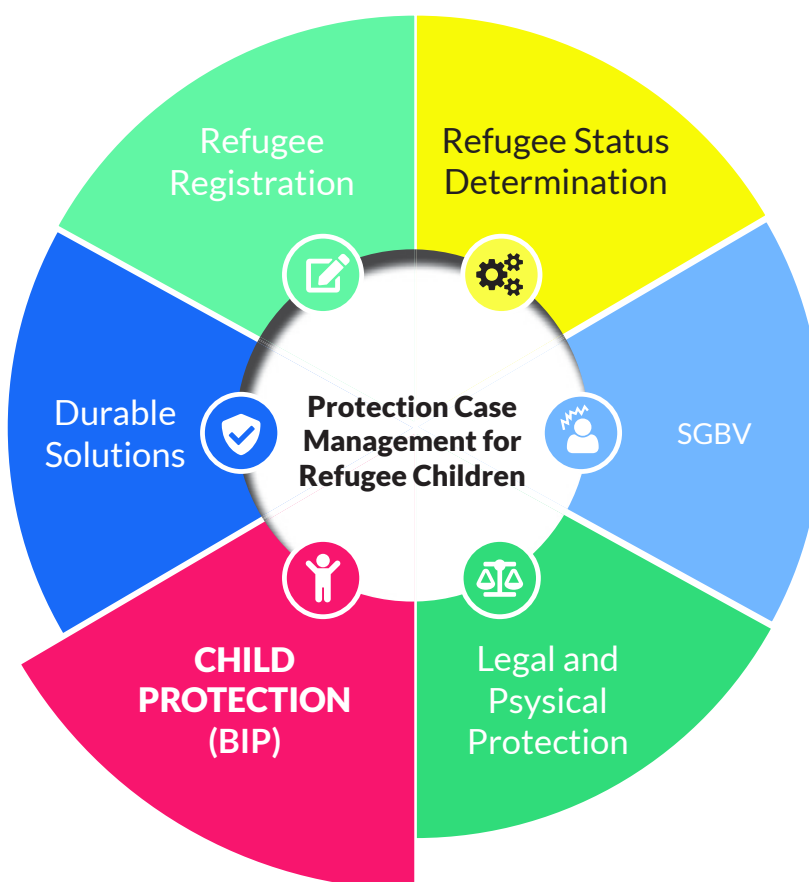
in general, and “best interests procedures” will be used to refer to procedures that assess and determine the best interests of children other than those outlined in these Guidelines (such as best interests procedures implemented by national authorities).

3.1.3 Refugee protection case management

Refugee protection case management is an integral part of UNHCR operations around the world, and covers registration, refugee status determination, identification of durable solutions, or follow-up on protection concerns raised by refugees approaching UNHCR and partners. This includes the systematic handling of the individualised protection response to children and their families. In refugee settings, BIP will always be an integral part of the broader refugee case management process.

Although there are similarities in the overall approach, case management for each of the different aspects of refugee protection has its own standards, objectives, good practices and guidelines.⁴⁷ 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 are appropriately linked. However, that does not mean that all information should be shared between all actors undertaking case management or that the processes are interchangeable. Since the objectives and approaches are different, information from BIP should only be shared where it is in the child’s best interests and ideally with the consent/assent of the parent/caregiver and/or child (for more information on information sharing, please see [Section 3.6](#)).

Figure 2: Components of Refugee Protection Case Management



⁴⁷ See: UN High Commissioner for Refugees (UNHCR), *Resettlement of Children and Adolescents at Risk*, June 2016, available at: <http://www.refworld.org/docid/58344f244.html> (Resettlement of Children and Adolescents at Risk); UN High Commissioner for Refugees (UNHCR), *UNHCR Handbook for Registration*, September 2003, available at: <http://www.refworld.org/docid/3f967dc14.html> (Handbook for Registration, currently under revision) UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html>

3.2 Operational considerations for the Best Interests Procedure

3.2.1 Core guidance

- Not all children, or even all children at risk, are in need of the Best Interests Procedure. Only children who require UNHCR to make important decisions given the absence of a parent or legal/customary caregiver, and/or children at heightened risk (i.e. requiring sustained support over time to reduce vulnerabilities and/or support rehabilitation) should be systematically included in Best Interests Procedures. An initial or 'screening' Best Interests Assessment can be used to determine if a child is in need of continued individual support through the Best Interests Procedure, or if other generalised or community-based programming such as access to education, child-friendly spaces, or other programmes might be sufficient.
- In some operations, especially those operating in an emergency context, it might not be possible to provide the Best Interests Procedure for all children at heightened risk immediately, or even at all. While we should strive to provide the Best Interests Procedure for all children who need it, it is recommended that all operations develop a framework for case prioritisation based on context and capacity.
- UNHCR operations undertaking or supporting best interests procedures should commit and/or advocate for appropriate resourcing, whether for government, partners or for UNHCR itself. This means ensuring an appropriate caseworker to child ratio and ongoing coordination and capacity building for all personnel engaged in best interests procedures.

3.2.2 Targeting and prioritisation for BIP

Not all children are in need of 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 do not need ongoing support. This could 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.

It is only necessary to initiate BIP where:

- UNHCR is required to make an important decision affecting an individual child in the absence of a parent or legal/customary caregiver, or against the parent or legal/customary caregiver's wishes;
- A child is identified who is at heightened risk, i.e. who requires sustained interventions over time to prevent or respond to incidents of violence, exploitation, abuse or neglect.

Vulnerability and Risk

The *Interagency 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) occurring in combination with individual vulnerabilities.

Risk factors that put children in a situation of heightened risk can include both risks in the wider protection environment and risks resulting from individual circumstances, taking into account the cumulative effects of being exposed to several risk factors, such as:⁴⁸

Table 1: Risk Factors

Wider environmental risk factors	Individual risk factors
Displacement	Unaccompanied or separated child
Statelessness	Child victim of violence
Insecure environment	Child survivor of SGBV
Lack of durable solutions	Child spouse and/or parent
Poverty	Child in detention
Lack of access to services	Child with disability
Discrimination	Child with serious health condition

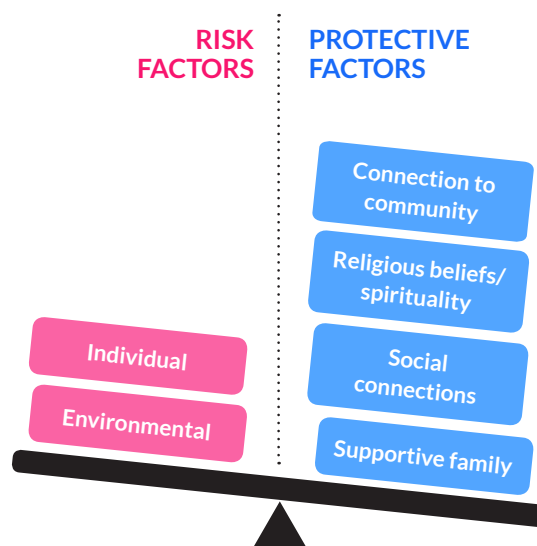
Risk is cumulative and the higher number of risks in a child's environment, the more urgent it is that we respond. Risks need to be considered in the short, medium and the long term.

Risks are balanced out by protective factors that protect a child. Protective factors are the physical, social, economic and environmental characteristics that reduce a child's susceptibility to difficulties and make them more resilient in the face of risk or harm.

In order to determine if a child is at heightened risk and in need of BIP, we need to assess both individual and environmental risk factors as well as the protective factors for the individual child. UNHCR's [Heightened Risk Identification Tool](#)⁴⁹ is an example of a framework for identifying children (as well as other persons with specific needs) who are at heightened risk. More information on identification of children at heightened risk is provided in [Section 3.2](#).

When faced with a large caseload, it is important to establish case prioritisation criteria based on the local context as part of BIP Standard Operating Procedures (BIP SOPs),⁵⁰ also called Child Protection Case Management SOPs. Prioritisation criteria support caseworkers in their day to day work, enabling them to respond to those children who are most in need.

Figure 3: Balancing risk and protective factors



⁴⁸ ExCom No. 107, para. (c).

⁴⁹ UNHCR, *The Heightened Risk Identification Tool*, June 2010, Second Edition, available at: <http://www.refworld.org/docid/4c46c6860.html>.

⁵⁰ Designing and Operationalising SOPs for the Implementation of the Best Interests Procedures for Children at Risk (BIP SOPs) Toolkit, available at: <https://goo.gl/5sHhux>. Note that these Guidelines refer to BIP SOPs. Many operations may refer to these SOPs as Child Protection SOPs or Child Protection Case Management SOPs, particularly where the SOPs integrate both response and prevention aspects of child protection programming.

Table 2: Roles and responsibilities in case prioritisation

Roles and responsibilities in case prioritisation			
	Caseworker	Caseworker supervisor	BID Supervisor
All BIP cases	• Prioritises cases within own caseload in line with prioritisation criteria • Takes action on cases within the appropriate timeframes according to their priority level	• Distributes cases amongst caseworkers she/he is responsible for in line with prioritisation criteria • Ensures that caseworkers have a balance of cases at higher and lower priorities	• N/A
BID cases	• Alerts supervisor of any cases meeting criteria for BID	• Alerts BID Supervisor to urgent and upcoming cases	• Prioritises cases referred to BID panel • Convenes emergency BID panels if necessary

Prioritisation is normally a part of BIP in all operations except those with very small caseloads. It is especially important in emergencies – for more information on establishing BIP in emergency settings, see the Best Interests Procedure Emergency Handbook entry.⁵¹

In developing prioritisation criteria, an assessment or situation analysis is necessary to facilitate an 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 girls and boys are facing. Prioritisation criteria must also reflect operational capacity to respond. The fewer caseworkers that are available, the tighter prioritisation criteria should be, in order to allow a manageable caseload per caseworker (see [Section 3.2.6](#) on Resourcing for BIP).

Prioritization criteria should be applied with necessary care, as each case remains unique and context-specific, and a holistic approach towards children 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. An example of prioritisation criteria is included in the BIP SOP Toolkit.⁵²

3.2.3 Partnerships for BIP

Child protection work, including BIP, requires a multi-sectoral, multi-stakeholder approach, both with child protection actors and those in other sectors. As emphasised in [Chapter 1](#), UNHCR should work in close partnership with local and national authorities. However, UNHCR should also look to develop partnerships with communities, children and national and international child protection organisations. Partnership and collaboration must be guided by, amongst others, the principle of best interests of the child, considerations about the child's safety, and confidentiality. This means that decisions regarding the modalities for involvement of any given actor must be carefully considered, as involving partners must not lead to further harm to the child.

⁵¹ UNHCR, Emergency Handbook, Best interests procedure for children, available at: <https://emergency.unhcr.org/entry/94380>.

⁵² Designing and Operationalising SOPs for the Implementation of the Best Interests Procedures for Children at Risk (BIP SOPs) Toolkit, available at: <https://goo.gl/5sHhux>.

Table 3: Roles of different partners in BIP

Overview Of Possible Partners and their Roles in BIP
National Agencies & Authorities: UNHCR should involve local and national governments in BIP as much as possible, as set out in Chapter 1. Local or national authorities may be partners for implementation of the BIP, for example, undertaking all or some of the functions of caseworkers and case managers, BIP reviewers and supervisors, and BID Panel members. They may also assume more of a supervisory role in the overall management and coordination of BIP and in capacity building for other partners implementing BIP.
UNICEF: UNICEF plays an important role, especially at the level of the development of strategic decisions for child protection programming and advocacy. Given its mandate, UNICEF may be able to provide greater leverage with national child protection and social welfare authorities. UNICEF may also play a role in supporting BIP with funding, capacity building and through membership of the BID Panel.
Child protection NGOs: National NGOs with a child protection profile can play a vital role in BIP, as they have an in-depth understanding of the local situation and practices. These agencies 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 providing oversight. Child protection NGOs can also provide capacity building for staff involved in BIP. 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 supervision of BIP), and BID Panel members. NGOs can also provide capacity building to UNHCR, governments and other civil society partners on some or all aspects of BIP.
Community-based organisations: Community-based organisations (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. However, in some cases, parents and children may be worried about confidentiality when reporting to CBOs. An assessment of each CBO's capacity, strengths and risks, and a corresponding mitigation/capacity building plan, should be undertaken before defining roles and responsibilities for BIP.
Other NGOs: 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.
ICRC and National Red Cross and Red Crescent Societies: The 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. 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 the persons unaccounted for. Referral mechanisms for Restoring Family Links services are essential for BIP. The ICRC and the National Red Cross and Red Crescent Societies might participate, as an observer, in BID Panels, especially if they have followed the child, know him/her well and/or have a presence in the child's area of country of origin.
Experts: Specialised mental health, other medical, and legal experts, among others, can provide necessary interventions, information and advice throughout BIP on a case-by-case basis.

Partnership, collaboration and coordination are fundamental elements of a child protection programme, including quality and timely protection services for girls and boys at risk. In its *Framework for the Protection of Children*, UNHCR reiterates the importance of partnership with States, communities, children, and child protection actors and agencies in building a comprehensive child protection system, including BIP, through complementarity of resources, knowledge and skills.

In ExCom No. 107, UNHCR's Executive Committee also called on States, UNHCR, and other relevant agencies and partners to "work in close collaboration to prevent children from being put at heightened risk".⁵³ It is important to ensure that external actors are treated as equal partners for the protection of children. This will also guarantee buy-in, which will result in better outcomes and timely actions for children.

In practical terms, NGOs and community-based organisations complement the work of UNHCR, providing specific expert services, and carrying 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 girls and boys. International and national agencies and organisations, on the other hand, can contribute with technical expertise, guidance, funding and training to strengthen targeted support to children as well as strengthen national child protection systems. Independent professionals and experts are also important as they can provide valuable analysis on the context, expert opinion on protection issues and options, and help guide responses that are in children's best interests.

Partnerships will differ from context to context, depending on capacity, national regulations and frameworks, and on historical arrangements. Where several partners are involved in the implementation of BIP, it is a good practice to establish a BIP coordination group as part of or in addition to the overall child protection sector working group.⁵⁴ This group would not discuss specific cases, but rather work to harmonise BIP across partners and geographic areas and analyse trends in child protection risks identified, and challenges or gaps in BIP coverage or implementation.

Where UNHCR implements BIP in partnership with other actors, the following tips may also be useful in working with different types of partners:

- In refugee settings, whether a partner is a funded partner or an operational partner that does not receive UNHCR funding, UNHCR should still lead and coordinate BIP.⁵⁵ Operational partners can implement BIP whether or not they are funded partners – however, it may be necessary to sign Data Transfer Agreements and/or Information Sharing Protocols in order to share information about children at risk and children in BIP, in particular where partners have not signed a Project Partnership Agreement.
- UNHCR should base partnership for BIP on an assessment of an actor's child protection and BIP/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.
- Working with local and national organisations may be more sustainable in the long-term. However, in emergency or large-scale operations, it may also be appropriate to work with international organisations who may be able to scale up more quickly and/or provide additional specialized expertise.
- 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

⁵³ ExCom No. 107, para. (g).

⁵⁴ In many contexts, this BIP coordination group may be called a Case Management Task Force or a Case Management Sub-Working Group.

⁵⁵ For example, UNHCR's leadership role 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: <http://bit.ly/2BewiQA>

utilize a case management approach such as psychosocial support and safe shelter, there should always be one partner with the overall responsibility for BIP in a particular area.

Partners are independent actors, each with their own governance and management structures. Their engagement with children and collaboration in BIP must be based on their commitment to international standards, and relevant national, regional and international legal framework. Like UNHCR, they must be accountable to children, their families and communities.

3.2.4 BIP coordination fora

BIP requires the coordination and collaboration of many different parties. For this reason an individual caseworker is assigned to the case, in order for the required actions to be carried out by the responsible caseworker. Oftentimes, the caseworker will need to refer the child and/or her/his family to other types of services. In this situation, the caseworker's responsibility will be to ensure that the referred services are received. In particular cases, this might require gathering the involved parties in one location to ensure actions are planned and carried out. Outlined below is a description of several such fora, including the multidisciplinary BID panel.

Table 4: Types of Meeting for BIP

Case Planning / Review Meetings	BIP coordination meetings	Case Conferences	BID Panels*
Purpose			
Develop/review case plans	Reviewing caseloads/ supervision within one agency	Formal decision making Development/ review of case plan	Formal decision making with procedural safeguards
Which cases?			
All cases	As decided by agency	Complex cases where intervention is interagency, multi-disciplinary, or multi-sectoral	Cases that require a BID (see Chapter 4)
When?			
Could be done as a part of the case planning stage or at the case review stage	Could be done at any stage	Could be done after assessment stage as a part of the case planning, or during implementation of case plan or review	Could be done after assessment stage, ideally after case plan stage
Participation of child/family?			
Yes	No	No	No
Participation of other actors?			
If needed and appropriate	No	Yes	Only trained panel members participate. Caseworkers and experts can be invited if needed to discuss specific cases.

* See [Section 5.5](#) for more information on BID Panels.

3.2.5 Developing SOPs

BIP SOPs (also called Child Protection Case Management SOPs),⁵⁶ which include SOPs for BID, are a set of written instructions that aim to guide actions and ensure that guiding principles, approaches and best practice are upheld in 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 transparency of the process, and promote efficiency and accountability.⁵⁷ SOPs should define roles, responsibilities and relationships between the different people involved in BIP, and how to handle different types of child protection cases. They should give details of the process involved in each step of BIP, the service mapping and referral system, the method and process for working with children, and the system for managing information.

SOPs should be established at country level to ensure streamlined and efficient BIP processes across field locations, taking into account the national context and operational realities, while respecting these BIP Guidelines. Taking into account national SOPs, field offices may wish to develop contextualised SOPs to ensure ease of use and applicability locally. SOPs for BID should not be established in isolation, but instead, should be part of a comprehensive child protection programme and case management system. Procedures for BID must therefore be integrated into broader BIP or child protection case management SOPs.⁵⁸

The first step of the process of establishing SOPs for BIP is to review the existing child protection and other SOPs (e.g. registration, RSD, durable solutions) to determine the extent to which children's best interests is adequately highlighted.

The BIP SOP should be developed in consultation with relevant actors, in particular national child protection authorities, UNICEF and other child protection actors engaged in the implementation of BIP. Communities and children should also be consulted in the development of any SOPs, particularly in processes that will directly affect their wellbeing (e.g. assistance, feedback), as well as where they will play an active role (e.g. identification). Depending on the context, these community consultations can be done via the same consultation process as with other actors – for example, via representatives of community-based mechanisms – or separately in focus group discussions with different segments of the population.

Given that BIP is used primarily in contexts where UNHCR is accountable for child protection, UNHCR would normally lead or co-lead the process of developing and updating SOPs, in partnership with other stakeholders. Once the content is agreed and the SOP finalised, representatives of each agency may sign the document to indicate their commitment to adhere to the procedures therein.

The responsibility for disseminating the SOPs, and training of relevant actors on the use of the SOPs should be divided among all participating actors. Where necessary, UNHCR may work with a child protection partner to roll-out, disseminate and carry out training on the operationalisation of the SOPs. The SOPs should be translated into relevant languages as required in order to facilitate easy use by child protection caseworkers, national authorities and other relevant stakeholders. SOPs should furthermore be reviewed with regular frequency, and at least once a year, with engagement of child protection partners, authorities and UNICEF.

⁵⁶ As noted above, 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. UNHCR BIP SOPs Toolkit, available at: <https://goo.gl/5sHhux>

⁵⁷ *ibid.*

⁵⁸ Section 5 of the SOP Template in UNHCR's BIP SOP Toolkit focuses specifically on procedures for BID.

CHECKLIST: Is a Revision of the SOPs 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 any changes (increase or decrease) in the number 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?

* UNHCR BIP SOP Toolkit – Guidance Note.

3.2.6 Staffing and resourcing for BIP

Implementing BIP in a big operation with a significant proportion of children at risk can require significant resources – especially in areas where government or civil society capacity may be low. However, UNHCR is rarely solely responsible for resourcing BIP, even where it leads the child protection sub-sector. Other actors, including government, other UN organisations, and national and international organisations also seek and commit resources to the operationalisation of BIP. UNHCR should always seek to build on the capacity of other actors, and to work in a complementary manner, including in resource mobilisation and allocation – see [Section 1.2](#) on working with national child protection systems.

Staffing is the primary resource required for BIP. The *Minimum Standards for Child Protection in Humanitarian Action* recommends a 1:5 supervisor-caseworker ratio, and a caseworker: active case ratio of no more than 1:25.⁵⁹ Assuming that an average child protection case can be closed or moved to less intensive support after approximately 3 months, this would imply that operations should plan for one caseworker to process around 75-100 cases per year – however, this will vary significantly depending on the context. For example, if caseworkers have additional responsibilities within child protection programming, must travel long distances, or are dealing with mostly complex cases they will have less capacity. Where some case management functions are carried out by other service providers (e.g. follow up by psychosocial workers), or where a caseworker is dealing primarily with more straightforward cases they may have more capacity. Community volunteers can also supplement caseworkers, for example conducting BIAs and follow-up for lower risk cases. In practice, therefore, operations should define appropriate ratios of caseworker: case depending on the context.

For UNHCR specifically, 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. In many operations, separate human resources can also be deployed for BIP related to resettlement.

⁵⁹ Global Protection Cluster (GPC), *Minimum Standards for Child Protection in Humanitarian Action*, 2012, Standard 15, available at: <http://www.refworld.org/docid/5211dc124.html> (CPMS).

Table 5: Recommended roles for staff working on BIP

Position	Responsibilities	UNHCR/Partner
Senior Protection Officer (or most senior protection staff member in UNHCR)	Ensures the implementation and oversight of BIP as a whole. Appoints the BID Supervisor.	UNHCR
BID Supervisor*	Ensures the implementation and oversight of the BID process.	UNHCR
BID Coordinator (optional – in large operations)*	In larger operations, oversees the BID process in certain locations or for certain partners.	UNHCR or Partner
BID Reviewer (optional – in large operations)*	Reviews BID cases for submission to the BID Supervisor.	UNHCR or Partner
Child Protection and/or Casework Manager (optional – in large operations)	Coordinates caseworker supervisors and oversees caseload for BIP at a national or camp/local level.	UNHCR or Partner
Caseworker Supervisor / Manager	Supervises up to 5 caseworkers and reviews cases, ensuring the prioritisation of cases and the quality of work.	UNHCR or Partner
Caseworker*	Identifies children at risk, conducts BIAs and BIDs, 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 5.4](#).

The Best Interests Procedure requires that trained and qualified staff are involved at every stage of the child's case. Caseworkers (also called Child Welfare Officers) have the responsibility for case assessment, case planning, follow-up and monitoring (see [Section 3.3](#)). Efforts must be made to recruit caseworkers with relevant educational background and work experience. This includes training and experience in working with children, skills in communicating with children, and case management.

Training and capacity building is another important activity to consider in planning and resourcing. While varying levels of knowledge and expertise will be available amongst 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 heads of partner agencies should review training needs and organise refresher sessions.

For more information on the roles and responsibilities and necessary competencies of caseworkers and caseworker supervisors, please see the Interagency Case Management Guidelines.⁶⁰

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 Interagency Case Management Guidelines.⁶¹

⁶⁰ Interagency Case Management Guidelines, p. 41-44 and Appendices 1 and 2.

⁶¹ Interagency Case Management Guidelines, p.33-34.

3.3 The Best Interests Procedure – step by step

3.3.1 Core guidance

- UNHCR’s framework for child protection case management, the Best Interests Procedure, is made up of the following steps: identification, Best Interests Assessment, case planning, implementation, follow-up and review, and case closure/ transfer. There are two key procedural elements: the Best Interest Assessment and the Best Interests Determination.
- UNHCR’s assessment tool for the protection of individual children is referred to as a Best Interests Assessment (BIA). While a Best Interests Assessment does not require the strict procedural safeguards of a Best Interests Determination (BID), staff with the required expertise, skills and knowledge in child protection should carry out the Best Interests Assessment.
- A Best Interests Assessment should be undertaken in the following situations:
 - ▶ Initiating family tracing;
 - ▶ Providing temporary care*;
 - ▶ Initiating family reunification*;
 - ▶ Implementing durable solutions for separated children*;
 - ▶ Resettling a child with only one parent*;
 - ▶ Developing care plans for children at risk.
- The Best Interests Determination can be initiated at any time, but is not necessary for all children in the Best Interests Procedure. For more information on the criteria for when a Best Interests Determination is required, see [Chapter 4](#). For more information on the specific procedures for Best Interests Determination, see [Chapter 5](#).
- In these Guidelines, an overview of each step is provided. The Interagency Case Management Guidelines provide additional information on the implementation of each step.

3.3.2 Overview

BIP is a child protection tool for managing and implementing activities determined to be in the best interests of individual children at risk. It ensures that the individual needs of the child and the child’s caregivers are met through a systematic and coordinated process. The goal of BIP is to assess individual cases and plan and intervene in order to provide care and protection in a consistent and structured way for the individual child. Similarly, a well-managed BIP also ensures that the quality of intervention is consistent across cases. To achieve this, BIP requires strong leadership, teamwork and good coordination. It also requires documenting all aspects of the case in a physical and/or electronic file.

Not all children are in need of individual follow-up and case management. But for those children identified as at risk or in need of assistance, a system of decision-making with accountability ensures that all actors are considered and engaged in finding both immediate and long-term interventions and solutions. In brief, BIP entails a number of systematic steps as outlined in the diagram below.

Figure 4: Steps in the Best Interests Procedure



The BIA and the BID are two key tools for the implementation of BIP. Other tools can be used at different stages of BIP as seen in the table below. Note that examples of these tools can be found in the SOPs Toolkit.

Step*	Tools
Identification and Intake	Prioritisation criteria; Identification form; Screening tool; Consent form.
Best Interests Assessment	Best Interests Assessment example forms: Rapid BIA form (Annex 6); Comprehensive BIA form (Annex 7).
Case Planning	Case plan form.
Implementation	Referral form
Follow-up and review	Follow-up form
Case Closure	Closure form; child feedback form.
BID (can be initiated at any step)	BID report form (Annex 8); BID review form (Annex 9)

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

* Note that all steps can be documented in proGres Version 4.

3.3.3 Identification

Identification of children at risk should start as soon as possible after displacement and must be ongoing, particularly in situations where there is a population influx. Identification mechanisms should remain in place throughout the displacement cycle as part of ongoing general child protection monitoring. Children can be exposed to abuse, violence, neglect, exploitation, separation, and/or discrimination at any time.

Identification requires the establishment of measures for identifying children at risk. This includes ensuring that staff and other stakeholders are trained and referral contact points are identified. As early detection of risks is vital for the protection of girls and boys, mechanisms for identification and referral must be

EXAMPLE

Shire Ethiopia: Integration of BIA into proGres Registration Processes

In a joint UNHCR and Government Registration process, UNHCR in Shire, Ethiopia, has trained its registration staff to complete a rapid BIA as part of the registration interview for UASC, 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.

Measures to identify children at risk and in need of BIP can be employed in various situations and by various actors, including, for example:

- Upon arrival in the country of asylum, when children at risk can be identified by child protection focal points within the Registration team;
- During the refugee status determination (RSD) process by UNHCR and/or national authorities; e.g., by the RSD child protection focal point;
- During participatory assessments with children and communities;
- Through referral by national or international NGOs;
- Through community-based child protection mechanisms such as community committees;
- Through camp/community-level reception points, where children at risk and their families can seek direct assistance and support.

Trained staff of agencies that specialize in child protection should be involved in the identification, verification and documentation of children at risk. Staff should be sensitive and able to work with and interview children.

In most operational environments, the involvement of communities to identify children at risk is a good practice. Community leaders, teachers, health centres and women's and youth groups create a network which can help to identify and refer unaccompanied, separated and other children at risk. For more information on community based child protection mechanisms, see UNHCR's [CBCP Mechanisms Issue Brief](#).

established at the point of registration.⁶² This requires that registration staff are trained on identifying protection risks, including unaccompanied or separated children, as well as married and/or pregnant children, victims of trafficking, and survivors of violence and abuse. It is helpful to provide registration staff with a simple set of screening questions to determine if a child should be referred for BIP. In some cases, registration staff can do a detailed screening (for example, using the HRIT) or even conduct simple BIAs at registration (see example above). In other cases, it may be more appropriate for registration staff to refer identified children to protection staff at registration.

3.3.4 Best Interests Assessment

Actions and decisions relating to children at risk, including unaccompanied and separated children, must be based on a thorough assessment of the child's protection needs. UNHCR's assessment tool for the protection of individual children is referred to as a Best Interests Assessment (BIA). A BIA supports child protection actors to ensure actions taken are in line with the best interests of the child and is essential before any action affecting an individual child of concern to UNHCR is taken. As such, a BIA is the standard or default UNHCR child protection assessment. Other child protection agencies may refer to this process differently, e.g. "a child protection assessment".

A BIA does not require any particular formality, and should be conducted systematically in many circumstances that occur from the moment a child is identified as at risk until a durable solution is implemented or the child's vulnerabilities are otherwise addressed. There are several decisions for which a BIA should be carried out, although it can be used for any arising situation:

- Initiating family tracing;
- Providing temporary care*;
- Initiating family reunification*;
- Implementing durable solutions for separated children*;
- Resettling a child with only one parent*;
- Developing care plans for children at risk.

* Note that some of these cases may require a BID (see [Chapter 4](#)).

A BIA should be conducted as soon as possible after a child at risk has been identified. 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. The BIA should be carried out by staff with the required expertise, skills and knowledge in child protection. A BIA involves interviews with the child and her/his caregivers and in most cases also includes home visits.⁶³ The assessment must encourage and support the child's participation in the process. This includes informing the child of process and options, providing the child the time and space necessary to form and share their opinions, and to document the child's views and take them into consideration.

⁶² In these Guidelines, "Registration" refers to UNHCR Registration of refugees and asylum-seekers. For more information on UNHCR Registration, please see: [Handbook for Registration](#) (currently under revision)

⁶³ See the following guidance on conducting interviews: Finland: Directorate of Immigration, *Guidelines for Interviewing (Separated) Minors*, March 2002, available at: <http://www.refworld.org/docid/430ae8d72.html>; Vasquez, Rosemary, L.C.S.W. (2000), *Interviewing Children - Excerpts from an article for Court Appointed Special Advocates to help professional evaluators interview children*, April, 2000, available at: <https://bit.ly/2Jy8n0t>; Keller-Hamela, Maria, *The Child Interview. Practice Guidelines*, Nobody's Children Foundation, available at: <https://bit.ly/2uxn53f>; Linksy, Meredith, Director, ABA Commission on Immigration, December 2014, *Best Practices for Interviewing Child Clients and Child Victims of Trauma*, available at: <https://bit.ly/2NXNRdb>; Virtual Knowledge Centre to End Violence Against Women and Girls, *Steps for Conducting Interviews*, UN Women, available at: <https://bit.ly/2NmvyvH>

The assessment and the recommendations deriving from it need to be documented in order to facilitate monitoring and follow-up of the child. The sample BIA form in [Annexes 6 and 7](#) can be used as a base for this, but it is recommended to tailor the sample BIA form to the operational context.

The result of the BIA is a detailed appraisal of the child's protection situation (as well as her/his and the family's strengths and capacities) and a set of recommendations on the appropriate protection and care interventions. However, the BIA can also result in a recommendation that a BID is required or recommended. Even if it is clear that a full BID will be required but kept pending, for instance, to allow time for family tracing, a BIA can be a first step. In such instances, a well-done BIA is a good basis for the full BID and a tool for monitoring of progress in the situation of the child.

Identifying separated and unaccompanied children

Sometimes only unaccompanied children are identified, as staff may believe that separated children are traditionally cared for by their relatives and identification of separated children disrupts traditional forms of care. It should be emphasized, however, that separated children may risk treatment that is unequal to other children in the family: they may be subject to abuse, neglect, violence and/or exploitation or they may want to be reunified with their parent(s). Therefore it is important to conduct an initial or screening BIA to determine whether they are in need of case management/BIP and referral to services.

Ongoing information campaigns are needed at different levels in order to identify genuinely separated and unaccompanied children and to avoid facilitating false registration. It is essential to clearly explain the criteria that determine which children are unaccompanied or separated, and should be documented as such. Registration of unaccompanied and separated children may be seen as an opportunity for financial or material gain. Some parents might deliberately instruct their children to register as unaccompanied, separated, or orphaned children in hopes of receiving extra food, material support, or benefit from resettlement options. More holistic child protection programmes that target children at risk more broadly (rather than focusing only on unaccompanied and separated refugee children) can help to prevent false cases of unaccompanied and separated children.

Generally, unaccompanied and separated boys are more easily identified than girls. Therefore, data on unaccompanied and separated children must be carefully analysed to ensure that, for instance, the identification mechanism used captures both girls and boys who are unaccompanied or separated. Specific groups of UASC who are easily missed in the identification process include:

- Unaccompanied or separated girls: they can be “invisible” when taken in by the extended family or a foster family (e.g., providing domestic services in the household) and may not be identified as unaccompanied or separated by the community;
- UASC under 5 years of age;
- Married UASC;
- Unaccompanied or separated children in institutional care;
- Refugee or displaced children living and working in the street (these children commonly have parents or relatives, but for one reason or another they are not living with their family);
- Unaccompanied and separated children living in host communities.

3.3.5 Case plan

An individual case plan is an effective tool and process through which a set of actions and follow-ups to address the child's protection needs are developed and agreed upon. Case planning must be consultative and involve the child and, as appropriate, the child's family/caregiver. Based on the BIA, the case plan outlines the intended interventions, such as placement in interim care, tracing, family mediation and support and referral to appropriate services. The case plan should identify which actor or agency is responsible for each action relating to the child's protection needs, the referral services that the child (and her or his caregiver) needs, and timelines for implementation, which will facilitate monitoring. The case plan needs to indicate when the progress will be reviewed and by whom.

The options available for case plans depend on the engagement of a range of service providers, and the roles and responsibilities of actors must be part of the inter-agency BIP SOPs. Referrals should be made in accordance with the referral pathway and system established in the BIP SOPs (see BIP SOP Toolkit⁶⁴). Every effort should be made to identify solutions or responses within the national child protection system. However, where the system is not sufficiently robust or national actors lack the will to provide appropriate response, efforts should be made to engage individually responsible actors to provide necessary services. Where services are implemented by a NGO partner, UNHCR and the relevant State authority must be kept informed of the process/actions being implemented. Care must be taken in situations where involvement of a national authority can pose a protection risk for the child or a national actor is directly or indirectly linked to the protection risks to the child.

3.3.6 Implementing the case plan

Once the case plan is developed, its implementation can begin. This stage needs to include the child, her or his caregivers and all actors in the case plan. The role of the caseworker is to ensure that the child receives the services outlined in the case plan and to be the link between the service agency and the child.

3.3.7 Follow up and review

The implementation of the case plan needs to be monitored and followed up on to ensure that the child and her/his family are receiving the services outlined in their case plan. 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 (if she/he is a part of the case plan and privy to protection information about the child). The review of a case plan supports caseworkers to measure progress and adjust interventions to changed circumstances.

Monitoring the implementation of follow-up measures should be carried out in a timely manner. The actor responsible for follow-up should agree to report back in a manner and in accordance with the frequency indicated in the case plan (and/or BID, if applicable). Such commitment needs to be written into the BIP SOPs in order to give such requirement the necessary weight.

It is important to involve the child in follow-up. The meaningful participation of the child in her/his own solutions, by focusing on children and family's strengths and resources, can positively impact the child's

⁶⁴ BIP SOPs Toolkit, available at <https://goo.gl/5sHhux>.

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 quality of services being provided. In some cases, children who do not require regular monitoring can be provided with contact information so that the child herself/himself takes the initiative to report back on her/his status. It is important to establish this during the case planning and/or when the child is informed of the outcome of a decision relating to her/his case.

Developing referral pathways

A multi-agency approach to establishing and implementing BIP requires an interagency referral pathway. The referral pathway should be based on an understanding of the structure and capacity of the national child protection system (see [Section 1.2.3](#) on national child protection systems), as well as local structures and organisations. A good way to develop a referral pathway is to begin with a detailed actor/resource mapping* 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 the best interests procedure. The mapping exercise should also explore the gaps in the knowledge base amongst key actors.

The community also has a fundamental role in developing and implementing protection responses for children, and maintaining an environment that is protective. It will therefore be valuable to consult members of the community on available options, and their role in supporting the responses to the child's protection needs. However, it is important to maintain confidentiality regarding individual children's cases. Any involvement of community members in responses for individual cases must be based on the child's consent/assent, and with consideration of the child's safety and her/his best interests.

* Note that BIP SOP template Section 2, includes a section on Service Providers/Actors, and for more details, see BIP SOPs Toolkit, available at <https://goo.gl/5sHhux>.

3.3.8 Case closure and transfer

Procedures for the closure of cases should be part of effective BIP and should be outlined in the BIP SOP. The decision to close the case must be authorized by the case supervisor in charge, or in the context of BID cases, the BID Supervisor. It is difficult to define fixed criteria for closure of cases, as each case is different and context-specific. The following criteria for closure of cases can however be used as reference:

- The necessary referrals and protection interventions have been carried out and documented, and the child is no longer at risk. This could include successful family reunification and follow-up monitoring;
- The necessary referrals and protection interventions have been carried out and documented, and no further action is necessary or possible;
- The child and the caretaker each express her or his wish to end monitoring and follow-up, unless this is not in the child's best interests;



- The young person reached the age of 18 and the case has been handed over to other competent authorities, or no further action is necessary/possible (see [Section 3.4](#) below);
- The child is deceased;
- The child and the (foster) family moved to another location; note that in these circumstances, the case may need to be transferred to either UNHCR or other partners in the destination location, if possible (see below);
- The child's whereabouts are unknown and attempts to locate the child have been exhausted; or
- There is sufficient evidence to believe that the child was falsely identified as being at risk.

The child and the caregiver need to be informed about the closure of the case. In some instances, closed cases should be re-opened for review. Where a BID needs to be re-opened, the procedures outlined in [Section 5.7](#) apply.

In particular situations, such as if the child moves or there is a change in the lead BIP agency, cases are not closed but the responsibility for the management of the case is transferred to another agency or to another caseworker in a different location. Case transfers need to follow clearly outlined steps to ensure that the information and case file are fully handed over and the case plan continues to be implemented. These steps should be outlined in context specific SOPs (see [Section 3.2](#)).

3.4 Young people and the Best Interests Procedure

3.4.1 Core guidance

- While the Best Interests Procedure is carried out for children at risk under the age of 18, there may be instances where other young persons (up to age 21⁶⁵) are in need of additional support and safeguards, such as in the search for durable solutions.
- 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.
- Operations should include procedures for children ageing out of the different care systems in their Best Interests Procedure Standard Operating Procedures. This should also include provisions for children who arrive or are identified close to their 18th birthday.
- UNHCR should, in its assistance programming, avoid the creation of situations in which a 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 maturity, vulnerability, mental health, community integration, as well as age, gender and specific needs.
- Age assessment procedures should be undertaken as a measure of last resort, and be undertaken taking the best interests of the child as a primary consideration.

3.4.2 Overview

Best Interests Procedures are usually carried out for children under the age of 18, with case management and other processes normally concluded by the time children reach adulthood. However, there might be instances where other young persons (up to age 21) are in need of additional support and safeguards, such as in the search for durable solutions.

In most jurisdictions, childhood legally ends when a person reaches the age of 18 years. 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 the age of 18 years, it also varies from person to person with young people frequently reaching cognitive maturity before emotional maturity. Separation or other protection issues can result in considerable changes in brain development, and how young people respond and behave in relation to risks and challenges.⁶⁶

⁶⁵ In most jurisdictions, childhood legally ends when a person reaches the age of 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 persons 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 age 21 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). The extension of the 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' 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.

⁶⁶ See: Somerville, L. H., "Searching for signatures of brain maturity: What are we searching for?" *Neuron*, 92, 2016, 1164-1167.

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 need and the young adult consents to case management support, it is important that a process is available to support them in making their own decisions.

3.4.3 Procedures for children reaching 18 years of age during BIP

Children in BIP who are due to “age out” before a final decision is taken 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 be made to ensure that decisions for these children are reached and implemented 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, for the purposes of BIP, the most generous interpretation of age and dates is used. For example, if a child only knows their year of birth, they should be treated as if their birthday is 31 December for that year.

When a child who is engaged in BIP reaches the age of 18, she or he 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 and/or child protection staff should plan an interview or home visit with the young person in order to develop a plan of action. At this time caseworkers should explain to the young person that they are about to reach the legal age of adulthood and will then be responsible for making her/his own decisions, and may no longer be eligible for certain services. If the young person feels a need for continued support UNHCR and/or partners can still provide guidance, counselling and referral to support services including through BIP. Procedures for supporting the transition to adulthood should also be included in the BIP SOPs.

3.4.4 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.

Files of siblings who are living together in groups, including those who are 18 or above, should be kept together (see [Section 3.6](#)). In terms of BID, it is often best 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, as is the practice with other adult family members, in decisions concerning their younger brothers and sisters.

The following situations illustrate the types of circumstances in which UNHCR and partners should continue to include young adults (18 to 21 years of age) in BID (with her/his consent):

- 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 BIP 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 her/his age/stage of development, 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 the child's 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.
- Case management for children transitioning to adulthood should also include plans for 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 18th birthday, and should identify measures to support the child's independence, focussing on fostering her/his own strengths and capabilities.
- Decisions taken in the BIP, while considering what is in the child's immediate best interests, should also take into account the implications once the child reaches adulthood. Proposed support/follow-up should not automatically cease upon the child reaching the age of 18 years, 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.
- For young people who are survivors of SGBV, follow-up and monitoring services must continue in accordance with the operation's SGBV SOPs.
- When assessing the best interests of unaccompanied children in particular, it is important to keep 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.

3.4.5 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."⁶⁷

UNHCR should, in its assistance programming, avoid the creation of situations in which a 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 maturity, vulnerability, mental health, 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 preferred 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.

⁶⁷ ExCom No. 107, para. (g).

TEXT BOX: A principled approach to age assessment⁶⁸

- Age assessment procedures should only be undertaken as a **measure of last resort**.
- Age assessment procedures should be undertaken taking the **best interests of the child** as a primary consideration.
- A **multi-disciplinary approach to age assessment by qualified staff** should be adopted, with the least invasive options selected.
- The **procedure, outcome and consequences of the age assessment should be explained** to the individual in a language that she/he understands.
- Medical age assessment methods are highly contested and are subject to a high margin of error. **UNHCR offices should not support the use of medical age assessment methods.**
- If age assessment is thought necessary, **informed consent must be obtained** from the individual.

For further guidance on age assessment, for UNHCR operations, please see *UNHCR's Technical Note for UNHCR Operations on Age Assessment*⁶⁹ and for advocacy with States, please see the *Position Paper on Age Assessment in the Context of Separated Children in Europe*.⁷⁰

3.4.6 Children seeking to amend their registered age

In certain situations, children may seek to have their age, as recorded in Registration data, changed. This request may stem from error at the time of registration, errors on existing identity documents, or the provision of false 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 to the child the potential risks. 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 her/him.

While the Best Interests Procedure generally does not apply in the case of adults (see [Section 3.4.2](#)), 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 she/he has reached a sufficient level of self-reliance. This consideration also applies to young people who were initially identified as children, but later determined to be above the age of 18 years.

⁶⁸ In exceptional circumstances where UNHCR operations assess that it is necessary to conduct age assessment, the considerations below (which are the same that apply to State procedures) should govern the age assessment procedure.

⁶⁹ UN Children's Fund (UNICEF), *Age Assessment: A Technical Note*, January 2013, available at: <http://www.refworld.org/docid/5130659f2.html>

⁷⁰ Separated Children in Europe Programme, *Assessment in the Context of Separated Children in Europe*, 2012, available at: <http://www.refworld.org/docid/4ff535f52.html>

3.5 Participation of children and families in the Best Interests Procedure

3.5.1 Core guidance

- Children have a right to participate in the Best Interests Procedure in accordance with their age and maturity. Their safe and meaningful participation, and that of those close to them, is also essential for a successful and protective outcome.
- Caseworkers need to take into account a child's age, gender, ability, and how ethnicity, religion, sexual orientation, social and economic status and other factors may have an impact on a child's participation.
- Relevant information should also be collected from persons close to the child, as their in-depth knowledge of the child can be very valuable for the Best Interests Procedure. This is particularly the case for parents (if present), siblings, foster parents, foster siblings, as well as guardians. Experts can also be consulted.

3.5.2 General considerations for child participation

The Best Interests Procedure requires a holistic approach to clearly and comprehensively understand the child's background, as well as to discover as much as possible about her/his needs and protection risks, affective ties, capabilities, interests, and also the capacity of adults willing to care for the child. The process needs to be child-centred, gender-sensitive, guarantee the child's participation as well as those close to her/him, and have a forward-looking approach.

Meaningful participation in this context encompasses three fundamental elements:

- a. providing children with information on the procedure as well as options and outcomes;
- b. ensuring that information provision and engagement of the child is age appropriate, culturally sensitive, promotes child's resilience and family empowerment; and
- c. enabling the child to share her/his views and take these views into consideration in accordance with the child's age, maturity and evolving capacities.

Additional guidance on child participation is included in [Annex 10 – Actions to Support Safe and Meaningful Child Participation in BIP](#).

3.5.3 Seeking the views of the child

A child who is capable of forming her or his own views has the right to express those views freely, in all matters that affect him or her. Interviews with the child thus play a central role in the BIP process. It is important to know the child's thoughts, feelings, and opinions in order to properly assess the impact of a proposed action on her or his welfare. The kind of information which can be solicited from a child depends on a variety of factors, including her or his age and maturity, the type of decision to be taken, and the information available from other sources.

In addition to what is listed in [Annex 10 – Actions to Support Safe and Meaningful Child Participation in BIP](#), some things to remember before conducting an interview with a child include:

- **Children cannot be expected to give adult-like accounts of their experiences.** The child's age and stage of development at the time that the relevant events took place, as well as at the time of the interviews, must be considered.
- **Children may not be able to present information relating to context, timing, importance and details with the same precision as adults,** and may only have limited knowledge of the conditions in the country of origin. Good communication is more likely to occur if the interviewer considers the ability and competence of children as being different from, rather than inferior to, those of adults.
- **Many children find it easier to speak in the presence of a friend or guardian.** However, caution must be exercised in this regard, as current care-givers, foster parents, and others, may have a personal interest in the process and may prevent the child from freely expressing her or his views. Adults suspected of abuse should never be present.
- **Interviews with the child should take place in a confidential and child-friendly atmosphere.** If possible, the venue should be chosen by the child. Emphasis should be placed on putting the child at ease and developing a relationship of trust. The environment and tone of the interviews should be as informal as possible.
- **Children should always be allowed to say “no” or refuse to answer questions.** They should be allowed to change their minds and to make mistakes.
- **Children may not connect emotionally with what they are recounting in the same way as adults.** Children may have no emotional reaction at all or react to emotional cues from the interviewer. The interviewer 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.** Therefore, the caseworker should also use other methods and approaches, such as observation, sentence completion, games and drawing, to help the child to express traumatic experiences (e.g. flight, separation).
- **The length of the interview should be tailored to the age, maturity and psychological conditions of the child.** To reduce stress for the child, it is recommended to have two or three short interviews, instead of a long one. It is best to use the same interviewers and interpreters, as children often need time to build relationships. If the child at any time expresses preference for certain persons, this should be discussed.
- **In exceptional cases of extreme distress, such as incidents of abuse, arrangements should be put in place to ensure that the child has immediate access to counselling, especially if the information that may cause distress is likely to surface during the interview.**

3.5.4 Seeking the views of family members and other persons close to the child

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

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

Child participation as a right

Effective participation recognizes children as rights-holders, it builds their capacity and resilience, and allows them to protect themselves and their peers. The right of children to participate and to be heard is outlined in a number of legal and UNHCR policy documents:

- The CRC has several articles pertaining to child participation:
 - ▶ Article 12: children have the right to form her/his own views and to express those views freely in all matters affecting her/him, 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 CRC.
- Article 8 (3) of the *Convention on the Rights of Persons with Disabilities*^{*} guarantees to 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 are provided with disability and age-appropriate assistance to realize that right.
- ExCom No. 107 calls on state 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 UNHCR's *Framework for the Protection of Children*, as well as a guiding principle underpinning the Framework.

^{*} 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>

whom he or she feels close. When speaking to these persons, the caseworker must exercise caution and preserve strict confidentiality. Information received from the child and her or his 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 and child abuse, the safety and security of the child must determine whether or not to make inquiries of persons closely associated with the child, and guide the choice of method of inquiry.

Caution must likewise be exercised in communication with the parents of unaccompanied or separated refugee children, who remain in the country of origin. These contacts could reveal to the home country authorities that the child is seeking asylum elsewhere, and expose the parents or the child to possible harm. When tracing has been successful, the information provided by the ICRC or another agency undertaking tracing as to the situation of the family, and its readiness to receive the child, will frequently be sufficient for 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 panel. The same applies to decisions involving a possible separation from an accompanying adult, when determining temporary care arrangements, and in cases of removal from foster parents, which require a BID.



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

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

3.6 Information management for BIP

3.6.1 Core guidance

- Safe and ethical collection, storage, sharing and analysis of information relating to the Best Interests Procedure can enhance the response for individual children as well as child protection programming more broadly. However, the risks related to information management for BIP must be identified and mitigated for each operation.
- 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. Consent from parents/guardians is not necessary where it is not in the best interests of the child to share information with the child's parents/guardian or where parents/guardians are not reachable.
- Collecting accurate and comprehensive data on the child's situation, views and relevant options for care is essential to a quality BIP. Information can be collected from a variety of sources in addition to interviews, such as observation, external research, and, upon request, from other areas of refugee protection case management.
- 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 BIP files separately from the child's overall individual case file.
- ProGres is UNHCR's institutional tool for protection case management. Where proGres is in use, essential information relating to the status of BIP should be kept up to date in proGres.
- Information sharing in the best interests of the child should be encouraged and facilitated, wherever protective. It is a good practice for UNHCR and partners to develop inter-agency information sharing protocols or agreements to ensure that BIP-related information flows regularly, safely and ethically.
- Operations should dedicate sufficient time and resources to data analysis for BIP that will lead to concrete action that will benefit children and their communities.

3.6.2 Data protection

The Best Interests Procedure necessarily involves the processing of highly sensitive personal information (also called personal data), of the concerned child (or children) and often the information of parents, relatives or other caregivers as well. Consequently, UNHCR personnel needs to take into account and respect the provisions of UNHCR's Policy on the Protection of Personal Data of Persons of Concern (Data Protection Policy)⁷¹ in its work on BIP. Funded partners who are part of such procedures are also generally bound through the UNHCR *project partnership agreement* which includes general data protection clauses and refers to the Data Protection Policy. Where operational, non-funded partners are involved in BIP, UNHCR may wish to establish a Data Sharing Agreement which ensures respect for the provisions of the Data Protection Policy.

⁷¹ 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).

The below points elaborate the eight principles of the Data Protection Policy and provide guidance on their relevance to BIP, and how they can be applied and respected. They should be read together with the Data Protection Policy and Guidelines:

- Legitimate and fair processing:** The processing of personal data of children for the purpose of BIP 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. The legitimate basis of “vital or best interests” essentially allows UNHCR to conduct BIP in the absence of consent by a parent or legal representative, where this is required. However, this does not mean that there is no need to seek the approval or ‘assent’ from the child where she/he is capable to express her or his view and preference, or the consent of parents or caregivers. The processing of other individuals’ data (such as parents, relatives, etc.) would normally require their consent.
- Purpose specification:** Within the context of BIP, information should never be collected because it’s nice to have; it should only be collected if it’s necessary to assess and determine the best interests of the child. Generally, the fact that BIP is being conducted to provide necessary and timely assistance and protection for children at risk is in itself sufficiently specific and legitimate in order to meet the purpose specification principle. However, should another specific and legitimate purpose be pursued in the context of BIP, or should information from BIP be shared for another purpose, this should be communicated to the child and their parents/caregivers.
- Necessity and proportionality:** Since BIP, and in particular BID decisions, tend to involve decisions that will have a greater impact on a child, interviews and documentation for these cases will normally be more extensive. The necessity and proportionality principle should therefore not be misinterpreted so as to limit or unduly restrict UNHCR’s legitimate basis to obtain a comprehensive view of a child’s situation. However, information that is not relevant for the specific purpose of BIP, or where information that cannot be used or acted upon should not be collected or processed. Interviews can be stressful for children. Their length and number should be reduced as much as possible, especially where there are limited options for support for the child.
- Accuracy:** Information should always be recorded as accurately and kept as up to date as possible, ensuring that the child’s own views and actual situation are recorded objectively, rather than the opinions or judgments of the caseworker.
- Respect for the child’s rights as a data subject:** The child and/or their caregiver have the right to information about the use of their personal data (see para. 3.1 of the Data Protection Policy). Other rights include the right to access, to request correction and 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 modalities for requests and restrictions of the individual data subject’s rights. In the case of BID documents, the BID Supervisor is responsible for determining access.
- Confidentiality:** Confidentiality is one of the key data protection principles. Personal data should in principle remain confidential, i.e. not accessible to those who are not authorised to have access (i.e. 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 persons involved are usually authorised to do so by their respective organisations and identified in SOPs. In practice, this means that access to BIP files should be limited even within UNHCR operations, so that only staff who are directly working on cases or overseeing those working on cases should have automatic access. Other staff who wish to access files should provide a specific purpose as the basis for their access.

- **Security:** Appropriate measures to ensure confidentiality and integrity of BIP data should always be put in place. In practice, this means storing physical files in locked cabinets, avoiding sharing information by email, and using safe and secure electronic databases. In case of doubt, consult with Information & Communications Technology (ICT) staff in the operation.
- **Accountability and supervision:** The 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 who is 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.

3.6.3 Obtaining consent/assent

Consent is any freely given and informed indication of an agreement by a person, which may be given either by a written or oral statement or by a clear affirmative action.⁷² 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** is 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 the child's parents/guardian or where 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 (see [Section 3.5](#) and [Annex 10](#) – Actions to Support Safe and Meaningful Child Participation in BIP). For separated children, relatives responsible for their care are normally able to provide consent on their behalf. For unaccompanied children, where care arrangements have been formalised, caregivers are also able to provide consent.

Children of sufficient age and maturity may be able to provide consent for decisions that are of lesser weight or consequence – for example, to attend a child friendly space. In all circumstances, assent should be sought from children prior to taking action, and consent sought from parents/caregivers where possible and in the child's best interests. This includes all referrals or service provision.

In order to obtain consent/assent for participation in BIP, caseworkers must clearly explain the process, including the purpose of all assessments and home visits, and the available options to the child and the family members/caregiver. For each interview, the caseworker should explain the reason for the interview, and ask permission to take notes. In case planning, the caseworker should give information about possible referral options, including the services and facilities available to prevent or address protection issues and to facilitate involvement in community activities, and seek the child's views on each. In the context of a BID, the caseworker also needs to provide information on all of the possible options, and seek the child's views on each.

It is rare that actions in the best interests of the child go against the consent/assent of the caregiver/child – however, there are circumstances in which this is the case. If the child or caregiver does not consent/assent to a particular course of action, the caseworker should consult with their supervisor on how to proceed. In some cases, this may indicate that a BID is necessary over a BIA.

⁷² Adapted from Data Protection Policy, p.9.

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. Respecting confidentiality requires service providers to protect information gathered about clients and to ensure it is accessible only with a client’s explicit permission. 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

The principle of confidentiality needs to be respected – this applies not only to the child, but all persons involved in the Best Interests Procedure. Information must not be disclosed or made available to unauthorised persons in any way that is inconsistent with the understanding of the original disclosure without prior permission. If information collected for the BIP is to be shared within UNHCR or with other partners as part of the BIP, the child should be informed of how information will be shared, and be given the opportunity to object. The child should also be informed of the intention to use past information she or he has provided to UNHCR and its partners for the purposes of the BIP. Having ensured that the child understands the purpose of the BIP, the caseworker should record the reasons for any objections expressed. The limitations of confidentiality should also be explained to the child before any information is collected.

Maintaining confidentiality among the individuals involved in a case is also of high importance. For example, a child may be unaware of her or his adoptive status, and adoptive parents may request, for good reasons, not to disclose this information to the child or to the community.

3.6.4 Verifying existing information on the child

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

Relevant background information

Information from external sources may be obtained through independent research. Depending on the circumstances, such information, gathered from public and internal sources, could include:

- the security situation in the various geographical locations and risks to the child's safety (including potential international protection needs, exposure to abuse and exploitation as well as harmful traditional practices);
- 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 specific medical and psycho-social needs of the child, such as caused by disabilities, HIV/AIDS, domestic violence, other forms of sexual and gender-based violence;
- availability and quality of educational services in the various locations, not only in terms of facilities available, but also the quality of the education and safety of the school environment, and how such services prepare the child to lead a meaningful life in society;
- customary attitudes and support of the community for children in general, and for unaccompanied and separated children in particular, both before flight as well as in exile, and resources available for such support, including opportunities for social integration into the community, and its capacity to care for and protect children, particularly those with specific needs.

At the beginning of the BIP (or at any point throughout) the caseworker should be given access to relevant parts of 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 at the outset will provide a useful starting point for the BID process.

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), he or she must seek the advice of their supervisor. The latter should normally authorize (or contact the authorising person within UNHCR or the relevant partner for authorisation of) sharing the level of information required for an informed decision, minimizing any risk to the child and her or his family.

3.6.5 Collecting information for BIP

Collecting accurate and comprehensive data on the child's situation, views and relevant options for care is essential to a quality BIP. Information can be collected through:

- verification of existing documents providing information on the child (see [Section 3.5.3](#));
- interviews with the child (see [Section 3.5](#));
- observations of the child's situation and home environment;
- interviews with persons within the child's network including caregivers (see [Section 3.5.4](#));
- extended family and siblings, friends, neighbours, teachers, community leaders and workers, the guardian;
- background information on conditions in the geographical locations under consideration and other external sources; and
- 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 have experienced traumatic events, 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.

Considering the inherent sensitive nature of information related to BIP, any information collection must abide with the core principles outlined in the Data Protection Section above, and should adopt a child-centred approach that respects child participation (see [Section 3.5](#)). It is critical for any information collection systems, tools and procedures to implement these principles.

In addition, the standardisation 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 an effective BIP in any operation. As much as possible, caseworkers should enter information in standardised forms, with standardised processes for determining values such as priority, vulnerability, and risks affecting the child. Without a minimum level of standardisation, information cannot be compiled and compared in order to ensure a broad situation overview, making it difficult to measure the efficiency and effectiveness of the BIP in responding to the needs of children of concern.

3.6.6 Storing information

Information for BIP should be stored in the child's file. Each child should have their own file 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.⁷³

For physical files, depending on the size of the operation and the number of persons 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. 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

⁷³ More information on retention of permanent records are available in the Data Protection Policy, Section 4.6 Retention, p29.

file and/or 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 uses proGres,⁷⁴ 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 system⁷⁵.

Once information has been collected, it is vital that it is stored in accordance with the highest security standards, particularly given the extremely sensitive nature of child protection related information. All UNHCR staff working on BIP must be made aware of the severe risks of this type of information being accessed by non-authorised persons.

When a BIP case is closed, it should be archived by the operation in accordance with the archiving policy for permanent records (please see UNHCR's Policy on the Management of UNHCR Records and Archives).⁷⁶ When the child's individual case file is also archived, it is essential that the BIP file (completed BIAs, BIDs and reasons for closure) is included in the file. Where BIP files are maintained by partners, these should be provided to UNHCR for archiving either within an agreed timeframe after the closure of a case or when a partner leaves an operation.

3.6.7 Sharing information

Information sharing is essential for effective BIP, especially where several agencies are involved in different aspects of BIP, child protection services and refugee protection. Information sharing creates a space and opportunity for joint prioritisation and analysis, which is crucial to ensuring strong, effective and prioritised BIP and service provision to children at risk. In general, UNHCR and partners should regularly share aggregate data about trends in identification and processing of children for BIP, and information related to protection risks for children gathered through BIP. Sharing of aggregate, non-identifiable information can be done at regular meetings, and should ideally be governed by an information sharing agreement or protocol.⁷⁷ It should be recalled that there are dangers in sharing even aggregate, non-identifiable information, and therefore an analysis of risks should be conducted and appropriate data protection measures should be 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 (see [Section 3.6.8](#) on Analysing Information).

Where UNHCR is responsible and accountable for BIP, it is essential that a minimum amount of information on children at risk and children in BIP is shared with UNHCR. This is not only important given UNHCR's accountabilities, but also to ensure that children and their families have access to the full range of protection and assistance available to them in the long and short term. For example, in the case of separated and unaccompanied children, UNHCR needs to be aware of the identity of children and their caregivers in order to ensure that their cases are linked, and thus avoid the potential for accidental separation during relocation or assistance provision. Furthermore, if UNHCR is aware that a child is part of BIP through a partner, UNHCR may be able to avoid re-interviewing the child. Where children at risk are flagged with UNHCR, UNHCR is better able to provide protection, assistance and durable solutions.

⁷⁴ UNHCR's Profile Global Registration System (proGres) database is the organisation'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.

⁷⁶ UNHCR, *Policy on the Management of UNHCR Records and Archives*, January 2018, available at: <https://bit.ly/2uJ6lVX> (Records and Archives Policy).

⁷⁷ 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.

Table 6: Information to be shared with UNHCR by partners implementing BIP

Information	Description	Sharing upon identification	Sharing upon identified referral need	Sharing for archiving
Unique identifier for child, parents/ caregiver	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.	Required	Required	Required
Basic biodata of child, parents/ caregiver	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.	Required (or cross-checked)	Required (if no unique identifier can be used instead)	Required (if no unique identifier is available)
Specific needs	Applicable specific needs codes should be used, and can be supplemented by locally agreed values as required.	Required	Required	Required
Priority	The priority level of the case according to local SOPs.	Required	Required	Required
Status of Best Interests Procedure	Specifically, which steps of BIP have been completed (identification, BIA, case plan, implementation, follow-up, closure); and whether the case is being referred for a BID.	Required	Required	Required
Referral forms/ information and feedback on referrals	Where a partner is referring a child to UNHCR for a specific service (including BID, where the partner does not conduct BID interviews themselves), the relevant information should be shared, for example, in a referral form. Where a child has been referred by UNHCR to the partner, feedback on the referral, such as the status of the referral and information on the type of service provided, should also be shared.	Optional	Required	Optional
Completed BIA forms	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).	Optional	Optional	Required
Completed BID forms	Where the child requires a BID and the partner is responsible for BID documentation.	As soon as available	Required	Required
Case closure forms	Specifically, documenting the reasons for closure and the approval of closure by an authorised person.	N/A	N/A	Required
For all of the above, information should only be shared where it is in the best interests of the child to do so, and where the child and/or parents/caregivers are provided with information about sharing and provide consent/assent.				

UNHCR's specific accountabilities for the protection of refugee children require UNHCR to be alerted to the basic personal data for all children meeting the criteria for Best Interests Determination, except in exceptional circumstances where the parent/caregiver or child objects to the sharing of information and/or where there is a specific reason to believe that sharing the information is not in the best interests of the child. Normally, upon commencement of BIP, children and parents/caregivers should be informed of the purpose of sharing information with UNHCR, the type of information to be shared, and given the chance to object. Such objections should be rare, and, where they occur, UNHCR and the concerned partner should work together to address the issues that give rise to objections.

Table 7: Information to be shared by UNHCR with partners, for BIP cases managed by that partner

Information	Description	Sharing upon identification	Sharing upon identified referral need
Unique identifier for child, parents/ caregiver	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.	Required	Required
Basic biodata of child, parents/ caregiver	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.	Required (or cross-checked)	Required (if no unique identifier can be used instead)
Specific needs	Applicable specific needs codes should be used, and can be supplemented by locally agreed values as required.	Required	Required
Priority	The priority level of the case according to local SOPs.	Required	Required
Status of Best Interests Procedure	Specifically, which steps of BIP have been completed (identification, BIA, case plan, implementation, follow-up, closure); and the status of the BID (e.g. scheduled for Panel), if applicable.	Required	Required
Referral forms/ information and feedback on referrals	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.	Optional	Required
Completed BIA forms	Where there is a need for a partner to have BIA information, this can be shared either systematically, or upon request (e.g. if a child is being considered for a particular service).	Optional	Optional
Completed BID forms	Where the child requires a BID and the partner is responsible for BID documentation.	N/A	Optional
Case closure forms	Specifically, documenting the reasons for closure and the approval of closure by an authorised person.	N/A	N/A
For all of the above, information should only be shared where it is in the best interests of the child to do so, and where the child and/or parents/caregivers are provided with information about sharing and do not raise objections.			

It is a good practice for UNHCR and partners to develop inter-agency information sharing protocols or agreements to ensure that BIP-related information flows regularly, safely and ethically. At the onset of developing such agreements, stakeholders should hold discussions in order to agree on how information will be shared concretely in order to facilitate response.

The specific elements of data to be shared and modalities of sharing should be decided on depending on the circumstances in the particular context, but include, those in Table 6.

UNHCR should also share information regularly and transparently with partners who are implementing BIP for children of concern. Partners should have access to all the information that they need to provide timely and effective services to children at risk, in a manner that is as user-friendly as possible.

As above, the specific elements of data to be shared and modalities of sharing should be decided on depending on the circumstances in the particular context, but are included in Table 6.

3.6.8 Analysing information

Data analysis involves the translation of the data collected into information that is relevant and effective for improving 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 to the benefit of children and their communities. Actions supported by data analysis include: supporting more effective targeting and prioritisation, developing evidence-based advocacy messages and policies, supporting country operations' strategic planning, demonstrating impact of programming, improving internal and inter-agency coordination, and raising awareness with the community.

In order to provide successful analysis, information must be collected in a comparable way, and compiled (see [Section 3.6.5](#) on Collecting information and [Section 3.6.7](#) on Sharing information). It is therefore vital that data analysis is promoted from the very onset of BIP, and that support for data analysis is provided to all partners.

Specific axes of analysis that may be helpful within BIP caseloads are:

- Demographics, such as percentage of girls and boys of different age groups requiring BIP;
- Percentage of cases at different levels of priority, and at different stages of BIP;
- Percentage of cases requiring BID, by BID reason;
- Average time between different steps of BIP, e.g. between identification and assessment; or between identification and closure;
- Percentage of cases referred to different services or interventions;
- Most common specific needs for children in BIP; and
- 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, caseworker/partner, population groups and geographical areas.

4.

BEST INTERESTS DETERMINATION BY UNHCR

A Best Interests Determination (BID) is the formal procedure for assessing the child's best interests, taking her/his best interests as a primary consideration in decisions, evaluating the possible impact of such decisions, and guaranteeing the implementation of decisions in her/his best interests.

This chapter provides guidance as to the situations in which a Best Interests Determination is required, namely in the context of:

- Identifying durable solutions and complementary pathways for unaccompanied children (and separated children where there is an additional significant risk factor or protection concern);
- Determining the most appropriate options for children at risk in exceptional situations, including:
 - ▶ 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; and
- Possible separation of a child from parents against their will.

This chapter also explains the limits of UNHCR's involvement, and gives advice on dealing with the complexities that can arise. It builds on the overall framework of the Best Interests Procedure established in [Chapter 3](#).

A Best Interests Determination is underpinned by strict procedural safeguards, and it guarantees children's participation and ensures that their views and opinions are given due weight according to their age, maturity and evolving capacities. [Chapter 5](#) provides additional details on the procedures and safeguards for Best Interests Determination.

4.1 Durable solutions and complementary pathways for unaccompanied and separated children

4.1.1 Core guidance

- A solution is achieved when a durable legal status is obtained, which ensures national protection for civil, cultural, economic, political and social rights.
- Where national authorities do not undertake equivalent procedures to identify durable solutions for refugee children, a Best Interests Determination should be completed to identify durable solutions and complementary pathways for unaccompanied children, as well as separated children where an additional significant risk factor or protection concern has been identified. Significant risk factors or protection concerns in this case are individual or external risk factors that would put the child at risk of severe harm in the context of the durable solution or complementary pathway proposed.
- Some resettlement countries may still require a BID to identify durable solutions for separated children, but under these revised Guidelines a Best Interests Determination only needs to be undertaken to identify the most appropriate durable solution or complementary pathway for separated children where there is an additional significant risk factor or protection concern.
- A Best Interests Procedure for UASC should be initiated as soon as possible following identification by conducting a Best Interests Assessment. If a Best Interests Determination is necessary for durable solutions or complementary pathways, this should be initiated as soon as possible, and completed no later than two years following identification.
- 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, a Best Interests Procedure should still be initiated, the temporary care arrangements should be maintained and the case 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 formalisation of care arrangements for the child, ensuring a formal guardianship arrangement where possible.
- A Best Interests Determination for durable solutions and complementary pathways should consider a variety of options for durable solutions and complementary pathways simultaneously.

4.1.2 Purpose of the BID

Identifying the most appropriate durable solution⁷⁸ or complementary pathway for unaccompanied and separated children (UASC) generally requires carefully balancing many factors. Decisions on voluntary repatriation, resettlement, local integration or access to a complementary pathway are likely to have a fundamental and long-term impact on the child, and if she/he has been separated from her/his parents or other previous legal/customary caregivers, UNHCR must assess the best option through the BIP before action is taken (see [Chapter 2](#)).

⁷⁸ A solution is achieved when a durable legal status is obtained which ensures national protection for civil, cultural, economic, political and social rights. A durable solution ultimately allows refugees to acquire (or re-acquire) the full protection of a State. Solutions for refugees include: resettlement, voluntary repatriation and local integration, as well as access to complementary pathways for admission of refugees to third countries such as family reunification, educational opportunities and private sponsorships. For IDP children, a durable solution is achieved when they no longer have specific protection or assistance needs linked to their displacement and can enjoy their human rights without discrimination on account of their displacement. Solutions for IDPs include: sustainable return to the place of origin, sustainable local settlement in the area where IDPs have taken refuge or sustainable settlement elsewhere in the country. For stateless children, a durable solution is achieved when they have acquired a nationality and are able to exercise all the rights and responsibilities of their compatriots on an equal basis without discrimination on account of their nationality.

Table 8: QUICK GUIDE: The Best Interests Procedure for UASC in the context of durable solutions and complementary pathways where UNHCR is responsible for BIP

Category	Situation of the child	Appropriate procedure
Unaccompanied Children	Unaccompanied children who are not being reunified with a parent or legal/customary caregiver.	BID
	Unaccompanied children who are being reunified with a parent or legal/customary caregiver (See Section 4.2 and Annex 2 for checklist).	BIA
	Unaccompanied children who are being reunified with a parent or legal/customary caregiver in exceptional situations (See Section 4.2 and Annex 2 for checklist).	BID
Separated Children	Separated children where no additional significant risk factor or protection concern has been identified.	BIA
	Separated children where there is an additional significant risk factor or protection concern that requires the safeguards of a BID (See Annex 1 for checklist).	BID
	Separated children who are being reunified with a parent or legal/customary caregiver (See Section 4.2 and Annex 2 for checklist).	BIA
	Separated children who are being reunified with a parent or legal/customary caregiver in exceptional situations (See Section 4.2 and Annex 2 for checklist).	BID

When considering the best interests of the child in the context of durable solutions and complementary pathways, the caseworker should ideally be able to consider a variety of opportunities simultaneously. A comprehensive solutions package in which various options are examined is preferable, while recognizing the fact that one or more of the durable solutions pathways may not be available.

For all durable solutions and complementary pathways for UASC, once the solution has been identified on the basis of the four-factor analysis for assessing best interests (see [Section 5.2](#)), 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 institutions and/or organisations who can provide monitoring and support for children once a durable solution or complementary pathway 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 UASC.

If, when undertaking the BID, it is not possible to determine which durable solution or complementary pathway is in the best interests of the child, and the child has been integrated into her or his community, the temporary care arrangements should be maintained and the case reviewed in the event of a change of circumstances, or within one year at the latest. This may be the case where, for example, refugees are starting to avail themselves of voluntary repatriation, when tracing results are outstanding, or when UNHCR is engaged in discussions with the government regarding local integration which could lead to a durable solution for the foster family, and potentially the unaccompanied or separated child.

In the event that it is not possible to identify a durable solution within a reasonable timeframe, a BID can be conducted with a view to advocating for national authorities to formalise care arrangements for the child, ensuring a formal guardianship arrangement where possible. This may be the case where, for example, there are currently no options for durable solutions or 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 her or his best interests. UNHCR does not have the legal authority to formalise care arrangements; it can only recommend that formalisation would be in the child's best interests. In the context of durable solutions or complementary pathways, where a care arrangement for an unaccompanied child has been formalised through national procedures or a BID has recommended that formalisation would be in the child's best interests, a BIA would normally be sufficient before implementation of the durable solution or complementary pathway, provided that the care arrangement is maintained and there are no other significant risks or protection concerns identified. Note that, where an adoption⁷⁹ or *kafala* process has been completed with the national authorities, the child would no longer be considered separated or unaccompanied.

Note that other children at risk may also require a BID before a durable solution is implemented in exceptional situations. However, if they are not unaccompanied or separated, the decision as to whether to trigger a BID is governed by [Section 4.2](#) on exceptional situations.

TEXT BOX: Formalising care arrangements

Formalising a placement normally involves vetting and training caregivers, the signing of an agreement to care for the child under certain conditions and for a period of time, and agreeing to regular monitoring of the placement.⁸⁰ It is a good practice to consult with and involve the community in developing processes for formalising care arrangements to ensure their cultural acceptability. This can also help communities to understand the role and responsibility of caregivers and the reasons why additional assistance may be given. If, after two years, it is expected that the child will remain for the long-term with relatives or foster caregivers, the placement should ideally be formalised, in accordance with local law or custom, in order to establish the caregiver as the child's legal guardian and to clarify the child's and caregiver's legal rights and access to entitlements, including inheritance rights for the child. This may take the form of guardianship, adoption or *kafala*.⁸¹

⁷⁹ See UNHCR, *Policy on Adoption of Refugee Children* (1995), available at: <https://bit.ly/2zTDLae>

⁸⁰ Save the Children, *Alternative Care in Emergencies Toolkit* (2013), p.55, available at: <http://bit.ly/2rterkt> (ACE Toolkit)

⁸¹ ACE Toolkit, p.95.

4.1.4 When is a BID Required?

Note that, as indicated in [Chapter 1](#), the need for UNHCR to undertake BIP will depend on the degree of its involvement with the child. When a durable solution or complementary pathway for a child 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, UNHCR must complete a BID with a view to identifying durable solutions or complementary pathways:

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

The checklist in [Annex 1](#) will help to determine whether an unaccompanied or separated child requires a BID for durable solutions or complementary pathways outside of the context of family reunification. To enable UNHCR to make swift decisions in relation to solutions, where this is necessary, a simplified decision-making procedure may also be used in some cases (See [Section 5.6](#)).

Family reunification, whenever feasible, should generally be regarded as being in the best interests of the child. Once the family is traced, family relationships verified and the willingness of the child and the family members to be reunited has been confirmed, the process should not normally require a BID. However, prior to supporting family reunification, an assessment needs to be made by UNHCR as to whether it exposes or is likely to expose the child to abuse or neglect. For more information, see [Section 4.2](#) and the checklist in [Annex 2](#).

It is normally in the best interests of a separated child living in a kinship care arrangement with her/his relatives to remain with them in the context of durable solutions or complementary pathways, provided their parents or previous legal/customary caregiver has not been found. Careful consideration must be given to the need for continuity of care within the kinship care arrangement and to the potential for reunification with parents at a later stage. In general, it is considered that a child's relatives are capable of providing consent for the child in matters relating to durable solutions and complementary pathways. However, in exceptional situations – notably where a child is not well cared for, or where the child's wishes or prospects for family reunification conflict with the durable solution proposed for their kin – there may be a need for a BID. Annex 1 provides a checklist which helps to identify which separated children may require a BID for durable solutions and complementary pathways.

Given the absence of parents or previous legal/customary caregivers, BIAs should be conducted for all separated children being considered for any durable solution or complementary pathway. For other children at risk who are not separated or unaccompanied, a BIA would be initiated according to the prioritisation criteria of the operation (see [Chapter 3.2.2](#)). Where additional significant risk factors or protection concerns are identified, the BIA may recommend a BID.

Typical examples of what could be considered additional significant risk factors or protection concerns for separated children that would require a BID include:

- Where there are reasonable grounds to believe that a child is exposed to or is likely to be exposed to abuse or neglect by an accompanying adult;
- Where return to the country of origin potentially presents a particular risk to the child's rights to family unity, survival and development, and/or safe environment;
- Where the child has additional protection concerns that may require a more developed plan of care as part of the implementation of the durable solution or complementary pathway (e.g. child survivor of SGBV, child associated with armed forces or armed groups, child in the worst forms of child labour, etc.);
- Where the child expresses reluctance to participate in the proposed durable solution or complementary pathway; or
- Where the proposed durable solution or complementary pathway would result in separation of their current caregivers (apart from in the case of family reunification with a parent).

4.1.5 When to start a BID

The Committee on the Rights of the Child has indicated in its General Comment No. 6⁸² 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 should not wait until prospects for a durable solution emerge.

However, as the results of tracing are a key factor in determining the most appropriate durable solution for UASC, a reasonable lapse 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 areas of origin.

In any event, UNHCR should conduct a BID within two years of the identification of an unaccompanied child. A case-by-case approach is essential. There may be situations, particularly in the case of younger children, for whom a maximum two year framework is too long. As such, BIDs should build upon individual casework conducted earlier during the displacement (for example, through BIAs undertaken soon after identification of the child at risk). BIA documentation should be regularly reviewed and updated by protection staff and should also examine durable solutions and complementary pathways that may be available to the child. Regular monitoring and follow-up of the child would also guide UNHCR and partners as to when to initiate a BID in the context of durable solutions and complementary pathways.

⁸² CRC General Comment No. 6, para. 79.

4.1.6 Resettlement

Resettlement is the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement. UNHCR is mandated by its Statute and UN General Assembly Resolutions to undertake resettlement. Resettlement ensures protection against *refoulement* and provides a resettled refugee and her or his 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 and Physical Protection Needs or Medical Needs, and other categories which can be applied to children with protection needs, including “Children and Adolescents at Risk”, “Family Reunification”, and “Women (and Girls) at Risk”.

In some cases, resettlement may be in the best interests of a child, and may therefore be deemed the most suitable form of protection. As with any consideration of durable solutions, such a decision should not be taken lightly; for certain categories of children at risk, including UASC, the recommendation should benefit from the additional safeguards of the Best Interests Procedure. Resettlement should not automatically be considered to be in the best interests of the child; rather, resettlement recommendations should be subject to individual case assessment.

Among cases to be promoted 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.⁸³ 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 her or his own community and cultural context should be given special consideration, in particular relating to the longer-term impact on the child. Resettlement can also make family reunification more difficult after the child is in her/his new country – therefore it is important that the country of resettlement is selected carefully and that the operation who submits the cases for consideration is aware of the rules and regulations of the proposed country of resettlement.⁸⁴ The BIP must carefully balance the unaccompanied or separated child’s rights vis-a-vis her/his situation in the country of asylum and identify whether resettlement is the best durable solution for child in question.⁸⁵ A determination that resettlement is the most appropriate durable solution for unaccompanied children, and 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, but under these revised Guidelines, a BID only needs to be undertaken where there is an additional significant risk factor or protection concern.

⁸³ See: UNHCR, *Resettlement of Children and Adolescents at Risk*, June 2016, available at: <http://www.refworld.org/docid/58344f244.html>

⁸⁴ See: UNHCR Resettlement Handbook and Country Chapters, 2011, available at: <https://bit.ly/2gMDs6c> (UNHCR Resettlement Handbook and Country Chapters)

⁸⁵ See: UNHCR Resettlement Handbook and Country Chapters.

4.1.7 Local integration

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

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

- Repatriation may not be appropriate or feasible;
- Where refugees may be unwilling to return for specific reasons despite improvements in the overall situation in their country of origin; or
- Where 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 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. This process should also include an 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 to ensure an adequate integration of UASC. Careful consideration should be given to the children's rights to their own identity, especially for those who are unaccompanied or separated, which might be placed at risk as a result of the local integration process.

4.1.8 Voluntary repatriation

Voluntary repatriation, whether as part of a larger scale exercise or on a case-by-case basis, has serious consequences for children. It should be recalled that the *non-refoulement* principle applies to refugee children as well as to adults. For unaccompanied children, and separated children with an additional significant risk factor or protection concern, 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.

For unaccompanied children in foster care, give consideration to:

- 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, she/he needs to be carefully counselled about the fact that the foster family intends to return to a different area and 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 different from her/his area of origin may decrease the chances of tracing her/his family.

For unaccompanied children returning on their own:

- Ensure that a guardian or caregiver for the child is identified with the competent child protection authorities in the country of origin;
- Prior to her/his voluntary repatriation, develop an individual care plan for child's sustainable reintegration, drawn up in collaboration with the child and her/his pre-identified guardian or child protection service provider in the country of origin.

It is also important to confirm access to food, housing, health service, education and reintegration services to avoid increasing the vulnerability of the child, and to ensure family tracing continues where necessary.

Amongst returning UASC, special attention should be paid to children formerly associated with armed forces or armed groups (CAAFAG).⁸⁶ Their repatriation is likely to raise issues of acceptance by their family and the wider community, thereby creating additional challenges in their reintegration.⁸⁷

A determination that voluntary repatriation is the most appropriate durable solution for unaccompanied children, and for separated children where there is an additional significant risk factor or protection concern, must be based on a BID (except for family reunification – see [Section 4.2](#)). For other separated children, a BIA will be sufficient.

4.1.9 Complementary pathways of admission for refugees in third-countries

Complementary pathways are safe and regulated avenues by which refugees are provided with lawful stay in a third country where their international protection needs are met, while they are given opportunities such as learning new skills, acquiring an education, and 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 support them to achieve sustainable solutions.

Complementary pathways can take different forms. These pathways may include opportunities for family reunification for refugees who are eligible under a State's family reunification criteria and who may not have been prioritized for resettlement or humanitarian admission; education opportunities such as private, community or institution-based visas, scholarships, traineeship and apprenticeship programmes; and labour mobility schemes. As part of UNHCR's protection and solutions statutory responsibilities in supporting States to achieve lasting 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, 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, a BID is required and should consider whether:

⁸⁶ See: UNHCR, *Child Protection Issue Brief: Child recruitment*, 2013, available at: <http://www.refworld.org/docid/529ddb574.html>

⁸⁷ See: UNHCR, *Handbook – Voluntary Repatriation: International Protection*, 1996, available at: <https://bit.ly/2egD11i>

- 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 for the child to seek asylum and to remain in the third country after completion of their education, work or other programme if she/he cannot return to the first country of asylum or to her/his country of origin, and the right to legal counsel;
- 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 Refugee Convention Travel Document or other travel documents, adapted to international standards to address biometric and security imperatives;⁸⁸
- The child will have access to simplified visa and entry programs 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 she/he can return to countries of first asylum or to reunite with family and community;
- 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 – such as health, education, legal, shelter, counselling and psycho-social services, language support, and contact with diaspora and broader communities in the third country – will be available;
- Refugees without defined nationality will have access to birth registration and acquisition of citizenship 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.

⁸⁸ 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>

4.2 Children at risk in exceptional situations

4.2.1 Core guidance:

- Children at risk, including unaccompanied and separated children, may also require a Best Interests Determination in exceptional situations. Exceptional situations are those where a decision is required and a solution that adequately balances between core groups of rights is not easily found and where all of the options, or the suggested option, has long-term and severe consequences for the child.
- Exceptional situations are often encountered in cases of:
 - ▶ Family reunification for unaccompanied and separated children with additional risk factors;
 - ▶ Temporary care for unaccompanied and separated children with additional risk factors; and
 - ▶ Durable solutions or complementary pathways for separated children or other children at risk with multiple risk factors (See also [Section 4.1](#) for separated children).
- Country operations can define additional situations of children at risk in exceptional situations for themselves, either as a broad category, or on a case-by-case basis. However, it should be recalled that a Best Interests Determination is only required if a decision is being made that:
 - ▶ Has a serious and long-term impact on a child, especially where parents are not present to provide consent; or
 - ▶ The choice of options requires assigning a more significant weighting to one right or group of rights than to others.
- An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention on the Rights of the Child and other legal instruments. There is no hierarchy of rights in the Convention on the Rights of the Child; 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.
- A Best Interests Assessment will often help to determine if a decision for a particular child requires a Best Interests Determination. Other measures which may be appropriate before resorting to a Best Interests Determination are intensive follow-up and case conferences.

4.2.2 Purpose of the BID

In displacement situations, many children may be exposed to additional risk. While any child regardless of their family, environmental or personal characteristics could be exposed to violence, exploitation, abuse or neglect, some factors are commonly associated with an increased vulnerability (see [Section 3.2](#) for more). These include: unaccompanied and separated children or other children outside of parental care, child spouses, children in child labour, child survivors of SGBV, and children associated with armed forces or armed groups, amongst others.⁸⁹ 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 one of these children 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 at risk in question.

⁸⁹ See "[A few definitions](#)" for UNHCR's definition of "children at risk".

Table 9: QUICK GUIDE: The Best Interests Procedure for children at risk in exceptional situations where UNHCR is responsible for BIP

Category	Reason	Situation of the child	Appropriate procedure
Unaccompanied children	Family Reunification	Unaccompanied children who are being reunified with a parent or legal/customary caregiver where no additional risk factors or protection concerns identified (See Annex 2 for checklist) – see also Section 4.1.	BIA
		Unaccompanied children who are being reunified with a parent or legal/customary caregiver in exceptional situations (See Annex 2 for checklist).	BID
	Temporary Care Arrangements	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 Annex 3 for checklist).	BIA
		Decisions regarding placement in temporary care arrangements (whether confirming existing spontaneous arrangements or deciding on new placements) in exceptional situations (See Annex 3 for checklist).	BID
Separated Children	Family Reunification	Separated children who are being reunified with a parent or legal/customary caregiver where no additional risk factors or protection concerns identified (See Annex 2 for checklist).	BIA
		Separated children in exceptional situations; i.e. where there is an additional risk factor or protection concern that requires the safeguards of a BID (See Annex 2 for checklist).	BID
	Temporary Care Arrangements	Decisions regarding placement in temporary care arrangements (including assessing current care arrangement) where no additional risk factors or protection concerns are identified (See Annex 3 for checklist).	BIA
		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 Annex 3 for checklist) – see also Section 3.	BID
All Children at Risk	Durable Solutions	Children at risk who are with their parents or legal / customary caregiver, where the durable solution proposed does not involve a significant risk to life or deprivation of international protection (See Annex 1 for checklist).	N/A
		Children at risk who are with their parents or legal / customary caregiver, where the proposed solution could result in a significant risk to life or deprivation of international protection (See Annex 1 for checklist).	BID
	Other exceptional situations	Additional exceptional situations as defined by the operation on a case by case or systematic basis. These should be a limited number of situations where UNHCR is required to make a decision that has a serious and long-term impact on a child (especially where parents are not present to provide consent).	BID

4.2.3 When is a BID required?

When considering significant decisions for children at risk, the best interests of the child may not be immediately obvious but the consequences are profound. This may include decisions around durable solutions or pursuing complementary pathways such as family reunification or potential separation from persons close to the child (where these persons consent – see [Section 4.3](#) for situations where separation is against their will). An exceptional situation for a child at risk is usually one where there is a significant conflict between the options that would fulfil the different key rights groups that are considered in determining the best interests of the child. The key rights groups include:

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

A BID should only be initiated for children at risk in exceptional situations if this is necessary and/or beneficial to support identifying the correct course of action for a child. In many cases there may be other steps to take before deciding to open a BID process. 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 and/or service providers.

Some common exceptional circumstances for decisions related to children at risk are defined below, and further guidance is provided on UNHCR's obligations within BIP:

- **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 the reunification separates the child from another person with close ties to the child. See Checklist in [Annex 2](#).
- **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 Checklist in [Annex 3](#).
- **Exceptional situations for durable solutions or 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 additional vulnerabilities that may require support in the context of the durable solution or complementary pathway. See [Section 4.1](#) for separated children and the Checklist in [Annex 1](#).
- **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.

4.2.4 When to start a BID

A BID for children at risk in exceptional situations should be started as soon as the situation is identified. A BIA is normally conducted to identify if a BID is needed.

4.2.5 Exceptional situations for family reunification for UASC

Family reunification is normally considered as being in the best interests of the child. The right to family unity is entrenched in human rights instruments and international humanitarian law. It applies to all human beings, regardless of status. It therefore also applies to refugee, stateless and internally displaced children. At international level, the right is derived, inter alia, from Article 16 of the Universal Declaration of Human Rights; Articles 17 and 23 of the International Covenant on Civil and Political Rights (ICCPR); Article 10 of the International Covenant on Economic, Social and Cultural Rights; Article 74 of Additional Protocol 1 to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War; and Articles 9, 10, 16, and 22 of the CRC.⁹⁰

The principle of family unity is given significant emphasis in ExCom No. 107,⁹¹ and while the 1951 *Convention relating to the Status of Refugees*⁹² does not specifically refer to the family, the *Final Act of the Conference of Plenipotentiaries* at which the Convention was adopted nevertheless agreed a recommendation referring “the unity of the family ... [as] an essential right of the refugee” and recommended that Governments “take the necessary measures for the protection of the refugee’s family, especially with a view to ensuring that the unity of the family is maintained”.⁹³

Prior to supporting reunification, an assessment needs to be made by UNHCR as to whether it exposes or is likely to expose the child to abuse or neglect. This assessment should be based, *inter alia*, on any verifications already undertaken by the competent authorities of the State receiving the child. Normally, a BIA is sufficient for this assessment. However, 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 procedure may be applied (see [Section 5.6](#)).

This would apply in cases where there are risks or signs of abuse, neglect, or exploitation in the family; where the child’s separation lasted a long period relative to the age of the child; where there are doubts as to the legitimacy of the family relationship; and where the reunification may lead to the child’s separation from other individuals with close ties to the child.

⁹⁰ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html>; UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> (ICCPR); UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>; International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, available at: <http://www.refworld.org/docid/3ae6b36b4.html>; ICRC, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, available at: <http://www.refworld.org/docid/3ae6b36d2.html>; CRC.

⁹¹ ExCom No. 107, para. (b) and (h).

⁹² UN General Assembly *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>

⁹³ UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 1951, available at: <https://bit.ly/2NuvDPn>

Typical examples of what could be considered exceptional situations for family reunification of UASC that would require a BID are:

- Situations where there may be a history of abuse by the child's previous caregiver, or there is another reason to believe that the child may be at serious risk of abuse upon reunification;
- Situations where the child is unwilling to be reunified with her/his previous caregiver or the parent/caregiver expresses reluctance or reservation as to the reunification of the child;
- Situations where children are reunified with persons other than parents or previous legal/customary caregivers, or where the separation has been long;
- Situations where the interpretation of the general principle of family unity may be more complicated, for example where the child may be well integrated in the foster family, and the child's perceived ties to that family may be strong enough to constitute a new family relationship;
- Situations where the process of tracing and verification may be in doubt, or there is reason to doubt the family relationship for whatever reason;
- Situations where the traced family lives in an area that is still unsafe and insecure, or where the child would not have access to necessary services. It may be decided in consultation with the child and the family that postponement of reunification is a preferable temporary solution to protect the child. The child and the family need to maintain contact during this period, for instance, through conveying messages via the National Red Cross and Red Crescent Society. However, in these circumstances, reunification should take place as soon as possible, again with respect for the principle of *non-refoulement* in consultation with the child and the family.

[Annex 2](#) provides a checklist to help determine if a family reunification case may need a BID. [Annex 2](#) applies to family reunification in a third country and family reunification in the country of origin, and to both unaccompanied and separated children. The BID process should establish whether the reunification is in the best interests of the child. When reunification is pursued, the development of a care plan is required before reunification takes place and continues to be carried out, as instanced through monitoring and follow-up.

When considering family reunification of a child, UNHCR Offices must adopt a flexible approach, and should take into account social and cultural norms or other specific circumstances. This will involve the recognition of the right of children to reunify with same sex couples, common law spouses or couples and who have entered into a customary marriage. Similarly, adoptive parents, as well as well other legal or customary caregivers should be considered for reunification.⁹⁴

What if the parents have been refouled?

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

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

⁹⁴ UNHCR, *UNHCR RSD Procedural Standards – Processing Claims Based on the Right to Family Unity*, 2016, available at: <http://www.refworld.org/docid/577e17944.html>

4.2.6 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. This care should be based on the best interests of the child.

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

There are, however, exceptional situations where an assessment alone is not sufficient, and where a wide range of factors and rights require a review by more than one person, and that each step of the process be documented. 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 foster families must be guided by local legislation and policies, where they exist, and local authorities need to be involved, whenever possible. If temporary care arrangements have been made by a State authority, UNHCR and partner organisations do not have to be involved, unless there is a need to support the government entity in this undertaking.

Typical examples of what could be considered exceptional situations for temporary care for UASC that would require a BID are:

- Where there are reasonable grounds to believe that an unaccompanied or separated child is exposed to or is likely to be exposed to **abuse or neglect by an accompanying adult** and a decision on whether to place the child elsewhere has to be taken.
- Where **doubts about the legitimacy of the relationship with the accompanying adult may be indicative of an abusive or exploitative relationship**. In such cases, a BID must be conducted as soon as possible. When the child is at imminent risk of abuse, violence, neglect or exploitation, it is necessary to separate the child from the foster family/accompanying adult, as a preventive measure, prior to the BID and in accordance with local and national legal processes. The child needs to be placed in suitable interim care, and a care plan for monitoring and follow-up must be developed.
- Where there are reasonable grounds to believe that **existing care arrangements are not suitable for the child** (for example, due to differences in cultural, ethnic or religious background, her or his or his association with armed groups or forces, or the caregivers' association with armed groups or forces) or, where multiple specific needs, such as those of an unaccompanied child with a disability, may require additional support arrangements. Ensuring that the child is placed in a stable environment with a suitable foster family as soon as possible is highly recommended; multiple placements in different foster families must be avoided.

If temporary care arrangements are made by States, there is no call for UNHCR to undertake a BID, although it may assume a monitoring or advisory role. Enforcing local and national legislation and procedures may be problematic in some countries, or the legislation and procedures are inadequate, or procedures are unavailable or inaccessible. Where the existing system is inadequate or States are unable or unwilling to intervene, clear standards and procedures for interim care need to be identified and formulated by agencies working with foster children, in consultation with the community and/or local authorities as appropriate to

the context.⁹⁵ These standards and procedures should be in line with these BIP Guidelines, the Interagency Alternative Care Toolkit⁹⁶ and other relevant guidelines.

The BID procedure should start as soon as the exceptional situation has been identified. If there are reasonable grounds to believe that the child is at imminent risk to her or his 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 itself should take place as swiftly as possible.

Any separation from foster parents with whom the child has a particularly strong de facto family relationship and emotional bond should however follow the stricter guidance provided in [Section 4.3](#).

The importance of monitoring care arrangements

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

4.2.7 Children at risk in other exceptional situations

As outlined in [Section 4.2.1](#), a BID should only be conducted in a small number of instances where UNHCR is required to make a decision that has a serious and long-term impact on a child (especially where parents are not present to provide consent) and where the choice of options requires assigning a more significant weighting to one right or group of rights than to others. As such, BIDs for children at risk outside of the situations outlined in [Sections 4.1](#) and [4.3](#) should be the exception rather than the rule. Operations are advised to consider the guidance outlined in [Section 2.2](#) which sets out the reasons for which BIDs are required, and to recall that for children who are with their parents or other legal caregiver, considerations for a child's best interest primarily lie with the caregiver. Operations should also consider that most children at risk can be supported through the other steps of BIP outlined in [Section 3.3](#), 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.

⁹⁵ *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, January 2004, p.45, available at: <http://www.refworld.org/docid/4113abc14.html>

⁹⁶ ACE Toolkit.



- 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 formalising a context-specific BID trigger, it is recommended that the operation contact the Child Protection & Youth Unit in UNHCR Headquarters for discussion.

Given UNHCR's mandate, exceptional situations for children at risk who are not separated or unaccompanied may arise in relation to durable solutions or 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.
- Where a durable solution or complementary pathway proposed by a child's family would deprive the child from receiving a specialised service that the child requires on the basis of their specific needs (e.g. medical or mental health service);
- Where a proposed durable solution or complementary pathway for the child or their parents/caregivers would result in long-term separation.

4.3 Possible separation of a child from parents against their will

4.3.1 Core guidance

- Article 9 of the Convention on the Rights of the Child “requires 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”.
- A decision to separate a child from her or his parents falls within the competence of States. If UNHCR becomes aware of serious situations of abuse or neglect by the parents, its first responsibility is to inform the competent State authorities, and encourage them to carry 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.
- While this section deals with the separation of children from their parents, it may also apply to children living with those 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 complete absence of national authorities, this may possibly involve separating the child from her or his parents. Any intervention by UNHCR to separate the child from her or his parents is of an exceptional and provisional nature. 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 provisional arrangement, a BID is essential before any decision is taken. To ensure that the separation is a measure of last resort, a BIA accompanied by social work support should be conducted before any separation is considered (See [Section 3.3](#)).
- The situations where UNHCR would conduct a BID linked to separation of a child include:
 - ▶ Severe harm from parents; or
 - ▶ Separation of parents.
- As UNHCR does not have the legal competence to determine legal custody, a BID decision can only make a determination of which parent the child should stay with based on the best interests principle. After the BID, efforts to obtain a formal determination of legal custody through the competent state authority must continue.

4.3.2 Purpose of the BID

The CRC limits the competence for making decisions on the separation of a child from her or his parents against their will to “competent authorities subject to judicial review”.⁹⁷ Any intervention by UNHCR to separate the child from her or his parents can thus only be of a provisional nature, reserving the right to

⁹⁷ CRC, Art. 9.

Table 10: QUICK GUIDE: the Best Interests Procedure for possible separation of children from their parents where UNHCR is responsible for BIP

Category	BIP Reason	Situation of the child	Appropriate procedure
Child survivors of violence, exploitation, neglect or abuse	Separation from parents or legal / customary caregiver in the absence of national child protection systems	In order not to delay an urgent action 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, and there is an imminent risk of severe harm to the child.	BIA, BID subsequently
		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.	BID
Children in disputed custody arrangements		Where resettlement is being considered for a child with only one parent, and the other parent has either provided consent; or is not present and there is no legal documentation of sole custody, there is no proof of death of the absent parent, and there is no written consent provided by the other parent (See Operational Guidance Note*)	BIA
		Where resettlement is being considered for a child with only one parent, and the parent not resettling refuses to give consent for the resettlement of the child; or there are indications that the child might be at risk within the family being considered for resettlement.	BID
		Where custody arrangements remain unresolved and a determination of the best interests of the child in terms of custody is necessary.	BID

* UN High Commissioner for Refugees (UNHCR), *Operational Guidance Note: Best Interests Assessments For Children being Resettled with Only One Parent*, April 2013, available at: <http://www.refworld.org/docid/5163f4ff4.html> (Operational Guidance Note – BIA for Children being Resettled with Only One Parent).

make a decision on parental rights or responsibilities to the competent State authorities. The section below describes the two situations where UNHCR may be required to undertake a BID: cases of abuse or neglect of the child by the parents in which a separation against their will is being considered; and cases where parents are or may become separated and there is a need to determine with whom the child should stay.

The CRC also prohibits unlawful interference with the child's family⁹⁸ and her or his family relations as recognized by law.⁹⁹ The term family has to be interpreted in a broad sense including parents or, where applicable, the members of the extended family or community as provided for by local custom.¹⁰⁰ Although this Section refers to separation from parents, there are other relationships which require a careful balancing between the risks of abuse or neglect, and the impact of separation on the child, to which the guidance provided in this Section should also be applied. These include:

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

⁹⁸ CRC, Art. 16.

⁹⁹ CRC, Art. 8.

¹⁰⁰ CRC, Art. 5.

Separation of a child from her or his 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 should be combined with efforts to support the family through mediation and counselling for the involved family members, with the help of a social worker, child protection staff or potentially with the support of an elder or other respected community member.

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 requested by its Executive Committee to take actions for the resettlement of women and children at risk and to facilitate a speedy departure of women at risk and their dependants¹⁰¹.

4.3.3 When to start a BID

Any barriers to expediting the start and completion of a BID should not impede interventions to prevent further harm to a child – for instance, removal of a child from a family environment where she/he is at risk of abuse, exploitation, violence and neglect. In such cases, the removal of the child should be quickly followed by a BID.

In cases that are custody-related, a BID should begin as soon as the issue is identified for cases being submitted for resettlement, or as soon as a BIA indicates that a child is at risk of abandonment or harm, 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 need to determine if there are reasonable grounds to believe that the child is at imminent risk to her or his life or of physical injury. If this is the case, a decision must be taken to remove the child immediately from the family and provide temporary care. The same assessment is required when the child has already been removed, as an emergency measure, by neighbours, the community, or others. If temporary care arrangements have already been found by others, their suitability needs to be assessed.

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

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

¹⁰¹ ExCom Conclusion on Women and Girls at Risk, No. 105 (LVII), 2006, at p (ii); ExCom No. 107 at h (xviii)

b) Supporting the family

Regardless of whether the child stays with the parent(s) or not, support should be provided to the parent(s) to help her/him/them assume their parental responsibilities, and restore or enhance the family's capacity to take care of the child. This family support should be carried out by staff with the necessary child welfare expertise, and begin immediately.

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

Monitoring its implementation and ensuring follow-up must then be undertaken by UNHCR and/or its partners. For example, if the agreement establishes that the 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 agency whether the parent(s) is/are carrying out this task, if the child is going by herself or himself, or not at all.

If the agreement is successful, and the child is no longer in danger, there is no need for UNHCR to consider separation and thus no need for a BID. If, on the contrary, the agreement is not successful, or the 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 legal/customary caregivers includes cases of severe forms of abuse or neglect within the family. UNHCR should undertake a BID only in those situations in which the responsible State authorities are unwilling or unable to take action. UNHCR's involvement will primarily, if not exclusively, concern refugee children.

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

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

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

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

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 with which parent the child should stay. In these cases BID by UNHCR should be limited to those situations in which the competent authorities are unwilling or unable to take action.

The examples below illustrate possible scenarios requiring a BID:

- The parents separate and the child is abandoned.
- The parents separate and both parents want the child to stay with him or her.
- The parents do not agree with whom the child should be submitted for resettlement, in those cases where the two parents will be submitted separately, as may be the case in situations of polygamous families or when only one parent is to be resettled. With regards to polygamous marriages, most resettlement countries only accept one spouse in view of their own national legislation forbidding polygamy. As this could lead to the children of the other spouses being separated from their father, a BID should normally be undertaken to help advocate for the right of the children to remain with both parents.¹⁰²
- Finally, a BID will also be necessary in those exceptional situations in which the parents agree on a solution for the child following their separation, but UNHCR has reasonable grounds to believe that the parents' choice exposes or is likely to expose the child to severe harm. A BID is essential in all cases in which the resettlement of one parent is based on a protection risk emanating from within the family (e.g. domestic violence cases).

The primary responsibility for the child rests with her or his parents or customary 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 where national authorities are not available or accessible. 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 the ongoing conflict between the child's parents, causing distress for the child and negatively affect her/his emotional wellbeing. In some cases, violence may be perpetrated against the child by one or both parents. 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. It is important that these services are available throughout the displacement cycle. Families should also be advised and/or supported to obtain possible custody decisions from courts in countries of origin – if this can be done safely. If need be, legal assistance should be provided so families can access courts in the country of asylum.

Determination of legal custody falls squarely within the competence of States. This responsibility rests with the State where the child is residing, including for refugee children. UNHCR should therefore make all efforts to involve relevant authorities. If the State is unwilling or unable to take measures, then UNHCR and partner NGOs, working directly with children or legal partners, should try to mediate and provide guidance

¹⁰² ExCom No.107.

and counselling to the family. If, after these interventions, custody arrangements remain unresolved, a best interests determination must be conducted, especially in cases where resettlement has been identified as a desirable and feasible durable solution. As UNHCR does not have the legal competence to determine legal custody, the BID decision would solely make a determination on which parent the child should stay with based on the best interests principle. If parents and community leaders 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 determination of legal custody through the competent state authority must continue.

Current and previous custody arrangements should be documented throughout the Best Interests Procedure and refer to, and preferably include, copies of legal documentation related to custody. The documentation should also reflect frequency and nature of contact between the child and the parents, including whether the custody-holding parent has exercised her or his 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.

Keep in Mind

- 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 needed.
- If the relevant authorities are unwilling/unable to intervene, UNHCR and partners need to conduct a BID aiming 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 he or she has exercised the custody rights.
- As a longer-term strategy, advocacy might be the only intervention through which UNHCR can 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).
- 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 resettlement.

Specific considerations relating to custody in the context of resettlement

In the context of resettlement, complex custody issues may arise. Field guidance regarding resettlement with one parent can be found in UNHCR's *Operational Guidance Note: Best Interests Assessments For Children being Resettled with Only One Parent*.¹⁰³ The Operational Guidance Note outlines when a BIA or BID is necessary for resettlement procedures.

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

¹⁰³ Operational Guidance Note – BIA for Children being Resettled with Only One Parent.

Protection of Children,¹⁰⁴ states that, for refugees, such responsibility falls on the State where the child is present.

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 Abduction¹⁰⁵ considers the removal of a child as wrongful where “(a) it is in breach of rights of custody attributed to a person [...] under the law of the State in which the child was habitually resident immediately before the removal or retention; and (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.”

It follows that the transfer of a child without the consent of the person, institution or any other body holding the rights of custody will not constitute an abduction if custody rights are not being exercised. Depending on the circumstances this can occur if the relevant person or body has not, without any reason, been in contact with the child or caregiver of the child for an extended period of time. In those cases in which custody rights are being exercised by both parents, UNHCR must take all reasonable measures to clarify custody rights before facilitating the resettlement of a refugee child without one of her or his parents. In those cases in which, in the exercise of its international refugee protection functions, UNHCR concludes after a comprehensive review that resettlement of one parent is the only or most appropriate solution to prevent her or his further exposure to serious protection risks, UNHCR should take the following precautionary measure as regards the child:

- Obtain from the parent who is not travelling with the child, her/his informed written consent to the child’s departure for resettlement;
- If the parent is absent or if she/he refuses, verify whether previous custody decisions have already been made and, if so, obtain them, unless contacting the authorities of the country of origin would jeopardize the child’s safety or that of the parents;
- If no previous custody decisions exist – or if they are clearly not based on international standards relating to the best interests of the child – the competent authorities in the asylum country should be asked to determine custody prior to departure. UNHCR may, where necessary, support building the capacity of the competent authorities in the asylum country, possibly including the introduction of a special procedure for urgent cases;
- If the competent national authorities will not clarify custody rights, including cases where one parent is being resettled and custody disputes remain unresolved (due to the unavailability or inaccessibility of competent authorities, or to the impossibility of obtaining official documents from the country of origin), UNHCR should undertake a BID to determine if resettlement together with one parent is in the best interests of the child.¹⁰⁶ All reasonable efforts should be made to include representatives of the asylum country in the BID procedure in order to give it the strongest possible legitimacy;

¹⁰⁴ Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, Entry into force: 1-1-2002, Art. 6, available at: <https://bit.ly/2INhivo>

¹⁰⁵ 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:

¹⁰⁶ ExCom No. 105, p. ii; ExCom No. 107, p. xiv



- Where custody issues remain undecided, the parent with whom the child is resettled should be advised to initiate procedures to acquire full custody rights upon arrival in the resettlement country. In addition, a formal request should be made to the resettlement country to take a decision on custody rights as soon as possible after the resettlement of the child, based on Art. 25 of the 1951 Convention Relating to the Status of Refugees (administrative assistance). This decision should also specify rights of access;
- Whenever possible, a copy of the letter of consent, custody decisions or other relevant documentation regarding the child's custody should accompany the child or caregiver. This documentation may be helpful to determine custody in the country of return or resettlement.

5.

BID PROCEDURES AND DECISION MAKING

As discussed in [Chapter 4](#), a Best Interests Determination is required in situations where a decision is likely to have far reaching implications for the child. It is therefore crucial that the process is based on standards and procedural safeguards that include the child's meaningful participation, involvement of persons with different backgrounds and relevant expertise, the systematic documentation of the case, and a collaborative follow-up process that is underpinned by child protection principles.



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Once a decision is reached, follow-up measures must be implemented in an efficient and timely manner, involving all relevant partners. The roles and responsibilities of each partner must be part of an inter-agency Best Interests Procedure SOP, while the engagement of various actors must be coordinated and be based upon child protection principles and standards.

While a full BID is required in the situations outlined in [Chapter 4](#), certain situations necessitate the use of a simplified procedure. This includes situations of exceptional urgency, and circumstances requiring decisions for large number of children where time and capacity is limited.

This chapter will provide specific guidance on procedural safeguards and standards, balancing all relevant factors to determine the best interests of the child, working with partners and guardians, assigning roles and responsibilities for those involved in Best Interests Determinations, simplified decision-making procedures and when a Best Interests Determination decision should be reviewed or re-opened.

5.1 Procedural safeguards

5.1.1 Core guidance

- For the integrity of the Best Interests Determination process, it is essential to adhere to procedural safeguards as recommended in these BIP Guidelines and in CRC General Comment No. 14, including:
 - Supporting meaningful participation of the child, including the use of age appropriate materials and interview techniques;
 - Involvement of staff with relevant expertise;
 - Systematic documentation of each step of the procedure.
- As the Best Interests Procedure concerns decision-making on issues that will have a severe and long-term impact on a child, a greater level of protection and clearly defined procedures are appropriate. Basic procedural safeguards are also warranted to ensure the integrity of the Best Interests Procedure, including:
 - all those involved in Best Interests Determinations must sign the UNHCR Code of Conduct or similar undertaking of the organization or entity for which they work, as well as the undertaking of confidentiality (see [Annex 5](#));
 - a BID panel member should not be involved in an individual case if there is a conflict of interest, such as in cases involving friends or relatives; and
 - BID panel members should receive training on these Guidelines, the Code of Conduct and other relevant issues.

5.1.2 Procedural safeguards

Key safeguards and guarantees that should be followed include:¹⁰⁷

Right of the child to express her/his own views: A vital element of the process of identifying the best interests of a child involves facilitating the meaningful participation of the child, allowing the child to express her/his views, and clearly documenting the child's views.¹⁰⁸ See [Section 3.5.3](#) for more information on the participation of children.

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 multi-disciplinary team of professionals (e.g. child protection/protection, social work, psychologist) provide additional guarantees that the recommendations are objective and consider a wide range of aspects relevant to the case.

¹⁰⁷ This section draws on CRC General Comment No. 14, paras. 85-98, available at: <http://www.refworld.org/docid/51a84b5e4.html> and UNHCR, *Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, 2014, p.21, available at: <http://www.refworld.org/docid/5423da264.html>

¹⁰⁸ 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 with 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 CRC. 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>

Priority processing: Delays or long-drawn decision-making procedures can have adverse effect on children, especially since their perception of time is different from adult perceptions. 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 sufficient time to do a comprehensive assessment).

Written, reasoned decision: The recommendations and decisions made as part of a best interests procedure need to be justified and explained. In addition to stating the factual circumstances, the elements and factors considered also need to be documented, indicating what weight each factor was accorded in the process. If the decision is not in line with the views of the child, the reasons need to be clearly explained.

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 3.5](#) and [Annex 10](#) for more information.

Review of Decisions: 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 on the basis of new facts, evidence or other considerations which affect the initial decisions. See [Section 5.7](#) for more information on review and re-opening of BID decisions.

Independent representative or guardian: Children whose best interests are considered as part of the Best Interests Procedure, who are not cared for by their parents or other legal guardian, may benefit from having a support person to accompany them throughout the process. This could be a person appointed by an organisation or a trusted adult chosen by the child. In the latter case, caseworkers need to be vigilant that the accompanying person also has the best interests of the child in mind and is not exercising pressure of any sort on the child. Children who are in parental care may also be given the opportunity to be accompanied by an independent representative outside of the family should she/he so choose. See [Section 5.3](#) for more information on working with guardians.

Other general safeguards will also apply to ensure the integrity and quality of the BID process, including the need for those involved in best interests procedures to sign the UNHCR Code of Conduct or similar undertaking of the organization or entity for which they work, as well as the undertaking of confidentiality (see [Annex 5](#)). A BID panel member should not be involved in an individual case if there is a conflict of interest, such as in cases involving friends or relatives.

5.2 Balancing competing rights in making a decision

5.2.1 Core guidance

- The result of the Best Interests Determination 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.
- Deciding what is in the best interests of the child involves identifying the best out of several competing options.
- Best Interests Determination decisions should keep in mind the indivisible nature of the Convention on the Rights of the Child and the inter-dependency of all of its articles.
- Best Interests Determination decisions should base their analysis on the following four factors:
 - ▶ The views of the child, 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.

5.2.2 General considerations for decision-making

The primary consideration for decision-makers is to determine which of the available options is best suited to securing the attainment of the child's rights, and is in her/his best interests. Both the short and long-term impact of each option needs to be weighed before deciding which is best suited to the individual circumstances. The caseworker and 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 as well. Their decisions will have profound and long-term implications for the child.

Decision-making and identifying durable solutions and complementary pathways in children's best interests can be a difficult process; various facts, factors and rights of the child need to be carefully balanced and weighed. The quality 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 recorded information. This again stresses the importance of engaging skilled child protection staff and panel members with significant experience in child protection or child welfare to be part of the Best Interests Procedure.

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

Elements to Consider

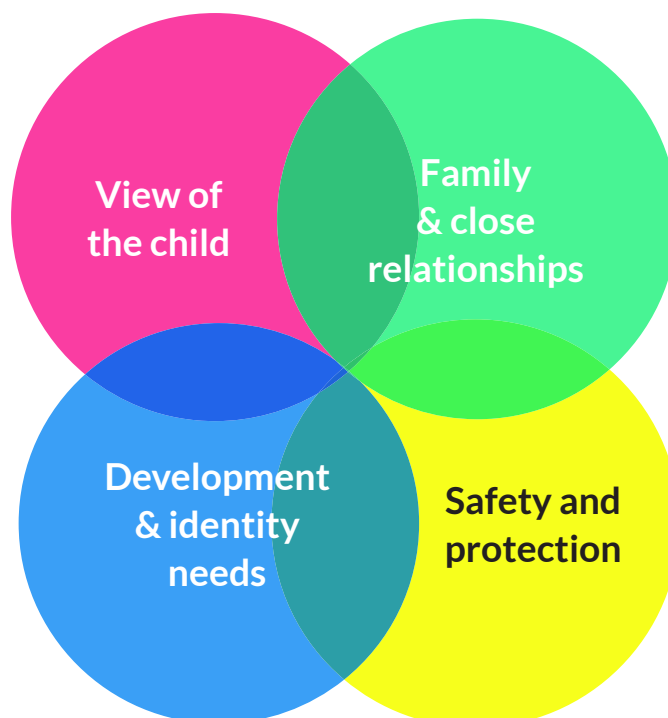
Often, determining the best interests of the child in UNHCR operational contexts is a choice among the least damaging of a limited number of alternatives. Often, solutions may not be indisputably “right”. In the final analysis, determination of a child’s best interests requires judgment that takes into account a range of relevant and possibly competing factors within the realm of achievable possibilities. Bearing in mind that each child is unique, some factors can include, but are not limited to:

- Exposure or likelihood of exposure to abuse, neglect, exploitation and violence, which commonly outweighs other factors;
- Past abuse, neglect, exploitation and violence (frequency, patterns, trends) and its existing root causes;
- Safety/security in the area where the child is living;
- A stable, protective, enabling environment;
- The existence of family and of close relationships;
- Stability of alternative care arrangements;
- Accessibility of basic services (health, food, water, shelter, education, etc.);
- Accessibility of treatment for children with disabilities or illnesses;
- The view and opinions of the child in light of the available options;
- Views of family members and others close to the child;
- Balancing the best interests of the child with the rights of others; and
- Ability to monitor the child’s safety and wellbeing.

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

Figure 5:

The interlinkages of key rights groups forming the child’s best interests



5.2.3 Views of the child

Article 12 CRC¹⁰⁹ requires that the views of the child be given “due weight in accordance with the **age and maturity** of the child”. In implementing this requirement, it is important to bear in mind the following factors for all age groups:

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

5.2.4 Views of family members and others close to the child

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

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

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

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

¹⁰⁹ CRC, art. 12.

5.2.5 Safety and protection

The right to life and freedom from torture, other cruel, inhuman or degrading treatment or punishment as laid down in international human rights instruments¹¹⁰ set decisive parameters for a BID. 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.¹¹¹

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

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

- Resettlement is generally in the best interests of an unaccompanied or separated refugee child when it is the only means of preventing serious violations of fundamental human rights, existing in both the country of origin and the country of asylum.
- With regard to the return to the country of origin, the principle of *non-refoulement* should always be upheld. In addition, when the child genuinely wishes to return and has the support of her or his guardian, voluntary repatriation cannot be considered to be in the child's best interests "if it would lead to a 'reasonable risk' that such return would result in the violation of fundamental human rights of the child."¹¹² Similarly, return would not be in the child's best interests if adequate care arrangements are not available upon return.
- For a child who is seriously distressed as a result of the past events, such as through serious violations of her or his fundamental rights, no decision that could cause even more distress to the child can be considered to be in her or his best interests.

5.2.6 Family and close relationships

Various international human rights instruments, including the *Universal Declaration of Human Rights*¹¹³ state that the family is the natural and fundamental social group unit and is entitled to protection from society and the State. Article 18 of the CRC requires the State to support parents and legal guardians in performing their child-rearing responsibilities, as laid down in Articles 3 (2), 7, 9, 10, 18 and 29 of the CRC. It follows that, for unaccompanied and separated children, all BIDs should ultimately address the extent to which family reunification is attainable.

¹¹⁰ 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, art. 37.

¹¹¹ CRC, articles 19, 34, 35, 36, 37 and 38.

¹¹² General Comment No. 6, para. 84.

¹¹³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), article 16, available at: <http://www.refworld.org/docid/3ae6b3712c.html>

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

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

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

BIDs relating to durable solutions and complementary pathways:

- Every effort should be made to keep siblings together;
- Resettlement is normally in the best interests of the child if it leads to family reunification;
- Resettlement to a country other than that of the parents can be in the best interests of the child, if family reunification is neither possible in the place of residence of the parents (for instance due to safety considerations) nor in the country of asylum, and the child faces serious protection risks which cannot be addressed in the environment of the country of asylum. Resettlement must, however, be implemented in a manner that does not undermine future prospects for family reunification. The parents have to be consulted and informed as to the whereabouts of the child, unless it would endanger the family or the child.
- In some cases, a group of children may have developed close links with one another in the country of asylum where they have been living together under group care. In these cases, it is recommended that the children be grouped together in a submission for resettlement.

BIDs relating to family reunification

- Though normally regarded as being in the best interests of the child, family reunification could, in certain circumstances, not be in her/his best interests. This would be the case when it exposes or is likely to expose the child to severe harm, or when it is opposed by the child or the parents, and efforts to address the problem through social work, family mediation and counselling remain unsuccessful. One example can be when the parent has remarried and remains unwilling to accept the child.
- The child may have forged such a strong bond with her/his foster family that forcing the child to move away from them would be as traumatic as the initial separation from the parents. A phased implementation of reunification may be preferable, unless the parents oppose it and consent to the adoption of the child by the foster parents.
- If family reunification is not possible, the child has a right to maintain direct contact with her or his parents. Realising this may entail considering practical matters and costs of maintaining contact, so as not to undermine the possibility of family reunification in the future.

BIDs in the context of temporary care arrangements:

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

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

- A decision to separate a child from her or his parents against their will should only be taken if the BID panel finds that the child is or is likely to be exposed to severe abuse or neglect which cannot be addressed through less intrusive measures than separation. These may include monitoring or targeted assistance, such as a weekly visit by a doctor for cases where the parents have neglected the child's medical needs.
- Separation should be for the shortest possible time. The BID decision should specify the length of the separation, and establish a deadline to review the separation, whenever there is any prospect of possible future reunification.
- If the child is to be placed with other family members, the BID decision should also stipulate what monitoring arrangements need to be established to ensure that any restriction to contact between parents and the child are respected.
- In case of separation, the frequency and type of contact with the parents need to be determined by the panel, and should be discussed with all relevant parties, including the child. The panel must clarify the long and short term purpose of the visits, any necessary supervision, duration, the related costs and the selection of a responsible person or agency to monitor and assess the impact of the visits on the child.

5.2.7 Development and identity needs of the child

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

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

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

- the “right [...] to preserve her or his identity, including nationality, name and family relations” (Article 8);
- due regard to “the desirability of continuity in a child’s upbringing and to a child’s ethnic, religious, cultural and linguistic background” (Article 20); understanding that this should not lead to the acceptance of harmful traditional practices and that with maturity the child may make a free choice regarding 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 her or his social and cultural network. A BID relating to a durable solution should normally not prioritize access to better health services or educational facilities in a given location over the possibility of family reunification in another location, or consider them as more important than maintaining cultural continuity.

In special situations, such as that of an adolescent for whom access to higher education is essential to her or his 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 her or his family and culture.

Balancing the rights of the individual child with that of others

The 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 CRC provides that the best interests of the child shall be a primary consideration in all actions concerning children. The CRC 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 where UNHCR decides to override the best interests considerations must be carefully analysed and documented.

5.3 Working with interpreters and guardians

5.3.1 Core guidance

- Persons working as interpreters in the BID process should have access to specific training for working with children, and sign the Undertaking of Confidentiality.
- As prescribed in the Convention on the Rights of the Child, the 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.
- The *Guidelines for the Alternative Care of Children*¹¹⁴ 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 her/his care and well-being to accompany the child throughout the status determination and decision-making process.”
- In contexts where national child protection systems do not fully provide for guardianship arrangements for unaccompanied children, UNHCR may, in line with ExCom No. 107, explore options to “facilitate the appointment of a guardian or advisor when an unaccompanied or separated child is identified.”¹¹⁵
- The Committee on the Rights of the Child recognises that during large-scale emergencies, it may be difficult to establish guardianship arrangements on an individual basis, and calls on States and organizations working on behalf of these children to safeguard and promote the rights and best interests of unaccompanied and separated children.¹¹⁶
- The term guardian can – depending on the context – be read to mean the same as ‘foster care provider’. Where the guardian is unable to perform the role of legal representation or adequately represent the child’s best interests in formal proceedings, including administrative and judicial matters, a separate advisor or legal representative may be assigned.

5.3.2 The role of the interpreter

Ideally, the caseworker should speak the child’s language. If this is not possible, proper translation must be provided. The caseworker must prepare the interpreter, making sure that she or he is sensitive to the culture and background of the child. The caseworker should observe the interactions of the interpreter and the child closely throughout the interview. The caseworker should always talk directly to the child, not to the interpreter.

Interpreters must understand the concept of confidentiality and abide by it. They must also sign the undertaking of confidentiality in [Annex 5](#). Interpreters require training on the basics of child protection

¹¹⁴ UN General Assembly, Guidelines for the Alternative Care of Children: resolution / adopted by the General Assembly, 24 February 2010, A/RES/64/142, available at: <https://www.refworld.org/docid/4c3acd162.html>

¹¹⁵ ExCom No. 107, para. h (iv).

¹¹⁶ CRC General Comment No. 6, para. 38.

and child rights, as well as on techniques for communicating with children.¹¹⁷ They must also have an understanding of the purpose and objectives of the BID process and the interviews.

5.3.3 The role of the guardian

A guardian is 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 acts as a statutory representative of the child in all proceedings in the same way that a parent represents her or his child.¹¹⁸

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

When the State has established appropriate procedures for assessing and determining the best interests of children of concern to UNHCR, the following considerations with respect to guardianship may support UNHCR's role of monitoring, capacity-building and advocacy:

- A guardian assumes the legal capacity of a parent, but is not necessarily the child's caregiver.
- The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution.
- If an assigned guardian is only able to provide day-to-day care, but is unable to adequately represent the child's best interests in all spheres and at all levels of the child's life, a separate advisor or legal representative must be appointed.¹¹⁹

5.3.4 Appointing a guardian

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 her/his care and well-being to accompany the child throughout the status determination and decision-making process".¹²⁰

¹¹⁷ For UNHCR operations, the procedure for engaging interpretation services for the BIP process is governed by the *UNHCR Guidelines for the Field on Recruitment Procedures, Conditions of Service, Training and Supervision of Interpreters*, 19 January 2009, IOM-FOM 005/2009. Relevant training tools or self-instructional documents on how to interpret/interview children include: UNHCR, *Self-Study Module 3: Interpreting in a Refugee Context*, 1 January 2009, <http://www.refworld.org/docid/49b6314d2.html>; UNHCR, *UNHCR RSD Procedural Standards – Interpretation in UNHCR RSD Procedures*, 2016, available at <http://www.refworld.org/docid/56baf2634.html>; Child Protection Working Group, *Interviewing Children – A Forensic Interview Training package*, 2014, available at <https://bit.ly/2zZk4h4>; Inter-agency Actions for the Rights of the Children, *ARC Resource Pack: Working with Children*, 2009, <https://uni.cf/2p2HWpC>; Save the Children UK, *Communicating with Children – Helping Children in Distress*, 1 January 2000, available at: <https://bit.ly/2uNjNlx>

¹¹⁸ 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>; CRC General Comment No. 6; *Guidelines for the Alternative Care of Children*.

¹¹⁹ General Comment No. 6, para. 34.

¹²⁰ *Guidelines for the Alternative Care of Children*, para. 145.



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In operations where the national child protection system is unable to respond to the specific need of assigning a guardian, as part of the child protection programme, UNHCR and/or a partner will normally support the identification of appropriate care arrangements for unaccompanied children arriving alone, or assess and confirm the care arrangement for children accompanied by a relative or a caregiver from the child's community. In contexts where national child protection systems do not fully provide for guardianship arrangements for unaccompanied children who are living independently (alone, or with siblings or peers), UNHCR and/or partners may assign a child protection caseworker or a mentor (often a member of the community) to provide guidance and support to the child/children throughout the BIP process or other protection procedures (e.g. a "support person" in UNHCR RSD procedures). In such cases, it is crucial that a person being assigned as a mentor or support person is thoroughly screened and trained.¹²¹ UNHCR and/or partners may also explore the feasibility of assigning an advisor or legal representative for the purpose of supporting the child through the BID process.

In the case of unaccompanied children who are living independently (alone, or with siblings or peers), UNHCR and/or partners may assign a child protection caseworker or a mentor (often a member of the community) to provide guidance and support to the child/children throughout the BID process or other protection procedures. In such cases, it is crucial that a person being assigned as a mentor is thoroughly screened and trained.¹²² UNHCR and/or partners may also explore the feasibility of assigning an advisor or legal representative for the purpose of supporting the child through the BID process.

¹²¹ ExCom No. 107, para. (h) (iv).

¹²² See: UNHCR Guidance on Supported Independent Living Arrangements (forthcoming), and the UNHCR's Community Support Volunteers for UASC Toolkit, available at: <https://goo.gl/yqQbUb> (Google Drive).

5.4 Roles and responsibilities for BID

5.4.1 Core guidance

- The Best Interests Determination process requires that specific staff be designated particular responsibilities in order to ensure that the Best Interests Determinations are implemented in a timely, child sensitive and coordinated manner.
- UNHCR operations need to designate a staff member as **BID Supervisor** responsible for setting up and supervising the Best Interests Determination process. Partner organisations may also have BID Supervisor positions. Larger operations with several field offices undertaking BIDs may also designate **BID Reviewing Officers** responsible for case review, and **BID Coordinators** in a branch or regional office responsible for ensuring consistency between procedures in various locations and ongoing support and coordination of the BID process.
- Caseworkers should usually work on the Best Interests Procedure as a whole and not be designated specifically for Best Interests Determinations. However, it may be that not all caseworkers are able to complete Best Interests Determinations without additional capacity building.
- Terms of Reference for the BID Supervisor, Reviewing Officer, and BID Coordinator, including a relevant technical profile, should be in place. These roles are assigned to staff with child protection expertise or training, and are not a specific function or position unless otherwise determined at the operational level.

5.4.2 BID 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, such a staff member will be referred to as the BID Supervisor.

A 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 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 assigned, she/he will be responsible for setting up, overseeing, coordinating and operationalising the BID process with UNHCR, government and other partners.

In the event a BID Supervisor is designated from within a partner organisation, this person can either act as a counterpart in that organisation for the UNHCR BID Supervisor or can assume some of the coordination responsibilities with other organisations. However, the UNHCR BID Supervisor remains accountable for the process.

In addition to overseeing the process as a whole, a key role of a BID Supervisor is prioritising BID cases. Prioritisation should normally take into account 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 taken into account in prioritisation.

In certain situations, when resettlement opportunities are only available for children, it may be wiser to give priority to those closest to adulthood to preserve access to this option and to the support provided upon arrival in the resettlement country. In other situations, specific groups of unaccompanied and separated children (e.g. girls, children of a certain age, those heading a household or those with disabilities) may face heightened risks and it may therefore be appropriate to prioritize these cases. See the BIP SOP Toolkit for sample Terms of Reference for a BID Supervisor.¹²³

Useful tips for BID Supervisors (and Coordinators where designated)¹²⁴

- Promote Best Interests Procedures 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 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 in 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 the implementation of the BID and child protection strategy through capacity-building and technical support.
- When appropriate, promote the establishment of BID panels in field locations (especially when there are large numbers of children requiring BID).

5.4.3 BID Coordinator

Large operations with several field or sub-offices undertaking BIDs, may wish to appoint a BID Coordinator in a Branch or Regional Office to ensure consistency between procedures in the various locations, and ongoing support and coordination of the BID process. The role of the BID Coordinator is especially important when it is decided to establish a multiple BID panels at field level, instead of one national level panel. The BID Coordinator may also be a BID Supervisor for one (e.g. Branch Office) panel. In some cases, Regional BID Coordinators supporting several operations may also be appointed.

BID Coordinators are normally assigned by the Senior Protection Officer or other senior protection staff member. BID Coordinators can also be staff of partner organisations. It is not necessary to have a UNHCR BID Coordinator in every office; the designation of BID Coordinators should be decided based upon efficiency considerations in each operation. See the [BIP SOP Toolkit](#) for sample Terms of Reference for a BID Coordinator.¹²⁵

¹²³ See Annex 14 - TOR BID Supervisor in the Annexes folder of the UNHCR BIP SOPs Toolkit, available at: <https://goo.gl/5sHhux>

¹²⁴ See [Annex 12](#).

¹²⁵ See Annex 15 - TOR BID Coordinator in the Annexes folder of the UNHCR BIP SOPs Toolkit, available at: <https://goo.gl/5sHhux>

5.4.4 BID 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 may be called up on to perform this role. However, in operations with large numbers of cases, staff should be identified to perform the role of BID Reviewing Officers. BID Reviewing Officers are normally senior caseworkers or caseworker supervisors.

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 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 SOP Toolkit](#) for sample Terms of Reference for a BID Reviewing Officer.¹²⁶

5.4.5 Caseworkers

The task of collecting all information needed for the BID process should be entrusted to one or more caseworkers (also called Child Welfare Officers), either by the BID Supervisor within UNHCR, or delegated to a partner agency. The term ‘caseworker’ is used in these Guidelines to designate the person responsible for specific actions in BIP, and is not intended as a specific function or position, unless they are recruited specifically for this purpose. Caseworkers should usually work on the Best Interests Procedure as a whole, and are not designated specifically for BID. See [Section 3.2](#) and the [BIP SOP Toolkit](#) sample Terms of Reference for a Caseworker¹²⁷ 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. For the purpose of the BID, the caseworker reports directly to the BID Supervisor or the BID Reviewing Officer as determined at the 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 personnel for conducting BIDs, it is essential that their work is coordinated with regular BIP staff from UNHCR and partners who will need to continue to provide support to the child and/or her/his family, conduct ongoing follow-up and monitoring.

In the context of the BID, a caseworker is responsible for collecting information relevant to the child’s case through interviewing the child, her/his family or other caregivers, and others who may be relevant to the child’s case. The caseworkers is also responsible for preparing the case report and submitting it to the Reviewing Officer for further action, while continuing to monitor and follow-up on the child’s protection situation. Relevant guidance for collecting information needed for the BID process is provided in [Section 5.2](#). The caseworker should also analyse the information collected and draft recommendations for decisions (see also the checklist provided in [Annex 11](#)).

¹²⁶ See Annex 16 - TOR BID Reviewing Officer in the Annexes folder of the UNHCR BIP SOPs Toolkit, available at: <https://goo.gl/5sHhux>

¹²⁷ See Annex 17 - TOR Caseworker in the Annexes folder of the UNHCR BIP SOPs Toolkit, available at: <https://goo.gl/5sHhux>

Considering the complexity of the issues that are likely to be involved in BID cases, and the sensitivities that need to be maintained, it is recommended that a caseworker for the purpose of BIDs 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 would 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 3.2](#)). 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. All reasonable efforts should be made to allow the child to choose the gender of their caseworker (if the option is available in the specific context of the operation).

5.5 The BID Panel

5.5.1 Core guidance

- The purpose of the Best Interests Determination 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.
- The Panel should be multi-disciplinary 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 Best Interests Determination 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 Best Interests Determination Panel are reached by consensus, following careful consideration of the available options.

5.5.2 Purpose of the BID 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, 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 process, including in BIDs. Entrusting decision-making to a multi-disciplinary panel contributes additional safeguards, as the panel members' varying perspectives will offer a wide spectrum of expertise. 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, and 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. All BID Panel decisions must be made in the spirit of the CRC.

5.5.3 Establishing the BID 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 organisations, 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, representatives of the 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.

Qualities of Panel Members

- 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 sexual gender-based violence (SGBV).
- 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.
- 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 necessary training on the BID process (this includes members who are alternate members and members of sub-BID Panels). International and national agencies that are specialised in child protection can assist in providing such training for the BID Panel or for persons otherwise involved in the BID process. Should there be a need for increased child protection expertise within UNHCR or partner organisations, external resources can also be sought to build capacity, for example, through support by regional advisers, the Child Protection and Youth 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 Best Interests Procedures 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 organisation as well as an Undertaking of Confidentiality (see [Annex 5](#)).

TEXT BOX: Overview of Possible Partners in the BID 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 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 procedural safeguards 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 (for example, in situations where the relevant authorities are not willing or able to be involved in BID procedures 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. 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 a voice in decision-making. 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 organisations and NGOs	International and/or national organisations 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. 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 and practices. 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 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. Organisations 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 recuse themselves from the final decision making process.
Caseworkers	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 decision-making member of the BID Panel.
Other Experts (Observers)	Individuals may be invited to participate as observers in BID Panels for individual cases as needed, for example where 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.

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 organisations 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. Organisations 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 her or his safety can be put in place.

In certain operational contexts, it may not be possible to establish a Panel along the criteria listed here. 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 5.6](#)).

5.5.4 BID Panel procedures

The BID Panel's procedures should be defined in operation-specific BIP SOPs (see [Section 3.2](#)). 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 Supervisor has completed the review of cases submitted by the caseworker, and concludes that the cases are to be submitted to the BID Panel, she/he 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 timeframe 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 anonymised) 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 3.6](#) 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 6-8 cases should be considered per Panel meeting, with meetings not exceeding 2 hours. However, operations may choose to consider more cases or to hold extended meetings depending on operational or logistical constraints.

5.5.5 Establishment of BID Panels in multiple locations

Depending on the operational context, BID Panels may be coordinated by one central Panel in the Branch 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 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 Supervisor/Coordinator at the Branch Office.

Steps for Decision-Making in BID Panel Meetings

- 1. Present the case:** For each case, a brief summary of the options and recommendation should be presented by the BID Supervisor. In some instances, the caseworker may also be asked to attend the BID Panel to present their cases.
- 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 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* who has the authority to endorse and oversee the implementation of a BID recommendation.
- 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 the entirety of Section 3 of the BID Report has been completed with recommendations documented, and signatures of BID Panel members.

* 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).

5.6 Simplified decision-making procedures for Best Interests Determination

5.6.1 Core guidance

- The formal determination of a child's best interests cannot be rushed, and needs to be given the appropriate level of weight and procedural safeguards depending on the complexity of the case. However, in some instances a simplified decision-making procedure may be required in order to ensure timely action in the child's best interests. Simplified decision-making procedures may only be employed in four specific situations:
 - ▶ Family reunification, depending upon the complexity of the case;
 - ▶ Situations that require urgent action in order to prevent further harm to the child, for example due to medical or protection emergencies;
 - ▶ Sudden movements of large numbers of unaccompanied children in a short period of time; or
 - ▶ Other exceptional situations, subject to agreement by the Division of International Protection (Child Protection & Youth Unit).
- Key safeguards of the Best Interests Determination process must be maintained in cases of simplified Best Interests Determination procedures. The procedures for a simplified Best Interests Determination are similar to those for a regular Best Interests Determination process, including a thorough assessment, completion of the Best Interests Determination Report, monitoring, implementation of the decision and follow-up of each individual child. Only 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 Best Interests Determination should be accompanied by other protection safeguards to minimize risks for the child. This may include focus group discussions with children and their communities to identify any protection risks and capacities to address these, monitoring arrangements upon arrival in the country of return or resettlement, escort during travel, final verification of a Best Interests Determination decision on the day of departure, monitoring and review of care arrangements in the country of return or resettlement.
- 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 Best Interests Determination.

5.6.2 When to use simplified decision-making procedures

Simplified decision-making procedures for BIDs may apply in deciding durable solutions, family reunification 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 Heightened Risk Identification Tool (HRIT),¹²⁸ operation-specific checklists or other processes should be put in place to determine which children, such as those at heightened risk (see [Section 3.2](#)), may require a full BID, and those for whom a simplified procedure would be appropriate.

¹²⁸ The Heightened Risk Identification Tool.

A simplified BID should be limited to the following situations:

- Family reunification, depending upon the complexity of the case (see [Section 4.2.5](#) and [Annex 2](#))
- Situations that require urgent action in order to prevent further harm to the child, for example due to medical or protection emergencies;
- For sudden movement of large numbers of unaccompanied and separated children over a short period of time, where practical constraints limit the capacity of UNHCR and of partners to undertake a full BID; or
- Other exceptional situations, subject to agreement of the Division of International Protection (Child Protection & Youth Unit).

Typically, situations where simplified procedures are appropriate are, for example, when voluntary repatriation or family reunification is being considered as a durable solution in a short timeframe for large numbers of unaccompanied children for whom BIDs have not been already done; or when 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.

5.6.3 Establishing simplified procedures

Establishing a simplified procedure begins with agreeing on a set of criteria for when a simplified procedure may be employed and the format of the simplified procedure. The proposal to establish such a simplified procedure should be made by the BID Supervisor based on consultations with caseworkers, UNHCR Protection staff, and other child protection agencies. The decision to establish a simplified procedure will be made by the UNHCR Representative or Head of Office, with further inputs from the Senior Protection Officer or the BID Supervisor.

Simplified procedures may take two forms: (i) by reducing or adapting panel membership or (ii) by replacing the panel by a reviewing officer with child protection expertise.

Reducing or adapting panel membership may take the form of a reduced panel size of two members (which may include one or more UNHCR staff) or remote participation of panel members. One of those two (or more) staff members should be appointed as BID Supervisor and will chair the BID meetings. In the case of conducting BIDs for a large number of children with a similar case background (e.g. group voluntary repatriation of UASC to country of origin), cases may be summarised and presented to a panel in a tabulated format.

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 and explain the procedure, and where relevant, identify appropriate mode of communication for remote participation of panel members in meetings. The BID Supervisor will also, in consultation with caseworkers and Protection staff, develop an operation-specific checklist for when to employ a simplified BID procedure, and a case list table for summarising the cases to be presented to the Panel (large number of cases with similar case background).

Steps for employing a simplified procedure in the case of individual children/urgent cases

- Where the UNHCR Representative or Head of Office has taken the decision to establish a simplified procedure, 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 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 the standard BID process.
- If the decision is to proceed with simplified procedures, the caseworker prioritises the collection of any additional information required to complete the BID Report. The BID Report should be submitted not later than 48 hours after decision to proceed with the simplified procedure.
- The BID Supervisor simultaneously alerts the Panel members who are able to participate in the meeting to review the case. In the event the Panel will meet remotely, the BID Supervisor ensures that the mode of communication is agreed upon and the necessary arrangements are made to facilitate the meeting.
- Once the caseworker submits the BID Report, the BID Supervisor prioritises the review of the Report, and submission to the Panel, ideally within 24 hours of receiving the report.
- BID Panel (or Reviewing Officer, where reduced or modified BID Panel is not feasible) makes a decision on the recommendations.
- BID Supervisor, through the caseworker initiates follow-up.

Where it is not feasible to convoke a reduced or adapted BID panel, UNHCR may replace the panel by a Reviewing Officer with child protection expertise. This should be the most senior protection staff member in the office.

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 the BID decisions, and the BID Supervisor will oversee the implementation of the decisions.

The agreed simplified procedure must be incorporated into the BIP or Child Protection Case Management SOPs.

Steps for employing a simplified procedure in the cases of large number of children

- In the context of large numbers of children requiring BID, and where the UNHCR Representative or Head of Office has taken the decision to establish a simplified procedure, a decision is made by the BID Supervisor based on the checklist.
- The caseworkers are quickly mobilised to collect information on each child's case and assess the specific implications of a proposed plan. Caseworkers must nevertheless carefully check and assess other potential issues that may require a full BID.
- The BID Supervisor, or a designated caseworker or Protection Officer should compile the case information for each child into the summarised case list table. It is important that special attention is paid to cases with particular protection issues, in which event, such cases would be referred for full BID.
- The BID Supervisor invites the Panel, presents an overview of the context, and distributes the summarised table.
- BID Panel (or Reviewing Officer, where reduced or modified BID Panel is not feasible) makes a decision on the recommendations.
- The simplified BID should be accompanied by other protection safeguards to minimise 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 unaccompanied, separated and other child at risk. This analysis determines which children need a full BID and which may appropriately have a simplified BID procedure.
 - ▶ Operation-specific checklists may be used to determine which children may require a full-fledged BID, and to identify those for whom a simplified procedure would be appropriate.
 - ▶ One staff member of UNHCR or a partner organisation 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 agency 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.
 - ▶ Staff should regularly monitor and evaluate the simplified BID process, identifying possible gaps and reviewing the strategy as needed.

5.7 Reopening a BID decision

5.7.1 Core guidance

- After an initial Best Interests Determination decision has been endorsed, a BID decision may be reopened at a later stage by the BID Supervisor for a variety of reasons, including:
 - ▶ material changes in circumstances that could change the original decision, such as successful tracing or the emergence of new evidence;
 - ▶ If initial Best Interests Determination decisions could not be implemented within a reasonable timeframe. In the context of durable solutions or complementary pathways, this should not extend beyond one year after the initial Best Interests Determination decision; and
 - ▶ After separation from parents, upon request of the child or the child's parent or guardian.
- When determining if a Best Interests Determination should be re-opened, a case assessment should be drafted examining the current situation of the child.
- If the BID Supervisor determines that a new Best Interests Determination should be conducted, then the case shall be re-opened and a new BID Report will be prepared by the caseworker and presented for deliberation by the BID Panel.

5.7.2 Reviewing the BID decision

Material changes in circumstances

Material changes in circumstances of the child's situation may impact the original BID decision taken by the BID Panel. Material changes that could be considered as meriting the re-opening of a BID include:

- Change in the views of the child, her/his parents, or the views of the caregiver;
- Change in the protection risks affecting the child, or any new protection incidents that have occurred since the BID decision was endorsed;
- Change in care arrangement that differs from the original BID (if the caregiver indicated in the initial BID is no longer the adult responsible for the child, or intends to relinquish responsibility for the child); or
- 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 re-opened with the discovery of new information which had not been obtained during the initial BID assessment. For example, in some circumstances, the child or other relevant family/community member may have initially withheld pertinent information from the caseworker.

Additionally, discrepancies in the BID and subsequent interviews may arise. Inconsistent information must be investigated, confirmed and corrected, with explanation of the inconsistencies documented. For example, 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 the 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.

Durable solution or complementary pathway decision not implemented

In the context of durable solutions or complementary pathways, a BID decision should be considered for review if:

- Any significant change in the child's access to other solutions exists;
- There is any departure or arrival of family members or other persons close to the child either in the country of asylum, the proposed country of resettlement, or country of repatriation that may impact upon the recommendation contained in the BID decision.
- More than one year has passed since the date that the original BID Panel decision was taken.

Reopening BID decision as per request of the child or parent/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, 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.

5.7.3 Procedures for reopening a BID

When determining if a BID should be re-opened, 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. This report shall be used to review whether a BID needs to be re-opened 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 – to 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 re-opened.

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.

ANNEX 1:

DURABLE SOLUTIONS CHECKLIST TO DETERMINE IF A BID IS REQUIRED

This checklist helps identify if a BID is required when considering durable solutions for children at risk under specific circumstances including unaccompanied and separated children. Note that where a child is being reunified with a parent, or legal or customary caregiver, the family reunification checklist in Annex 2 should be used instead. 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:		
☐	A durable solution is being considered for an unaccompanied child that does not involve family reunification with a parent, or previous legal or customary caregiver (If this is the case, see Annex 2).	
Separated children:		
☐	The child is being considered for 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 which is under consideration may lead to permanent separation from parents or previous legal / 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.	
Other children at risk:		
☐	The child has disclosed past abuse or neglect, or fears of future harm in their current care arrangement (see Section 4.3 and Checklist in Annex 4).	
☐	The durable solution which is being considered could put the child at risk of severe harm (e.g. re-recruitment into an armed group).	
☐	The child expresses significant concerns about or objections to the durable solution proposed.	
Remarks:		
Checklist completed by:	(Name & function)	
	(Signature)	
	Date:	
Reviewed by:	(Name & function)	
	(Signature)	
	Date:	

ANNEX 2:

FAMILY REUNIFICATION CHECKLIST TO DETERMINE IF A BID IS REQUIRED

This checklist should be completed before facilitating family reunification. 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 his or her 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 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.) which 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 his or her father or mother or previous legal or customary caregiver.
☐	The child is reluctant to be reunited with the family member(s).
☐	The child and the family member that s/he is joining have never lived together, or have not lived together for a significant period.
☐	The 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 4.4 of BIP Guidelines and Checklist in Annex 4).
Note that in certain circumstances, simplified decision-making procedures can be applied. See Section 5.6.	
Remarks:	
Checklist completed by:	(Name & function)
	(Signature)
	Date:
Reviewed by:	(Name & function)
	(Signature)
	Date:

* Where this is the only statement that applies, simplified decision-making procedures can be applied. See [Section 5.6](#).

ANNEX 3:

TEMPORARY CARE CHECKLIST TO DETERMINE IF A BID IS REQUIRED

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 (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 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.) which 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.
Remarks:	
Checklist completed by:	(Name & function)
	(Signature)
	Date:
Reviewed by:	(Name & function)
	(Signature)
	Date:

ANNEX 4:

SEPARATION OF A CHILD FROM PARENTS AND UNSOLVED CUSTODY CHECKLIST TO DETERMINE IF A BID IS REQUIRED

A BID is required in cases of possible separation of a child from parents against their will and unsolved custody issues, if any of the following statements applies (please tick relevant boxes) in situations where UNHCR is responsible for BIP:

Severe harm from the parents/ caregivers:		
☐	If the State authorities are unwilling or unable to take action in cases of severe forms of abuse or neglect within the family.*	
☐	If 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.	
☐	If the child is, or is likely to be, exposed to sexual abuse or exploitation by the parents/ or legal/customary caregivers, such as the inducement or coercion of a child to engage in any unlawful sexual activity; exploitative use in prostitution or other unlawful sexual practices; exploitative use in pornographic performances and materials.	
☐	If the child is, or 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.	
Parents' separation and unsolved custody disputes:		
☐	If the parents separate and the child is abandoned.	
☐	If the parents separate and both parents want the child to stay with him or her.	
☐	In all cases in which the resettlement of one parent is based on a protection risk emanating from within the family (e.g. domestic violence cases).	
☐	If resettlement is being considered for a child with only one parent, and the parent not resettling refuses to give consent for the resettlement of the child; or there are indications that the child might be at risk within the family being considered for resettlement.	
☐	The parents do not agree with whom the child should be submitted for resettlement, in those cases where the two parents will be submitted separately.	
☐	If the resettlement country's national legislation forbids polygamy, this could lead to the children of the other spouses being separated from their father/ mother.	
☐	If 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.	
☐	If 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.**	
Remarks:		
Checklist completed by:	(Name & function)	
	(Signature)	
	Date:	
Reviewed by:	(Name & function)	
	(Signature)	
	Date:	

* 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).

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

ANNEX 5

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

NATIONS UNIES
HAUT COMMISSARIAT

UNDERTAKING OF CONFIDENTIALITY (BID PROCEDURE)

Name:

Role:

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

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

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

Signature:

Date:

Place:

ANNEX 6:

BEST INTEREST ASSESSMENT – BIA

Case worker ID:	PRIORITY OF CASE		☐ Emergency ☐ High ☐ Medium ☐ Low		
Organization ID:					
GENERAL					
UNHCR Individual Number		Child Protection Case #			
BIA Number		Date case was opened			
BIA Status	☐ Pending interview ☐ Pending recommendation ☐ Pending review ☐ BIA completed	BIA status change reason			
Main purpose of BIA	☐ Child at risk ☐ Alternative Care ☐ Family tracing ☐ Family reunification ☐ Resettlement ☐ Other	Main purpose of BIA (details)			
BIA by		Source of referral (when applicable)	☐ Reception ☐ Registration ☐ RSD ☐ Protection	☐ Assistance ☐ UNHCR Partner ☐ Government ☐ Person of Concern ☐ Other	
Partner Case ID					
Partner Organization					
Partner Organization details					
BIO DATA					
1. First Name		2. Middle Name		3. Family Name	
4. Date of Birth	DD/MM/YYYY	5. Age (when case was opened)		6. Current age	
Is age Estimated?	☐ YES ☐ NO				
7. Gender	☐ Female ☐ Male ☐ Other	8. Place of Birth		9. Country of Origin	
10. Ethnicity		11. Religion			
12. Marital status		13. Legal status			
14. Name of registration group focal point		15. Relationship to focal point			
16. Education Level		17. Languages spoken		18. Nationalities	
19. Contact details		20. Phone number		21. Email	
22. Current address		23. Date of flight			
24. Date of entry CoA		25. Reasons for flight			
26. Registration country		27. Country of asylum			

PARENT / CUSTOMARY CAREGIVER INFORMATION			
Mother		Father	
Name		Name	
DOB		DOB	
Deceased? ☐ YES ☐ NO		Deceased? ☐ YES ☐ NO	
Currently in contact? ☐ YES ☐ NO Phone number:		Currently in contact? ☐ YES ☐ NO Phone number:	
Current location – Country:		Current location – Country:	
Current location – Address:		Current location – Address:	
ASSESSMENT			
Specific Needs			
☐ Child at Risk (CR)	☐ Unaccompanied or Separated Child (SC)	☐ Legal and Physical (LP)	☐ Sexual violence (SV)
☐ Child parent (CP) ☐ Child spouse (CS) ☐ Child carer (CC) ☐ Teenage pregnancy (TP) ☐ Worst forms of child labour (LW) ☐ CAAFAG (AF) ☐ Conflict with law (CL)	☐ Separated child (SC) ☐ Unaccompanied child (UC) ☐ Child-headed household (CH)	☐ No legal documentation (ND) ☐ Unmet basic needs (BN) ☐ Violence, abuse or neglect (AN) ☐ Marginalised (MS)	☐ Survivor in CoO (VO) ☐ Survivor in CoA (VA) ☐ FGM (GM) ☐ Harmful traditional practices (HP) ☐ Child marriage (forced/early) (FM) ☐ Survival sex (SS)
☐ Family Unity (FU)	☐ Disability (DS)	☐ Serious Medical Condition (SM)	
☐ Tracing required (TR) ☐ Reunification required (FR)	☐ Physical disability (PM) ☐ Visual impairment (BD) ☐ Hearing impairment (DF) ☐ Mental/intellectual disability (MM)	☐ Chronic illness (CI) ☐ Critical medical condition (CC) ☐ Other condition (OT)	
Care Arrangements (UASC and children separated from parents for protection)			
Full Name of current caregiver:		Ind. ID (if registered)	
Relationship to child:		Sex: ☐ Male ☐ Female	
Caregiver's Date of Birth: DD/MM/YYYY		Age	Contact details of Caregiver:
Number of children in the household:			
Is the care arrangement formalized? ☐ YES ☐ NO		Type of Care arrangement:	
Care Arrangement description:		☐ Foster Care	
		☐ Kinship Care	
		☐ Institutional Care	
		☐ Supported Independent Living	
		☐ Child-headed household	
		☐ Customary caregiver	
		☐ Other	
Assessment of the Care arrangement (include positive attributes, concerns, risks)			

Does the child need a family tracing and reunification intervention: ☐ YES ☐ NO			
Details of person to be traced:			
Protection and Safety			
Psychological			
Education			
Legal and Documentation			
Health and Nutrition			
Basic needs (Food, Shelter, NFI, WASH)			
Other Needs			
INTERVIEW DETAILS			
Persons interviewed for the BIA:			
Interview By		Interview completion date	DD/MM/YYYY
Interview organization		Language of the interview	
Additional information:			
HOME VISIT			
Home visit conducted: ☐ YES ☐ NO		Home visit date	DD/MM/YYYY
Child present during the home visit: ☐ YES ☐ NO			
Home visit comments:			
SUMMARY AND RECOMMENDATIONS			
Child's views			
Caregiver's views			

Has a BIA/ previously been conducted for the child? ☐ YES ☐ NO			
Prior BIA date: DD/MM/YYYY			
Prior BIA conducted by: Name:		Organisation	
Has a BIA/ previously been conducted for the child? ☐ YES ☐ NO			
Prior BIA date: DD/MM/YYYY			
Prior BIA conducted by: Name:		Organisation	
Summary of the Assessment			
BID Referral necessary ☐ YES ☐ NO Recommendations			
REVIEW			
Review Note			
Review by		Review date	DD/MM/YYYY
CONSENT			
Does the child (or caregiver if appropriate) give informed assent or consent for the interview?			☐ YES ☐ NO
Does the child (or caregiver if appropriate) give informed assent or consent to receive case management services?			☐ YES ☐ NO
Does the child (or caregiver if appropriate) give informed assent or consent to share information with other organizations for service provision?			☐ YES ☐ NO
Does the child (or caregiver if appropriate) give informed assent or consent for sharing non-identifiable information for statistical purposes?			☐ YES ☐ NO
Person providing consent name / ID:		Relationship to child (select 'Child' if no caregiver):	
Restrictions on information sharing:			

ANNEX 7:

SAMPLE COMPREHENSIVE BIA FORM

This form is to be used to complete a comprehensive assessment for all complex child protection cases, including those involving separated and unaccompanied children. If a rapid assessment has been conducted, attempt to fill in as much information as possible prior to the interview and verify it with the child and family in the course of the interview.

Begin by explaining the purpose of your interview and asking for the child and family's permission to talk about their family and home life. For each section, ask a general question first and allow the child to guide the interview. Fill in as much information as possible from what they tell you before asking clarifying questions.

Case worker ID:	PRIORITY OF CASE		☐ Emergency ☐ High ☐ Medium ☐ Low		
Organization ID:					
GENERAL					
UNHCR Individual Number		Child Protection Case #			
BIA Number		Date case was opened			
BIA Status	☐ Pending interview ☐ Pending recommendation ☐ Pending review ☐ BIA completed	BIA status change reason			
Main purpose of BIA	☐ Child at risk ☐ Alternative Care ☐ Family tracing ☐ Family reunification ☐ Resettlement ☐ Other	Main purpose of BIA (details)			
BIA by		Source of referral (when applicable)	☐ Reception ☐ Registration ☐ RSD ☐ Protection	☐ Assistance ☐ UNHCR Partner ☐ Government ☐ Person of Concern ☐ Other	
Partner Case ID					
Partner Organization					
Partner Organization details					
BIO DATA					
1. First Name		2. Middle Name		3. Family Name	
4. Date of Birth	DD/MM/YYYY	5. Age (when case was opened)		6. Current age	
Is age Estimated?	☐ YES ☐ NO				
7. Gender	☐ Female ☐ Male ☐ Other	8. Place of Birth		9. Country of Origin	
10. Ethnicity		11. Religion			
12. Marital status		13. Legal status			

14. Name of registration group focal point		15. Relationship to focal point			
16. Education Level		17. Languages spoken		18. Nationalities	
19. Contact details		20. Phone number		21. Email	
22. Current address		23. Date of flight			
24. Date of entry CoA		25. Reasons for flight			
26. Registration country		27. Country of asylum			

Parent / Customary Caregiver information*		
Parent 1	Parent 2	Customary Caregiver
Name	Name	Name
DOB	DOB	DOB
Deceased? ☐ YES ☐ NO	Deceased? ☐ YES ☐ NO	Deceased? ☐ YES ☐ NO
Currently in contact? ☐ YES ☐ NO Phone number:	Currently in contact? ☐ YES ☐ NO Phone number:	Currently in contact? ☐ YES ☐ NO Phone number:
Current location – Country:	Current location – Country:	Current location – Country:
Current location – Address:	Current location – Address:	Current location – Address:
When did you last see your [Parent 1]?		
Where?		
Where do you think your [Parent 1] is now?		
When did you last see your [Parent 2]?		
Where?		
Where do you think your [Parent 2] is now?		
When did you last see your [Customary Caregiver]?		
Where?		
Where do you think your [Customary Caregiver] is now?		
OTHER FAMILY MEMBERS		
Name	Age/Sex	Current whereabouts

* This information on family members (mother/father/ siblings-their whereabouts, etc) needs to be collected in case of unaccompanied and separated children

SECTION 1: History of family separation and tracing needs
How did you become separated from your family? (Indicate time, place of separation, as well as causes of separation.)
Why did you leave your home country?
How did you travel to (name of the country of asylum)? (Indicate mode and route of travel, names of persons who assisted and their relationship to the unaccompanied/separated child)
When did you arrive in (name of the country of asylum)?
Do you have any relatives or friends in (name of the country of asylum)? If so, provide name, relationship.
Is there anything you would like to tell about your flight?
Would you like to receive help to find some of your family members? If so, note whom the child would like to trace and any information the child has about relatives' location.
Is tracing taking place? If yes, by which agency? Is the child being informed about the tracing results? Are there additional needs?

SECTION 2: Care Arrangements and Living Conditions					
Can you tell me about your family (the family you are living with)?					
2a) Care Arrangements					
Who do you currently live with? More than one possible (Complete Part F if child is not accompanied by his parents)					
☐ Immediate family ☐ Female-headed household ☐ Elderly Caregiver ☐ Alone ☐ Extended family ☐ Host family ☐ Other children ☐ Others:					
How is your relationship with your family/ the people you live with? Do you like to stay here? (If child spouse, ask about treatment from spouse and family) <i>Describe the present care arrangement from the child's point of views, you do not need to quote the child ("the child explained that he is presently living with..."). Be detailed: what is the precise family link between child and caregiver? Since how long do they know each other? How often were they in contact before the child came and live with him/her? how was the relationship before? How is the relationship now? How does the caregiver support the child? Does s/he cook for the child? Do they eat together? Do they play together? Is the caregiver supportive when child is facing problems? Does the child trust the caregiver? Does the child want to live with caregiver on the long term?</i>					
In case of no home visit – Ask the child how they would describe the place where you are staying? Otherwise fill in from your own observations.					
If home visit conducted Date: Interviewer's observation on housing: Number of rooms: Number and identity of persons sleeping in same room as the child:	Which type of accommodation: ☐ Owned house/apartment ☐ Host Family ☐ Renting house/ apartment ☐ Collective Shelter/Centre ☐ Tent (ITS or FTS) ☐ Garage or unfinished building ☐ Other (specify)		Housing conditions: ☐ Overcrowding ☐ Dangerous items in household ☐ Unhygienic ☐ Not suitably equipped for climate ☐ Other (specify)		
Other (Shelter or Wash assistance received etc)					
2b) Family Members living with the child					
Full Name	Relationship to child	Sex (M/F)	Marital status	Date of Birth / Age	Specific needs

2c) Consultation with parents/ adult caregivers					
Name:			Date of Birth/Age		
Sex: £ Male £ Female			Nationality:		
Relationship to child:			Religion:		
Are you the legal guardian for this child? ☐ No ☐ Yes if yes, are guardianship documents available? ☐ Not legally, but with permission of the parents					
How would you describe your relationship with the child?					
How is the child getting along with other children? What daily activities are they engaged in?					
IF SEPARATED OR UNACCOMPANIED ONLY: What information do you have about the child, his/her life and the family separation? Include information about status of father or mother, any contact caregiver has with child's other family members, etc.					

SECTION 3: Health and Safety	
3a) Safety/Security (Complete Part F if specific concerns arise)	
Do you feel safe here (in your accommodation, in your neighbourhood, etc)? If not what are the reasons, list any concerns.	
What were you doing before you came to "country of Asylum" (CoA)? How did you make your way to CoA?	
3b) Psychosocial wellbeing	
Where/to whom do you go to discuss problems or ask for help/assistance?	
☐ Mother ☐ Father ☐ Friends ☐ Neighbours ☐ Other family member (specify) grandfather and grandmother _____ ☐ Other (specify) _____ ☐ No One	
Do you ever trouble sleeping? Do you have nightmares?	
Interviewer observation: Does the child appear distressed or have such difficulty functioning in their daily life that they should be assessed by a mental health professional? If yes, describe why?	
3c) Health/medical access	
How are you feeling? How is your health?	
Do you have any problems accessing medical care? (Does the child know where and how to access care) If so, explain why.	
Interviewer observations: Does the child look healthy and/or have any disabilities?	

SECTION 4: Daily life
Can you tell me a bit about what you do each day?

4a) Education		
Do you attend school or ever miss school? ☐ I always attend school ☐ Don't attend school at all ☐ Once per week ☐ Once per month ☐ Never	What grade are you in (in CoA)? _____ What other education activities do you attend? _____	Do you attend remedial classes? ☐ No ☐ Yes (where) _____ Did you attend school in your home country? If yes until which grade and for how long. _____
Do you have any difficulties or problems at school or going to school? If so, what are they? _____		
4b) Daily activities		
Can you tell me a little bit about what you do each day? Do you spend time with friends, other children? _____		
Do you currently work? ☐ Yes if yes, How many hours per day: _____ How many days per week: _____ ☐ No Type of work: _____ For how many months: _____		
Do you earn any money for the work? Is so, how much and what do you use it for. _____		
Does your family depend on the money you earn ? ☐ No ☐ Yes if yes, specify _____		
Interviewer observations: Does the work constitute Worst Forms of Child Labour (WFCL)(ILO Convention 1999 No. 182): slavery or slavery-like practices, recruitment of children into armed forces/groups, prostitution, production of pornography, illicit activities such as drug trafficking, or an immediate risk to the child's health and safety. ☐ No ☐ Yes Please explain: _____		
Other		
Is there any other information you would like to share with me today? Is there anything else you would like to talk to me about today? _____		

SECTION 5: Conclusions			
Additional observations and comments of the interviewer. Include any observations on the child and family's resources and strengths. _____			
SPECIFIC NEEDS			
☐ Child at Risk (CR)	☐ Unaccompanied or Separated Child (SC)	☐ Legal and Physical (LP)	☐ Sexual violence (SV)
☐ Child parent (CP) ☐ Child spouse (CS) ☐ Child carer (CC) ☐ Teenage pregnancy (TP) ☐ Worst forms of child labour (LW) ☐ CAAFAG (AF) ☐ Conflict with law (CL)	☐ Separated child (SC) ☐ Unaccompanied child (UC) ☐ Child-headed household (CH)	☐ No legal documentation (ND) ☐ Unmet basic needs (BN) ☐ Violence, abuse or neglect (AN) ☐ Marginalised (MS)	☐ Survivor in CoO (VO) ☐ Survivor in CoA (VA) ☐ FGM (GM) ☐ Harmful traditional practices (HP) ☐ Child marriage (forced/early) (FM) ☐ Survival sex (SS)
☐ Family Unity (FU)	☐ Disability (DS)	☐ Serious Medical Condition (SM)	

☐ Tracing required (TR) ☐ Reunification required (FR)	☐ Physical disability (PM) ☐ Visual impairment (BD) ☐ Hearing impairment (DF) ☐ Mental/intellectual disability (MM)	☐ Chronic illness (CI) ☐ Critical medical condition (CC) ☐ Other condition (OT)	
The child is at imminent risk? ☐ No ☐ Yes		Risk Assessment, ☐ 24 hours (High Risk) ☐ 3 days (Medium Risk) ☐ 1 week (Low Risk)	
5a) Recommendations for additional actions			
Indicate the available options and analysis. What is recommended for the child's best interest considering: Views of the child, Safe Environment, Family and close relationships, Development and identity needs			

ACTION PLAN			
4a) Narrative			
<i>Please describe the logic of the action plan for the child. Include the child's own goals and the steps to be taken to get there.</i>			
Actions for the Child			
Actions for family members / other caregivers			
Next Actions/ Follow Up Needed (including development of case plan and time frame for all actions)			
Type of Action	Details	Timeframe	Type
Family tracing			☐ Intervention ☐ Referral
Protection and Safety			☐ Intervention ☐ Referral
Psychosocial			☐ Intervention ☐ Referral
Education			☐ Intervention ☐ Referral
Legal and Documentation			☐ Intervention ☐ Referral
Health and Nutrition			☐ Intervention ☐ Referral
Basic Needs			☐ Intervention ☐ Referral
Other			☐ Intervention ☐ Referral
4b) Review			
Name and Signature of Interviewer:		Name and Signature of Reviewer:	
Date:		Date:	

ANNEX 8:

BEST INTERESTS DETERMINATION REPORT

SECTION 1: OVERVIEW

CAMP / LOCATION:		LINKED CASES:	
BID NO:		CASE NO:	
REGISTRATION NUMBER:			
SEPARATION STATUS OF THE CHILD		PURPOSE OF BID	
UNACCOMPANIED	☐	DURABLE SOLUTION	☐
SEPARATED	☐	FAMILY REUNIFICATION	☐
ORPHAN	☐	TEMPORARY CARE ARRANGEMENTS	☐
NONE OF ABOVE	☐	SEPARATION FROM PARENTS/CAREGIVER	☐
		OTHER	☐
PRIORITY OF THE CASE			
☐ Emergency ☐ High ☐ Medium ☐ Low		REASONS	
SPECIFIC NEEDS OF THE CHILD			
CHILD'S BASIC BIO-DATA (REFER TO REGISTRATION FORM)			
	WHERE RELEVANT, INDICATE IF INFORMATION IS AN ESTIMATE		
FULL NAME			
ALIAS			
AGE			
GENDER			
DATE OF BIRTH			
PLACE OF BIRTH			
DATE OF ARRIVAL IN THE COUNTRY			
DATE OF ARRIVAL AT CURRENT LOCATION			
NATIONALITY			
ETHNICITY			
RELIGION			
CURRENT ADDRESS			
REGISTERED ADDRESS			
CURRENT CAREGIVER			
RELATED CASE (S)			
LINKED BID(S)			
NAME OF FATHER			
NAME OF MOTHER			
SIBLINGS			

TRACING	STARTED ON	
	STATUS	
INTERVIEWS		
PERSON INTERVIEWED	NO. OF INTERVIEWS	DATE OF INTERVIEWS
	NAME	ORGANIZATION
INTERVIEWER		
REVIEWING OFFICER		
INTERPRETER		
DOCUMENTATION ATTACHED		
1		
2		
3		

SECTION 2: OPTIONS AND RECOMMENDATIONS

Part I – BRIEF SUMMARY INFORMATION ON THE CASE

Please **briefly summarize** key issues, such as current care arrangement, information on parents and family, and the options under consideration.

Part II – HISTORY PRIOR TO FLIGHT/SEPARATION

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

Part III – CURRENT SITUATION

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

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

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

Part IV – AVAILABLE OPTIONS & ANALYSIS

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

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

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

FINAL RECOMMENDATION

Please provide the final recommendation and reasons.

NAME OF THE ASSESSOR:	DATE:
SIGNATURE OF THE ASSESSOR:	

NAME OF REVIEWER:	
COMMENTS BY REVIEWER TO THE REPORT:	
SIGNATURE OF REVIEWER:	DATE:

SECTION 3: PANEL DECISION

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

THE PANEL		
☐ Approves the recommendations ☐ Defers decision (please explain why) ☐ Does not approve the recommendations (please explain why and provide the panel’s recommendation) ☐ Reopens the case (please explain why, and who requested the reopening) ☐ Closes the case		
FULL REASONS FOR DECISION		
FOLLOW UP ACTIONS REQUIRED (DESCRIBE)		
COMMENTS		
SIGNATURE OF PANEL MEMBERS		
NAME	ORGANIZATION	SIGNATURE

DATE:

ANNEX 9:

BEST INTERESTS DETERMINATION REVIEW REPORT – CASE REVIEW OR RE-OPENING FORM

(To be used to review whether a BID needs to be re-opened or whether the recommendations can be upheld)

Case Details	
Name of Child:	Indiv. Registration No:
BID Case No:	Linked BID(s):
Date of BID decision:	Case Referred By:
BID Recommendations (please provide a summary of the recommendations of the BID):	
Address:	Resettlement Case Number (if applicable) :
Name of current caregiver:	Indiv. Registration No:

Reasons for review of the BID decision (tick all that apply)	
☐	Review of decision after 12 months (recommendations not yet implemented)
☐	Inability to implement decision
☐	At the direct request of the Child
☐	At the direct request of the Caregiver(s)
☐	Other(s) (please indicate)

REVIEW DETAILS

Interviews		
Person(s) interviewed for the review and their relationship to the child)	No. of interviews	Date of Interviews
Child		
Caregiver		
Parents (if present)		

	Name	Organization
Interviewing Officer		
Interpreter		
Reviewing Officer		

Case Summary

Current Situation
<i>Please provide an overview of child's situation, highlighting any significant changes from the BID Report in care arrangement, health, education, psychosocial well-being, access to durable solutions, protection concerns or other areas</i>

Child's Views
<i>Please provide an overview of the views of the child on their current situation and on the proposed course of action indicated by the BID</i>

Final Recommendations (tick as appropriate)
☐ Reopen the BID (please tick the applicable reason below)
☐ Additional information in relation to tracing of child's parents and/or relatives
☐ New protection concerns identified
☐ Change in family composition / care arrangement
☐ Change in the views of the child / caregiver / parents
☐ Change in the child's potential access to durable solutions
☐ Other substantive change in the child's situation
☐ Original BID decision cannot be implemented in a reasonable timeframe
☐ Other:
☐ Uphold BID recommendations and do not re-open
Comments:

Name & Signature of the assessor:
Date:

Comments by Reviewer to the report:
Name & Signature of Reviewer:
Date

Guidance notes for the use of this form:

- **Responsibility of the BID Supervisor for the recommendation to re-open:** A BID decision can be reopened if the recommendations have not been implemented in a reasonable time period (one year is a reference point for durable solutions in particular), and that reopening a BID decision is normally the responsibility of the BID Supervisor. The case would only need to go to the Panel if there is a recommendation to re-open. There is no need to re-open 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
 - ▶ There is no reason to believe that it will not be possible to implement the BID decision within a reasonable timeframe.
- **Changes in circumstances that would merit re-opening:** The Guidelines only explicitly mention successful tracing and the emergence of new evidence as examples of 'changes in circumstances'. Other material changes in circumstances that could be considered as meriting the re-opening of a BID include, *inter alia*:
 - ▶ Any change in the child's views about the proposed resettlement, or those of the parent / caregiver (that the child resides with and/or that the child may be going to join). This is particularly important to re-assess, since the maturity of a child can evolve significantly over the course of a year as the child develops.
 - ▶ Any departure or arrival of family members or other persons close to the child either in the country of asylum or the proposed country of resettlement, especially those who are directly considered in the RRF.
 - ▶ Any change in the protection risks affecting the child – e.g. any new and different protection incidents that have occurred since the BID decision was taken (e.g. an incident of sexual abuse or assault, incidents of physical violence in the family, etc.).
 - ▶ Any significant change in the child's access to other durable solutions – e.g. access to national services which make local integration a greater possibility.
 - ▶ Any new information or re-assessment of existing information that would indicate that the BID decision will not be possible to implement within a reasonable timeframe.
- **Assessment and documentation of child's circumstances:** In order to assess whether there are any changes on the above, it would be necessary, at a minimum, to re-interview the child, foster family / guardians, and parents/relatives again, and – wherever possible – to conduct a home visit. The above form or a BIA form can be used to document the assessment and to make recommendations either to re-open or not, to be approved by the BID Supervisor. This form can then simply be annexed to the BID report. If the recommendation is to re-open, the form and the original BID decision should be submitted to the BID Panel for review.

ANNEX 10:

ACTIONS TO SUPPORT SAFE AND MEANINGFUL CHILD PARTICIPATION IN BEST INTERESTS PROCEDURES

The following actions will help caseworkers to support safe and meaningful child participation in BIP:

- **Provide information:** the BIP should not be an extractive exercise, but rather a cooperative effort.
 - ▶ Children should always be informed about the purpose, timeframes and procedures for interviews and actions related to BIP. Children should also be invited to share their own views and to ask questions.
 - ▶ Information provided to children should be presented in an age- appropriate and accessible format.¹ Children may have diverse communication needs and preferences, depending on age, disability and other factors. Consult the child and their caregivers (if appropriate) to understand the preferred means of communication.
 - ▶ When communicating with children with disabilities – particularly children with visual, hearing or intellectual disabilities – identify the most appropriate way to communicate with them. Such children may need additional supports, such as sign language interpretation, communication boards or the presence of a support person, where appropriate.
 - ▶ Communicate with clarity and in a child friendly manner, avoiding technical terms and phrases. Regularly check that the child understood what was said. Similarly, it is important that the caseworker checks with the child that she/he understood what the child stated.
- **Be aware:** the 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 her/his participation.
 - ▶ Social norms (for instance gender roles) are likely to influence how girls and boys express themselves, for example when talking about issues and experiences that were painful, sensitive or considered embarrassing.
 - ▶ Check that the caseworker's and interpreter's gender is appropriate and that the child, where possible, has a choice with regards to the gender of their caseworker/interpreter.
- **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.
 - ▶ Explain children's rights in a manner they can understand, including their responsibility to tell the truth, their right to withdraw consent/assent, their right to access information that concerns them and their right to participate.

¹ The *Convention on the Rights of Persons with Disabilities* explicitly notes that information provided to children with disabilities must be provided in a format that is accessible and appropriate.

- ▶ Encourage and support children to explore and suggest options for follow-up and potential solutions that they themselves consider appropriate. Caseworkers should also explain the actions that they consider appropriate, and seek the child's views on the proposed action.
- ▶ Use child-friendly interviewing techniques which allow children to express themselves. Using drawing, family-trees, timelines and daily activities can help children to feel comfortable and to express their needs, capacities and views in their own words.
- **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.
 - ▶ Ask children about their preferences for duration and frequency of actions, including interviews. Explain the reasons why when it is not possible to implement their preferences.
 - ▶ If you have limited time, or you cannot respect the timeframes originally set, explain the reasons for this to the child.
- **Be sensitive:** Children at risk have often lived through traumatic events, and the decisions related to BIP can in some circumstances be upsetting.
 - ▶ When conveying a message about a decision or outcome that is not that hoped for by the child or family, preparation is needed to respond to potential distress. The caseworker must assess the likely reaction of the child, and be able to respond with psychosocial support when necessary. For example, a decision regarding the separation of a child from her/his parents will be a distressing experience for the child and parents. It is therefore necessary to explain such decisions with appropriate sensitivity, care and empathy.
 - ▶ Identify an interpreter with the appropriate gender, and discuss the case prior to meeting with the child/child's family.
- **Involve parents and caregivers:** Care must be given to ensure that parents and caregivers maintain responsibility for the child's protection, wellbeing and development, in accordance with their obligations, and in line with the best interests of the child.
 - ▶ It is important to consult/obtain permission of parents or caregivers before engaging the child.
 - ▶ Caseworkers should explain that building the child's own strengths and capacities is not aimed at undermining the role of the parents. Promoting children's meaningful participation should positively involve the child's parents or caregivers.
- **Be professional:** Ensure that staff and interpreters are trained in communication skills and are experienced in working with children.

ANNEX 11:

CHECKLIST FOR CHILD PROTECTION CASEWORKER

Actions recommended prior to submission of a BID for review

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

ANNEX 12:

CHECKLIST FOR BID SUPERVISOR

SETTING UP/ CONSOLIDATING THE BID PROCESS

- Establish a multi-functional BID panel;
- Draft, amend or update all relevant Standard Operating Procedures;
- Provide the BID team with adequate training on:
 - ▶ BIP Guidelines
 - ▶ Data collection
 - ▶ How to interview children
 - ▶ Writing techniques;
- Ensure that all members of the BID team sign the Code of Conduct and the Undertaking of Confidentiality;
- Identify competent local or national authorities, inform them regularly about the BIP process and involve them in the process, if possible;
- Consult with all the NGOs working on child protection or child welfare issues in order to define roles and responsibilities in the BIP process;
 - ▶ Identify how to inform the community about the BID purpose and process;
 - ▶ Determine how to prioritize cases.

REVIEWING THE BID REPORT FORM (IF RELEVANT)

- Check if the child's bio data is correctly reported in the BID report form;
- Check if the history of the separation/flight, or the assessment of abuse or neglect is clearly reported;
- Check that all documents utilized to draft the recommendations are available and attached to the BID report form;
- In case of resettlement for family reunification, ensure that the parents/relatives were contacted and interviewed;
- Review if the recommendations proposed are consistent with the BIP Guidelines.

LIAISING WITH THE BID PANEL

- Submit the BID report forms with the related documentation to the panel with proper advance notice;
- Act as reference point for the panel if more information or clarification on BID cases are required;
- Receive decisions from the panel and monitor that the decision and any follow-up measures are implemented;
- Ensure that the child and his or her parents or care-giver are informed in a timely manner about the decision.

MAINTAINING RECORDS

- Create a read-only electronic copy of the BID report form;
- Ensure secure filing of the BID report form and other relevant BID documents;
- If the child departs for another country, ensure that a copy of the BID report form and other key documents, such as custody decisions, travel with him/her.

RE-OPENING

- Monitor the possible need to reopen a BID decision and initiate the process if required.

ANNEX 13:

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

All factors listed below are of relevance when determining which among the available options is in the child's best interests, including identifying the follow-up measures required. The weight of each factor inevitably varies according to the individual child. Advice on the difficult task of balancing these factors is provided in Chapter 5 of the Guidelines.

VIEWS OF THE CHILD

- Child's wishes and feelings and were these obtained from the child directly
- The weight to be given to them, in light of the child's age and maturity;
- Child's ability to comprehend and assess the implications of the various options.

SAFE ENVIRONMENT

- Safety is normally a priority. Exposure or likely exposure to severe harm usually outweighs other factors. Consider:
 - ▶ safety in the geographical location/household under consideration
 - ▶ availability of life-saving medical treatment for sick children
 - ▶ past harm (frequency, patterns, trends)
 - ▶ ability to monitor
 - ▶ whether root causes of past harm still persist.

FAMILY AND CLOSE RELATIONSHIPS

a) General factors:

- Quality and duration of the relationship and degree of attachment of the child to:
 - ▶ siblings
 - ▶ other family members
 - ▶ other adults or children in the cultural community any potential care-giver;
- Potential effect of separation from family or change in care-givers on the child;
- Capacity of current and potential future care-givers to care for the child;
- Views of persons close to the child, where relevant.

b) Factors specifically relevant to durable solutions for unaccompanied or separated children:

- Possibility of family reunification (normally presumed to be in the best interests). Consider whether:
 - ▶ tracing has been initiated and its results
 - ▶ the efforts made to contact the parents/family directly the family relationship to the child has been verified
 - ▶ the child and family member are willing to be reunited and, if not, reasons for any reluctance.

- c) Factors specifically relevant to temporary care arrangements: Retention of family and sibling relationships;
 - Prospects for care in a family setting;
 - Prospects of using community care systems (provided they are safe and effective).

- d) Factors specifically relevant to separation of a child from parents against their will (normally strongly discouraged):
 - The views of both and the weight to be attached to them;
 - Quality of the relationship between the child and parents and likely effect of separation;
 - Capacity of parents to care for the child;
 - Capacity of extended family members to care for the child;
 - Considerations of proportionality in cases involving removal from family. Consider:
 - ▶ options for addressing problems in a less intrusive way
 - ▶ maintaining a minimal continuity of contact (e.g. under supervision)
 - ▶ separation for the shortest duration and early deadline for review;
 - Access rights.

DEVELOPMENT AND IDENTITY NEEDS

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

