Information from the UNHCR Field Handbook for the implementation of the Best Interest of the Child Determination (BID) Handbook.

Best Interests Determination (BID) in the framework of durable solution

The ‘best interests of the child’ is the guiding principle.

**Article 3(1) CRC:** “…best interests of the child shall be a primary consideration.”

A complex balancing of factors and rights is required to determine the best interests of the child in an individual case.

Factors to consider during the BID process:

- a. Family and close relationships situation
- b. Situation in the country of origin
- c. Safe care arrangements in environment (housing, health, education and vocational training, employment prospects)
- d. Potential risks, e.g. heightened risk of abuse/exploitation/violence for girls (risks should not exceed the safety precautions in place, or be disproportionate in relation to safeguards)
- e. Social integration in the host country
- f. Mental and physical health of the child
- g. Development possibilities and identity needs (personal and cultural development)

Additional factors:

- h. Special circumstances of a child
- i. Age and maturity of the child ("in accordance with the age and maturity of the child" - **Article 12, CRC**)

“…efforts to find durable solutions for unaccompanied or separated children...should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated” - Committee on the Rights of the Child, General Comment No.6, para.79

- The formal BID procedure should be completed early in the displacement cycle (within 2 years since identification of a UM), not just prior to the identification of durable solution.
- BID should lead up to the identification of durable solution options, with the participation of the child (age-specific, child-friendly and adequate information, perhaps on-spot visits) taking into account their views and ensuring their informed consent (UNHCR BID Guidelines: pages 59–63, 67-69). Specific needs of the child, where appropriate, should also be taken into account.

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- BID procedures should not be undertaken solely or separately from other assessments, but follow up on the best interests assessment (BIA) and form part of the overall individual care/protection plan for the minor.

**BID for durable solutions for unaccompanied and separated refugee children**

UNHCR BID Guidelines, Annex 1, page 84

**A. Family reunification and/or resettlement**

*Family tracing*

“States Parties shall provide... co-operation.. to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment...” - *Article 22(2), CRC*
‘Family’

‘Family’ includes family members/relatives or other legal or customary carers/guardians. The definition of ‘family’ can be extended to include relationships of socio-economic or emotional dependency.

- There should be consultation with the child before initiating family tracing, in a case-sensitive manner.
- Documentation, e.g. birth certificate, court orders etc., should remain with the child to enable the process of family tracing.
- The launch of family tracing should take place shortly after being aware of an unaccompanied child, at the same time of the intake of social history and while the BID process is continuous.
- In some cases, family tracing can continue after resettlement, integration in the host society or voluntary repatriation.

Family reunification/resettlement

“Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding” – Convention on the Rights of the Child, Preamble

UNHCR’s Executive Committee Conclusion on Children at Risk No 107 (LVIII) 2007:

“xviii. Enhance the use of resettlement as a protection and durable solutions tool for children at risk; where appropriate, take a flexible approach to family unity.”

Family reunification vs resettlement

The family reunification option is based on the principle of family unity.

Family reunification and resettlement can be tied up together or resettlement can take place subject to Dublin II regulations (Dublin transfers).

There is a presumption that family reunification is in the best interests of the child, while resettlement (if it does not lead to family reunification) is considered in the best interests of a child if there is a significant risk of rights violations in the country of origin or the asylum-seeking country. Resettlement should not, however, undermine future family reunification.

- There should be monitoring mechanisms established both before, in the form of guarantees (establishing contact with the family members and organisations in the country of origin with the consent of the child) and after the reunification is effectuated, in the form of follow up.
- Once the family is traced, family relationships verified and the child and family have expressed their wish to be reunited then the process should continue, unless there are dangers with regards to abuse/neglect/exploitation related to the family members or the country situation renders such reunification non-advisable.

• One of the guarantees that should be in place is the principle of non-refoulement; “No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” (Article 3, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See also Articles 6 and 7 of the International Covenant on Civil and Political Rights).

• Family reunification has to encompass and ensure access to civil, social, economic, cultural and political rights. The situation of the country, dangers and risks has to be examined and investigated.

• Resettlement (not leading to family reunification) might be considered based on the existence of a number of criteria, such as legal and physical protection needs or medical needs, and further considerations apply specifically for children. See also below Section 4.6.

• Cooperation with institutions/organisations active in this field or other agencies with a mandate in voluntary returns, family tracing and family reunification (such as UNHCR, IOM, ICRC etc) is encouraged.

**Family Reunification Checklist to Determine if a BID is required**

This checklist should be completed before facilitating family reunification. A BID, normally in its simplified form, is required if any of the following statements applies (please tick relevant boxes):

- The child is not registered with UNHCR and after all reasonable efforts, information gathered on the child and his or her family, remains insufficient to make an informed decision as to whether family reunification could lead to violations of the rights of the child.
- Doubts exist as to the legitimacy of the family relationship.
- Family members have provided false information about essential facts relating to the reunification (e.g. identity of family members).
- There are indications of past or current child abuse or neglect within the household that the child will join.
- The family member that the child will join lives in an environment (in detention, in an area affected by armed conflict or natural disaster, etc.) which is likely to expose the child to physical or emotional harm.
- The child has disclosed past abuse or neglect, or fears of future harm.
- Reunification will or is likely to expose the child to abuse or neglect.
- The family member that the child will join is not his or her father or mother.
- The child is reluctant to be reunited with the family member(s).
- The child and the family member that s/he is joining have never lived together, or have not lived together for a significant period.
- The reunification will result in the child being separated from a family member who is close to the child or with whom there has been a dependency, and/or could affect custodial rights or contact with a family member (see BID Guidelines, Section II.3).

**UNHCR BID Guidelines, Annex 4, page 87**

**B. Integration in host country/ Local integration**

‘Integration’:

Legal, social (contacts, relationships etc), economic (education/employment/training etc) and cultural (language etc) inclusion.

- Access to civil, social, economic, cultural and political rights in the host country is to be ensured. Unaccompanied children shall benefit of the same rights as national children and

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5 See Chapter 6, UNHCR resettlement submission categories, [www.unhcr.org/3d464e842.pdf](http://www.unhcr.org/3d464e842.pdf)
should not be discriminated against; “without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” (Art.2, CRC)

- There has to be educational and psychological support provided during the stages of local integration.
- There has to be proper care arrangements, protection and assistance in the host country; “entitled to special protection and assistance provided by the State... alternative care.. foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children.” (Art.20, CRC)
- Usually integration is accompanied by an application to remain in the country on protection, humanitarian or immigration grounds. Successful integration should encompass the granting of international protection.
- Integration entails the existence of documentation to prove their identity and (acquired) status.

C. Voluntary return/repatriation

Return ‘in safety and in dignity’:

Return in conditions of physical, legal and material safety, with full restoration of national protection being the end product.\(^6\)

Voluntary return/repatriation can be tied up with the solution of family reunification in the country of origin.

- Return/repatriation has to encompass and ensure access to civil, social, economic, cultural and political rights in the country of origin.
- There should be effective monitoring before (by the guardian or another appointed party) and post return. Preparation of a re-integration plan before and after the return.
- Efforts to maintain communication or stay informed/updated about the well-being of the child after their return to the country of origin.
- When considering the option of repatriation there should be no pressure in enforcing the return of a child, or immediate return after the child turns 18 (if such return is not in accordance with their wishes).
- Cooperation with institutions/organisations active in this field or other agencies with a mandate in voluntary returns, family tracing and family reunification (such as UNHCR, IOM, ICRC etc) is encouraged.

Below are some factors to consider which can influence the decision for voluntary return:

- Views of the child expressed in exercise of their right to do so (Art. 12, CRC) and those of the caretakers. Informed decision of the child has to be secured.

b. Safety, security and conditions, including socio-economic conditions awaiting the child upon return (including through home study), where appropriate, conducted by social network organizations.

c. Availability of care arrangements for that particular child.

d. The child’s level of integration in the host country and the duration of absence from the home country.

e. The child’s right to preserve their identity, cultural and other background; “to preserve his or her identity, including nationality, name and family relations” (Art. 8, CRC) and the “desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background” (Art. 20, CRC).  

7 Committee on the Rights of the Child, General Comment No.6, www2.ohchr.org/english/bodies/crc/docs/GC6.pdf, p.22


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**Article 10 – Return Directive**

1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.