



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Guidelines on Formal Determination of the Best Interests of the Child

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Preface

The UNHCR Guidelines on Formal Determination of the Best Interests of the Child are part of the commitment (Agenda for Protection Goal 6.2.) by UNHCR to disseminate materials on the rights of refugee children, drawing on the Convention on the Rights of the Child and other international human rights law. Information collected from a variety of reports, including the Annual Protection Reports, as well as through participatory assessments, indicates that there is no consistency among field offices as to when and how Best Interests Determinations should be carried out.

The Guidelines are for the benefit of staff from UNHCR, implementing and operational partners who are required to make and document a formal determination of the best interests of the child at field level. While the Guidelines also make reference to obligations by States and UNHCR's monitoring and supportive role, these are not addressed in a comprehensive manner. The Guidelines identify the underlying principles that can be used to construct a framework for ensuring compliance with the Convention on the Rights of the Child in a formal Best Interests Determination (BID). They set out the legal and other principles that will guide decision-makers in

- When to make a formal Best Interests Determination;
- Who should make the determination and what procedural safeguards should be followed;
- How criteria should be applied to take a decision in a particular case.

The Guidelines make frequent reference to other aspects of UNHCR's work with children, including the identification of unaccompanied and separated children, registration procedures, tracing and the appointment of a guardian. Guidance on these issues which are generally preconditions for a proper formal BID are included in the 1994 *Refugee Children: Guidelines on Protection and Care* as well as in the 2004 *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* and in the reference materials listed in these two documents.

These Guidelines will be included into an updated version of the 1994 *Refugee Children: Guidelines on Protection and Care*.

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Definitions

- The word **child** is used throughout these Guidelines in accordance with the definition contained in Article 1 of the CRC. In line with the Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.
- **Unaccompanied children** (or **unaccompanied minors**) are children who have been separated from both parents and relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.
- **Separated children** are those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from their relatives. These may therefore include children accompanied by adult family members other than their parents.
- **Orphans** are children whose parents are both known to be dead. In some countries, however, a child who has lost one parent is also considered an orphan.
- **The best interests assessment** is part of a continuous process in which the best interests of the child are pursued continuously as the overall goal of any interventions made on behalf of an unaccompanied or separated child throughout the displacement cycle.
- **The formal Best Interests Determination (BID)** is a formal process with specific procedural safeguards and documentation requirements that is conducted for certain children of concern to UNHCR, whereby a decision-maker is required to weigh and balance all the relevant factors of a particular case, giving appropriate weight to the rights and obligations recognized in the CRC and other human rights instruments, so that a comprehensive decision can be made that best protects the rights of children.

Part 1

The Best Interests Principle

1. International Legal Framework

1.1. Convention on the Rights of the Child

While child rights are set forth in a number of international legal instruments, the **Convention on the Rights of the Child**¹ (CRC) is the most authoritative international legal instrument for the protection of children's human rights, with almost universal acceptance. The CRC has highlighted the fundamental human dignity of all children, the urgency of ensuring their protection, well-being, survival and development, and the concept of children as bearers of human rights.

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

In addition to these four principles, the CRC provides for a number of fundamental rights which include, *inter alia*, the need to protect children from abuse, exploitation and neglect², and the importance of the physical and intellectual development of the child³. It also gives particular attention to the role of the family in providing care to the child⁴ as well to the special protection of asylum-seeking and refugee children⁵.

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

The CRC does not offer a precise definition of the best interests of the child. While the term “best interests” broadly describes the well-being of a child, it is not possible to give a conclusive definition of what is in the best interests of the child, as this depends on a variety of individual circumstances, such as the age and the level of maturity of the child, the presence or absence of parents, the child’s environment, etc. The term “best interests” should, however, be interpreted and applied in conjunction with the CRC and other international legal norms. It is important to be aware that for certain specific actions, including adoption and separation from parents against their will, the CRC requires that the best interests be the *determining factor*, whereas for other actions it has to be a primary consideration, which does not exclude other considerations to be taken into account. Annex 1 contains the exact wording of the CRC that refers to the term “best interests”.

1.2. Other legal sources

When determining the best interests of the child, it is important to consider all the rights of the child. In addition to the norms contained in the CRC, there are other legal bases, both at the international and the national level, that may affect the decision on what constitutes the best interests in a particular situation. One has, however, to take into account that the higher standard shall always apply⁶.

Other international and regional human rights instruments⁷, including general human rights, international humanitarian law⁸, refugee law⁹, as well as specific instruments focusing on children, are important guides in a BID. The latter include, among others, the Optional Protocols to the CRC¹⁰, the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption and its 1994 Recommendation concerning the application to refugee and other internationally displaced persons¹¹, the African Charter on the Rights and Welfare of the Child 1990¹², as well as ILO Conventions No. 182 (Worst Forms of Child Labour Convention, 1999)¹³ and No. 138 (Minimum Age Convention, 1973)¹⁴. General comment No. 6 (2005) by the Committee on the Rights of the Child on the “Treatment of unaccompanied and separated children outside their country of origin”¹⁵ provides assistance in understanding or interpreting the CRC, as may concluding observations by the Committee on the Rights of the Child in relation to the country of operation.

National law and domestic jurisprudence play an important role in translating international law into the national context, although some caution should be applied when using domestic law for guidance on the meaning of “best interests” during a BID. The principle of the best interests of the child was originally devised to guide judges’ decisions on custody disputes as a result of divorce or petitions for adoptions. The principle set forth in Article 3 CRC was primarily meant to ensure that measures were put in place to allow for proper consideration of the well-being of the child when making a decision that affected the child. Nevertheless, national law may provide more specific guidance on general principles set forth in international instruments and offices should analyse applicable domestic legislation. For instance, the 1989 UK Children Act (c.41) provides in Section 1 (3) a useful checklist for courts when determining questions relating to the upbringing of a child.¹⁶

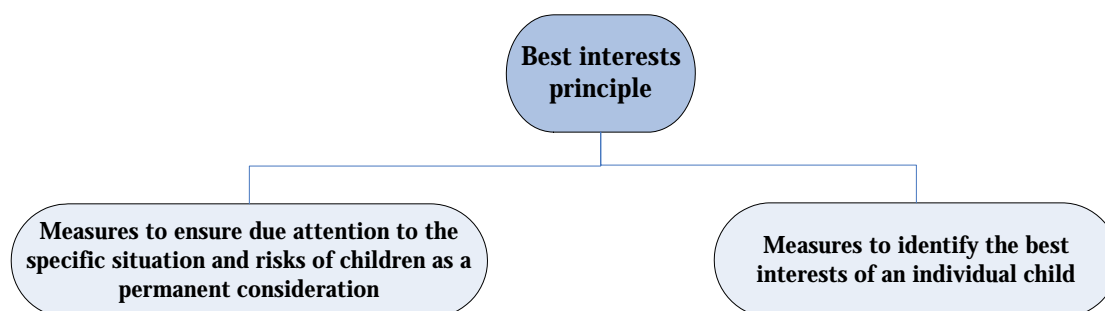
2. How to identify the best interests of the child

One of the key priorities of UNHCR is to protect and promote within its capacity the rights of all children including adolescents.¹⁷ Children have needs and rights in addition to those of adults. Care must be taken to ensure that the specific needs, capabilities, and rights of children – girls and boys of all ages and backgrounds – are perceived, understood and attended to. In carrying out its activities, UNHCR has to be guided by refugee law, international humanitarian law and international human rights law, including the CRC, which has been adopted as a normative frame of reference in relation to its actions on behalf of children¹⁸.

The principle arising from Article 3, that the best interests of the child shall be a primary consideration, should be applied in a systematic manner in any planning and policy-making by the Office that affects a child of concern to UNHCR and must permeate all protection and care issues involving UNHCR.

For actions of a general character, such as data collection, planning, resource allocation, project implementation, monitoring, or development of guidelines as well as actions affecting individual children of concern to the Office, the best interests principle requires that measures are taken to ensure that due attention is given to the specific situation and protection risks of children. Such measures include, for instance, the insertion of child-specific aspects in UNHCR Guidelines, Policies and Standard Operating Procedures.

Diagram 1. Best Interests Principle



For actions affecting individual children of concern to the Office, the best interests principle requires UNHCR to assess what is in the best interests of the child in every step of the displacement cycle and to give it primary consideration. While relevant for all children of concern to the Office, the identification of the best interests of unaccompanied and separated children requires special attention given the particular risks that they face. Depending on the type of decision on the different procedural safeguards that need to be put in place in order to identify what option, among those available, corresponds to the best interests of the child, a distinction is introduced between a best interests assessment and a formal Best Interests Determination.

2.1. Best interests assessment

The best interests assessment is a continuous process that has particular relevance for unaccompanied and separated children. It starts from the moment of their identification, and continues throughout the displacement cycle until a durable or long-term solution is implemented. Any decision and action affecting the child, including, among others, identification and registration, family tracing, the determination of the most appropriate temporary care arrangement, the appointment of a guardian, monitoring of temporary care arrangements, refugee status determination procedures, family reunification, etc. must be instilled with considerations for the best interests of the child. Such decisions and actions cannot be taken unless an assessment is made by the responsible officer on what option is in the best interests of the child.

Measures shall be taken to ensure that the child participates in the decision. The degree to which such assessment is documented will vary according to the type of decision to make and the need to refer to such a decision and its reasoning at a later stage. Whereas some decisions (such as the decision on when to schedule a newly arrived unaccompanied or separated child for the eligibility interview) will not require a separate note for the file, decisions on temporary care arrangements for unaccompanied or separated children should be recorded with a specific reason. Furthermore, while the decision will be made by the responsible officer, the consultation of other persons may be necessary depending on the issue.

Guidance on how to ensure that the most appropriate decision is taken when dealing with unaccompanied and separated children is included in a number of documents:

- **Inter-Agency Guiding Principles on Unaccompanied and Separated Children**, (UNHCR, UNICEF, ICRC, IRC, Save the Children (UK), World Vision International, Geneva, January 2004)
- **Refugee Children: Guidelines on Protection and Care** (UNHCR, Geneva, 1994)
- **Working with Unaccompanied Children: A Community-based Approach** (UNHCR, Geneva, revised May 1996)
- **Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum**, (UNHCR, Geneva, 1997)
- **The Separated Children in Europe Programme: Statement of Good Practice**, (UNHCR and International Save the Children Alliance, Brussels, third edition, October 2004)
- **Working with separated children, Field Guide. Training Manual and Training Exercises**, (Save the Children UK, London, 1999).

2.2. Formal Best Interests Determination (BID)

The CRC suggests that higher safeguards are required in some circumstances, as specific procedural guarantees are provided for decisions on the separation from parents (Art. 9) and for adoption decisions (Art. 21). In relation to unaccompanied and separated children outside their country of origin, the Committee on the Rights of the Child has clarified that in order to pay due respect to Article 3 of the CRC, a Best Interests Determination must be “documented in preparation of any decision fundamentally impacting on the child’s life”¹⁹.

For specific actions for which higher procedural safeguards are required, a procedure for a formal Best Interests Determination (BID) has to be put in place in order to ensure that sufficient attention is given to determine what is in the best interests of a child in each individual case. In these cases, more than one individual has to be involved in the process and a **formal Best Interests Determination (BID)** procedure, in which each step of the procedure has to be documented, is required for every individual child.

In UNHCR's view, higher procedural safeguards are necessary in case of a cumulative presence of the following three conditions:

- **The parents are absent, do not or are unable to exercise basic parental responsibilities.**
Normally, the best interests of the child are best secured by the parents. Therefore, a formal BID with higher procedural guarantees is considered necessary for children whose parents are absent, do not or are unable to exercise basic parental responsibilities. As recognised by the CRC, particularly in Article 20, children deprived of their family environment face greater risks, including sexual exploitation and abuse, military recruitment, child labour, lack of access to education and basic assistance, and detention. UNHCR's experience has shown that even if refugee children are "accompanied" by an extended family member, this does not necessarily decrease their exposure to risks like those of unaccompanied children.
- The decision has a **fundamental impact on the future of the child.**
Such a fundamental impact can be expected for those situations in which the CRC gives predominant weight to the best interests of the child, thus going beyond the requirement of Article 3 CRC (*e.g.* adoption and separation from parents). This is clearly also the case for durable solutions decisions.
- A **complex balancing of factors and rights** is required to determine the best interests of the child in the individual case.

On the basis of the three criteria listed above, the following three situations have been identified as those in which a formal BID by UNHCR is required for children of concern to UNHCR:

- a) to identify durable solutions for unaccompanied and separated refugee or IDP children;
- b) to decide on temporary care arrangements for unaccompanied and separated children in particularly complex situations;
- c) to decide on the separation of a child from his or her parents against their will.²⁰

There may be other situations, however, in which the BID may be a useful protection tool, depending on the national context or the individual case at stake, such as, at times, placement into foster families.

The following diagram summarizes the type of actions that UNHCR needs to take in order to take into account the best interests principle in every step of its operations:

Diagram 2. Best Interests Principle

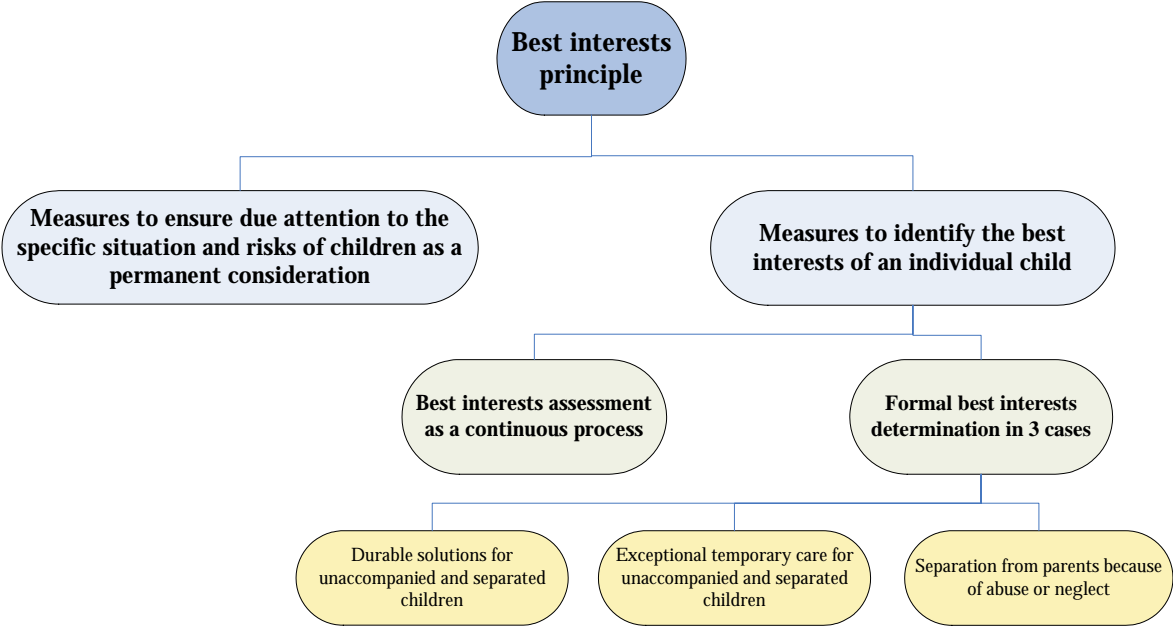
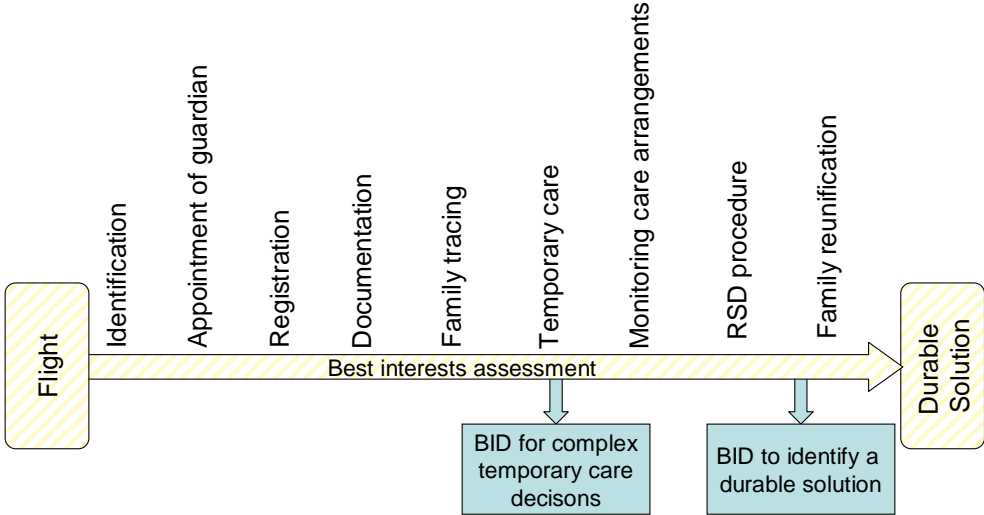


Diagram 3 shows the relationship between the best interests assessment (as a continuous process regarding all decisions and actions affecting the child) and the formal Best Interests Determination for *unaccompanied and separated children*. It should be noted that the graph only highlights the most important decisions and actions and that these are not necessarily listed in chronological order, as some actions are of an ongoing nature (e.g. monitoring of care arrangement), whereas others may be taken at different stages depending on the individual case.

Diagram 3. Unaccompanied and Separated Children



3. Decisions by States and UNHCR's role

In most cases decisions that require higher procedural safeguards fall under the competence of States. States that have signed and ratified the CRC bear the responsibility to ensure its implementation. This includes the obligation to give the weight required by the CRC to the best interests of the child when making decisions affecting children of concern to UNHCR. Examples in which States are required to follow specific procedural safeguards in making a decision affecting a child include adoption, separation from parents, appointment of a guardian for unaccompanied or separated children and the return of unaccompanied children to their country of origin. UNHCR's mandate for refugee and other children of concern requires the Office to monitor that all rights of children of concern are observed, including monitoring that procedural safeguards foreseen in the CRC and international law are respected.

If necessary, UNHCR should furthermore aim at supporting child welfare structures or where such are not present, other competent national or local authorities in abiding by the requirements of the CRC in dealing with children of concern to the Office. A thorough analysis will be necessary to establish the supportive action required by the international community at a national level to fill existing gaps. In this context, UNHCR should also seek the views of UNICEF as well as other partners, such as the ICRC and relevant NGOs operating in the country, and strive to join efforts in responding to the identified needs. In practical terms, depending on the circumstances, UNHCR may equip responsible State authorities with the necessary means to ensure that a capacity to implement their obligations under the CRC is created, which may include training, provision of advice on international law, interpretation and translation services, etc. In other situations, the role of UNHCR may be limited to monitoring in order to assess whether standards are being adequately implemented or not.

Adoption

For **adoption**, the Office's role should be focused on a monitoring function to ensure respect of safeguards included in Article 21 CRC and in the 1993 Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption and in its Recommendation relating to refugee and internationally displaced children.²¹ Article 21 CRC stresses that "the best interests of the child shall be the paramount consideration" in all adoption arrangements. Thus, no other interests, including those of the proposed adoptive parents, should take precedence over, or be considered equal to, the best interests of the child.

Separation

For decisions on **separation of children from their parents against the parents' will** (*e.g.* in cases of abuse or neglect or when parents live apart and a decision must be made on the child's place of residence), Article 9 CRC requires that "a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child". As is the case for adoption, in these cases the CRC requires that the best interests of the child be the determining factor.

Appointment of a guardian

According to Article 20 CRC, States shall provide special protection and assistance to a child who is temporarily or permanently deprived of his or her family environment or in whose own best interests cannot be allowed to remain in that environment. Although the CRC does not establish specific procedural safeguards for the **appointment of a guardian**²² and for decisions on alternative care for children deprived of their family environment, Article 20 CRC refers to national laws where specific guarantees are generally present.

Return

Finally, in its General Comment No. 6, the Committee on the Rights of the Child clarifies that **return to the country of origin** of

unaccompanied children “shall in principle only be arranged if such return is in the best interests of the child” and provides for a list of aspects and rights that such determination shall take into account²³. States who plan to return a child shall establish and carry out fair BID procedures, which should be guided by the standards developed by the Committee on the Rights of the Child in its General Comment No. 6²⁴ and ensure adequate child participation. The child’s guardian shall have the authority to be present during the interview with the child. In general, such procedures should be carried out by the competent national authorities with NGO and expert participation where appropriate or foreseen in national legislation. Child development specialists should be involved in the decision-making process in order to ensure that the procedure is focused on the welfare of the child.

UNHCR’s international protection mandate assigns to UNHCR a certain responsibility in monitoring that returns are guided by the principle of the best interests of the child. In co-ordination with other partners, including in particular UNICEF, UNHCR may provide support for the establishment of fair determination procedures, including, among others, through the provision of technical advice and assistance to States. This may include the sharing of information on the situation in the country of origin and in particular on the situation of children, that is already available to UNHCR.

UNHCR should normally not have a formal deciding role in the determination process, nor act as an investigative agency for the State undertaking the BID. However, when required for the protection of the child, UNHCR may provide advice on individual cases, as deemed appropriate.

In countries in which UNHCR has direct responsibility for refugee status determination and thus for the care of unaccompanied and separated asylum-seeking children, Article 3 CRC and Executive Committee Conclusion No. 96/2003 require that the Office cannot automatically withdraw from any responsibility for such children the day they are rejected in the final instance. Further actions affecting these children should be guided by the principle of the best interests of the child. While the primary responsibility for the implementation of the CRC lies on State Parties, who will ensure that a Best Interests Determination is undertaken prior to returning the child to his or her country of origin, UNHCR should not automatically drop existing care arrangements solely on the basis of the rejection/cessation, as long as the continuation of care and other follow-up measures is not ensured by other actors.

Part 2:

Formal Best Interests Determination by UNHCR

The formal Best Interests Determination (BID) is a formal process with specific procedural safeguards and documentation requirements that is conducted for certain children of concern to UNHCR, whereby a decision-maker is required to weigh and balance all the relevant factors of a particular case, giving appropriate weight to the rights and obligations recognized in the CRC and other human rights instruments, so that a comprehensive decision can be made that best protects the rights of children.

The formal BID is a means to ensure that specific protection and assistance is provided to children who are or may become deprived of the protection of their family. It is a necessary tool to ensure that all factors and rights under international law are taken into account when making a decision that has a fundamental impact on the child. The formal process enables UNHCR staff and partners to ensure that decisions are in line with the provisions and the spirit of the CRC and other relevant international instruments and are set within a human rights framework. It ensures that such decisions take due account of the fundamental right to life, survival and development of the child to the maximum extent possible. The BID also provides the means for the child's participation in the process of the BID according to his or her maturity and capacity. In addition, through its individual child-focused approach, the BID may also identify protection gaps affecting individuals or groups of boys or girls of concern to the Office, monitor the effectiveness of measures taken in the past to address gaps and enable follow-up actions, if needed.

There are a number of pre-conditions that are essential for an effective determination of the best interests of the child. Such pre-conditions – which include a proper identification of unaccompanied and separated children; an adequate registration process, including documentation; tracing; the appointment of a guardian; the opening of an individual file – are not described in these Guidelines. Guidance on these issues is, however, included in the 1994 *Refugee Children: Guidelines on Protection and Care* as well as in the 2004 *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* and in the reference materials listed in these two documents.

As mentioned in the previous chapter, UNHCR will undertake a BID prior to making the following decisions: decisions to identify durable solutions for unaccompanied and separated children; decisions on temporary care arrangements for unaccompanied and separated children in particularly complex situations; and decisions which may involve the separation of the child from parents against the parent's will or the will of both, the parents and the child. UNHCR shall undertake a BID for every individual under 18 who is put in any of these three situations. In cases in which unaccompanied or separated children marry before they become 18, and such a marriage has been carried out in accordance with national law and CRC standards, the individual will no longer be considered an

unaccompanied or separated child and no BID is therefore required. Country-specific Concluding Observations by the Committee on the Rights of the Child may assist the Office in determining whether national standards are in line with the CRC.

1. BID to identify durable solutions for unaccompanied and separated children

A. Purpose of the BID for durable solutions

Decisions to identify durable solutions for unaccompanied and separated children generally require a complex balancing of relevant factors and rights in each individual case. The inherent complexity of such a decision, combined with the fundamental and long-term impact on the child's life, require a formal BID procedure particularly prior to processing an unaccompanied or separated child for voluntary repatriation or resettlement, including group resettlement.

The BID aims to identify the most appropriate durable solution for the child. This entails the following steps:

- Identify the most appropriate durable solution (voluntary repatriation, local integration, or resettlement).
- Determine whether processing for a durable solution shall be undertaken immediately or, depending on the circumstances, at a later stage.

If, at the time of undertaking the BID, it is not possible to determine which durable solution is in the best interests of the child, and the child has been integrated into his or her refugee or IDP²⁵ community, the decision on a durable solution shall remain open. Examples may include situations in which after the signing of a peace-agreement there is a need to wait for a certain amount of time to decide whether voluntary repatriation may be a realistic option, situations with outstanding tracing results, or situations in which more time is necessary to determine whether a current temporary care arrangement may develop into local integration (*e.g.* adoption). In such cases, the BID panel shall review the case again after one year at the latest.

B. UNHCR's involvement in BIDs for durable solutions

The degree to which UNHCR will be involved in the BID process will depend on whether it concerns children who are under the direct care of the Government or agencies other than UNHCR, or children who are under the direct care of UNHCR (*e.g.* those who are staying in camps or facilities operated by UNHCR or by others on UNHCR's behalf).

a) Unaccompanied or separated children not under the direct care of UNHCR

If UNHCR assistance is requested to process children for a durable solution, UNHCR must be satisfied that a Best Interests Determination respecting the standards set forth in the CRC or outlined by the Committee on the Rights of the Child ²⁶ has been undertaken by the Government or other partners. If this is not the case, prior to processing a case for a durable solution, UNHCR must undertake a formal BID following the procedural safeguards set forth in Part III of this document.

b) Unaccompanied or separated children under the direct care of UNHCR

A formal Best Interests Determination shall always be carried out to identify the most appropriate durable solution for unaccompanied and separated children of concern to the Office who are under the direct care of UNHCR. This includes refugee or IDP children staying in camps or facilities run by UNHCR or by others with UNHCR's support. It also includes refugees or IDPs supported by UNHCR living in scattered locations and generally all unaccompanied and separated children recognised as refugees under the Mandate (*e.g.* in the absence of national RSD procedures).

C. When to undertake the BID for durable solutions

The Committee on the Rights of the Child has stressed 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”²⁷.

Best interests assessment for durable solutions

A formal BID is *not required* in cases in which UNHCR is requested to facilitate family reunification of unaccompanied or separated children. Prior to its involvement in the case, UNHCR will, however, make a best interests assessment to verify that family reunification is in the best interests of the child and does not expose the child to abuse or violation of human rights that are of such a serious nature that they would outweigh the benefits of family reunification. Moreover, ‘[i]n cases where there are serious concerns, it may [also] be necessary to involve the appropriate local authorities, existing welfare systems, other agencies and local communities for any further action or future support required’

(*Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, page 37)

A formal BID must therefore be undertaken as early as possible in the displacement cycle. UNHCR should not wait until prospects for a durable solution emerge. However, as the results of tracing are a key factor in determining the most appropriate durable solution for an unaccompanied or separated child, a reasonable amount of time shall be provided for tracing. If tracing has already occurred, BID procedures must begin immediately. When tracing procedures cause undue delay, *e.g.* because of lack of access to the area of origin, UNHCR shall not wait for the results of tracing. In all cases, a BID shall be undertaken by the Office **within two years** from the moment an unaccompanied or separated child has been identified.

For those special situations in which a refugee child has become separated or unaccompanied as a result of the *refoulement* of his or her parents, a BID will be undertaken immediately to determine the most appropriate durable solution and the time for its implementation.

D. How to prioritize

The decision on how to prioritise cases for a formal BID in a fair manner must be determined in line with the circumstances of each individual situation. The existence of imminent protection risks for specific subgroups, serious health concerns of a child, the age of the child, and the prospects for a durable solution are elements that must be taken into consideration. For instance, if, for certain situation-specific reasons, resettlement as a durable solution is only available for children, it may be wiser to begin the process with those who otherwise “age out” in order to preserve the existing options for solutions. In other situations, there may be indications that specific groups of unaccompanied and separated children (*e.g.* girls, children of a certain age, a child heading a household) face a higher risk of abuse (trafficking, sexual exploitation, slavery or servitude) and should therefore be given priority for a formal BID.

Aged-out children

Normally, UNHCR will only undertake a formal BID for children. In some operations, however, “aged-out children” may live together in groups with unaccompanied children and may share the same protection risks or may have arrived at the same time and share the same flight history. In these situations, field offices may decide to undertake a BID also for “aged-out children” up to 21 years of age, if this is deemed necessary to address their protection needs or identify a durable solution.

E. Exceptional measures in cases of very large numbers

Formal BIDs for unaccompanied and separated children shall also be undertaken for each individual child in operations in which durable solutions are provided to a significant number of refugees, including voluntary repatriation operations or group resettlement and, if necessary, the adjustment of processing capacities. Existing secondment agreements by UNHCR can be utilised for this purpose.

In exceptional situations in which very large numbers of unaccompanied and separated children move within a short period of time, as in sudden large voluntary repatriation operations, practical constraints may limit the capacity of UNHCR and its partners to undertake a full individual BID. In such situations, where available information offers strong indications of what constitutes the best interests for groups of children sharing the same characteristics (*e.g.* same ethnic background, same area of origin, or similar care arrangements), UNHCR may simplify BID and decision-making procedures by developing tools such as checklists to screen whether individual cases can be grouped together. Full-fledged individual BIDs could in this way be limited to those children who are not suited for the solution proposed for the entire group. In addition to other protection tools – such as strengthening monitoring arrangements, providing escorts during travel etc. – in all those cases in which a full Best Interests Determination could not be carried out prior to departure, mechanisms should be put in place to review the care arrangement in the country of return or resettlement in order to minimise existing risks for the children.

If these Guidelines are adequately implemented and the two-year timeframe set out above is followed, situations that necessitate exceptional measures for BID should rarely occur in practice.

2. Decisions on temporary care arrangements for unaccompanied and separated children in particularly complex situations

A. Purpose of the BID for temporary care arrangements

In exceptional circumstances, the complexity of the factors and rights that need to be considered, combined with the fundamental consequences that a decision on temporary care arrangements may have, require that the case be reviewed by more than one person and that each step of the process be documented. Such exceptional circumstances include:

- (a) Cases of separated children, where there are **doubts about the legitimacy of the relationship with the accompanying family member** and a decision on whether to place the child elsewhere has to be taken. These include, in particular, cases in which there are indications that the relationship may be abusive or exploitative.
- (b) Cases, where there are serious indications that **existing care arrangements may not be suitable for the individual** (for instance, due to the child's cultural or religious background, his or her

Best interests assessment for temporary care arrangements

As noted above, decisions on temporary care arrangements do not normally require the high procedural safeguards that characterize a formal Best Interests Determination. An assessment by the responsible officer entrusted with the task of identifying the most appropriate care arrangement for an individual child sufficiently respects the best interests principle. This is particularly the case, in situations in which established and qualified partners are involved, or where *de facto* arrangements with relatives continue, unless there are indications of abuse. In these cases, respect for the requirements of Article 3 CRC can be ensured by following the guidance provided in Article 20 CRC and by applying the guidance contained in the documents listed in the chapter on best interests assessment.

association with armed groups or forces, or the care givers' association with armed groups or forces) or, where multiple specific needs (*e.g.* the case of an unaccompanied child with a disability) may require a non-typical care arrangement.

- (c) If **removal from foster parents** in cases of alleged abuse or neglect is considered, an assessment by a social worker would normally be sufficient. However, when a careful balancing is needed between the risk and the impact of separation on the child due to the relationship between the foster parents and the child, a formal BID should be undertaken by UNHCR prior to a decision of removal.

B. UNHCR's involvement in BIDs for temporary care arrangements

The best interests determination will have to be undertaken for all situations in which UNHCR makes decisions on temporary care arrangements for persons of concern to the Office falling under the three exceptional situations above. UNHCR does not need to make a formal BID if temporary care arrangements are made by

governments.

C. When to undertake the BID for temporary care arrangements

In these situations, a BID with the procedural safeguards outlined in Part III should start immediately after the protection problem of an unaccompanied or separated child that requires a BID has been identified. The BID procedures shall be finalised and implemented as swiftly as possible.

Monitoring care arrangements

During the time they remain separated from their families or caregivers, children must be able to live in a safe 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 them. This environment should also ensure that their health and educational needs are addressed. It is essential that UNHCR and its partners carefully and continuously monitor these care arrangements to ensure the protection and well-being of the child and that his/her best interests are respected. This monitoring should also include listening to the views of the child and a reporting and response mechanism. Where necessary foster families will be supported in carrying out their responsibilities.

3. Decisions which may involve a separation of the child from parents against their will

A. Purpose of the BID for separation

Given the gravity of the impact that separation from his or her parents has on the child, even if it may only be a provisional arrangement, a formal individual Best Interests Determination must be undertaken by the Office before an exceptional decision on separation of the child from parents against their will is made by UNHCR.

B. UNHCR's involvement in BIDs for separation

The wording of Article 9 CRC, which also includes children of concern to UNHCR, clearly indicates that a decision to separate a child from his or her parents falls within the competence of States. When UNHCR becomes aware of serious situations of abuse or neglect from parents (for example, in a UNHCR camp or during UNHCR's other mandate activities),

Custody rights

In situations where UNHCR intends to process a child victim of domestic abuse for resettlement or where resettlement of one of the parents is considered (e.g. due to domestic violence) and a decision must be made about the child, the first step by UNHCR must be to ensure that a decision on custody rights is made by the competent authorities prior to departure. In cases where no custody decision exists, UNHCR should make all efforts to have the competent state authorities of the country of asylum decide on the custody of the child prior to the departure for resettlement. In cases in which this is not possible – for instance, due to the urgency of the case – UNHCR will undertake a formal BID prior to the resettlement submission. Consideration may be given to include representatives of the resettlement country in the decision-making panel described in Part III. In addition, a formal request should be made to the resettlement country to make 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 on administrative assistance. At the same time, the parent with whom the child is resettled should be informed to take the necessary steps to acquire custody rights upon arrival in the resettlement country.

its first responsibility is to inform the competent State authorities to take appropriate action and monitor that the decision on separation is carried out with the safeguards included in Article 9 CRC.

In the absence of any State authorities or when they are either unwilling or unable to take responsibility, UNHCR, based on its mandate, may have to take urgent measures to protect the fundamental rights of a child of concern, which may involve separation from his or her parents. This may be the case in situations in which there is evidence of serious child abuse or neglect by the parents in a refugee camp where national authorities are non-existent. As the CRC limits the competence to make decisions on the separation of a child from his or her parents against their will to “competent authorities subject to judicial review”, any intervention by UNHCR to separate the child from his or her parents can only be one of a provisional nature, thereby reserving the right to the competent State authorities to make a formal decision.

C. When to undertake the BID for separation

A BID by UNHCR for this category of children shall remain exceptional and limited to situations in which state authorities are unwilling or unable to take action. As competent national authorities are more likely to be present in returnee or IDP settings, UNHCR involvement will primarily, although not exclusively, be with refugee children.

Situations in which UNHCR may be required to undertake a BID include cases in which there is a serious risk of violence to or abuse of the child, if he or she remains within his or her family. In some situations, the child may already have been physically separated from the family and placed elsewhere as part of an emergency measure taken by UNHCR, the neighbours, or others to prevent physical and psychological harm to the child. Situations that may require UNHCR’s involvement may also include cases in which following the separation of the child from his or her parents, a decision needs to be made on where to place the child.

In all these situations, a BID shall be undertaken immediately once the protection risk has been identified, or, depending on the situation, immediately after an urgent measure has been taken to separate the child or to place the child in an emergency shelter. The BID shall be finalised and implemented as promptly as possible.

D. Precedence given to the interests of the child

It should finally be noted that in cases of separation from parents, Article 9 of the CRC provides for a higher threshold than the general rule of Article 3 CRC in which the best interests are a “primary consideration”. Article 9 requires that separation be carried out only if it is in the best interests of the child, thus excluding any balancing of the best interests of the child with the interests of other groups. Article 9 also indicates that the child has the right to maintain personal relations and direct contact with both parents, unless this is contrary to the child’s best interests.

Part 3: Procedural Issues

Part III of these guidelines provides advice on the procedures that UNHCR must follow when it undertakes a formal BID prior to decisions within the limits of its own competence. While in some instances the considerations contained in this part of the Guidelines may also be useful in providing advice to States, they are primarily addressed to UNHCR's own BID processes, particularly as higher safeguards are provided by the CRC for some actions falling under the exclusive competence of States, such as adoption and separation from parents.

In order to ensure fairness, transparency and efficiency of the formal BID process, Field Offices with a larger number of unaccompanied and separated children requiring a formal BID should complement these Guidelines by developing office-specific BID Standard Operating Procedures or by amending the existing **Standard Operating Procedures** to include relevant sections on BID. Such office-specific procedures should be developed in co-operation with partners, after analyzing the national context and taking into account operational and logistical constraints.

When UNHCR carries out a BID, UNHCR shall, whenever possible, make efforts to involve the competent State authorities in order to support them in carrying out their responsibilities. Furthermore, this may also facilitate the Government's involvement in the implementation of decisions taken as a result of the BID (*e.g.* issuance of an exit visa in cases of resettlement and removal of the child from family members).

1. Who undertakes the BID?

A report and an assessment made by a specialist on protection, community services, or child welfare, to a multi-disciplinary panel capable of considering each child on a case-by-case basis, is the most appropriate mechanism for undertaking a BID. UNHCR shall make all possible efforts to adhere to these procedural safeguards.

In those **exceptional circumstances** in which practical operational constraints do not allow the establishment of a panel (*e.g.* individual cases in which a BID decision must be made swiftly and the establishment of a panel would imply unacceptable delays), the justification for the need to reduce the procedural safeguards should be documented in advance and kept on file. As a formal BID has a significant impact on the life of a child, also in those cases in which a panel cannot be established, **more than one person** should be involved in making the determination that will be carried out for each individual child. One possible option is to have one person collect all relevant information and prepare a recommendation and a second person with different skills and experience making the decision. The guidance provided below to gather the necessary information and make the decision in an individual case remains applicable and each step of the procedure must be documented.

For this purpose, from the outset, the Head of Office should designate:

- a) **The UNHCR staff member responsible for setting up and supervising the formal BID process (BID supervisor).** The staff member shall be responsible for supervising the BID process, shall develop or amend existing Standard Operating Procedures as required, provide training to those involved in the formal BID procedures, ensure that the Code of Conduct, as well as the confidentiality oath (Annex 1) is signed by all those involved.

The BID supervisor shall identify either from within UNHCR or among partners, a person with child protection, community services or child welfare expertise to undertake the gathering of the relevant information (hereinafter **welfare officer**). Such welfare officer will analyse the materials collected and act as an advisor to a panel. To ensure independence, however, it is recommended that the person in charge of gathering the facts and formulating the recommendations come from outside the refugee community. At the same time, it is critical that the person who gathers the information understands and works closely with the child's community.

- b) **A BID panel**, which is tasked to review the report and assessment made by the welfare officer and determine the best interests of the child. The panel should be multi-disciplinary, normally composed of 3-5 persons with professional expertise in child development and child protection. Attention to gender balance shall be given to the selection of the members of the panel. The panel should be established in co-operation with the responsible national child welfare or other competent authorities, such as refugee agencies, health or other agencies depending on the context. In addition to such Government officials and UNHCR staff, depending on local circumstances, international organisations and NGOs with child-specific mandates that are familiar with the populations of concern to UNHCR should be invited to participate in the panel. For IDP settings in particular, UNICEF should be encouraged to join the panel. Organisations that may have a conflict of interest, such as those involved in the care and maintenance of children or in the preparation for resettlement processing for UNHCR, should not have an overriding role in the decision-making body, i.e. not be in the majority in the panel.

All individuals involved in the formal BID process, including the welfare officer, interpreters as well as the members of the panel shall sign the UNHCR Code of Conduct, and the signed copies shall be kept at the UNHCR Office. All staff involved in the formal BID, including members of the panel, will be required to treat personal information in a confidential manner and will sign the confidentiality oath attached (Annex 1). Persons involved in the formal BID process must not be in a situation in which there is a conflict of interest that could lead to an action at the expense of the child's best interests. If any of the involved persons feel that they will be prejudiced at any time during the process they must inform the BID supervisor and be replaced.

It is essential that suitably qualified personnel are involved in gathering information and determining the best interests of the child. As expertise in many different sectors is needed, these Guidelines recommend that more than one person be involved in the process.

Different panel members should, to the maximum extent possible, have the following expertise:

- an understanding of child rights
- a thorough knowledge of UNHCR guidelines in relation to children
- a solid understanding of the practical implications of the different stages in child and adolescent development and psycho-social well-being, including knowledge of psychological, emotional and physical development and children's behaviour
- knowledge on specific protection risks such as, trafficking, recruitment, sexual and gender-based violence
- an understanding of the procedural aspects of the BID
- a sensitivity to cultural background, age and gender-related issues
- a knowledge of the legal context and protection implications of the BID
- an understanding of the cultural and religious background of the child
- a knowledge of the social and economic background of the child

All reasonable efforts should be made to use interviewers and interpreters of the same sex for girls unless requested otherwise by the child upon consultation. Special attention should be given to attaining the same interviewers and interpreters, as children often need time to build relationships. If the child at any time raises the question of preference towards certain persons, this should be discussed accordingly.

UNHCR shall offer the necessary training to all staff and partners involved in the Best Interests Determination process, including the members of the panel, welfare officer(s) and interpreters. This will include training on these guidelines, training to understand their responsibilities under the Code of Conduct and the confidentiality oath and, if necessary, background briefings on the operation.

The types of expertise required by the welfare officer include:

- training in psycho-social counselling which would involve; mental and physical development of children, ability to recognise signs of stress and trauma, ability to assess age and maturity, expertise in age-specific interviewing techniques,
- an understanding of child rights
- knowledge of how cultural, religious and socio-economic background may influence the child's behaviour and his/her understanding of the process

The types of expertise required by the interpreter(s) ²⁸ include:

- training as interpreter
- awareness of impartial role as interpreter
- knowledge as well as ability to show sensitivity to gender, age and cultural matters

2. Gathering Information

A determination of what is in the best interests of the child will have a fundamental and often long-term impact on the child. Therefore, the determination requires a clear and comprehensive assessment of the child's background, particular specific needs and protection risks, while analysing this from an age, gender and diversity perspective. It is necessary to learn as much as possible about the child's needs, affective ties, capabilities, interests, and also the capacity of the adults willing to care for the child. To achieve this, the formal BID shall be child-centred, gender sensitive, guarantee the child's participation and not be hindered by technicalities. The process must be tailored to the future-focused nature of the proceeding.

It is important to make clear findings of facts, based on credible information, as these facts will determine the rest of the decision. Decision-makers must make certain that all relevant information can be obtained in order to ensure that decisions are based on a comprehensive analysis of the situation of the child. In many situations, however, the information collected may be contradictory or incomplete, due to, for instance, lack of access to the country of origin, the security situation in the locations under consideration, or the lack of access to confidential information. In these situations, decision-makers need to strike a reasonable balance between the necessity of making a swift decision on the best interests of the child and the need to ensure that a decision must be based on sufficient solid information.

The process of gathering information must include:

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

2.1. Verification of existing and documented information on the child

Gathering the necessary information for a formal BID should begin as soon as the refugee child is identified and registered according to the criteria set out in chapter 2. Information collected during the registration process, including through existing registration databases and aspects of the RSD process – such as a psychological assessment or competence assessment – are important for the formal BID process. By reviewing the RSD file, the welfare officer may identify levels of maturity or immaturity, explain a lack of knowledge or provide useful background information for the formal BID process. Similarly, a history of violence against the child recorded by UNHCR or an NGO, including evidence in medical history, is important to assess the likelihood of future incidents and the potential for future abuse, and whether medical or psycho-social care will continually be required.

The welfare officer should be given access to all relevant information to present to the panel a comprehensive picture of the child. This shall, in all cases, include access to registration information and the summary information on the child's claim for refugee status, which can normally be shared with the panel.

The designated welfare officer should also be given access to relevant parts of individual files from UNHCR or implementing partners if these contain information that is important in determining the best interests of the child. However, for the purpose of protecting data, such information shall be used as background information and shall not normally be shared with the panel. If, in specific circumstances, the welfare officer considers that more specific information obtained through the RSD files or from medical reports is essential for the panel to make an informed decision (*e.g.* current antiretroviral therapy in the case of voluntary repatriation to a country where antiretroviral treatment is not available), he or she shall seek the approval of the BID supervisor prior to sharing such information. The BID supervisor shall give his or her agreement to share the information only in those cases in which such information is deemed to be in the best interests of the child, and shall decide after appropriate consultation which elements of the information on file can be shared.

2.2. Interviewing and exploring the views of the child

The interviews with the child play a central role in the formal BID process. It is important to know the child's thoughts and feelings in order to properly assess the impact of a proposed action on the welfare of the child. Children often have factual information that is relevant, and when they feel that they have been heard, understood and respected, it may be easier for them to accept a decision even if they may initially disagree with it. The BID process should be explained and discussed with the child from the outset and the child must be kept informed throughout the process.

Supporting the child in providing their views

A child who is capable of forming his or her own views has the right to express those views freely in all matters that affect him or her. While the child may provide information on a variety of issues it should be explained to the child that not all such information may be relevant for the BID process. It is important to keep in mind that some children may not want to participate in the decision making at all and this should be respected.

Interviews with the child should take place in a confidential and child-friendly atmosphere. If possible, the venue should be chosen by the child. Remember that during the interview the child is subject to two kinds of stress. One is the interview itself; to be able to understand the questions and why the interview is taking place. Secondly, the stress-factor is linked to being a victim or witness to traumatic events. Therefore, when interviewing 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.

The child should be informed about the BID process from the outset and kept continuously informed. It is important that it is apparent to the child why it is useful to talk to the welfare officer. As mentioned, the child may be stressed and will need to have information repeated. The welfare officer will need to ensure that the proceedings are understood throughout the process by letting the child explain what he/she thinks are the next steps.

Caution must be exercised with regard to the presence of other persons during the interviews (guardian, current caretakers etc) due to personal interests in the decision which may prevent the child from freely expressing his or her views. Many children find it easier to speak if they have a friend with them. One-to-one interviews, especially with an adult who is a relative stranger, may be too pressurising for many.

Children should always be allowed to say no or refuse to answer the questions. They should be allowed to change their minds and to make mistakes.

Interviewers should be familiar with available Guidelines on interviewing and methods of collecting evidence from children.²⁹ Children cannot be expected to give adult-like accounts of their experiences. Simple, age-appropriate language should be used. The child's age and stage of development at the time that the relevant events took place as well as at the time of the interviews must be taken into consideration. Children may not be able to present information relating to context, timing, importance and details with the same degree of 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 see children's ability and competencies as being *different* from rather than *lesser* than adult ones.

It is important that the staff involved in the formal BID recognise the stage of development and maturity of the child and take into account that conditions of depressions and anxiety often influence the child's ability to acquire knowledge and solve problems. The experience of traumas can thus affect the cognitive competence of the child and his/her ability to pass on information during interviews. Therefore, the welfare officer should not limit the information gathering to interviews, but use other methods and approaches to overcome the limitations of children's ability to express themselves. For example, the use of observation, sentence completion, games and drawing could be helpful for the child in expressing traumatic experiences such as the flight, separation from parents and their life as a refugee.

Exceptional cases, such as those concerning an extremely distressed child, may need special consideration to minimise the negative impact of the interview. Arrangements should be put in place to ensure that the child has immediate access to counselling, if information that may cause distress to the child surfaces during the interview, such as incidents of abuse. Where technically feasible, consideration may be given to use video recording, as this may reduce the need for re-interviewing.

Information that should be collected from the child

The information which should be collected from the child will depend on a variety of factors, including his or her age and degree of maturity, mental state, the type of decision to take and the availability of other sources of information

Basic information on the child shall be recorded in the inter-agency registration form (see Annex 3). If the form has already been completed during registration (as it should be in most cases), the information contained in the form should be verified during the formal BID process.

Caution must be exercised with regard to the presence of the child's caretaker during the interviews. He/she might have a personal interest in the decision and may prevent the child from freely expressing his or her views. In cases in which there are indications or suspicions of abuse of the child by the current caretaker, the latter must clearly not be present at the interview with the child.

Information to be collected from the child may include:

- details on the quality of the relationship between the child and others who cared for the child in the past;
- the reasons for separation or those that give rise to the particular protection risk;
- past experiences of the child that have an impact on the decision;
- the child's views and fears with regard to the different options under consideration.

While no standard form has been introduced to record the interviews with the child, it is important to put on record all information provided by the child and not limit it to the fields contained in the BID report and BID assessment forms (Annexes 4 and 5). The interview record shall, in particular, document any follow-up action to the child's protection or other concerns that need to be addressed, regardless of the Best Interests Determination process. An assessment of the child's age and maturity shall be carried out and recorded at the end of the interview.

2.3. Interviews with family members and other persons close to the child

In addition to the interview with the child, relevant information can also be gathered from persons close to the child, as their expertise, deriving from an in-depth knowledge of the child, can be very valuable for the formal BID process. This is particularly the case of the parents (if present), siblings, foster parents as well as guardians. Their views on what is in the best interests of the child should be collected and documented. Their role becomes especially relevant in the case of younger or extremely distressed children, where only limited information can be obtained directly from the child.

By mapping the child's network the persons of concern to the child become evident. Mapping should be carried out with care and according to confidentiality. The purpose is not to reveal information regarding the child, but to receive information that will clarify issues of concern and the child's relationship to the various persons within the network. By asking the child and the persons that evidently have ties to the child, their network will become apparent. A variety of methods can be used such as asking the child to draw the persons they are in contact with and who they feel close to. This exercise will also prove useful for receiving information from the child.

The interviewer must pay attention to a potential conflict of interests and strictly preserve the confidentiality of the case at all times. The welfare officer should never disclose information received from the child or the wishes of the child as it may put the child at risk. The information should only be used as a background for discussion with persons close to the child. Furthermore, disclosed information will most likely return to the child, and the relationship between the welfare officer and the child might be endangered. In suspected cases of trafficking and child abuse, the safety and security of the child ought to be the determining element in deciding whether or not to make inquiries with persons closely

associated with the child, and in determining the method of the inquiry.

Caution should also be exercised in communicating directly to the parents of unaccompanied or separated refugee children who remain in the country of origin, as an interview could endanger the parents or the child. In cases where tracing has been successful, the information provided by the ICRC or other tracing agencies on the situation of the family and its readiness to receive the child will frequently be sufficient for the formal BID process.

In cases of separation of children from parents against their will, the parents have a right to be heard and their views shall be recorded separately and presented to the panel. The same procedure shall be followed for decisions on temporary care arrangements in cases of doubts about the legitimacy of the relationship with the accompanying family member or in cases of removal from foster parents, which require a BID.

Information that should be collected from persons close to the child includes but should not be limited to:

- Duration and quality of the relationship with the child, including, where relevant, the potential effects that a separation from the person would have on the child;
- Location and care arrangements of siblings;
- Views of persons close to the child with regards to fears, concerns, and wishes expressed by the child (information must be based on the knowledge of the interviewee, not the welfare officer);
- Information on areas in which there may be a possible conflict of interest;
- Issues relating to the child's playing habits and interaction with other children and community members, and in the case of children in foster care, interaction with other children in foster families and with the foster parents;
- Information on how the child is coping in school, able to concentrate during lessons and interaction with other children and teachers;
- Information regarding flight, parents and the situation in the country of origin prior to the flight.

2.4. Background information

A decision on what constitutes the best interests of the child cannot be taken purely on the basis of the statements of the child and persons close to the child, but must also take into account external sources. For instance, in the case where a durable solution is considered for the child, security conditions must be taken into account as well as opportunities for the development of the child and appropriate care for the child in the various locations under consideration. While the interviews with the child and with persons closely associated with the child will help shed some light on these external factors, they should be complemented by independent research. The focus of such research will vary according to the options to consider and to the decisions to take (*e.g.* decisions on durable solutions, decisions on temporary care or separation from parents due to abuse or neglect).

Depending on the circumstances, under consideration in the BID process the following information

should, among others, be collected from public or internal sources:

- Information to determine the security situation in the various geographical locations and the existence of risks to the child's safety (including, where relevant, the potential existence of international protection needs) and how the security situation is likely to impact on the child.
- Information on the possibility of continuity in a child's upbringing and on the possibility for the child to maintain a link with his or her own ethnic, religious, cultural and linguistic background.
- The availability and quality of health services in the various locations. The assessment should be undertaken with particular regard to specific needs, including the medical and psycho-social needs of the child, including those deriving from HIV/AIDS, domestic violence or other forms of sexual and gender-based violence.
- Information on the availability and quality of education services in the various locations. Education rights include standards related not only to the educational facilities that are available, but also to the quality of the education and safe school environment that is provided and how it prepares the child to lead a meaningful life in society.
- Information on customary attitudes and responses by the community to children in general, and unaccompanied and separated children in particular, prior to the flight as well as in exile and on the resources in the community to implement such responses. This includes the possibility of social integration into the community and the community's capacity to care for and protect children, particularly children with specific needs.

2.5. Seeking the views of experts

In some cases, it may be useful or necessary to seek the views of experts. For example, medical and psycho-social expertise may be requested to assess children who have experienced traumatic events and children with mental or physical disabilities. Their expertise may prove useful in determining whether the condition of the child could be relevant to the child's ability to provide information, such as his or her level of intelligence, level of traumatising, power of perception, memory and self-expression. Investigations must not, under any circumstances, violate the child's physical or mental integrity.

3. Making the decision

3.1. Procedural safeguards

The determination of the best interests of the child by UNHCR will generally be undertaken by a panel on the basis of the report and assessment tabled by the welfare officer. The panel shall identify existing options and decide which option corresponds to the best interests of the child.

The welfare officer shall present to the panel an individual file which should include the registration form (Annex 3), a summary of the child's history, the available options and the information required to balance the relevant factors. To facilitate a systematic presentation of information, it is recommended to use the following:

- (i) The BID report form (Annex 4) → to summarise information on the child and available options and
- (ii) The BID assessment form (Annex 5) → to list the information required to balance all relevant factors

The file should also include copies of expert opinion(s) as well as any other relevant background information that has been collected. For decisions relating to separation from parents, the views of each parent shall also be presented to the panel. For decisions that may involve separation from accompanying family members or the removal from foster parents, the views of the accompanying family member or of the foster parents shall also be presented to the panel.

The panel shall take decisions by majority or qualified majority depending on its composition. Decisions that conclude resettlement as the most appropriate solution must be endorsed by UNHCR. The procedures for the panel should be laid down in operation-specific SOPs.

It is necessary to take into account and document all relevant circumstances as they exist at the date that the decision is made, not at the time of arrival or the interview. Collected information may have different strengths and values and should be assessed on its credibility and reliability. If information is rejected for its lack of credibility, this must be recorded in the protocol of the panel (in the comments part in the assessment form attached in Annex 5).

Deliberations by the panel shall be recorded. Parts II and III of the assessment form (see Annex 5) can be used for this purpose. It is important to record whether the decision was reached by majority or unanimity, and also the reasoning of the decision as well as any relevant issues raised during the discussion.

3.2. Balancing competing rights of the child

The best interests of the child will rarely be determined by a single, overriding factor. In most cases, the result of the formal BID will take into account the entire range of the child's rights, particularly due to the indivisible nature of the CRC and the inter-dependency of its articles.

Decision-makers need to determine which of the available options better secures the attainment of the child's rights and thus corresponds to his or her best interests. For this purpose, it is recommended that decision-makers identify both the short-term and long-term advantages and disadvantages of each option and then decide which option best suits the individual circumstances. This also means that when a BID relating to temporary care arrangements or other immediate protection needs is undertaken, such decisions should be made in the context of the durable solution to be pursued. In some situations, this decision may be self-evident but in others, such a determination requires a careful balancing exercise. This is particularly the case when each option leads to the enjoyment of some rights and at the same time to the detriment of others.

In certain situations, the formal BID undertaken by UNHCR shall be informed by decisions already taken or being taken by competent State authorities (*e.g.* court decisions regarding custody). Normally, UNHCR will respect such decisions, unless the decision leads to *refoulement* or is evidently based on a misperception of the concept of the best interests of the child or violates other fundamental rights of the child. In these situations, efforts should first be made to rectify such decisions through available remedies.

The formal BID requires decision-makers to make an effort to predict outcomes. All relevant circumstances should be taken into account, keeping in mind that no right set out in the Convention should be considered in isolation. The following sections attempt to provide some guidance.

3.2.1. Views of the child

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

- Children 16 years and older are normally assumed to be sufficiently mature to make decisions, such as decisions relating to their caregivers.
- Children between 14 and 16 are presumed to be mature enough to make a major contribution.
- Children between 9 and 14 can meaningfully participate in the decision-making procedure, but their maturity must be carefully assessed on an individual basis. However, care must be taken with younger children and they may require specific assistance to ensure that they can express themselves clearly and freely.

The following factors should be taken into account regarding all age groups

- Traumatized children, like adults, may have difficulties in expressing themselves, acquire knowledge and solve problems. Involve experts if considered necessary.
- Recognise the stage of development and maturity of the child, as the views of the child may carry different weight depending on the degree that the child knows and understands the consequences of the various options. If considered necessary involve experts.
- Refrain from pressuring the child to be a part of the decision making.
- Realise that the child may be manipulated and stating the views of others which may be contrary to their own opinion.

- Children younger than 9 have the right to give their opinion and be heard. They may be able to participate in the decision-making procedure to a certain degree, but caution should be exercised to avoid burdening them by giving them a feeling of becoming decision makers.

The views of the child may carry different weight depending on the degree that the child knows and understands the consequences of the various options. In most cases, the views of the child will be the determinant factor in defining the child's place of residence in the case of separation or divorce of the parents. In cases of family reunification, if the child is reluctant to be reunified with his or her family, imposing family reunification on the child may not lead to a durable solution unless the reasons for the child's reluctance are understood and properly addressed. Such

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 the child is not familiar with (particularly in cases where one of the parents remarried). However, the views of the child will not carry the same weight when it comes to a decision on resettlement to a country on which the child has only limited knowledge and understanding. .

Moreover, the weight attributed to the views of the child may vary depending on whether the views expressed by the child are genuine, have a sound rational basis or can be shown to be wholly or partly a result of manipulation.

3.2.2. Views of family members and other persons close to the child

The information from within the child's network will allow for a further understanding of the child's situation when it is combined with the views of the child. The views of family members and other persons close to the child may be extremely important to understand the reasons behind the concerns, fears, and wishes expressed by the child. In addition to providing general information on the maturity of the child, these persons may shed light on the reasons behind certain preferences expressed by the child. The more important and meaningful the person's relationship is for the child, the greater the weight that should be given to their views.

The information collected from the persons within the child's network will often provide details on issues such as the nature of relations between the child and significant others, where additional support might be required, the strengths and skills of the child.

There are however potential conflicts of interest that need to be considered in the decision of determining the best interests of the child, such as, for instance, in cases in which there are indications

that the relationship with the person close to the child 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 child but are a separate factor that carries its own weight. These situations include:

- The views of the relative in decisions on whether to opt for a care arrangements with the relative concerned, as without the consent of the latter, the care arrangement cannot be realised.
- The views of the parents in cases a decision on whether the child shall remain with them or with one of the parents needs to be taken. Great caution should be taken when attributing weight to the views of the parents to determine whether the separation is in fact in the best interests of the child.

3.2.3. Safe environment and risk of harm

Fundamental international human rights norms to protect the right to life and freedom from torture, other cruel, inhuman or degrading treatment or punishment set decisive parameters for a BID. Several provisions of the CRC (*e.g.* Articles 19, 34, 35, 36, 37 and 38) relate to the necessity of protecting the safety of children. This includes among other things protection from physical and mental violence, sexual exploitation, harmful traditional practices, trafficking and abduction, child labour and protection from threats posed by armed conflict to children's lives.

The presence of substantial grounds to believe that there is a **real risk of irreparable harm** to the child, such as violations of his or her right to life, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, underage recruitment or trafficking (and for refugee children, the presence of a well-founded fear of persecution) shall outweigh any other factors. A similar level of weight should be given to access to life-saving treatment for mentally and/or physically ill children or children with disabilities. For decisions on durable solutions, in cases where a real risk is present in both the country of origin as well as in the country of asylum, resettlement has to be considered as being in the best interests of the child, when it is the only means of preventing serious violations of fundamental human rights.

Recognising their right to return to their own country, in situations where an unaccompanied or separated refugee child genuinely wishes to return and the views of the child are supported by his or her guardian, the return can only be considered to be in the child's best interests if there is no real risk of irreparable harm to the child upon return, such as persecution.

For a child who is seriously distressed as a result of past events, such as serious violations of his or her fundamental rights, decisions that are likely to cause even more distress to the child cannot be considered to be in his or her best interests.

In cases where it has been determined after a comprehensive assessment that there is a mere possibility of the risk of harm, considerations regarding a safe environment will remain an important factor to consider, but will not automatically outweigh other factors.

3.2.4. Family environment and alternative care

Several international human rights instruments including the 1948 Universal Declaration of Human Rights indicate that the family is the natural and fundamental social group unit and is entitled to protection from society and the State. The right to family unity plays an extremely important role in determining the best interests of the child. The parents have the joint responsibility of raising the child, and they are primarily responsible for the child's upbringing and development. Article 18 CRC indicates that the State shall support them in this task by providing appropriate assistance to parents in child-raising. The primary responsibility of parents to raise their children is stipulated in Articles 3 (2), 7, 9, 10, 18 and 29 CRC. Therefore, for unaccompanied and separated children, all Best Interests Determinations should ultimately address the extent to which family reunification is attainable.

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

- Continuity of a child's relations with parental figures is vital to the child's feelings of security;
- The process of socialisation, during which a child internalises the values and norms of society and develops the capacity to empathise with the feelings of others, depends primarily upon identification with parental figures;
- Continuity of the child's contact with external surroundings, including people and places, has an important psychological effect on developing and maintaining the child's inner sense of stability.

Thus, as long as certain minimum care requirements for the child are met, **the interests of the child are generally best met when the child remains with his or her family**. Temporary care arrangements that allow a separated child to remain with the extended family are generally in the best interests of the child, unless this entails a real risk of irreparable harm. In cases where a BID for decisions on care arrangements with relatives has to be made, the hypothetical prospects for developing a better and stronger relationship in the future (whether or not there has been significant recent contact) would normally be given less weight than the proven history of the relationship based on past conduct.

The decisions to separate a child from his or her parents in cases of abuse or neglect shall only be taken in the case of imminent risk of serious and irreparable harm to the child. If separation is considered, the norm should not be to place the child with other family members. Placing children with other family members might seem as the best immediate solution, however it could cause additional harm to the child as it does often not ensure that the necessary restrictions in contact between parents and child are upheld. Moreover, it places other family members in a difficult position regarding loyalty to the child and/or the parents. Where concerns regarding the best interests of the child can be effectively addressed through other mechanisms short of separation such as monitoring or targeted assistance (*e.g.* a weekly visit by a doctor for cases where the parents neglect the child's medical needs), such less intrusive measures should be taken rather than separating the child from his or her parents.

Family reunification, if feasible, should be regarded as being in the best interests of the child.

Resettlement will generally be in the best interests of the child if it is the basis for family reunification. Family reunification, however, would not be in the best interests of the child if it entails a risk of irreparable harm, or if the child or the parents are opposed to it and especially if the reasons for such opposition are not properly addressed. There may be situations in which the child has forged such a strong bond with the foster family that forcing the child to move away from them would be as traumatic to the child as the initial separation from the parents. There may be other situations in which a parent has remarried and is unwilling to accept the child.

In cases where family reunification is not possible, attention must be given to the need for the child to maintain contact with his or her parents and family when determining what constitutes the best interests of the child. Factors such as practical matters and costs to maintain such contacts shall be considered, so as not to undermine the possibility of family reunification in the future. Unless required to overcome real threats to the physical safety of the child, resettlement is normally not in the child's best interests in cases where it may undermine tracing and the subsequent reunification of the family or create substantial obstacles for maintaining contacts. Existing communication infrastructures in the countries concerned shall also be considered, when assessing the impact of the distance between the resettlement location and the child's home country and parents.

By contrast, resettlement is not automatically excluded when the whereabouts of the parents are known: If family reunification is neither possible in the place of residence of the parents (for instance, due to a real risk of irreparable harm to the child) nor in the country of asylum and the child faces serious protection risks – such as underage recruitment, trafficking, etc., which cannot be addressed in the environment of the country of asylum – resettlement to a third country may be in the child's best interests if it is implemented in a manner that does not undermine future prospects for family reunification. In these cases, it is important that the parents are consulted and informed on the whereabouts of the child, unless it would endanger the family or it is considered not to be in the best interests of the child.

When it is considered that resettlement is in the best interests of the child, the decision to resettle must be swiftly implemented. In some cases, a group of children may have developed close links with one another in the country of asylum if they have been living together under group care. In such cases, it is recommended that the children be grouped together in their submission to resettlement countries so that they can remain together.

In case of separation from parents the visitation rights of the parents need to be determined by the panel, and should be discussed with all relevant parties, including the child. In cases where contact is to be upheld the panel should clarify the long and short term purpose of visitation, supervision and duration of the visits, the costs and expenses related to visits and the selection of a responsible person or agency to perform monitoring and assessments of the visitation.

3.2.5. Development needs of the child

Article 6 CRC emphasises the need 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. While the feeling of being wanted is rooted in family relations, as a person matures, the frames of reference widen into increasingly larger circles that branch out to relatives, peers, community, and society, and the need to feel valued grows into a need to belong to social groups and to have a place in society. In order to make sure that the less concrete needs are not ignored, psychological needs (which refer to both emotional and intellectual development) and social needs (which include culture) must be given equal importance to physical needs.

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

- the “right to preserve his or her identity, including nationality, name and family relations” (Article 8 CRC);
- the “desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background” (Article 20 CRC);
- the right of the child to the enjoyment of the highest attainable standard of health (Article 24 CRC);
- the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development (Article 27 CRC);
- access to education (Articles 28 and 29 CRC);
- the right of the child to rest and leisure, to engage in play and recreational activities appropriate to his or her age (Article 31 CRC).

The development needs of a child are generally best met by remaining in or maintaining close contacts with the family. Thus, when undertaking a formal BID prior to a decision on a durable solution, access to better health services or educational facilities in one location shall not outweigh the possibility of family reunification in another location. In special situations, such as the case of an adolescent for whom access to higher education is a determinant aspect of his or her development needs, more weight can be attributed to education. However, in order to be in the child's best interests, access to corresponding educational facilities must be provided in a way that does not curtail the child's link with the family.

4. Best interests of the child and rights and interests of others

The interests of children can sometimes conflict with the interests of other groups in society. While the interests of children including adolescents may overlap with or be connected to the interests of parents, family, community or state, the interests are not necessarily the same. In making a decision on the welfare of a child, the decision-maker must be aware of the competing interests in order to properly evaluate the interests of the child.

During the BID procedure, it is important to focus on the rights of the child so that the child's interests will be fully considered. This does not mean that the needs and rights of a child must always prevail where interests clash. This is only the case in those situations in which the CRC requires that the best interests of the child shall be *the* primary consideration, *e.g.* adoption, separation from parents.

The general principle contained in the CRC provides that the best interests of the child shall be *a* primary consideration. Once the best interests of the child are determined, the CRC does not exclude balancing other considerations. Other considerations, if they are rights-based, may in certain rare circumstances override the best interests considerations.

Such may be the case in situations in which the child constitutes a serious risk to the physical safety of other persons or health of the community. In certain situations, UNHCR may thus be required to balance the best interests of the child with other legitimate concerns based on the rights of other persons of concern to the Office. For instance, the placement in a foster family of a child with TB may well be in his or her best interests in the short term, but may lead to the contagion of the family if the physical placement is done prior to treatment. All such exceptional cases where the Office decides to override best interests considerations must be carefully analysed and documented.

5. Informing the child of the decision

The child should be informed of the decision as soon as it is made. If the child has been involved throughout the process, as should be the practice, the decision will in most cases not come as a surprise. However, there may be instances in which the child disagrees with the decision, particularly when the desire of the child may be in conflict with the most appropriate care arrangement or durable solution. Honest and frank communication between the welfare officer and the child, particularly regarding the practicality of the desired option and existence of available options is necessary. Pre-service counselling may also be valuable in some circumstances although it should not unduly delay the service of the decision.

Just as every BID case differs, the reaction of the child to the BID outcome will differ. Every child should have the chance to come to terms with the decisions, and some children may need more time than others. The welfare officer should be open to all forms of reactions to the decision, and have considered various ways in line with the best interests of the child to make the changes in the life of the child as gentle as possible.

Depending on the circumstances, it may be appropriate and supportive to formalise or celebrate the

implementation of the decision. Particularly in cases of family reunification, but also in cases of foster arrangements, a certain kind of acceptance ceremony and a written and signed evidence of the reunification or residence with the foster family may help to underline the responsibilities of the caregiver to the child and help ensure that the child is protected in the new environment.

6. Filing

Records shall be kept of all information collected, including the protocols of interviews, the BID report and assessment forms and other materials. Access to BID documents shall be restricted to staff authorised by UNHCR. Files shall be kept in a secure location. The BID file must follow the child and a copy of the file must remain with UNHCR as permanent records. Procedures for maintaining closed BID files and for transferring individual BID files to Headquarters should be developed and implemented in accordance with directives produced by the Archives Section in UNHCR Headquarters.

It is suggested to keep an **action sheet** in each individual BID file in which all steps of the implementation of the BID decision are recorded. This allows one to keep track of developments towards the implementation of the decision in each individual case.

7. Reopening and reviewing the BID decision

The BID can be reopened either *ex officio* or – in the case of separation due to abuse or neglect – upon request. An *ex officio* reopening shall be undertaken within one year from the first BID decision, when a durable solution for unaccompanied or separated children has not been determined. Furthermore, the BID shall be reopened in the case of changes in circumstances, such as successful tracing or emergence of new evidence, that have the potential to alter the original decision or when the first BID decision cannot be implemented within one year unless obstacles for implementation of the decision have been removed and there is clear evidence that the decision will be implemented in the nearest future.

The emergence of new facts also includes changes in the views of the child (*e.g.* a child received a scholarship and does not want the proposed solution anymore).

BID decisions on the separation of the child from his or her parents can also be reopened upon request by the child's guardian or holders of parental rights. While the final decision on parental rights remains with the competent state authorities (including appeal authorities), UNHCR shall review the measure it took upon request from either the child's guardian or the parents, if new facts, evidence, or legal considerations are brought forward that may have the potential to alter the first decision. It is recommended that SOPs foresee that such reviews be considered by an expanded panel or by a panel of different composition than the one that made the first decision. In these cases, the parents or the guardian shall be given access to the documentation presented to the panel during the first BID.

¹ The UN Convention on the Rights of the Child – 44/25 – 1989 was adopted by the United Nations General Assembly on 20.11.1989 and has been in force since 2.9.1990. It is ratified by 192 countries. The CRC has Optional Protocols on the Involvement of Children in Armed Conflict (in effect February 2002) and on the Sale of Children, Child Prostitution and Child Pornography (in effect January 2002).

² See e.g. Articles 19, 36 and 38.

³ See e.g. Articles 6, 23, 24, 27, 28 and 41.

⁴ See Articles 20, 21, 22, 23.

⁵ See Article 22.

⁶ See Article 41 CRC, which mentions that wherever standards set in applicable national and international law relevant to the rights of the child are higher than those in the CRC, the higher standards shall always apply.

⁷ The international instruments listed in these Guidelines can be found in the expected 2006 version of the UNHCR Collection of international instruments and other legal texts concerning refugees and displaced persons. For human rights instruments, the web site of the Office of the United Nations High Commissioner for Human Rights (OHCHR) provides an up to date list of signatories to various Conventions. See <http://www.ohchr.org/english/law/>.

⁸ See the four Geneva Conventions: (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; (III) relative to the Treatment of Prisoners of War; (IV) relative to the Protection of Civilian Persons in Time of War adopted on 12 August 1949 as well as the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

⁹ Convention Relating to the Status of Refugees, Geneva, 28 July 1951; Protocol Relating to the Status of Refugees, New York, 31 January 1967; OAU Convention Governing specific aspects of refugee problems in Africa, 10 September 1969.

¹⁰ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted by General Assembly Resolution 54/263 of 25 May 2000; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by General Assembly Resolution 54/263 of 25 May 2000.

¹¹ The convention was concluded on 29 May 1993. The Recommendation concerning the Application to Refugee Children and other Internationally Displaced Children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption was adopted on 21 October 1994.

¹² OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

¹³ Adopted on 17 June 1999; see also Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour, R190/1999, adopted on 17 June 1999.

¹⁴ Adopted on 26 June 1973; see also Recommendation concerning Minimum Age for Admission to Employment, R146/1973, adopted on 26 June 1973.

¹⁵ Committee on the Rights of the Child, 39th Session, 3 June 2005, UN Doc. CRC/GC/2005/6.

¹⁶ According to Section 1 (3) of the Act, "a court shall have regard in particular to

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question."

¹⁷ EC/SCP/82 "UNHCR Policy on Refugee Children", Executive Committee of the High Commissioner's Programme, Forty-fourth session Sub-Committee of the Whole on International Protection, 23rd meeting, 6 August 1993 at paragraph 1.

¹⁸ EC/SCP/82 "UNHCR Policy on Refugee Children", Executive Committee of the High Commissioner's Programme, Forty-fourth session Sub-Committee of the Whole on International Protection, 23rd meeting, 6 August 1993 at paragraph 17.

¹⁹ Committee on the Rights of the Child, General Comment No. 6, at IV c).

²⁰ Art. 9 CRC. 'Against their will' refers either to the parents' will or to the will of the parents and child together.

²¹ Refugee Children: Guidelines on Protection and Care, pages 130-133 and UNHCR's Policy on Adoption, August 1995 which contains as an Annex the Recommendation Concerning the Application to Refugee Children and Other Internationally Displaced Children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, Oct, 1994.

²² "...in essence the term guardianship refers to the designation of responsibility to an adult or organization for ensuring that a child's best interests are fully represented", according to the Inter-agency Guiding Principles on Unaccompanied and Separated Children. For more information on guardianship please see page 47 of the same Guiding Principles as well as General Comment No. 6 Chapter V at b) and paragraphs 21, 63, 69 and 89.

²³ General Comment, at VII c).

²⁴ See in particular Chapter VII at c).

²⁵ For IDPs the durable solution only contains two options, voluntary repatriation and local integration as resettlement is not as such presently available.

²⁶ General Comment, Chapter VII at c) establishes guidelines for decisions on return to the country of origin.

²⁷ Committee on the Rights of the Child, General Comment No. 6, at VII c).

²⁸ The UNHCR training module "Interpreting in a Refugee Context", RLD 3. Geneva, June 1993 can be used as a self-instructory training tool for interpreters.

²⁹ Further guidance on how to interview children can be found in UNHCR, "Interviewing Applicants for Refugee Status", Training Module RLD 4. Geneva 1995, UNHCR Procedural Standards for RSD under UNHCR's Mandate, at 4.3.7, Action for the Rights of Children, Working with Children; UNHCR, "Resettlement Handbook", November 2004, chapter 6.5. See also some documents relating to refugee status determination procedures, including: Immigration and Refugee Board, "Guideline 3 Child Refugee Claimants: Procedural and Evidentiary Issues", Ottawa Canada, September 30, 1996; Finnish Migration Board, Directorate of Immigration, "Guidelines for Interviewing (separated) minors" Finland, 2002; and US Department of Justice, Immigration and Naturalization Service, "Guidelines for children's asylum claims", 1999. See furthermore The Australian Law Reform Commission, "Seen and heard: priority for children in the legal process", Report No. 84, September 1997, at <http://www.austlii.edu.au/au/other/alrc/publications/reports/84/ALRC84.html> as well as Save the Children UK, "Communicating with Children", 1 January 2000.

ANNEX 1

Use of “best interests” in the CRC

Article 3 establishes the general principle that “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 9 enshrines the principle that “a child shall not be separated from his or her parents against their will, except when competent authorities ... determine ... that such separation *is necessary for the best interests of the child.*” And ... “the right of the child who is separated from one or both parents 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.*”

Article 18 indicates that “...both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. *The best interests of the child will be their basic concern.*”

Article 20 provides that a “child temporarily or permanently deprived of his or her family environment, or in *whose own best interests cannot be allowed to remain in that environment*, shall be entitled to special protection and assistance provided by the State.”

Article 21 requires that in adoption matters “the **best interests of the child shall be the paramount consideration**”.

Article 37 (c) requires States to ensure that “... every child deprived of liberty shall be separated from adults **unless it is considered in the child's best interest** not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;”

Article 40 (2) (b) (iii) requires States to ensure that “every child alleged as, accused of, or recognized as having infringed the penal law ... to have the matter determined without delay by a competent, independent and impartial **authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and**, *unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.*”

ANNEX 2



UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES



NATIONS UNIES
HAUT COMMISSARIAT
POUR LES RÉFUGIÉS

UNDERTAKING OF CONFIDENTIALITY

Name of the person involved in the BID:

In addition to my agreement to abide by the principles set out in the *UNHCR Code of Conduct*, I make the following undertaking in respect of the performance of my formal role in the procedure for the determination of the best interests of the child.

I undertake not to disclose or discuss any information about the child that comes to my knowledge as a result of my role in the BID process. I understand and accept that my obligation to maintain the confidentiality of information I have received to determine the best interests of the child continues beyond the termination of my formal role in the BID process.

I understand that this signed Undertaking will be maintained on file with UNHCR and that failure to comply with it, without reasonable excuse, will amount to misconduct and may result in disciplinary proceedings against me and/or legal action.

I have read, understand and accept the above undertaking of confidentiality.

Signature:.....

Date:.....

Place:.....

ANNEX 3. BID GUIDELINES

INTER-AGENCY REGISTRATION FORM FOR UNACCOMPANIED AND SEPARATED CHILDREN

**REGISTRATION FORM FOR
UNACCOMPANIED AND
SEPARATED CHILDREN**



PHOTO

ICRC ID No. _____

Other ID No. _____

(Please specify organization)

Unaccompanied child

Separated child

Please Note:

- A **separated** child is any person under the age of 18, separated from both parents, or from his/her previous legal or customary primary care giver, but not necessarily from other relatives. An **unaccompanied** child is any person who is under the age of 18, separated from both parents, or from his/her previous legal or customary primary care giver and **also** his/her relatives.

- If the child does not remember his/her address, please note other relevant information, such as descriptions of mosques, churches, schools and other landmarks.

Please fill out this form with a ballpoint pen. (1 form per child except for siblings under point 2.)

1. Identity of the child

Personal ID document type and no. _____

Sex M F

Full name (as expressed locally) _____

Also known as (nickname) _____

Name(s) given to the child by others after separation from parents? Yes No

Date of birth/age _____ Place of birth _____

Nationality _____ Country _____

Ethnic group _____

Language(s) spoken _____

Distinguishing physical characteristics _____

Father's full name _____

Alive Dead don't know

Mother's full name _____

Alive Dead don't know

If father and/or mother believed dead, please give details _____

Other persons familiar to the child _____

Address of the child before separation (i.e. where the child grew up)

Tel. no _____

Person(s) with whom child lived _____

2. Siblings (brothers/sisters) accompanying the child

A. Full name _____

Date of birth/age _____

Place of Birth _____ Country _____

Current address _____

_____ Tel. no. _____

B. Full name _____

Date of birth/age _____

Place of Birth _____ Country _____

Current address _____

_____ Tel. no. _____

3. Current care arrangement of the child

a. Children's centre b. Foster family (please specify nationality) _____

c. Other (please specify) _____

Full name of institution/person(s) responsible _____

Address

_____ Tel. no. _____

Date this care arrangement commenced _____

Place foster family intends or is likely to return to or resettle in:

Address _____ Country _____

4. History of separation

Date of separation _____

Place of separation _____ Country _____

Circumstances of separation _____

List additional movements between place of initial separation and current location

5. In case the child has been evacuated

By whom / through which organisation? _____ Date _____

Reason(s) for evacuation _____

From where? _____ to where? _____

6. Additional protection concerns

Has the child been associated with an armed force or armed group? Yes No

Child headed household Yes No

Disabled child Yes No

Medical Yes No

Street child Yes No

Girl mother Yes No

Abuse situation Yes No

Other (please specify) _____

Further information _____

Immediate action required? Yes No _____

7. Wishes of the Child

Person/s child wishes to find

Father Mother Brother Sister

ANNEX 4 BID REPORT FORM

LOCATION:	FILE NO.:
OFFICER PREPARING THE REPORT:	SIGNATURE:
	DATE:
INTERPRETER:	

CHILD'S BASIC BIO-DATA

(REFER TO REGISTRATION FORM)

FULL NAME:	NATIONALITY AS STATED:
NICKNAME	IF STATELESS, PLACE OF FORMER HABITUAL RESIDENCE:
DATE/YEAR OF BIRTH:	ETHNICITY:
SEX:	RELIGION:
STATUS OF THE CHILD:	
NAME OF THE FATHER:	NAME OF THE MOTHER:

Part I- SUMMARY INFORMATION ON THE CHILD

1. History prior to separation

This part should briefly outline the situation of the child prior to the separation. It should contain information on the family composition, the nature, duration and quality of the relationship of the child with family members and others who cared for it, as well as key information regarding the physical safety, including protection risks of the child and the degree to which the development needs (e.g. access to education, health services, rest and leisure, etc.) of the child were met.

2. History of separation, including flight

This part should briefly describe the history of separation. It should contain information on the circumstances of separation from the family or others who cared for the child, as well as information on who was with the child during the flight and potential abuses faced during the flight.

3. History after flight and current situation

This part should briefly describe care arrangements after flight and to what extent current care arrangements ensure respect for the fundamental right to life, survival and development (including education and access to adequate health services). For unaccompanied and separated children it should contain information on when tracing was initiated and its results. This part should also contain relevant information on the physical security of the child, on the quality of the relationship of the child with his/her caregivers, guardian, relatives and other close to the child, on the degree of integration in his/her current community as well as on the likely effect of a separation of the child from his/her community or from persons close to him/her.

4. Follow-up measures

Please list the follow-up measures to address protection gaps identified during the BID process, but not directly linked with the BID decision and indicate what action has been initiated.

5. Assessment of the child's age and maturity

This part should include an estimate of the child's age or age range and a brief description of the information used to reach the estimate (e.g. documents, corroborating statements from relatives or other community members regarding current events at time of child's birth, educational background, family history, physical appearance). This part should also include information related to the child's physical, psychosocial and cognitive development (e.g. cognitive delays).

Part II - AVAILABLE OPTIONS

1. List existing options that the BID should consider

Depending on the individual situation, under this heading the various options which are possible in a given context should be listed and briefly described.

2. Views of the child

Briefly describe the preference identified by the child. Provide a brief assessment on whether the views expressed are considered to be genuine or the result of manipulation.

3. Views of persons close to the child

Briefly describe the views of family members, guardians or other persons close to the child as may be relevant in the individual case (e.g. medical staff, teachers, etc.) on what they consider to be in the best interests of the child.

ANNEX 5
UNHCR BID ASSESSMENT FORM

NAME OF THE CHILD:	FILE NO.:
NAME OF OFFICER PREPARING THE REPORT:	SIGNATURE:
DATE:	

Part I – Assessment of relevant factors

This part shall be drafted by the welfare officer. It shall serve as a basis for the panel or other decision making mechanism to take a decision in the individual case. In case of BID prior to a durable solution decision, three or more options should be considered in relation to the current situation of the child, including voluntary repatriation, local integration and resettlement. Assumptions related to the practical feasibility of each option, including opportunities and risks, should be made explicit (e.g. in relation to the situation of the family, home country, host country, etc.). In cases of a BID by UNHCR when circumstances do not allow for a meaningful evaluation of durable solutions (including for exceptional temporary care arrangement decision or for separation from parents), recommendations should include a timeframe for such an assessment to be undertaken.

Factors	Current Situation of the Child	Option 1	Option 2	Option 3
VIEWS OF THE CHILD				

<p>VIEWS OF FAMILY MEMBERS AND OTHER PERSONS CLOSE TO THE CHILD This section should also include any indication of conflict of interests</p>				
<p>SAFE ENVIRONMENT AND RISK OF HARM This part should include but not be limited to threats to the right to life, freedom from torture, other cruel, inhuman or degrading treatment or punishment, <i>refoulement</i>, underage recruitment, threats to physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse as well as access to life-saving treatment for sick children</p>				

<p>FAMILY ENVIRONMENT AND ALTERNATIVE CARE This part should reflect the outcome of tracing activities and focuses on the degree of attachment of the child to those persons close to him/her as well as on their ability and readiness to care for the child. The likely impact of a separation from persons close to the child shall be described.</p>				
<p>DEVELOPMENT NEEDS OF THE CHILD This part focuses on the degree of the child's integration in the current community, the degree of continuity in the child's upbringing and the child's ethnic, religious, cultural and linguistic background, the right of the child to the enjoyment of the highest attainable standard of health, the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development, access to education as well as the right of the child to rest and leisure, to engage in play and recreational activities appropriate to his/her age.</p>				
<p>OTHER FACTOR(S) RELEVANT IN THE SPECIFIC CIRCUMSTANCE (DESCRIBE)</p>				

REASSESSMENT If the durable solution decision is postponed, the timeframe for reopening the case and reassessing the decision should be noted here				

Part II – Recommendation by decision maker

This part shall contain the decision by the panel or other decision-making mechanism. It shall include the reasons for the decision as well as any relevant aspect of the discussion in the panel.

Part III – Comments by decision maker

This place is reserved for additional comments by the decision making body, such as for instance a decision to reopen the case in case special events occur, or.....

DATE:	NAME OF DECISION MAKER:	SIGNATURE (OF CHAIR IN CASE PANEL):
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ANNEX 6

Sample Standard Operating Procedures

UNHCR Guinea

Processus pour une solution durable des enfants séparés

Comité de coordination: Cellule Solutions Durables

Conakry, Guinée

Besoins développementaux de l'enfant en vue de la détermination de l'intérêt supérieur de l'enfant

- Souhait de l'enfant: droit d'être consulté, informé et à participer.
- Identité: nom, sentiment d'appartenance à une famille ou à un groupe, langue, religion et culture, changement de l'identité, information sur le pays d'origine, etc.
- Support social et soin: présence de membres de la famille (famille biologique, famille d'accueil¹, famille élargie) ou de la communauté avec qui l'enfant peut développer les habilités sociales et culturelles, accompagnement dans le cas de maladie ou autre détresse, accès aux services de base, etc.
- Contact dans le milieu de vie: participation à la vie dans le milieu de vie, stabilité, amour, affection, relations, loisirs, etc.
- Education et formation incluant opportunité de travail conformément à la législation en vigueur (en réponse aux besoins psychologiques de l'enfant et à la préparation à la vie adulte) accès, temps pour les devoirs, présence et régularité, etc.
- Bien-être physique et santé mentale: Accès aux services de base en fonction des besoins particuliers de l'enfant, protection des abus, survie, alimentation, environnement physique, etc.
- Intégration et implication au sein de la communauté : relations, engagement, connaissance du réseau d'appui, etc.
- Protection: connaissance des systèmes en place, risque d'exploitation sexuelle, travail infantile, etc.
- Contexte: analyse et connaissance de la situation géopolitique et sociale actuelle dans les pays hôte et d'origine
- Impacts de la durée de séparation sur l'enfant

Ces paramètres serviront à l'élaboration de la matrice pour la détermination de l'intérêt supérieur de l'enfant et à la révision du format du rapport à être utilisé pour la présentation de l'information sur l'enfant. Cette liste sera revue régulièrement.

ETAPES pour la détermination d'une solution durable

Il est important de souligner que la cellule ne remplacera pas le travail quotidien que chacune des

¹ Le choix d'une nouvelle famille d'accueil se fera dans le respect des normes citées dans le document « Inter agency guiding principles on unaccompanied and separated children », Ch. 6 p. 61

agences membres de la cellule est appelé à faire. Le travail de collaboration entre les agences doit être maintenu et favorisé. La cellule a un rôle décisionnel tandis que les agences de protection continueront d'assurer l'exécution.

À chaque étape du processus, l'état des recherches de parents et les perspectives de succès de ces recherches seront prises en ligne de compte. Un délai raisonnable devra s'être écoulé (au moins 2 ans) au cours duquel une combinaison d'outils de tracing aura été utilisée par un ou plusieurs agences avant qu'une autre solution durable autre que la réunification familiale soit retenue. Dans des cas exceptionnels, un délai plus court pourra être accepté. La découverte de nouvelles informations pouvant mener à un tracing positif pourra prolonger le délai.

Lorsqu'au terme du processus, une solution durable autre que la réunification familiale sera retenue, la poursuite de la recherche de parents pourrait se poursuivre. La décision se prendra en fonction de la solution durable, des souhaits et de l'intérêt de l'enfant ainsi que des perspectives de tracing. La solution durable retenue préservera les intérêts de l'enfant au cas où le lien familial serait rétabli.

1. Soumission des dossiers

Qui peut soumettre ? : Toutes les agences de protection, impliquées dans la gestion des enfants séparés, pourront soumettre au moment convenu, des cas d'enfants qui répondent minimalement à un des critères présentés ci-dessous.

Quoi soumettre ? : Le rapport incluant l'information mise à jour, présentée selon le format de rapport approuvé par la Cellule (voir en annexe I), sera soumise à la Cellule de Solutions Durables. Lorsque considéré pertinent, l'analyse des différentes alternatives ainsi qu'une recommandation pour l'intérêt supérieur de l'enfant effectuées à partir de la matrice d'évaluation seront aussi incluses. Les dossiers appartenant à l'agence d'exécution ne seront pas circulés. Les rapports seront soumis à chacun des membres de la Cellule Solutions Durables.

Quels cas soumettre ? : Les cas qui répondent à un ou plusieurs critères ci-contre pourront être soumis à la cellule :

- Tous les enfants ou le family tracing fut négatif.
- Enfants de 18 ans et + qui étaient mineurs au moment de l'enregistrement
- Cas difficiles:
 - a) Malgré l'implication de deux agences de protection ou plus, une solution consensuelle n'a pas pu être trouvée.
 - b) Répondant à un ou plusieurs critères tel que durée de séparation, âge de l'enfant, vulnérabilité, peu de stabilité dans la vie de l'enfant, enfants de la rue particulièrement les filles, filles-mères, enfant vivant avec un(e) chef de famille vulnérable etc.

Quels cas ne pas soumettre ? : Les cas, où la divulgation de l'information pourrait causer préjudice à l'enfant, seront traités confidentiellement.

A qui soumettre ? : Il est considéré avantageux que les régions Haute Guinée et Forestière aient une antenne Solutions Durables autonome. D'ici que ces deux régions se dotent d'une entité fonctionnelle et répondant à des normes de qualité, ce qui va requérir formation et appui, la cellule de Conakry se chargera de traiter les cas qui relèvent de ces zones. La composition de chacune des cellules reflétera la présence sur le terrain et inclura obligatoirement un membre du HCR et du Ministère des Affaires sociales. Une étroite collaboration et coordination seront instaurées entre les différentes cellules. Les mécanismes seront discutés ultérieurement.

2. Révision des dossiers

Chacun des membres de la Cellule Solutions Durables prendra connaissance du rapport et remplira la matrice d'identification de l'intérêt supérieur de l'enfant (voir annexe II) pour chacun des cas soumis et ce avant la réunion de travail de la cellule. L'analyse se fera au cas par cas dans le respect des principes directeurs suivants :

- La diligence des décisions prendra en ligne de compte l'ensemble du processus de séparation de l'enfant.
- L'intérêt de l'enfant sera dissocié de l'intérêt des autres membres
- L'intérêt de tous les acteurs sera subordonné au bénéfice du bien-être de l'enfant
- Les opinions, perceptions et sentiments de l'enfant seront pris au sérieux
- L'enfant sera considéré comme porteur de droits
- L'évaluation de l'impact sera mise en lumière dans l'analyse de chacune des options.
- Le professionnalisme de chacun des membres sera au-dessus de toute autre considération.

3. Recommandation au cas par cas

Les options considérées seront les suivantes :

- Tracing / réunification familiale
- Rapatriement (la mesure devra détailler lorsque nécessaire les mesures spéciales de protection qui devront être mises en place, care arrangements, etc.)
- Intégration locale (la mesure devra spécifier si nécessaire : adoption, naturalisation, care arrangements, etc.)
- Réinstallation

Quand se fera la recommandation ? : Devant l'urgence, il semble impératif que les réunions programmées soient effectuées. Dans ce sens, chacune des agences membres de la cellule fera en sorte qu'un représentant doté du pouvoir décisionnel requis assiste à chacune des réunions. La détermination de la recommandation pourrait être différée si un ou plusieurs membres de la cellule juge l'information incomplète et/ou requiert un avis extérieur. Le rapport sera remis à l'agence

d'exécution pour complémentation.

Comment se prendra la décision ? La recommandation se prendra selon le choix de la majorité où chacune des agences membre aura droit à un vote. Dans le cas d'égalité ou d'un différend important entre des membres, la recommandation sera différée jusqu'au moment où l'opinion d'un expert, de l'information additionnelle, etc. sera soumise. Un nouveau vote sera demandé.

4. Mise en œuvre des recommandations

Chacun des dossiers sera acheminé à l'institution responsable de la mise en œuvre de la recommandation prescrite par la Cellule. Un plan de suivi au cas par cas sera élaboré. La cellule Solutions Durables fournira de l'information additionnelle, des mises en garde, etc. requises par l'instance responsable de la mise en œuvre de la recommandation. L'(es) agence(s) de protection responsable(s) du cas effectuera(ont) le suivi auprès de l'entité décisionnelle afin de connaître la progression du dossier et de faire un compte-rendu aux membres de la Cellule Solutions Durables. Une fiche de suivi, incluant les actions, les problèmes rencontrés, date de chacune des étapes, etc., sera mise à sa disposition.

Document révisé et approuvé par : HCR, IRC, Ministère des Affaires Sociales, Sabou Guinée et UNICEF

Le document "Inter agency guiding principles on unaccompanied and separated children" servira de référence au travail de la Cellule de Solutions Durables.