Overview of UNHCR Best Interest Determination Guidelines

Ron Pouwels, UNHCR

Ron Pouwels, UNHCR, presented on the background of Best Interest Determinations (BID) for children of concern by laying the foundation of the legal framework provided in Article 3 of the Convention on the Rights of the Child. This convention states that the best interests of the child shall be a primary consideration in all actions affecting children. For UNHCR this principle must be applied systematically for any UNHCR action that affects children of concern.

In May 2008 the final version of the UNHCR BID Guidelines was made available. The purpose of the Guidelines is to identify when a BID should be conducted, who should participate in the BID process, and what criteria should be used in making a BID decision. The BID is to be seen as a tool for protection, not only as a tool for resettlement.

Best interest assessments are made by staff with individual children to ensure that primary consideration is given to the child’s best interest. A BID is a formal process with strict procedural safeguards for decisions affecting the child and should involve the child’s participation, involve decision-makers with relevant expertise, and be a balanced decision.

BIDS should be carried out to identify durable solutions for unaccompanied and separated refugee children, to make temporary care arrangements for unaccompanied or separated children in exceptional circumstances, or to decide on the possible separation of a child from his or her parent(s) against the will of the child.

The State, with UNHCR as a subsidiary actor, should undertake conducting BIDs to complement the State’s child protection systems unless UNHCR is a substitute for the State or for actions UNHCR takes independently, such as for resettlement or repatriation purposes. The State should be involved in BID decisions.

The BID structure includes a BID supervisor who sets up and supervises the process, a child welfare officer who collects and analyses all information and drafts the recommendation, and a multi-disciplinary BID panel which considers the recommendation of the child welfare officer (which has been reviewed by the BID supervisor) and makes the decision.

Rarely is a BID decision made based on one over-riding factor. The short- and long-term impact of all choices must be weighed. A checklist of factors to consider has been included in the annex of the Guidelines. Some key factors are the views of the child, the view of family members, safety, the importance of family and other close relationships, and nurturing the developmental needs of the child. For example, in terms of safety, threat of severe harm outweighs other factors; in terms of family, the quality and duration of relationships is considered.

Each BID panel follows the Guidelines and should establish a standard process for deciding on BIDs in that office. The decision of the panel, including whether the decision was unanimous or majority and the reasoning of the decision, is recorded on the BID. Any information, even information that is rejected, must be recorded. A BID decision may be re-opened if there are changes in circumstances or the initial decision cannot be carried out in a specified timeframe.

Conducting Best Interest Determinations ensures that care and protection is provided to a child, involves UNHCR and partners in a comprehensive review, allows the child’s views to be heard, identifies
protection gaps affecting individuals or groups, and involves persons of varying expertise. Fifty-four UNHCR offices are implementing the Guidelines and 12 have BID panels. Current resources are inadequate, however, and there is a need to build capacity, including training on techniques for interviewing children. The focus on resettlement is only implemented when an office is implementing durable solutions.

UNHCR is translating the Guidelines into French and providing technical guidance to offices. There is a need for strengthening partnerships particularly concerning BIDs. UNHCR advocates for implementing BIDs beyond resettlement and for conducting them in a timeframe shorter than two years.

Recommendations:

1. A more concerted effort that pre-conditions to conducting BIDs are in place.
2. Further strengthening the child protection capacity of UNHCR and partner staff in the field.
3. Make sure BIDs are started earlier in order to be completed within the 2 year period.
4. De-link BIDs from Resettlement in recognition of its importance as a protection tool.

Abigail Price, IRC

In 1999, the International Rescue Committee was the lead agency tracing Sierra Leonean refugees in Guinea. By December 2004, UNHCR had completed repatriating refugees to Sierra Leone. The question remained: What to do with the children left behind? In March 2005, IRC established the Durable Solutions Committee - a panel of experts including UNHCR, the Guinean Ministry of Social Affairs, UNICEF, ICRC, and IRC. In the absence of BID Guidelines, the committee established criteria for submitting cases of refugees or internally displaced children recognized by UNHCR for whom family reunion was not available in the foreseeable future.

Decisions were based on each child’s wishes, views and articulated needs as well as the child’s identity, history, current needs, and educational and employment opportunities. Each decision was analyzed, balanced and weighed. Challenges included the fact that repatriation had been completed and was not available, BID guidelines were not in place and there were no procedures to follow.

Lessons learned include:

• a recommendation that the BID process be put in place at the time of an emergency;
• the BID process to be done within the framework of tracing and registration;
• and that the BID process be influenced by the data collected.

Regarding the establishment of committees, it is important that UNHCR lead the committee, that the correct host government ministry be involved, and that all parties need capacity or training which must be provided if it is lacking. It is important to clarify each party’s role and responsibility. We also need to explore other circumstances in which the BID process can be used, ie child soldiers, children with siblings, and adults with disabilities.