

# GUIDELINES

FOR BEST INTERESTS  
DETERMINATION  
FOR **VULNERABLE**  
**CHILD MIGRANTS**  
IN ZAMBIA



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# GUIDELINES FOR BEST INTERESTS DETERMINATION FOR **VULNERABLE** **CHILD MIGRANTS** IN ZAMBIA

July 2018







# FOREWORD

The “best interests of the child” is one of the core principles of the United Nations Convention on the Rights of the Child (UNCRC). The Government of Zambia is a signatory to the UNCRC, as well as the African Charter on the Rights and Welfare of the Child (ACRWC). In order to operationalize the principle of the “best interests of the child,” the Government of the Republic of Zambia has developed guidelines for the implementation of best interests assessment (BIA) and best interests determination (BID) for vulnerable migrant children in Zambia. The Guidelines were developed with relevant stakeholders and civil society organizations (CSOs), with support from the International Organization for Migration (IOM). This is also part of the implementation of the United Nations – Government of Zambia Joint Programme on Social Protection.

Best interests determination is a formal process with strict procedural safeguards designed to determine a child’s best interests, particularly for decisions affecting the child. The objective of the BID process is to make decisions based on national law and international standards, protecting the rights of the child and supporting his/her well-being, safety and development. Standardizing and formalizing the procedure helps to provide the necessary support and guidance to all actors that have roles to play in meeting the needs of vulnerable migrant children. The process is equally aimed at providing support at the centre, which focuses on children’s best interests.

The Guidelines, discussed in this publication, were developed for the purpose of establishing a formalized procedure for best interests determination, as well as to increase the consistency and quality of services received by vulnerable migrant children in Zambia. These children include (but are not limited to) victims of trafficking (presumed and potential), unaccompanied and separated children, and stranded migrant children. The Guidelines are based on international, regional and national best practices and agreed-upon minimum

standards. They ensure that the best interests of the child are taken into consideration throughout the process of identification, provision of protective services, return/resettlement and reintegration of all those in care.

The Ministry of Community Development and Social Services is proud to launch this sterling volume, Guidelines for Best Interests Determination (BID) for Vulnerable Child Migrants in Zambia. I call upon all partners to adhere to the procedures and standards herein and support the roll-out of the Guidelines in the country, to improve the well-being of vulnerable migrant children in Zambia.



Hon. Emerine Kabanshi

Member of Parliament

Minister of Community Development and Social Services



# ACKNOWLEDGEMENTS

The Guidelines for Best Interests Determination (BID) for Vulnerable Child Migrants in Zambia have been developed for the purpose of establishing a formalized procedure of dealing with vulnerable migrant children. The Guidelines seek to improve service delivery by promoting consistency, efficiency and effectiveness when responding to the needs of vulnerable migrant children.

The Ministry of Community Development and Social Services was encouraged to embark on this project by the amount of support from and the participation of various stakeholders. Working with these stakeholders, which include civil society organizations (CSOs), and receiving support from the International Organization for Migration (IOM), the Ministry is focused at promoting and implementing the Government of the Republic of Zambia (GRZ) – United Nations Joint Programme on Social Protection.

The Ministry would like to acknowledge and commend all the stakeholders for the commitment and effective participation in the consultative process in developing the Guidelines. In this regard, I wish to recognize the contributions of the Technical Working Group, which comprised participants from the following international organizations and Zambian Government agencies:

- International Organization for Migration (IOM)
- UNICEF
- Save the Children International – Zambia
- Office of the United Nations High Commissioner for Refugees
- Office of the Commissioner for Refugees, Ministry of Home Affairs
- The Department of Immigration
- The Child Protection Unit of the Zambia Police Service
- Provincial Social Welfare Office
- The Department of Social Welfare under the Ministry of Community Development and Social Services

I also wish to take special recognition of the consultant, Mr Mwiba Mwenda, and IOM Zambia's Migrant Protection and Assistance Team under the leadership of Ms Marianne Lane, for the unwavering support in ensuring the successful completion of the Guidelines.

The development of the Guidelines was also made possible with financial support from Irish Aid, the United Kingdom's Department for International Development (DFID), as well as the Governments of Finland and Sweden (under the Joint Programme on Social Protection).

It is my belief that the Guidelines will vastly improve the management and delivery of services for vulnerable migrant children in the country.



Rev. Dr Howard Sikwela  
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Ministry of Community Development and Social Services





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# ACRONYMS AND ABBREVIATIONS

<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>BIA</b>	best interests assessment
<b>BID</b>	best interests determination
<b>CRIA</b>	child-rights impact assessment
<b>IOM</b>	International Organization for Migration
<b>SOP</b>	standard operating procedure
<b>UASC</b>	unaccompanied and separated children
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNHCR</b>	(Office of the) United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations International Children's Fund
<b>VoT</b>	victim of trafficking
<b>NRM</b>	National Referral Mechanism



# EXECUTIVE SUMMARY

States parties to the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child have a duty to respect, protect and fulfil children's rights. The principle of the best interests of the child, in particular, should be of primary consideration. At the national level, the commitment to make the principle a reality is reflected in laws and policies. However, despite legislation and policies in Zambia that guarantee the best interests of the child, including those of the migrant child, there are no clear guidelines in place to operationalize the principle.

In view of the above observation, the Government of the Republic of Zambia, working with relevant stakeholders and civil society organizations (CSOs), and with support from the International Organization for Migration (IOM) as part of its implementation of the United Nations Joint Programme on Social Protection (in which the Food and Agriculture Organization (FAO), International Labour Organization (ILO), UNICEF and World Food Programme (WFP) are also involved), have developed these Guidelines to formalize the process of best interests determination (BID), as well as best interests assessment (BIA) – with particular focus on the needs of migrant children – in accordance with international, regional and national minimum standards.

It must be appreciated that the Guidelines are aimed at formalizing the process of determining children's best interests, and at increasing the consistency and quality of services that significantly impact the lives of migrant children in Zambia. Furthermore, the Guidelines establish the BID Panel and assign to it its responsibilities, as well as provide guidance on the elements of and the practical procedural steps for consideration during the BIA and BID processes, focusing on child protection. The Guidelines apply to vulnerable migrant children in Zambia, including (but not limited to) actual, presumed and potential child victims of trafficking, unaccompanied and separated children, asylum seekers, refugee children, stateless children and stranded migrant children. However, the Guidelines are in no way an attempt to dispense with

other guidelines already existing and relating to specific categories of children. In an attempt to deal with child protection issues, the Guidelines have identified, inter alia, existing normative frameworks at both the international and regional levels. In addition, they provide the nexus between the best interests of the child and other fundamental child rights principles, such as the rights to non-discrimination; life, survival and development; and respect for the views of the child. Establishing the link between these child rights principles becomes critical for the reason that Article 3 of the UNCRC states that the best interests of the child must be a primary consideration, if not the sole consideration. Therefore, in determining the best interests of the child, a person, court or other competent authority should take into account the other general principles of the UNCRC.

The Guidelines also attempt to outline the different needs of migrant children at different stages of the migration process, in accordance with the established National Referral Mechanism (NRM), which considers the risks associated with denying children on the move their rightful protection. Stage 1 of the NRM comprises the initial interview and assessment, while status determination is dealt with under Stage 2. Stage 3 focuses on referrals and service provision, while the provision of immediate needs and services is addressed in Stage 4. Stage 5 relates to medium- and long-term needs, while voluntary return to the country of origin is addressed in Stage 6. The seventh (and last) stage of the NRM, which is elaborated in the Guidelines, looks at providing lasting solutions for migrants, which may include repatriation, reintegration, integration or resettlement. In augmenting child protection, the Guidelines also address other cross-cutting issues, including: (a) prevention of trafficking, sexual and other forms of exploitation, abuse and violence; (b) prevention of military recruitment and protection against the effects of war; (c) prevention of the deprivation of liberty and treatment in cases thereof; and (d) access to asylum procedures, legal safeguards, interpreters and rights in asylum.

In Section 3, the Guidelines deal with BID and BIA. The Guidelines highlight the reasons for conducting the BIA and BID processes, which include:

- (a) Providing a formal procedure with safeguards for making decisions that are likely to have a fundamental impact on children's lives;
- (b) Ensuring that children's views and opinions are given due weight and consideration;
- (c) Providing a comprehensive situational assessment of children at risk, addressing the full spectrum of their needs and vulnerabilities;
- (d) Facilitating case management through the development of a care plan;
- (e) Facilitating better quality care for children at risk through the involvement of child protection professionals.

In addition, the Guidelines identify the three instances where BID needs to be conducted. The first instance identified is when there is no clear lasting solution, and the BID process is needed to adequately address a child's protection needs. This may include (but is not limited to) return, resettlement or local integration. The process helps in determining the most appropriate solution and identify the right time for its implementation, and can also contribute to successful family tracking and family reunification. The second instance is where there is a need to determine or make temporary care arrangements for the child, including where there are reasonable grounds to suspect abuse and/or neglect, and/or exploitation, as well as where there are reasonable grounds to expect that existing care arrangements are not suitable for other reasons. The third instance identified is where there is possible separation of the child from his/her parents against his/her will, though this should only be allowed in exceptional circumstances, including where there is a risk of severe harm from the child's parents.

The Guidelines also discuss the elements of the BIA process, highlighting the need to balance them, and suggest procedural safeguards to guarantee the implementation of the child's best interests. These are all grounded in the recognition that the "best interests of the child" is a right, a principle and a rule of procedure and must be based on an assessment of all the elements of the child's interests in a specific situation. Elements for consideration include, but are not limited to, the views of the child; the child's identity; the preservation of the child's family environment and maintaining his/her relations; care, the

protection and safety of the child; and any situation of vulnerability the child may be in. Other elements include the child's rights to health and education. It is always important to balance competing interests, in order to determine what is in the child's best interests after carefully following established procedural safeguards.

Finally, the Guidelines establish the BID Panel and devise vital tools and forms for use throughout the BIA and BID processes. The BID Panel is chaired by a representative from the Ministry of Community Development and Social Services and is deputized by the Child Protection Unit of the Zambia Police Service. Members of the panel include representatives from Zambia's Department of Immigration, the Zambia Correctional Service, the Office of the Commissioner for Refugees, the Ministry of Sports, Youth and Child Development, civil society organizations, and IOM, UNICEF or the Office of the United Nations High Commissioner for Refugees (UNHCR) (as relevant to the case), while the Secretariat is hosted by the Ministry of Community Development and Social Services. The forms – which include the Best Interests Assessment (BIA) Form, Best Interests Determination (BID) Form, BID Confidentiality Form, and Interpreter's Undertaking and Confidentiality Form – are, in practice, intended for capturing data to aid in decision-making and statistics management.





# 1. INTRODUCTION AND BACKGROUND

## 1.1. INTRODUCTION

The Government of the Republic of Zambia has an obligation to respect, protect and fulfil the rights of children. It has a duty to guarantee and/or uphold the principle of the best interests of the child established under the Convention on the Rights of the Child (hereinafter, “the UNCRC”) and the African Charter on the Rights and Welfare of the Child (hereinafter, “the ACRWC”), which were ratified in 1991 and 2008, respectively. Consequently, Zambia’s national Constitution guarantees every person’s (including children’s) entitlement to fundamental rights and freedoms. Therefore, subordinate legislation has been (or is being) enacted and/or amended to be in line with this framework. In addition to this, the National Child Policy was adopted in 2006 in an attempt to make the fundamental principles – including the best interests of the child principle – a reality in both the public and private spheres of life. However, there are no clear guidelines on how to operationalize the best interests of the child principle, including for migrant children, and this has made it particularly difficult for national authorities, decision makers and service providers to mainstream and/or operationalize such principles.

In view of the above, the Government of the Republic of Zambia, working with relevant stakeholders and civil society organizations (CSOs), with support from the International Organization for Migration (IOM) as part of its implementation of the United Nations Joint Programme on Social Protection (in which the Food and Agriculture Organization (FAO), International Labour Organization (ILO), UNICEF and World Food Programme (WFP) are also involved), have developed these Guidelines to help address the abovementioned challenges and gaps, in order to guide and formalize the processes of best interests determination (BID) and best interests assessment (BIA) with particular focus on the needs of migrant children and in accordance with international, regional and national minimum standards.

It must be mentioned that United Nations Committee on the Rights of the Child (CRC) General Comment No. 14 of 2013 (on the right of the child to have his/her best interests taken as a primary consideration) was considered in the process of developing these Guidelines,<sup>1</sup> along with CRC General Comment No. 6 of 2005 (on the treatment of unaccompanied and separated children outside their country of origin),<sup>2</sup> the 2008 United Nations High Commissioner for Refugees (UNHCR) Guidelines on Determining the Best Interests of the Child, *Field Handbook for the Implementation of UNHCR BID Guidelines* (2011), and Save the Children International's *Best Interests Determination for Children on the Move: A Toolkit for Decision Making* (2010). Furthermore, the process has taken into consideration provisions in Zambia's national Constitution, subordinate legislation, policies and other relevant works. However, the focus of the Guidelines is BID and BIA for children involved in transnational migration flows.

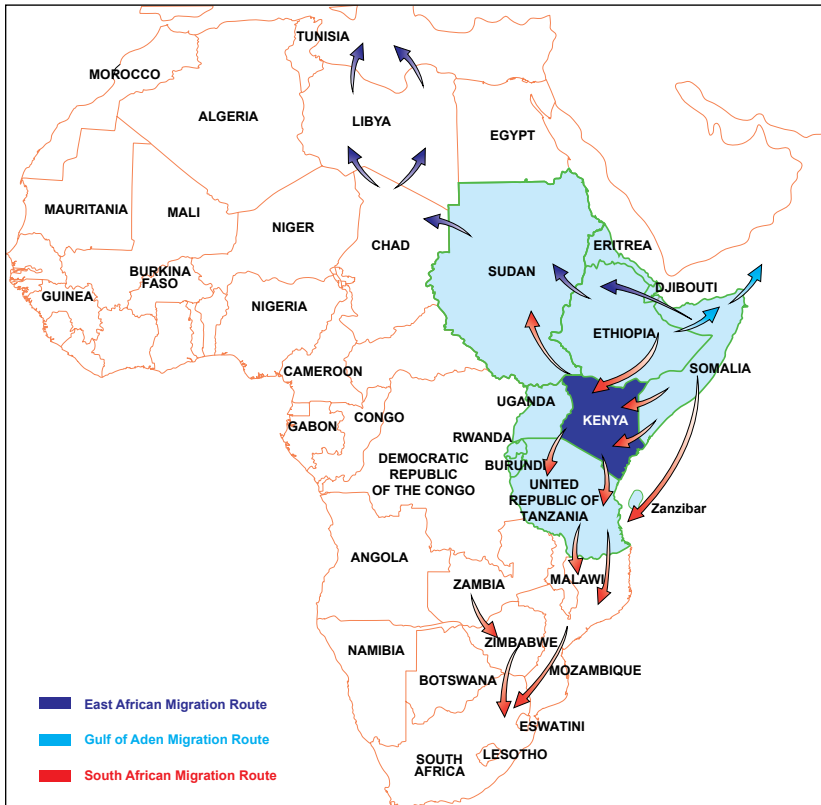
Zambia is a landlocked country and, as part of sub-Saharan Africa, is affected by transnational migration flows. Therefore, the development of these Guidelines, which focus on BID for children in transnational migration flows, was carried out with the recognition that Zambia is a source, transit and destination country for various categories of migrant children. The maps in Figures 1 and 2 depict how Zambia is affected by mixed migration.

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<sup>1</sup> CRC General Comment No. 14 of 2013 (on the right of the child to have his or her best interests taken as a primary consideration). Available from [www.refworld.org/docid/51a84b5e4.html](http://www.refworld.org/docid/51a84b5e4.html)

<sup>2</sup> CRC General Comment No. 6 of 2005 (on the treatment of unaccompanied and separated children outside their country of origin). Available from [www.refworld.org/docid/42dd174b4.html](http://www.refworld.org/docid/42dd174b4.html)

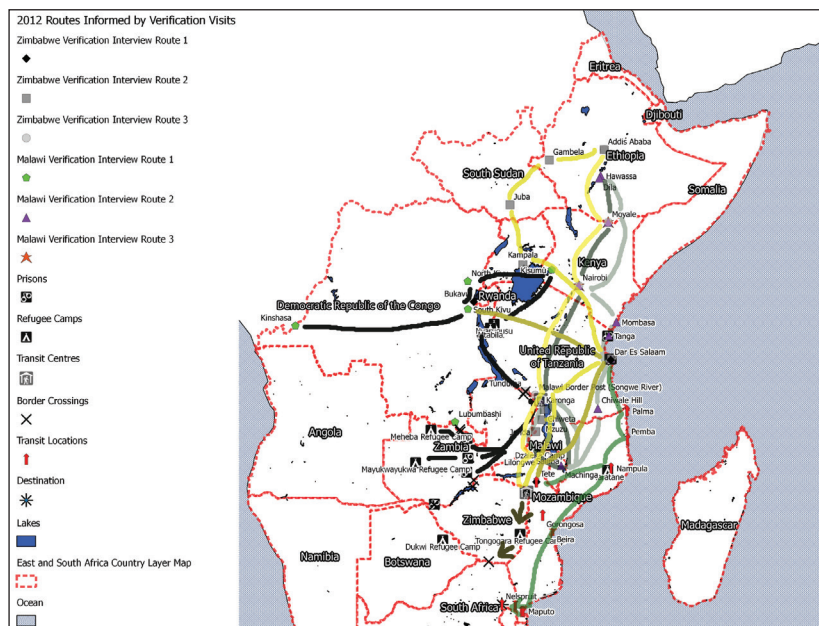
**Figure 1:**  
**Mixed Migration flows in East and Southern Africa**



Source: International Organization for Migration (IOM), *IOM Kenya Strategic Plan 2012–2014* (IOM, Geneva, 2012). Available from [https://publications.iom.int/system/files/pdf/kenyastrategicplan\\_25sept12.pdf](https://publications.iom.int/system/files/pdf/kenyastrategicplan_25sept12.pdf)

Note: This map is for illustration purposes only. The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by IOM.

Figure 2:  
Routes, and transit and destination points for mixed migration flows in  
Eastern and Southern Africa



Source: International Organization for Migration (IOM), *Health Vulnerabilities Study of Mixed Migration Flows from the East and Horn of Africa and the Great Lakes Region to Southern Africa* (IOM, Geneva, 2013).

**Note:** This map is for illustration purposes only. The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by IOM.

## 1.2. PURPOSE AND SCOPE OF THE GUIDELINES

The Guidelines have been developed for the purpose of formalizing a procedure for BID and BIA, in line with established child rights minimum standards, and creating the BID Panel and laying down its responsibilities. The Guidelines focus on child protection and outline both the elements of and the procedures for the BIA and BID processes for vulnerable migrant children in Zambia, including – but not limited to – victims of trafficking, presumed and potential victims of trafficking, unaccompanied and separated children, asylum seekers, refugee children, stateless children and stranded migrant children.

The two specific objectives of the Guidelines are as follows:

- (a) Formalize the process of determining children's best interests;
- (b) Increase the consistency and quality of services that significantly impact the lives of migrant children in Zambia.

## 1.3. RATIONALE AND BASIS FOR BEST INTERESTS DETERMINATION


Children in migration flows, especially those with irregular migration status or who have been separated from their usual caregivers, are particularly vulnerable to abuse, exploitation, neglect and other forms of harm. Therefore, it is absolutely necessary to identify established safeguards and procedures in the country's child protection system, which comprises laws, policies, practices and services, to comprehensively address the protection needs of the various categories of vulnerable migrant children in different situations and/or circumstances. In so doing, the primary consideration is the principle of the best interests of the child<sup>3</sup> and its nexus with three other principles established by the UNCRC and the ACRWC, namely: (a) non-discrimination; (b) life, survival and development; and (c) respect for the views of the child.

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<sup>3</sup> The principle is established in Article 3 of the United Nations Convention on the Rights of the Child.

In order to provide guidance to actors and service providers in the child protection system, it has become inevitable to develop BID guidelines which identify, inter alia, the different categories of children in need of protection assistance and their specific protection needs, as well as systemic safeguards and procedures. This stems from the realization that the BID process is a child protection tool and that the Guidelines have to provide the answer to what it is about, why it is necessary, when it should be conducted and what the legal bases for conducting it are. The Guidelines also establish procedures, tools and forms to guide and facilitate the BID and BIA processes.

Given the fact that the best interests of the child is a dynamic concept that encompasses various issues that are continuously evolving, the Guidelines provide a strategic framework and/or guidance for assessing and determining the child's best interests. The Guidelines also make an attempt to describe what is best for children in different situations and/or circumstances, be they child victims of trafficking and unaccompanied or separated migrant children.



## 2. PROTECTION GUIDELINES FOR VULNERABLE MIGRANT CHILDREN

### 2.1. THE NORMATIVE FRAMEWORK FOR CHILD PROTECTION

The normative framework for child protection comprises laws, policies and regulations at the international, regional and national levels meant for the protection of children from abuse, exploitation, neglect and other forms of harm. Highlighted in this section are some instruments that form the normative framework.

#### 2.1.1. International and regional normative frameworks

There are various international and regional human rights instruments that provide a normative framework and establish minimum standards relating to safeguards and procedures applicable to the protection of children in general and the principle of the best interests of the child in particular. At the international and regional levels, the UNCRC and the ACRWC (adopted in 1989 and 1990, respectively) are the primary instruments that provide a comprehensive normative framework for the protection of children and establish fundamental principles.

In addition, there are other child-specific human rights instruments supplemental to the UNCRC and the ACRWC that are equally part of the normative framework for the protection of children at the international level. These include:

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)
- Convention on the Civil Aspects of International Child Abduction (1980)
- Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption (1993)
- Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect to Parental Responsibility and Measures for the Protection of Children (1996)
- ILO Convention No. 182 (Worst Forms of Child Labour) (1999)
- ILO Convention No. 138 (Minimum Age) (1973).

It should, however, be acknowledged that general human rights instruments and/or treaties are also part of the normative framework for the protection of children as members of the human family. These instruments, inter alia, include:

- Universal Declaration of Human Rights (UDHR) (1948)
- International Covenant on Civil and Political Rights (ICCPR) (1966)
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)
- United Nations Convention Relating to the Status of Refugees (1951)
- Convention on the Protection of All Migrant Workers and Members of their Families (1990)



## 2.1.2. National legal and policy framework

At the national level, the Constitution<sup>4</sup> is the “grand norm” and defines a child as any person who has not attained or is below the age of 18 years.<sup>5</sup> It guarantees the enjoyment of human rights under the Bill of Rights and provides that every person in Zambia (including children) is and shall continue to be entitled to the enjoyment of fundamental rights and freedoms without discrimination.<sup>6</sup> The rights provided for under the Bill of Rights include, inter alia, life, liberty, freedom from torture, inhumane and degrading treatment and/or punishment, protection by the law, and freedom of expression.<sup>7</sup> Furthermore, the Constitution provides for the protection of young persons from exploitation<sup>8</sup> and for the directive principles of State policy whose implementation do and/or can benefit children.

It should nevertheless be highlighted that Zambia does not have an act codifying child protection measures, that is, a “Children’s Act.” Therefore, child protection measures are scattered among a number of laws and policies subordinate to the Constitution. Subordinate legislation and policies contain substantive and procedural safeguards for different categories of people and provide protection to vulnerable children as well. These include:

- Anti-Human Trafficking Act (No. 11 of 2008)
- Refugees Act (No. 1 of 2017)
- Immigration and Deportation Act (No. 18 of 2010)
- Juveniles Act (Chapter 53 of the Laws of Zambia)
- Employment of Young Persons and Children Act (Chapter 274 of the Laws of Zambia)
- Adoption Act (Chapter 54 of the Laws of Zambia)
- National Child Policy (2006)<sup>9</sup>
- National Policy to Combat Human Trafficking (2007)

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<sup>4</sup> The Constitution is contained in Chapter 1 of the Laws of Zambia.

<sup>5</sup> Constitution of Zambia, Article 266. Available from [www.parliament.gov.zm/sites/default/files/documents/acts/Constitution%20of%20Zambia%20Act%202016%20\\_0.pdf](http://www.parliament.gov.zm/sites/default/files/documents/acts/Constitution%20of%20Zambia%20Act%202016%20_0.pdf)

<sup>6</sup> Ibid, Article 11.

<sup>7</sup> Ibid, Articles 12, 13, 14, 15, 18 and 21.

<sup>8</sup> Ibid. Article 24.

<sup>9</sup> As reviewed in 2013.

## 2.2. CHILD RIGHTS FUNDAMENTAL PRINCIPLES: THE UNCRC AND ACRWC

There are fundamental principles established under the UNCRC and the ACRWC that must be taken into consideration in all actions, taken by either public or private bodies/institutions, when dealing with children. These are:

- Principle of non-discrimination<sup>10</sup>
- Principle of the best interests of the child<sup>11</sup>
- Principle of life, survival and development<sup>12</sup>
- Principle of respect for the views of the child<sup>13</sup>

### 2.2.1. Principle of non-discrimination

Article 2(1) of the UNCRC provides that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind...” The prohibited grounds of discrimination under the said Article are the child's or his/her parent's or legal guardian's:

- Race
- Skin colour
- Sex
- Language
- Religion
- Political or other opinion
- National, ethnic or social origin
- Ownership of property
- Disability
- Birth or any other status (e.g. marital status)

<sup>10</sup> UNCRC, Article 2; and African Charter on the Rights and Welfare of the Child (ACRWC), Article 3, available from [www.achpr.org/instruments/child](http://www.achpr.org/instruments/child)

<sup>11</sup> UNCRC, Article 3; and ACWRC, Article 4.

<sup>12</sup> UNCRC, Article 6; and ACWRC, Article 5.

<sup>13</sup> UNCRC, Article 12; and ACWRC, Article 7.

Furthermore, the Article 2(2) of the UNCRC provides that: “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”

Similarly, Article 3 of the ACRWC provides that: “Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter, irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, [skin] colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.”

### **2.2.2. Principle of the best interests of the child**

Article 3 of the UNCRC provides 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 3 further requires States parties to ensure the child such protection and care as is necessary for his/her well-being, taking into account the rights and duties of his/her parents, legal guardians, or other individuals legally responsible for him/her, and to take all appropriate legislative and administrative measures.<sup>14</sup>

Furthermore, Article 3 creates an obligation for States parties to ensure that the institutions, services and facilities responsible for the care or protection of children conform to the standards established by competent authorities, particularly in the areas of safety and health, and in terms of the number and suitability of their staff, as well as the competence of their supervision.

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<sup>14</sup> ACWRC, Article 3.

In a similar manner, Article 4 of the ACRWC provides that “in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.” It further provides that:

In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority, in accordance with the provisions of [the] appropriate law.

### 2.2.3. Principle of life, survival and development

With regard to the life, survival and development of the child, Article 6 of the UNCRC categorically stipulates that “States Parties recognize that every child has the inherent right to life.” The article also creates an obligation for States parties to ensure to the maximum extent possible the survival and development of the child.”

In the ACRWC, the principle of child survival and development is provided in Article 5, which stipulates that every child has an inherent right to life and that this right shall be protected by law. Furthermore, the article requires States parties to ensure, to the maximum extent possible, the survival, protection and development of the child and expressly prohibits the death sentence from being pronounced for crimes committed by children.

### 2.2.4. Principle of the views of the child

Respect for the views of the child is another fundamental principle that must be taken into consideration in all matters affecting the child. Article 12 of the UNCRC provides that:

States Parties shall assure to the child who is capable of forming his/her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

The child is to be provided, in particular, with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Similarly, the ACRWC provides, in its Article 7, for the child's freedom of expression and stipulates that:

“Every child who is capable of communicating his/her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.”

### **2.3. THE NEXUS: BEST INTERESTS PRINCIPLE AND OTHER PRINCIPLES**

As discussed, the UNCRC establishes four fundamental principles and guarantees the child basic rights and freedoms. “The principle arising from Article 3 of the UNCRC, that the best interests of the child shall be a primary consideration, must be applied in a systematic manner for any action that affects children of concern. It applies to actions affecting children in general or specific groups of children, as well as to those affecting individual children of concern.”<sup>15</sup>

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<sup>15</sup> UNHCR, “UNHCR Guidelines on determining the best interests of the child”, p. 20.

## Box 1:

### Key messages<sup>16</sup>

- In all actions concerning children, the best interests of the child shall be a primary consideration.
- The principle of the best interests of the child applies to all children, without discrimination.
- The best interests' principle can only truly operate when children themselves are viewed as individual rights holders and their right to participation is respected.
- BID is a key child protection tool providing additional procedural safeguards and protection measures for children at risk in accordance with the UNCRC.
- BID facilitates case management, monitoring and follow-up of children at risk.
- BID is a key part of a child protection system and needs to be integrated into the overall protection strategy.

The UNCRC, in its Article 3, states that the best interests of the child must be a primary (if not the sole) consideration. The principle applies to all other actions affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. It obliges States to ensure that children's interests are placed at the heart of all decision-making that impacts children. In determining the best interests of the child, a person, court or other authority should take into account the other general principles of the UNCRC. This gives the nexus between the best interests principle and other established principles.

In applying the best interests principle, there should be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion,

<sup>16</sup> UNHCR, *Field Handbook for the Implementation of UNHCR BID Guidelines* (UNHCR, Geneva, 2011), p. 3.

national, ethnic or social origin, property, disability, birth or migratory status.<sup>17</sup> In the application of this principle, States parties are obligated to recognize that every child has an inherent right to life and should, therefore, ensure to the maximum extent possible the survival and development of the child.<sup>18</sup> Furthermore, the whole process of determining the best interests of the child should assure children's right to express their views freely in all matters affecting them, with their views being given due weight in accordance with their age and level of maturity.<sup>19</sup>

### 2.3.1. Authoritative interpretation of the principle of best interests of the child

The “best interests” principle is legally binding, and although the UNCRC does not give a precise definition of the principle, or explicitly outline common factors of the best interests of the child, the concept does broadly describe the overall well-being of a child. The absence of a specific definition in the UNCRC allows for the considerations of each case to be balanced in relation to its own context, but within a well-defined procedural framework. Considerations include individual factors such as age, gender, level of maturity and experiences, as well as social context factors, such as the presence or absence of parents, quality of the relationships between the child and his/her family/caretaker(s), the physical and psychosocial situation of the child, and his/her protection situation (i.e. physical security, protection risks, etc.).<sup>20</sup>

The United Nations Committee on the Rights of the Child (CRC), established pursuant to the provisions of Article 43 of the UNCRC, in 2013 during its Sixty-second Session, published General Comment No. 14 to provide guidance on the interpretation of the right of the child to have his/her best interests taken as a primary consideration, as demanded in Article 3 of the convention. The comment provides an analysis of Article 3 and constitutes an authoritative interpretation as to what is expected of States parties, Zambia included, in the implementation or operationalization of the principle.

As earlier mentioned, Article 3 of the UNCRC provides that “in all actions concerning children, whether undertaken by public or private social welfare

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<sup>17</sup> As required by Article 2 of the UNCRC.

<sup>18</sup> As required by Article 6 of the UNCRC.

<sup>19</sup> As required by Article 12 of the UNCRC.

<sup>20</sup> UNHCR, *Field Handbook for the Implementation of UNHCR BID Guidelines*, p. 3.

institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” and that “States Parties [must] undertake to ensure the child such protection and care as is necessary for his/her well-being, taking into account the rights and duties of his/her parents, legal guardians, or other individuals legally responsible for him/her, and, to this end, shall take all appropriate legislative and administrative measures.” The Convention, therefore, seeks to ensure the application of and respect for the best interests of the child by the States parties.

CRC General Comment No. 14 of 2013 defines the requirements for due consideration, especially in judicial and administrative decisions, as well as in other actions concerning the child as an individual, and at all stages of the adoption of laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives and guidelines – that is, all implementation measures – concerning children in general or as a specific group. General Comment No. 14 also seeks to provide guidance in decision-making by all concerned with children, including parents and other caregivers.

## 2.4. CATEGORIES OF VULNERABLE CHILDREN IN NEED OF PROTECTION

There are complex pull and push factors perpetuating the involvement of various categories of migrant children, with reasons and/or circumstances varying from child to child. The International Organization for Migration (IOM), working in partnership with the Government of the Republic of Zambia, has identified various categories of children on the move and in need of protection assistance. The identification of the different categories of vulnerable migrants has been done through the Guidelines on the Protection of Vulnerable Migrants in Zambia<sup>21</sup> and the National Referral Mechanism (NRM). Vulnerable persons and children identified, inter alia, include:

- Victims of trafficking, presumed and potential victims of trafficking
- Unaccompanied or separated children

<sup>21</sup> Government of Zambia and IOM, “Guidelines on protection assistance for vulnerable migrants in Zambia” (IOM and Government of Zambia, Lusaka, 2014), available from [www.iom.int/files/live/sites/iom/files/Country/docs/Guidelines\\_Protection-Assistance-for-Vulnerable-Migrants.pdf](http://www.iom.int/files/live/sites/iom/files/Country/docs/Guidelines_Protection-Assistance-for-Vulnerable-Migrants.pdf); Government of Zambia, “National Referral Mechanism for the Protection of Vulnerable Migrants in Zambia”, information sheet (IOM and Government of Zambia, Lusaka, 2014), available from [www.iom.int/files/live/sites/iom/files/Country/docs/National-Referral-Mechanism-NRM-for-the-Protection-of-Vulnerable-Migrants-in-Zambia.pdf](http://www.iom.int/files/live/sites/iom/files/Country/docs/National-Referral-Mechanism-NRM-for-the-Protection-of-Vulnerable-Migrants-in-Zambia.pdf)



- Refugees
- Asylum seekers
- Stateless persons
- Stranded migrants
- Other vulnerable migrants

Information for purposes of initial case identification is obtained through the Profiling Form for Vulnerable Migrants developed in 2014 and is part of *Guidelines: Protection Assistance for Vulnerable Migrants in Zambia* (IOM, 2014) (hereinafter, “the Guidelines”).

The Profiling Form is intended to assist first-line officials and service providers in identifying indicators for the initial case type determination of vulnerable migrants, including asylum seekers who are yet to enter the asylum process.<sup>22</sup> It provides a basis for the identification and referral of migrants in need of assistance and follows a victim-centred approach, taking into consideration the best interests of the child.

The protection and assistance needs of vulnerable migrants include immediate basic needs, medium-term needs and long-term needs for each of the identified category of vulnerable migrants.<sup>23</sup> Furthermore, the development of Zambia’s NRM (which clearly outlines seven different stages of the assessment and assistance process for vulnerable migrants), as well as the Guidelines, took into consideration the identified categories and their specific protection and assistance needs based on legal safeguards and procedures.

Save the Children International has also categorically identified that for children on the move “without sufficient cash in hand or appropriate documentation, the complexity of their situation increases when they cross the border and they become vulnerable to abuse, violence and exploitation. Upon entering the child protection system, the risk of being denied their rightful protection is sometimes exacerbated by lack of awareness or capacity among duty bearers to interpret and implement existing regional and national legal and policy

<sup>22</sup> Government of Zambia and IOM, “Guidelines on protection assistance for vulnerable migrants in Zambia”, p. 32.

<sup>23</sup> Ibid., p. 15.

frameworks.”<sup>24</sup> This particularly makes the different categories of children on the move particularly vulnerable.

## 2.5. PROTECTION MEASURES FOR IDENTIFIED VULNERABLE MIGRANT CHILDREN

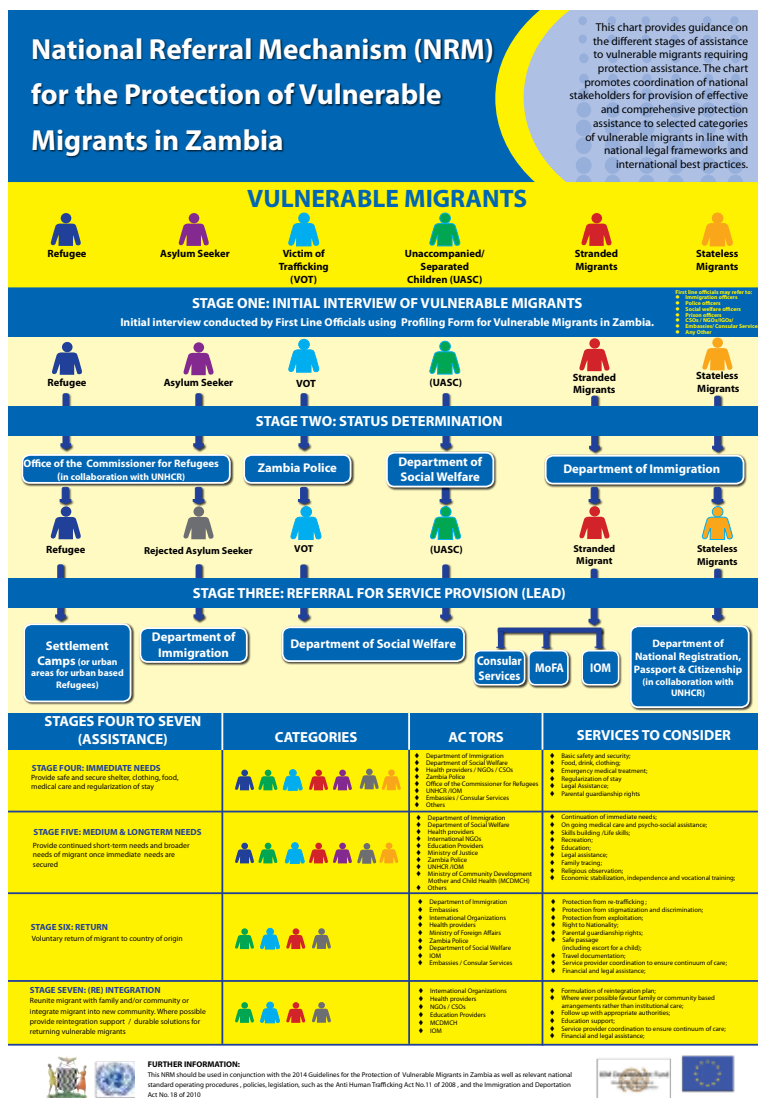
Taking into consideration the risks associated with denying children on the move their rightful protection, Zambia has developed the NRM<sup>25</sup> to provide guidance on the different stages of assistance to vulnerable migrants (including migrant children) requiring protection assistance. The mechanism, comprising seven different stages, also promotes coordination among national stakeholders for the provision of effective and comprehensive protection assistance to selected categories of vulnerable migrants, in line with the national legal framework and international best practices. Therefore, Zambia’s NRM, in general, provides an elaborate enumeration of the protection needs of vulnerable persons (including migrant children). While the NRM addresses the protection needs of vulnerable migrants in general, Figure 3 illustrates the stages and/or measures outlined in the NRM specifically relating to the protection of migrant children.

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<sup>24</sup> Save the Children UK – South Africa Programme, *Best Interests Determination for Children on the Move: A Toolkit for Decision-Making* (Save The Children, Hatfield, 2010), p. 8.

<sup>25</sup> Government of Zambia, “National Referral Mechanism”.

**Figure 3:**  
**Stages of assistance in the National Referral Mechanism (NRM)**



Source: “National Referral Mechanism for the Protection of Vulnerable Migrants in Zambia”. Available from [www.iom.int/files/live/sites/iom/files/Country/docs/National-Referral-Mechanism-NRM-for-the-Protection-of-Vulnerable-Migrants-in-Zambia.pdf](http://www.iom.int/files/live/sites/iom/files/Country/docs/National-Referral-Mechanism-NRM-for-the-Protection-of-Vulnerable-Migrants-in-Zambia.pdf)

### 2.5.1. Stage 1: Initial interview and assessment

The NRM requires an immediate assessment and/or screening of a person falling under any of the listed categories of vulnerable persons on the move. The screening/assessment is conducted by first-line officials.<sup>26</sup> Above all, the assessment should be conducted within the parameters or dictates of the principle of the best interests of the child, without discrimination and having meaningfully considered the views of the child for purposes of safeguarding the child's life, survival and development.

The first stage of Zambia's NRM provides for an initial interview of vulnerable migrants, which is conducted by first-line officials using the Profiling Form for Vulnerable Migrants. At this stage, information is obtained to assist first-line officials to determine which government department or office the case should be referred to for status determination.

### 2.5.2. Stage 2: Status determination

This stage focuses on status determination and helps in the identification of child-protective provisions of the law and/or policies and establishes which department has the jurisdiction to deal with the protection needs of the child. A child classified as a refugee or asylum seeker is under the jurisdiction of the Office of the Commissioner for Refugees (COR), in collaboration with UNHCR; a child victim of trafficking or potential victim of trafficking, under the Zambia Police Service; an unaccompanied and/or separated minor, under the Department of Social Welfare; while a stateless person or stranded migrant is under the jurisdiction of the Department of Immigration.

### 2.5.3. Stage 3: Referrals and service provision

Stage 3 of the NRM focuses on referrals and service provision, prescribing the following:

- (a) Persons (including children) who are refugees are referred to the Office of the Commissioner for Refugees, and are often thereafter transferred to refugee settlements (or granted urban area residence if they are eligible), where they receive a range of services;

<sup>26</sup> "First-line official" is a term used broadly to encompass immigration officials, police officers, social welfare officers, prison officials, and other civil servants and civil society organization personnel who have "first contact" and follow-up contact with vulnerable migrants in need of protection.

- (b) Rejected asylum seekers are referred to the Department of Immigration and are usually required to leave the country and regularize their documentation before returning, but may also be entitled to other protective measures as provided by law (in particular, rejected child asylum cases);
- (c) Victims of trafficking and unaccompanied and separated migrant children are referred to the Department of Social Welfare for protection services;
- (d) Persons falling under other categories of stranded migrants are referred to their respective consular offices, or for help from the Ministry of Foreign Affairs and/or IOM;
- (e) Stateless persons are referred to the Department of National Registration, Passport and Citizenship, which works in collaboration with the Department of Immigration and UNHCR, the UN agency mandated by the United Nations General Assembly in 1974 to assist stateless people under the 1961 Convention on the Reduction of Statelessness.

#### 2.5.4. Stage 4: Immediate needs provision

The NRM details the immediate needs that vulnerable migrants may have at this stage of protection assistance, and focuses on the provision of services such as basic safety and security, food, drink, clothing, emergency medical treatment, regularization of stay, legal assistance and parental guardianship rights. For instance, it must be appreciated that unaccompanied or separated children outside their countries of origin are temporarily or permanently deprived of their family environment and, as such, are identified as beneficiaries of States' obligations under Article 20 of the UNCRC and alternative care in accordance with Article 22 of the Convention. A wide range of options for care and accommodation arrangements for such children exist and are explicitly acknowledged in Article 20(3) of the UNCRC. Such options include foster placement, adoption and placement in suitable institutions for the care of children, among others. When selecting from these options, the particular vulnerabilities and needs of such a child should be taken into account.

## Box 2:

### Care and accommodation arrangements<sup>27</sup>

As a general rule, children should not be deprived of liberty. Also, continuity of care must be ensured, and changes in residence for an unaccompanied or separated child should be limited to instances where such change is in his/her best interests. In accordance with the principle of family unity, siblings should be kept together, and a child who has adult relatives arriving with him/her or already living in the country of asylum (or, in this case, migration) should be allowed to stay with him/her, unless such action would be contrary to his/her best interests.

Social welfare personnel shall conduct regular assessments of the care arrangements made for unaccompanied and separated children to reduce their vulnerabilities. Regular supervision and assessment ought to be maintained by qualified persons, in order to ensure children's physical and psychosocial health; protection against domestic violence or exploitation; and access to educational and vocational skills and opportunities. In large-scale emergencies, interim care must be provided for the shortest time appropriate for unaccompanied children. The interim care should provide for their security and physical and emotional care in a setting that encourages their general development. Furthermore, children must be kept informed of the care arrangements being made for them, and their opinions must be taken into consideration.

<sup>27</sup> CRC General Comment No. 6 of 2005, Paragraphs 39–40.

### 2.5.5. Stage 5: Medium- and long-term needs provision

Stage 5 focuses on the provision of medium and long-term needs, which include continuation of immediate needs, ongoing medical care and psychosocial assistance, skills-building (including life skills), recreation, education, legal assistance, family tracing, religious observance, as well as economic stabilization, independence and vocational training.

It should, for instance, be appreciated that under international minimum standards as regards the provision of education, every child, irrespective of his/her status, should be entitled to full access to education in the country that he/she has entered, in line with Articles 28, 29(1)(c), 30 and 32 of the UNCRC, without discrimination and, in particular, girls and boys should have equal access to formal and informal education, including vocational training (as relevant) at all levels. Access to quality education should also be ensured for children with special needs; this is particularly the case for children with disabilities. Furthermore, States should ensure that unaccompanied and separated children are provided with school certificates and/or other documentation indicating their level of education, particularly in preparation for relocation, local integration, resettlement or return. Laws and policies in Zambia make primary education free, while the provision of basic and higher education is relative and progressive, depending on available resources. However, at a minimum education must be available, accessible, affordable and of quality.

At Stage 5, children should also be accorded an adequate standard of living. States must ensure that children have a standard of living adequate for their physical, mental, spiritual, cultural and moral development. As provided in Article 27(2) of the UNCRC, States shall, in particular, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. Where government capacity is limited, States can accept and facilitate the assistance offered by UNICEF, UNESCO, UNHCR, IOM and other UN agencies within their respective mandates, and, where appropriate, other competent intergovernmental organizations or non-governmental organizations (Article 22(2)), in order to secure an adequate standard of living for children.

Furthermore, the State should protect children's right to enjoy the highest attainable standards of health and facilities for the treatment of illnesses and rehabilitation of health (Articles 23, 24 and 39). When implementing the right to enjoy the highest attainable standard of health and facilities for the treatment of illnesses and rehabilitation of health under Article 24 of the UNCRC, States are obligated to ensure that migrant children have the same access to health care as national children, while the obligation under Article 39 of the Convention sets out the duty of States to provide rehabilitation services to children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhumane and degrading treatment, or armed conflict.

#### 2.5.6. Stage 6: Voluntary return to the country of origin

This stage focuses on child protection needs relating to the voluntary return of the migrant child to the country of origin when it is considered safe to do so. It focuses on the provision of services to protect the child from re-trafficking, stigmatization and discrimination, and exploitation. It also prioritizes the protection of the right to nationality, parental guardianship rights, safe passage (including escort for a child), travel documentation, service provider coordination to ensure a continuum of care, and financial and legal assistance.

Return to the country of origin is not an option if it would lead to a “reasonable risk” that such return would result in the violation of fundamental human rights of the child and, in particular, if the principle of non-refoulement<sup>28</sup> applies. Return to the country of origin shall, in principle, only be arranged if such return is in the best interests of the child.

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<sup>28</sup> Non-refoulement refers to the right not to be returned to a country where persecution is feared.



### Box 3:

#### Factors for consideration in determining the appropriateness of voluntary return

- Safety, security and conditions, including socioeconomic conditions awaiting the child upon return, including through home study, where appropriate (assessment to be conducted by social work organizations)
- Availability of care arrangements for that particular child
- Views of the child expressed in the exercise of his/her right and those of the caretakers to do so under Article 12 of the UNCRC
- The child's level of integration in the host country and the duration of absence from the home country
- The child's right "to preserve his or her identity, including [his or her] nationality, name and family relations" (Article 8 of the UNCRC)
- The "desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (Article 20 of the UNCRC)

In the absence of the usual care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without making secure and concrete arrangements in advance for the child's care and without first assigning custodial responsibilities upon return to the country of origin. Exceptionally, a return to the home country may be arranged, after careful balancing of the child's best interests and other considerations, if the latter are rights-based and override the best interests of the child. Such may be the case in situations in which the child constitutes a serious risk to the security of the State or to society. Non-rights-based arguments, such as those relating to general migration control, cannot override best interests considerations.

In all cases, return measures must be conducted in a safe, child-appropriate and gender-sensitive manner. Furthermore, countries of origin have an obligation pursuant to Article 10 of the UNCRC, to respect “the right of the child and his or her parents to leave any country, including their own, and to enter their own country.”

### 2.5.7. Stage 7: Lasting solutions for migrant children

The seventh and final stage of the NRM looks at providing lasting solutions for migrants. Such solutions may include repatriation, reintegration, integration and/or resettlement. Measures must be made where possible to reunite the child with his or her family and/or community. Where this is not possible or is considered not to be in the best interests of the child, then other possible, durable solutions, such as integration in the local/host community or resettlement to a third State should be explored.

In particular, when providing assistance to unaccompanied and separated children, it is important to remember that all the four fundamental principles apply with equal force. In particular, the principle of non-discrimination, in all its facets, applies in respect to all dealings with separated and unaccompanied children. The principle prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or some other category of migrant.<sup>29</sup>

In according proper treatment to unaccompanied or separated children, States must, inter alia: (a) respect the principle of non-refoulement derived from international human rights, humanitarian and refugee law;<sup>30</sup> (b) protect the confidentiality of information received in relation to an unaccompanied or separated child, consistent with the obligation to protect the child's rights, including the right to privacy,<sup>31</sup> and information relating to the whereabouts of the child shall only be withheld vis-à-vis the parents where required for the safety of the child or to otherwise secure the “best interests” of the child;<sup>32</sup> (c) appoint a guardian or adviser and legal representative;<sup>33</sup> (d) provide for care

<sup>29</sup> CRC General Comment No. 6 of 2005, p. 8.

<sup>30</sup> As required under Article 33 of the 1951 Refugee Convention and in Article 3 of the UNCAT.

<sup>31</sup> UNCRC, Article 16.

<sup>32</sup> CRC General Comment No. 6 of 2005, page 10.

<sup>33</sup> UNCRC, Articles 18(2) and 20(1).

and accommodation arrangements;<sup>34</sup> (e) ensure full access to education<sup>35</sup> and the right to an adequate standard of living;<sup>36</sup> (f) protect the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health;<sup>37</sup> (g) prevent trafficking (or re-trafficking) and of sexual and other forms of exploitation, abuse and violence;<sup>38</sup> (h) prevent military recruitment and protect against the effects of war;<sup>39</sup> and (i) prevent the deprivation of liberty and treatment in cases thereof.<sup>40</sup>

The ultimate aim of addressing the fate of an unaccompanied or separated child is to identify a lasting solution that addresses all of his/her protection needs, takes into account the child's view, and, wherever possible, helps to reverse the situation of the child being unaccompanied or separated, and/or the situation that led him/her to migrate in a manner that resulted in vulnerability. Therefore, efforts to find lasting solutions for an unaccompanied or separated child should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of the child being unaccompanied or separated. Furthermore, a rights-based approach requires that the search for a durable solution commences with analysing the possibility of family reunification.

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<sup>34</sup> Ibid., Articles 20 and 22.

<sup>35</sup> Ibid., Articles 28, 29(1)(c), 30 and 32.

<sup>36</sup> Ibid., Article 27.

<sup>37</sup> UNCRC, Articles 23, 24 and 39.

<sup>38</sup> UNCRC, Articles 34, 35 and 36.

<sup>39</sup> UNCRC, Articles 38, 39.

<sup>40</sup> UNCRC, Article 37.C.

#### Box 4:

#### Family tracing and reunification

- In order to pay full respect to the obligation of States under Article 9 of the UNCRC to ensure that children shall not be separated from their parents against their will, all efforts should be made to return unaccompanied or separated children to their parents, except where further separation is necessary for their best interests, taking full account of the right of children to express their views.
- Family reunification in the country of origin should not be pursued where there is a “reasonable risk” that such a return would lead to the violation of the fundamental human rights of the child. In this context, it must be recalled that the survival of the child is of paramount importance and a precondition for the enjoyment of other rights.
- Whenever family reunification in the country of origin is not possible, irrespective of whether this is due to legal obstacles to return, or whether the best interests-based balancing test has decided against return, the obligations under Article 9 and 10 of the UNCRC come into effect and should govern the host country’s decisions on family reunification therein: “Applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner” and “shall entail no adverse consequences for the applicants and for the members of their family.” (Article 10(1))
- Countries of origin must respect “the right of the child and his or her parents to leave any country, including their own, and to enter their own country.” (Article 10(2) of UNCRC).

Family tracing is an essential component of any search for a lasting solution and should be prioritized, except where the act of family tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or would jeopardize the fundamental rights of those being traced. For all children who remain in the territory of the host State, a durable solution must be sought.

### 2.5.8. Other measures

#### Local integration

Local integration is the primary option if return to the country of origin is impossible on either legal or factual grounds. Local integration must be based on a secure legal status (including residence status) and be governed by the rights outlined in the UNCRC, which are fully applicable to all children who remain in the country, irrespective of their status or other legal obstacles to return, or, whether the BID recommendation has decided against return.

#### Box 5:

##### Local integration

Once it has been determined that a child will remain in the community, the relevant authorities should conduct an assessment of the child's situation and, then, in consultation with the child and his/her guardian, determine the appropriate long-term arrangements within the local community and other necessary measures to facilitate such integration.

Long-term placement should be decided in the best interests of the child and at this stage, institutional care should, wherever possible, serve only as a last resort. The separated or unaccompanied child should have the same access to rights (including to education, training, employment and health care) as enjoyed by a national child; the host country may need to pay special attention to the extra measures required to address the migrant child's vulnerable status.

## Adoption

The Adoption Act (Chapter 54 of the Laws of Zambia) provides a legal framework within which adoption of children, including migrant children, should take place. The Act provides for, inter alia, the making and registration of adoption orders; registration and control of adoption societies; regulation of arrangements made by adoption societies and other persons in connection with the adoption of children; supervision of adopted children by the Commissioner for Juvenile Welfare (in certain cases); and restrictions to the making and receipt of payments in connection with the adoption of children. In relation to migrant children, the Act in Section 2 defines a “foreign infant” as a person who is below the age of twenty-one years and is not a citizen of Zambia. Children falling under this definition are entitled to the protective measures prescribed by law.

International law also regulates inter-country adoption. In this regard, the UNCRC requires States to have full respect for the preconditions provided under Article 21, as well as other relevant international instruments, including, in particular, the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption and its 1994 Recommendation Concerning the Application to Refugee Children and Other Internationally Displaced Children when considering the adoption of unaccompanied and separated children. In particular, States should observe the following:

### Box 6:

#### Adoption of migrant children

- Adoption of unaccompanied or separated children should only be considered once it has been established that the child is in a position to be adopted. In practice, this means, inter alia, that efforts with regard to tracing and family reunification have failed, or that the parents have consented to the adoption.

- The consent of parents and of other persons, institutions and authorities that are necessary for adoption must be free and informed. This supposes, notably, that such consent has not been induced by payment or compensation of any kind.
- Unaccompanied or separated children must not be adopted in haste at the height of an emergency. Any adoption must be determined as being in the child's best interests and carried out in keeping with applicable national, international and customary laws. The views of the child, depending upon his/her age and degree of maturity, should be sought and taken into account in all adoption procedures. Such consent must have been given freely and not induced by payment or compensation of any kind.
- Adoption should not be considered where there is reasonable hope of successful tracing and family reunification is in the child's best interests, and if it is contrary to the expressed wishes of the child or the parents.
- Adoption should also not be considered where no reasonable time has passed during which all feasible steps to trace the parents or other surviving family members have been carried out.
- Adoption in a country of asylum should not be taken up where there is the possibility of voluntary return under conditions of safety and dignity in the near future.

## Resettlement

Resettlement to a third country may offer a lasting solution for refugee children who cannot return to their country of origin and for whom no lasting solution can be envisaged in the host country. The decision to resettle an unaccompanied or separated child must be based on an updated, comprehensive and thorough best interests assessment, taking into account, in particular, ongoing international and other protection needs.

Resettlement is particularly called for if such is the only means to protect effectively and sustainably a child against refoulement or against persecution or other serious human rights violations in the country where the migrant child has been identified, including the country of asylum. Resettlement can be used as a tool in the best interests of the unaccompanied or separated child if it serves family reunification in the resettlement country.

### Box 7:

#### Factors for consideration in deciding to resettle a child

- The envisaged duration of legal or other obstacles to a child's return to his/her home country
- The child's right to preserve his/her identity, including nationality and name (Article 8), the child's age, sex, emotional state, educational and family background
- Continuity/discontinuity of care in the host country
- The desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (Article 20), the right of the child to preserve his/her family relations (Article 8) and related short-, mid- and long-term possibilities of family reunion either in the home, host or resettlement country.

**Note:** Unaccompanied or separated children should never be resettled in a third country if this would undermine or seriously hamper future reunion with their family, and States are only encouraged to provide resettlement opportunities, in order to meet all the resettlement needs related to unaccompanied and separated children.

## 2.6. OTHER CROSS-CUTTING CHILD PROTECTION ISSUES FOR CONSIDERATION

The measures discussed in this section must be appreciated as cross-cutting protection needs at all stages, in addition to those already mentioned in previous sections.



### 2.6.1. Prevention of trafficking, sexual and other forms of exploitation, abuse and violence

Children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Girls may be at particular risk of being trafficked, including for purposes of sexual exploitation. Articles 34 to 36 of the UNCRC must be read in conjunction with special protection and assistance obligations, to be provided according to Article 20 of the Convention, in order to ensure that children are shielded from trafficking, sexual and other forms of exploitation, abuse and violence.

At the national level, it should be emphasized in this regard that the Constitution of Zambia, in its Article 24(3), categorically provides that “no young person shall be subject[ed] to traffic[king] in any form,” while Section 31 of the Anti-Human Trafficking Act (No. 11 of 2008) provides for the placement of a child victim of trafficking under temporary safe care, and a finding that a child victim with irregular immigration status and in need of care and protection should serve as valid justification for allowing the child to remain in Zambia. Furthermore, deportation of a victim of trafficking is prohibited under Section 32 of the Act.

#### Box 8:

#### Child trafficking and protective measures

- Trafficking or “re-trafficking” (in cases where a child was already a victim of trafficking) is one of many dangers faced by unaccompanied or separated children.
- Trafficking in children is a threat to the fulfilment of their right to life, survival and development (Article 6). In accordance with Article 35 of the UNCRC, States parties should take appropriate measures to prevent such trafficking.
- Necessary measures include identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age-appropriate, gender-sensitive and in a language and in a medium that are understandable to the child.

- Adequate legislation should also be passed and effective mechanisms of enforcement should be established with respect to labour regulations and border crossing.

It should also be emphasized that risks are greater for a child who has already been a victim of trafficking, resulting in a status of being unaccompanied or separated. Such children should not be penalized and should receive assistance as victims of a serious human rights violation. Some trafficked children may be eligible for refugee status under the 1951 Convention, and States should ensure that separated and unaccompanied trafficked children who wish to seek asylum, or in relation to whom there is otherwise an indication that international protection needs exist, have access to asylum procedures. Their consideration for refugee status is also provided for under Section 2 of the Refugees Act (No. 1 of 2017). Children who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken. States should consider complementary forms of protection for trafficked children when return is not in their best interests.

### **2.6.2. Prevention of military recruitment and protection against effects of war**

#### **Prevention of recruitment**

State obligations deriving from Article 38 of the UNCRC and from Articles 3 and 4 of the Optional Protocol to the UNCRC on the involvement of children in armed conflict also apply to children in mixed migration. A State must take all necessary measures to prevent the recruitment or use of such children by any party to a conflict. This also applies to former child soldiers who have defected from their units and who require protection against re-recruitment.

It is always necessary to ensure that care arrangements for children be made in a manner which prevents their recruitment, re-recruitment or use by any party to a conflict. Furthermore, guardianship should not be given to individuals or organizations who are directly or indirectly involved in a conflict.

## Box 9:

### Care arrangement for child soldiers

Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers – who often find themselves unaccompanied or separated at the cessation of the conflict or following defection – should be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling. Such children should be identified and demobilized on a priority basis during an identification and separation operation. Child soldiers – particularly those who are unaccompanied or separated – should not normally be interned, but rather benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity.

If, under certain circumstances, exceptional internment of a child soldier over the age of 15 years is unavoidable and is in compliance with international human rights and humanitarian law (for example, where he/she poses a serious security threat), the conditions of such internment should be in conformity with international standards, including Article 37 of the UNCRC and those pertaining to juvenile justice, and should not preclude any tracing efforts and priority participation in rehabilitation programmes.

## Non-refoulement

As under-age recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, including the right to life, State obligations deriving from Article 38 of the Convention, in conjunction with Articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects, and States shall refrain from returning a child in any

manner whatsoever to the borders of a State where there is a real risk of underage recruitment or participation, whether direct or indirect, in hostilities. Furthermore, rehabilitation and recovery services must be made available. States should develop, where needed, in cooperation with international agencies and NGOs, a comprehensive age-appropriate and gender-sensitive system of psychological support and assistance for children affected by armed conflict.

### **2.6.3. Prevention of the deprivation of liberty and treatment of children in cases thereof**

In application of Article 37 of the UNCRC and the principle of the best interests of the child, vulnerable migrant children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Therefore, migrant children are equally entitled to the protection of the right to personal liberty guaranteed under Article 13(1) of the Zambian Constitution, which provides that “no person shall be deprived of his personal liberty except as may be authorized by law.”

Where detention is exceptionally justified for other reasons, it should be conducted in accordance with Article 37(b) of the UNCRC, which requires detention to conform to the law of the relevant country and only to be used as a measure of last resort and for the shortest appropriate period of time. In consequence, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of migrant children from detention and their placement in other forms of appropriate care or accommodation.

In addition to national requirements, international obligations constitute part of the law governing detention. With regards to asylum-seeking, unaccompanied and separated children, States must, in particular, respect their obligations deriving from Article 31(1) of the 1951 Refugee Convention. States should further take into account that illegal entry into or stay in a country by a child may also be justified according to general principles of law, where such entry or stay is the only way of preventing a violation of the fundamental human rights of the child. More generally, in developing policies on unaccompanied or separated children, including those who are victims of trafficking and exploitation, States should ensure that such children are not criminalized solely for the reason of illegal entry or presence in the country.

In the exceptional case of detention Article 13 of the Constitution relating to the liberty of persons must be adhered to as Section 18 of the Immigration and Deportation Act No. 18 of 2010 limiting the period of detention must be observed. Furthermore, conditions of detention must be governed by the best interests of the child and pay full respect to Article 37(a) and (c) of the UNCRC and other international instruments.

#### **Box 10:**

#### **Treatment of children in exceptional cases of detention**

- Special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child's best interests not to do so. Indeed, the underlying approach to such a programme should be care and not detention.
- Facilities should not be located in isolated areas where culturally appropriate community resources and legal aid are unavailable.
- Children should have the opportunity to make regular contact and receive visits from their friends, relatives, religious, social and legal counsel, and guardian(s).
- They should also be provided with the opportunity to receive all basic necessities, as well as appropriate medical treatment and psychological counselling, where necessary.
- During their period in detention, children have the right to education, which ideally ought to take place outside the detention premises, in order to facilitate the continuance of their education upon release.
- They also have the right to recreation and play, as provided for in Article 31 of the UNCRC.
- In order to effectively secure the rights provided by Article 37(d) of the UNCRC, unaccompanied or separated children deprived of their liberty should be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative.

#### 2.6.4. Access to asylum procedures, legal safeguards and interpreters, and rights in asylum<sup>41</sup>

Article 22 of the UNCRC requires States to take “appropriate measures” to ensure that a child, whether unaccompanied or accompanied, who is seeking refugee status receives appropriate protection, among others. States have the responsibility to set up a functioning asylum system and, in particular, to enact legislation addressing the particular treatment of children and to build capacities necessary to realize this treatment in accordance with applicable rights codified in the UNCRC and in other international human rights, refugee protection or humanitarian instruments to which the State is a party. Zambia, to this effect, enacted the Refugees Act (No. 1 of 2017), which provides access to asylum processes as domesticating the 1951 Refugee Convention and its 1967 Protocol and the 1967 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

Asylum-seeking children should enjoy access to asylum procedures and other complementary mechanisms providing international protection, irrespective of their age. In the case that facts become known during the identification and registration process which indicate that the child may have a well-founded fear, or even if unable to explicitly articulate a concrete fear, may objectively be at risk of persecution, such a child should be referred to the asylum procedure and/or, where relevant, to mechanisms providing complementary protection under international and domestic law.<sup>42</sup> Appropriate measures required under Article 22(1) of the UNCRC must take into account the particular vulnerabilities of unaccompanied and separated children and the national legal framework and conditions.

<sup>41</sup> CRC General Comment No. 6 of 2005, Paragraphs 41–78.

<sup>42</sup> CRC General Comment No. 6 of 2005, Paragraph 66.

## Box 11:

### Assessment, referrals and other measures<sup>43</sup>

The best interests of the child must also be a guiding principle for determining the priority of protection needs and the chronology of measures to be applied in respect of unaccompanied and separated children. This necessary initial assessment process entails the following particular considerations:

- Prioritize identification of a child as separated or unaccompanied immediately upon his/her arrival at a port of entry or as soon as his/her presence in the country becomes known to the authorities (UNCRC, Article 8).
- Prompt registration by means of an initial interview conducted: (a) in an age-appropriate and gender-sensitive manner; (b) in a language the child understands; and (c) by persons professionally qualified to collect bio-data and social history\* to ascertain the identity of the child, including, wherever possible, the identities of both parents, other siblings, as well as the citizenship(s) of the child, the siblings and the parents.

\*This information should include: reasons for being separated or unaccompanied; an assessment of the child's particular vulnerabilities, including health, physical, psychosocial, material and other protection needs, including those deriving from domestic violence, trafficking or trauma.

- All available information to determine the potential existence of international protection needs, including those: (a) due to a “well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion” in the child’s country of origin (1951 Refugee Convention, Article 1A(2)); (b) deriving from external aggression, occupation, foreign domination or events seriously disturbing public order (Convention Governing the Specific

<sup>43</sup> CRC General Comment No. 6 of 2005, Paragraphs 31 and 32.

Aspects of Refugee Problems in Africa, Article 1(2)); or relating to the indiscriminate effects of generalized violence.

- Unaccompanied and separated children should be provided with their own personal identity documentation as soon as possible.
- Tracing of family members should commence as early as possible (UNCRC, Articles 9(3), 10(2) and 22(2)).

Any further action relating to the residence and other status of the child in the territory of the State should be based on the findings of an initial protection assessment carried out in accordance with the above procedures. States should refrain from referring unaccompanied and separated children to asylum procedures if their presence in the territory does not raise the question of international refugee protection needs. This is without prejudice to the obligation of States to refer unaccompanied or separated children into relevant procedures serving child protection, such as those foreseen under child welfare legislation.





# 3. BEST INTERESTS ASSESSMENT AND BEST INTERESTS DETERMINATION

## 3.1. BEST INTERESTS ASSESSMENT

BIA is an assessment made prior to taking any action which will affect an individual child or a group of children. BIA for an individual child is a continuous process that starts from the moment of identification of a child in need of assistance, and continues throughout the displacement cycle until a durable solution is reached.<sup>44</sup>

BIA must be conducted for all children of concern and it should involve a mandatory initial assessment. However, the BIA process does not require the same safeguards as BID, though it should be carried out by suitably-trained individuals. “The assessment regarding what is in the best interests of the child should be conducted by the officer responsible for any decision and action affecting children of concern . . . The assessment can be done by one staff member alone . . . if this person has been trained in child protection. If not, someone with child protection competency should be consulted when needed. Meaningful child participation should be facilitated, in accordance with UNCRC Article 12. The assessment and the actions taken should be documented,”<sup>45</sup> adapting the process to the situation.

Prior to undertaking any of the actions in respect of a child relating to, inter alia, placement of children in temporary care arrangement; tracing of family

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<sup>44</sup> Government of Zambia and UNHCR, *Standard operating procedures for best interests assessments and best interests determinations for asylum-seeking and refugee children in Zambia* (Government of Zambia, Lusaka, 2010), p. 2.

<sup>45</sup> *Ibid.*, p.2.

members; referral to services and/or family reunification, BIA should be conducted. Furthermore, the outcome of BIA may reveal that BID is required.

### 3.2. BEST INTERESTS DETERMINATION

BID is a tool for child protection and is specifically conducted for purposes of finding a lasting solution. It “describes the formal process with strict procedural safeguards designed to determine the child’s best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision- makers with relevant areas of expertise, and balance all relevant factors in order to access the best option.”<sup>46</sup>

UNHCR aptly puts it that “identifying the most appropriate durable solution for an unaccompanied or separated refugee child generally requires carefully balancing many factors. Decisions on voluntary repatriation, resettlement or local integration are likely to have a fundamental and long-term impact on the child. Before [making] such decisions, BID must be carried out to ensure sufficient focus on the child’s rights when choosing the most appropriate durable solution and the right time for it.”<sup>47</sup> Furthermore, “if, when 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/her community, the temporary care arrangements should be maintained and the case reviewed as soon as possible...”<sup>48</sup>

### 3.3. REASONS FOR CONDUCTING BID

Some reasons for conducting BID are to:

- Provide a formal process with safeguards for making decisions that are likely to have a fundamental impact on children’s lives;
- Ensure that children’s views and opinions are given due weight;
- Provide a comprehensive assessment of children at risk, beyond what is provided for in the BIA, that addresses the full spectrum of the child’s situational needs and vulnerabilities;

<sup>46</sup> UNHCR, “UNHCR Guidelines on determining the best interests of the child”.

<sup>47</sup> Ibid., p. 30.

<sup>48</sup> Ibid., p. 30.

- Facilitate case management through the development of a care plan;
- Facilitate better quality care for children at risk through the involvement of child protection professionals.

### 3.4. INSTANCES WHERE BID NEEDS TO BE CONDUCTED

There are three instances identified by UNHCR where BID should be conducted; these are also applicable in instances involving vulnerable migrant children.<sup>49</sup> These are as follows:

- (a) Wherever there is no clear lasting solution, and one is, therefore, needed to adequately address a child's protection needs (This may include – but is not limited to – return, resettlement or local integration. The process will help in determining the most appropriate solution and identify the right time for the implementation of such solution, and can also contribute to successful family tracking and family reunification.);
- (b) Wherever there is a need to determine or make temporary care arrangements for the child, including where there are reasonable grounds to suspect abuse and/or neglect, and/or exploitation, as well as where there are reasonable grounds to expect that existing care arrangements are not suitable for other reasons;
- (c) Wherever there is a possible separation of a child from his/her parents against their will, though this should only be allowed in exceptional circumstances, including where there is a risk of severe harm from the parents, including (but not limited to) neglect, abuse, or sexual and gender-based violence, parental separation or where the child is abandoned.

It is key 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.”<sup>50</sup> Therefore, BID should be undertaken as early as possible.

<sup>49</sup> Ibid., p. 30–36.

<sup>50</sup> CRC General Comment No. 6 of 2005, Paragraph 79.

### 3.5. ELEMENTS AND PRACTICAL PROCEDURAL STEPS IN CONDUCTING BID

Certain elements and practical procedural steps must be taken into consideration to implement the assessment and determination of the child's best interests. Things to be taken into account should, *inter alia*, include the following, which are explained in greater detail below:

- Elements for assessing the child's best interests
- The need to balance the elements of BIA
- Procedural safeguards to guarantee the implementation of the child's best interests<sup>51</sup>

These factors for consideration come from the appreciation that the “best interests of the child” is a right, a principle and a rule of procedure based on an assessment of all elements of a child's interests in a specific situation.<sup>52</sup> When assessing and determining the best interests of the child, in order to make a decision on a specific measure, the following two steps must be followed:

- (a) Within the specific factual context of the case, find out the relevant elements of the BIA, give them concrete content, and assign a weight to each in relation to one another.
- (b) Follow a procedure that ensures legal guarantees and proper application of the right.

“The assessment and determination of the child's best interests are two steps to be followed when required to make a decision. “Best interests assessment” consists of evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children. It is carried out by the decision maker and his/her staff – if possible, a multidisciplinary team – and requires the participation of the child. Best interests determination describes the formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best interests assessment.”<sup>53</sup>

<sup>51</sup> CRC General Comment No. 14 of 2013, Paragraphs 46–99.

<sup>52</sup> *Ibid.*, Paragraph 46.

<sup>53</sup> *Ibid.*, Paragraph 47.

### 3.5.1. Elements for consideration

The following elements are to be taken into account when assessing and determining the child's best interests:

**(a) Views of the child**

- The element that the child should have an opportunity to express his/her views in every decision that affect them is a mandatory requirement under Article 12 of the UNCRC.
- The views of the child must be given due weight in BID and BIA, taking into account the age, maturity and/or evolving capacities of the child.
- The age and vulnerability of the child should not deprive him/her of the right to express his/her views, nor reduce the weight given to the child's views in determining his/her best interests.

**(b) The child's identity**

- Staff involved in BID and BIA must always be mindful that children are not a homogeneous group and, therefore, diversity must be taken into account during decision-making.
- The child's right to preserve his/her identity is guaranteed in Article 8 of the UNCRC and must be respected.
- The identity of the child includes characteristics such as sex, national origin, religious and other beliefs, cultural identity and personality.
- Although children share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities. (For example, with regard to religious and cultural identity: When considering a foster home or placement for a child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.)<sup>54</sup>
- Similarly, in cases of adoption, or the separation or divorce of a child's parents: The child, in support of his/her best interests, is entitled to have access to the culture (and language, if possible) of his/her country and family of origin, and the opportunity to

<sup>54</sup> As provided by the UNCRC in Article 20, Paragraph 3.

access information about his/her biological family, in accordance with the law.<sup>55</sup>

- Although preservation of religious and cultural values and traditions as part of a child's identity must be taken into consideration, practices that are inconsistent or incompatible with the rights established in the UNCRC are not in the child's best interests. Therefore, cultural identity cannot excuse or justify the perpetuation by decision makers and authorities of traditions and cultural values that deny the child or children the rights guaranteed by the Convention.<sup>56</sup>

**(c) Preservation of the family environment and maintaining relations**

- The family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children.<sup>57</sup>
- The right of the child to family life is protected,<sup>58</sup> and the UNCRC, in its Articles 9, 18 and 20, makes it indispensable to carry out the assessment and determination of the child's best interests in the context of potential separation from his/her parents.
- The term "family" must be interpreted in a broad sense to include biological, adoptive and foster parents or, where applicable, the members of the child's extended family or community, as provided for by local custom.<sup>59</sup>
- Preventing family separation and preserving family unity are important components of the child protection system.
- Given the gravity of the impact on the child of the separation from his/her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary.

<sup>55</sup> As required by the UNCRC in its Article 9, Paragraph 4.

<sup>56</sup> CRC General Comment No. 14 of 2013, Paragraph 57.

<sup>57</sup> UNCRC, Preamble.

<sup>58</sup> Ibid., Article 16.

<sup>59</sup> Ibid., Article 5.

**(d) Care, protection and safety of the child**

- Child protection and welfare officers should ensure the child such protection and care (as is necessary for his/her well-being)<sup>60</sup> which should, in a broad sense, include the child's basic material, physical, educational and emotional needs, including affection and safety.
- The assessment of the child's best interests must guarantee safety. The child must be protected against all forms of physical and mental violence, injury or abuse;<sup>61</sup> sexual harassment; peer pressure and bullying; and degrading treatment;<sup>62</sup> as well as protection against sexual, economic and other forms of exploitation, drugs, labour, and armed conflict, among others, as required under Article 32 to 39 of the UNCRC.
- Applying a best interests approach to decision-making requires assessing the safety and integrity of the child at the current time. However, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child's safety.<sup>63</sup>

**(e) Situations of vulnerability**

- Factors of vulnerability relating to the specific aspects of the child should be taken into consideration. Such factors may include being a victim or presumed victim of trafficking, asylum seeker or refugee, being unaccompanied or separated; living on the street; disability; being a victim of abuse; and belonging to a minority group, among others.
- It should, however, be noted that "the best interests of a child in a specific situation of vulnerability will not be the same as those of all children in the same vulnerable situation. Authorities and decision makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child's uniqueness. An individualized assessment of each child's history from birth should be carried out, with regular reviews

<sup>60</sup> Ibid., Article 3, Paragraph 2.

<sup>61</sup> Ibid., Article 19.

<sup>62</sup> CRC General Comment No. 13 of 2011 (on the right of the child to freedom from all forms of violence). Available from [www.refworld.org/docid/4e6da4922.html](http://www.refworld.org/docid/4e6da4922.html)

<sup>63</sup> CRC General Comment No. 14 of 2013, Paragraph 74.

by a multidisciplinary team and recommended reasonable accommodation throughout the child's development process."<sup>64</sup>

- It must be remembered that BID for a child in a vulnerable situation is not only meant to ensure that a child enjoys the rights provided under the UNCRC but is also meant to ensure that the child equally enjoys the protection and rights relating to his/her specific situation guaranteed in instruments specifically relating to persons in his/her situation or other general human rights instruments.

**(f) The child's right to health**

- The child's health condition is central to the assessment of the child's best interests. Therefore, authorities and decision makers should ensure that vulnerable children enjoy the right to the highest attainable standard of health.<sup>65</sup>
- However, if there is more than one possible treatment for a health condition or if the outcome of a treatment is uncertain, the advantages of all possible treatments must be weighed against all possible risks and side effects, and the views of the child must also be given due weight based on his/her age and maturity.
- Children should be provided with adequate and appropriate information, in order to understand their situation and all relevant issues that relate to the determination of their interests, and be allowed, when possible, to give their consent in an informed manner.<sup>66</sup>

**(g) The child's right to education**

- Education is in the best interests of the child. Therefore, authorities and decision makers must ensure that a vulnerable child has access to quality and free primary education, while secondary and higher education should be accessible and affordable.<sup>67</sup>
- In addition to formal education, the child should have access to informal education and all decisions on measures and actions

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<sup>64</sup> Ibid., Paragraph 76.

<sup>65</sup> UNCRC, Article 24.

<sup>66</sup> CRC General Comment No. 15 of 2013 (on the right of the child to the enjoyment of the highest attainable standard of health), Article 24, Paragraph. 31.

<sup>67</sup> UNCRC, Article 28.



concerning a specific child or a group of children must respect the best interests of the child or children, with regard to education.<sup>68</sup>

### 3.5.2. Balancing the elements for consideration in BIA

The following steps should be taken into account in balancing the elements of BIA:

- BIA should involve a general assessment of all relevant elements of the child's best interests, the weight of each element depending on the weight of others elements.
- Authorities and decision makers should balance the competing elements to determine the child's best interests.
- Where "protection" factors affecting a child need to be assessed in relation to measures of "empowerment", the age and maturity of the child should guide the balancing of the elements.
- Decision makers should appreciate that the capacities of the child will evolve and should, therefore, consider measures that can be revised or adjusted accordingly, as opposed to making definitive and irreversible decisions.

#### Box 12:

#### Steps in Balancing the Elements for Consideration in BIA

**Balancing Step 1.** Based on the appreciation that "not all the elements will be relevant to every case, and different elements can be used in different ways in different cases. The content of each element will necessarily vary from child to child and from case to case, depending on the type of decision [to be made] and the concrete circumstances, as will the importance of each element in the overall assessment."<sup>69</sup>

<sup>68</sup> CRC General Comment No. 14 of 2013, Paragraph 79.

<sup>69</sup> CRC General Comment No. 14 of 2013, Paragraph 80.

**Balancing Step 2.** Based on the appreciation that “sometimes it is possible to have a situation where the elements conflict with each other when considering a specific case and the surrounding circumstances. For example “preservation of the family environment may conflict with the need to protect the child from the risk of violence or abuse by [his/her] parents. In such situations, the elements will have to be weighed against each other, in order to find the solution that is in the best interests of the child or children.”<sup>70</sup> This is what will ensure that the child enjoys the rights recognized in the UNCRC and its optional protocols, as well as other human rights instruments.

**Balancing Step 3.** Requires that “the physical, emotional, cognitive and social development of the child should be taken into account to assess the level of maturity of the child.”<sup>71</sup>

**Balancing Step 4.** Demands that when making the decision on the child’s best interests “decision-makers should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child’s development, and analyse them in the short- and long-term.”<sup>72</sup>

*Note:* The outlined balancing steps will enable decision makers to assess the continuity and stability of the child’s present and future situation, as well as facilitate the implementation of intervention measures to enhance child protection.

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<sup>70</sup> Ibid., Paragraph 81.

<sup>71</sup> Ibid., Paragraph 83.

<sup>72</sup> Ibid., Paragraph 84.

### 3.6. BID PANEL PROCEDURAL SAFEGUARDS TO GUARANTEE IMPLEMENTATION OF THE CHILD'S BEST INTERESTS

It must be emphasized here that the concept of the child's best interests is a rule of procedure,<sup>73</sup> and a formal process with strict procedural safeguards, designed to assess and determine the child's best interests for decisions affecting the child, including mechanisms for evaluating the results.<sup>74</sup> Public authorities and organizations making decisions that concern children must act in conformity with the obligation to assess and determine the child's best interests. To ensure that the best interests of the child are taken into account as a primary consideration by the BID Panel, there must be child-friendly, transparent and objective procedural safeguards and processes.

In the assessment and determination of the child's best interests, the UNCRC Committee of Experts, through General Comment No. 14 of 2013 (Paragraphs 89 to 99), has called on both public authorities and private bodies or persons, involved in decision-making, to pay special attention to the following procedural safeguards and guarantees:

**(a) Right of the child to express his/her own views**

- Ensure meaningful child participation in identifying the child's best interests.
- Inform the child about the process and possible sustainable solutions and services.
- Collect information from the child and seek his/her views.
- Where the child's views are expressed through a representative, there is an obligation to accurately communicate the views of the child.
- Where the child's views are in conflict with those of his/her representative, a procedure should be established to allow the child to approach an authority to establish separate representation for him/her (e.g. a guardian ad litem<sup>75</sup>), if necessary.

*Note:* In exceptional cases, a situation may arise for assessing and determining the best interests of children as a group. A different procedure should be adopted or a different actor must take the lead (e.g. children's hearings, children-led organizations, and children's unions or other representative bodies) using a representative sample.

<sup>73</sup> Ibid., Paragraph 85.

<sup>74</sup> Ibid., Paragraph 86.

<sup>75</sup> A guardian that acts as the child's "next friend."

**(b) Establishment of facts**

- Facts and information relevant to a particular case must be obtained by well-trained professionals, in order to draw up all the elements necessary for BIA.
- Persons who should be interviewed to establish facts may include those close to the child, people who are in contact with the child on a daily basis, and witnesses to certain incidents.
- Information gathered must be verified and analysed prior to being used in the child's BIA.

**(c) Perception of time**

- Delays in or prolonged decision-making have particularly adverse effects on children as they evolve.
- It is advisable that procedures or processes regarding or impacting children be prioritized and completed in the shortest time possible because the passing of time is not perceived in the same way by children when compared to adults.
- The timing of the decision should, as far as possible, correspond to the child's perception of how it can benefit him/her, and the decisions taken should be reviewed at reasonable intervals as the child develops and his/her capacity to express his/her views evolves.
- All decisions on care, treatment, placement and other measures concerning the child must be reviewed periodically in terms of his/her perception of time, and his/her evolving capacities and development (Article 25).

**(d) Qualified professionals**

- Given that children are a diverse group, with each having his/her own characteristics and needs, the assessment and determination of children's best interests should adequately be made by professionals who have expertise in matters related to child and adolescent development.
- The formal assessment process should be carried out in an objective manner, and in friendly and safe atmosphere, by professionals trained in, inter alia, child psychology, child development, and other relevant human and social development

fields (e.g. law, sociology, education, social work and health), and who have experience working with children.

- As far as possible, a multidisciplinary team of professionals should be involved in conducting the BID.

(e) **Legal representation**

- The child needs appropriate legal representation when his/her best interests are to be formally assessed and determined by courts and equivalent bodies.
- In particular, in cases where a child is referred to an administrative or judicial procedure involving the determination of his/her best interests, he/she should be provided with a legal representative, in addition to a guardian or representative of his/her views.

(f) **Legal reasoning**

- In order to demonstrate that the right of the child to have his/her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child must be motivated, justified and explained.
- The motivation should explicitly state all the factual circumstances regarding the child, what elements have been found relevant in the best interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests.
- If the decision differs from the views of the child, the reason for it should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out, in order to show that the child's best interests were a primary consideration despite the result.
- It is not sufficient to state in general terms that other considerations override the best interests of the child. All considerations must be explicitly specified in relation to the case at hand, and the reason why they carry greater weight in the particular case must be explained.
- The reasoning must also demonstrate, in a credible manner, why the best interests of the child were not strong enough to be outweighed by the other considerations.

**(g) Mechanisms to review or revise decisions**

- Mechanisms to review decisions concerning children when a decision seems not to be in accordance with the appropriate BIA and BID procedures must be established within the system.
- There should always be the possibility to request a review or to appeal such a decision at the national level.
- Mechanisms should be made known to the child and be accessible by him/her directly or by his/her legal representative.
- The reviewing body must look into the aforementioned aspects.
- The reviewing body must look into whether: procedural safeguards had not been respected; the facts are inaccurate; the best interests assessment had not been adequately carried out; or that competing considerations had been given too much weight.

*Note:* Circumstances that may necessitate the review of a decision may include: (a) if the BID Panel itself see to review the decision; (b) if new facts emerge; (c) if it becomes manifest that the procedure was defective; and (d) when the decision made is outside or beyond the powers (*ultra vires*) of the BID Panel.

**(h) Child rights impact assessment (CRIA)**

- Child rights impact assessment (CRIA) should be used to predict the impact of any proposed policy, legislation, regulation, budget or other administrative decision that will affect a child or children, including by affecting their enjoyment of their rights.
- CRIA should complement ongoing monitoring and evaluation of the impact of measures on children's rights.
- CRIA needs to be built into processes at all levels and as early as possible in decision-making and in the development of implementation measures.
- Different methodologies and practices may be developed when undertaking CRIA. At a minimum, they must use the UNCRC and its Optional Protocols as a framework, in particular ensuring that the assessment is in line with the general principles and having a special regard for the differentiated impact of the measure(s) under consideration on children.

### 3.7. THE BID PANEL, MANAGER AND FORMS

#### 3.7.1. The BID Panel and its responsibilities

The BID Panel shall be responsible for the determination of what is in the best interest of each individual child in migration flows for whom BID is required. The panel shall consider formal reports submitted by case workers and/or social welfare officers as well as reports made during BIA.

The panel shall consist of permanent members, who shall be persons responsible for child protection, welfare and services, from government ministries and departments, UN agencies and CSOs formally appointed to represent their respective ministries/institutions/organizations in BID processes. In particular, members of the National BID Panel for Zambia (which shall be the overall supervisory and review body) shall come from the ministries responsible for social welfare, child development and home affairs (namely, Department of Immigration, Zambia Police Service, Zambia Correctional Services and the Office of the Commissioner for Refugees (COR)). Where appropriate, other members shall come from IOM, UNICEF and other implementing partners (including CSOs).

BID Panels shall also be established at the provincial and district levels. The District BID Panel may refer a particular case to the Provincial BID Panel for BID determination, review or referral to the National BID Panel.

#### 3.7.2. Structure of the National BID Panel

- Chair: Department of Social Welfare
- Vice Chair: Zambia Police Service – Child Protection Unit
- Secretariat: Department of Social Welfare (within the Ministry of Community Development and Social Services)
- Members:
  - Department of Immigration
  - Zambia Correctional Service
  - Office of the Commissioner for Refugees (COR)
  - Ministry Responsible for Child Development
  - civil society organization representative
  - IOM, UNHCR or UNICEF (as and whichever is relevant to the case)

Permanent members shall attend scheduled BID meetings regularly. However, each BID meeting shall be attended by an uneven number of no less than five members, excluding the BID Manager and the case worker. Decisions shall be made through consensus and through a majority vote; in the event of a tie, the Chairperson shall exercise a casting vote. (NOTE: The selection of the members to constitute the BID Panel meeting shall be determined by the BID Manager, taking into consideration the nature of the matter to be determined and the relevance of the mandate of the institution.)

Furthermore, each ministry, institution or organization represented on the panel, shall nominate an alternate member to represent the permanent member in the event that the permanent member is unable to attend/participate in the meeting called for purposes of conducting BID. Furthermore, both permanent members and alternate members shall be qualified staff with relevant expertise and experience in their respective areas of operation. Permanent members shall be responsible for ensuring that their alternates are kept fully up-to-date for continuity of case management and sound decision-making.

In the event that the panel seeks services and/or advice from a ministry, department or institution not represented on the panel, it shall be at liberty to invite an external expert for purposes of obtaining a specific service or advice. However, the external expert shall not participate in the making of the final decision on the matter. The role of an external expert shall be limited to giving advice to the panel to facilitate decision-making. The determination of the child's best interests shall be the responsibility of the panel.

### **3.7.3. The BID manager and his/her responsibilities**

The Ministry of Community Development and Social Services shall appoint a BID Manager and a deputy from the Social Welfare Department. The BID Manager (and in his/her absence the BID deputy) shall be responsible for calling BID meetings and submitting to the panel reports from case workers or social welfare officers for consideration. Upon receipt of the report(s) from the BID Manager, the panel shall assess the situation of the child based on the information provided in the reports and the options given. Furthermore, it shall adopt decisions on what is considered in the child's best interests and/or give recommendations on how to improve the protection and welfare of the child. The Manager shall also ensure that the filing of BID cases and BID Panel resolutions or recommendations is smoothly done.



### 3.7.4. Vital tools/forms for BIA and BID

Standard forms have been designed to help formalize the procedure of undertaking the BIA and BID processes on children of concern. They are to be used by case workers involved in BIA processes when assessing the situation of the child. Furthermore, the forms shall assist the BID Panel in determining the child's best interests. It must be emphasized that the forms are, in practice, intended to aid in capturing data, decision-making and statistics management.<sup>76</sup>

#### Box 13:

#### Data and statistics on unaccompanied and separated children

It has been observed in practice that data and statistics collected on unaccompanied and separated children tend to be limited to: (a) number of arrivals and/or (b) number of requests for asylum. These data are insufficient for a detailed analysis of the implementation of safeguards for the rights of such children. Furthermore, data and statistics are often collected by a variety of different ministries and agencies, which can impede further analysis and present potential concerns with regard to confidentiality and children's right to privacy.<sup>77</sup> Accordingly, the development of a detailed and integrated system of data collection on unaccompanied and separated children is a prerequisite for the development of effective policies for the implementation of the rights of such children.<sup>78</sup>

Data collected within such a system should ideally include but should not be limited to: (a) basic biographical data on each child (including age, sex, country of origin and nationality, ethnic group); (b) total number of unaccompanied and separated children attempting to enter the country and the number that have been refused entry; (c) number of requests for asylum; (d) number of legal representatives and guardians

<sup>76</sup> As recommended by the Committee of Experts in CRC General Comment No. 6 of 2005.

<sup>77</sup> CRC General Comment No. 6 of 2005, Paragraph 97.

<sup>78</sup> Ibid., Paragraph 98.

assigned to such children; (e) legal and immigration status (i.e. asylum seeker, refugee or temporary resident (with a permit)); (f) living arrangements (i.e. in institutions, with families or living independently); (g) enrolment in school or vocational training; (h) family reunification; and (i) number of children returned to their country of origin. In addition, States parties should consider collecting qualitative data that would allow them to analyse issues that remain insufficiently addressed, such as disappearances of unaccompanied and separated children, and the impact of trafficking.<sup>79</sup>

### Best Interests Assessment Form (BIAF)

The form, shown in Annex A of these Guidelines, is an instrument guiding the collection of information required from a child who is in the country without appropriate care (i.e. a lack of an identifiable parent or guardian) at the point of identification. It is designed for collecting information that will enable social workers and other relevant authorities to decide on appropriate care arrangements in line with the best interests of the child.<sup>80</sup> The form is used to state the purpose for which BIA is undertaken and for the collection of bio-data relating to the child. It is also essential for recording referrals and/or service provision. In addition, it is used to determine whether the case is of high priority and to capture the name of the assessor and his/her contact details, as well as record the child's background information, including his/her personal particulars and contact details and whereabouts of the parent(s), legal guardian and/or other family members. Furthermore, the form is used to assess information on the child's circumstances, protection needs and care assessment. It may also contain "special" observations made by the assessor; findings from the verification interview with a shelter provider; a summary of the case; and the actual action plan, including recommended follow-up actions.

<sup>79</sup> Ibid., Paragraph 99.

<sup>80</sup> Save the Children UK – South Africa Programme, *Best Interests Determination for Children on the Move*, p. 11.

## **Best Interests Determination Form**

The form, which appears in Annex B of the Guidelines, contains information relating to the case, clearly indicating, inter alia, the migratory status of the child; purpose of the BID; priority level of the case; the child's basic bio-data; interviews conducted with the child; relevant documentation (as an attachment); intervention options and recommendations; and the BID Panel decision, disclosing the full reasons for the recommendation(s) made, including the actual action plan and where the child has been referred to.

## **BID Confidentiality Form**

The form is shown in Annex C of the Guidelines and requires persons participating in the BIA and/or BID processes to make an agreement or undertaking that they are bound to maintain confidentiality on information that comes to their knowledge or attention, and in line with their duties or participation in the BIA and/or BID processes. These persons shall be required to acknowledge that they understand and accept that the obligation to maintain confidentiality shall continue even after their formal role and/or participation in the BIA and/or BID processes has ended, and that any breach may attract sanctions, including exclusion from participating in BIA and/or BID processes going forward.

## **Interpreter's Undertaking and Confidentiality Form**

The form is contained in Annex D of the Guidelines and requires any person engaged as an interpreter, during the BIA and/or BID processes, to give an undertaking to provide interpretation services to the best of his or her ability. It further requires the interpreter to agree not to disclose, to any person and/or authority not involved in the BIA and/or BID processes, any information that comes to her/ his knowledge as a result of being an interpreter. It is also used to require such interpreter to give an undertaking to adhere to the principle of confidentiality even after one's formal role in the BIA and/or BID processes has ended, while acknowledging that a breach of confidentiality may attract sanctions as the authorities may deem fit.





## 4. CONCLUSION

The information given in these Guidelines is intended to help with conducting BID and BIA for vulnerable children in migration flows in Zambia. The Guidelines have been developed out of the realization that children involved in mixed migration flows are particularly vulnerable and are in need of protection, all the while taking their individual best interests as a primary consideration. In general, the Guidelines identify various categories of vulnerable children in migration flows whose individual cases must be assessed and their best interests determined.

The categories of vulnerable children on the move identified through the Guidelines include, but are not limited to, victims of trafficking, unaccompanied and separated children, asylum seekers, refugee children and stranded migrants. This is consistent with the categories set out in *Guidelines: Protection Assistance for Vulnerable Migrants in Zambia*. The Guidelines also highlight both international and national normative frameworks providing safeguards and procedures in child protection system and service provision. Above all, the Guidelines outline the elements, steps and practical procedures for assessing and determining the migrant child's or children's best interests.

The Guidelines, in particular, cover child rights and fundamental principles established under the UNCRC and the ACRWC. Furthermore, they provide the nexus between the principles of the best interests of the child, of non-discrimination, of life, survival and development, and of respect for the views of the child. In a similar manner, the Guidelines provide an authoritative interpretation and application of the “best interests” principle, with guidance from the Committee of Experts established through the UNCRC; identify child protection needs and appropriate responses to child protection; and explain the BIA and BID processes in detail, as well as when and why BID should be conducted. The Guidelines also establish the BID Panel and its procedures, as well as the standard forms needed when operationalizing

the BIA and BID processes. In sum, these Guidelines help formalize and standardize procedures for the BIA and BID processes for vulnerable children in transnational migration flows in Zambia.



# GLOSSARY

## **asylum seeker**

A person who is seeking protection from a foreign country and is waiting to have his/her claim assessed.<sup>81</sup>

## **best interests assessment**

An assessment made by staff taking action with regard to individual children (except when a BID procedure is required), designed to ensure that such action gives primary consideration to the child's best interests. The assessment can be done by staff with the required expertise, working either alone or in consultation with others, and requires the participation of the child.<sup>82</sup>

## **best interests determination**

A formal process with strict procedural safeguards designed to determine a child's best interests for particularly important decisions affecting him/her. It should facilitate adequate child participation without discrimination, involve decision makers with relevant areas of expertise, and balance all relevant factors, in order to identify the best option.<sup>83</sup>

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<sup>81</sup> United Nations Joint Programme on Social Protection, "Guidelines on protection assistance for vulnerable migrants in Zambia, 2014" (IOM, Geneva, 2014). Available from [www.iom.int/files/live/sites/iom/files/Country/docs/Guidelines\\_Protection-Assistance-for-Vulnerable-Migrants.pdf](http://www.iom.int/files/live/sites/iom/files/Country/docs/Guidelines_Protection-Assistance-for-Vulnerable-Migrants.pdf)

<sup>82</sup> Office of the United Nations High Commissioner for Refugees (UNHCR), "UNHCR Guidelines on determining the best interests of the child, May 2008 (UNHCR, Geneva, 2008). Available from [www.unicef.org/violencestudy/pdf/BID%20Guidelines%20-%20provisional%20realease%20May%2006.pdf](http://www.unicef.org/violencestudy/pdf/BID%20Guidelines%20-%20provisional%20realease%20May%2006.pdf)

<sup>83</sup> Ibid.

## child

“Every human being below the age of eighteen years, unless under the law applicable, majority is attained earlier.”<sup>84</sup>

## first-line official

A term used broadly to encompass immigration officials, police officers, social welfare officers, prison officials, other civil servants and civil society organization (CSO) personnel who have “first contact” – and, in some cases, also follow-up contact – with vulnerable migrants in need of protection.<sup>85</sup>

## mixed migration (also, mixed flows)

Complex migratory population movements that include refugees, asylum seekers, economic migrants and other migrants, as opposed to migratory population movements that consist entirely of one category of migrants.<sup>86</sup>

## unaccompanied child (also, unaccompanied minor)

As defined in General Comment No. 6 of 2005 by the United Nations Committee on the Rights of the Child, a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.<sup>87</sup>

<sup>84</sup> United Nations General Assembly Resolution No. 44/25 of 10 November 1989 (Convention on the Rights of the Child) (UNCRC), Article 1. Available from [www.unhcr.org/protection/children/50f941fe9/united-nations-convention-rights-child-crc.html](http://www.unhcr.org/protection/children/50f941fe9/united-nations-convention-rights-child-crc.html)

<sup>85</sup> Government of Zambia, International Organization for Migration (IOM), United Nations High Commission for Refugees (UNHCR) and the United Nations Children’s Fund (UNICEF), “Training manual: (Facilitators guide) Protection assistance for vulnerable migrants in Zambia, 2014” (IOM, Geneva, 2014). Available from [www.iom.int/files/live/sites/iom/files/Country/docs/Manual-Protection-Assistance-for-Vulnerable-Migrants.pdf](http://www.iom.int/files/live/sites/iom/files/Country/docs/Manual-Protection-Assistance-for-Vulnerable-Migrants.pdf)

<sup>86</sup> IOM, *International Migration Law No. 25: Glossary on Migration* (Second edition, IOM, Geneva, 2011). Available from <https://publications.iom.int/books/international-migration-law-ndeg25-glossary-migration>

<sup>87</sup> CRC General Comment No. 6 of 2005 (Treatment of unaccompanied and separated children outside their country of origin). Available from [www2.ohchr.org/english/bodies/crc/docs/GC6.pdf](http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf)



## separated child

As defined in General Comment No. 6 of 2005 by the United Nations Committee on the Rights of the Child, a child who has been separated from both parents, or from their previous legal or customary primary caregiver(s), but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.<sup>88</sup>

## refugee

Any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country.<sup>89</sup>

## stateless person

A person who is not considered as a national by any State under its law.<sup>90</sup>

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<sup>88</sup> Ibid.

<sup>89</sup> Convention Relating to the Status of Refugees of 28 July 1951; and Protocol Relating to the Status of Refugees of 31 January 1967. Available from [www.gdrc.org/doyourbit/refugee-convention.pdf](http://www.gdrc.org/doyourbit/refugee-convention.pdf)

<sup>90</sup> Convention Relating to the Status of Stateless Persons of 28 September 1954. Available from [www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf)

## stranded migrant

The term has no generally accepted definition. However, in practice, a migrant becomes legally stranded where he/she is caught between: (a) removal from the State in which he/she is physically present; (b) inability to return to his/her State of nationality or former residence; and (c) refusal by any other State to grant entry. They may also be stranded where there are practical or humanitarian reasons that prevent them from returning home. Many of those who become stranded – including rejected asylum seekers, migrant workers and other economic migrants – have entered the country irregularly, assisted by smugglers or transported by traffickers. Some are legally stateless.<sup>91</sup>

## victim of trafficking

A person who has been exploited and has suffered loss of fundamental rights and psychological or physical harm because of being trafficked.<sup>92</sup>

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<sup>91</sup> S. Grant, "The legal protection of stranded migrants", in: *International Migration Law: Developing Paradigms and Key Challenges* (R. Cholewinski, R. Perruchoud and E. MacDonald (eds.)). T.M.C. Asser Press, The Hague, 2007.

<sup>92</sup> United Nations Joint Programme on Human Trafficking, *Training Toolkit and Minimum Standard Guidelines on Protection of Victims of Human Trafficking* (IOM, Lusaka, 2012).

# ANNEX A

## Best Interests Assessment (BIA) Form for Vulnerable Migrant Children in Need of Protection

The purpose of the BIA Form is to assist case workers working with children assess the protection needs of a migrant child facing vulnerabilities as soon as possible after the child is identified.

**REF. No.:**

**CASE REFERRED BY:**

**DATE OF REFERRAL:**

**STATUS OF THE CHILD:**

- Unaccompanied ☐  
 Separated ☐  
 Victim of trafficking (VoT) ☐  
 Potential VoT ☐  
 Stranded migrant ☐  
 Stateless migrant ☐  
 Other (specify) ☐

**PURPOSE OF BIA:**

- Long-term ☐  
 Short-term ☐  
 Others ☐ Specify: \_\_\_\_\_

**PRIORITY OF THE CASE:**

**SPECIFY:**

High		
Normal		
Specific needs of the child		

Date of interview:		Organization:	
Name of interviewer:		Location of interview:	
Name of interpreter:		Interpreter's nationality:	

Bio-data of the Child			
Surname:			
Other names:			
Alias:			
First language:		Other languages: (indicate all that apply)	
Date of birth/age:		Linked cases:	
Place of birth: (country, town and village)		Child identified by (agency/officer)	
Place of origin: i.e place where journey started from (country, town and village)		Nationality:	
Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male			
Special identification features/marks:			
Details of legal guardian: (name and contact information)			
Case referred from:		<input type="checkbox"/> High priority <input type="checkbox"/> Priority <input type="checkbox"/> Normal	

Background Information	
Ethnicity:	
Religion:	
Languages spoken:	
Level of education:	

Mother or Significant Others	
Mother's name:	
When did you last see your mother?	
Where?	
Where do you think your mother is now?	
How can she be contacted? (phone, email, letter, etc.)	

Father or Significant Others	
Father's name:	
When did you last see your father?	
Where?	
Where do you think your father is now?	
How can he be contacted? (phone, email, letter, etc.)	

Siblings		
Name	Age/Sex	Current whereabouts

## I. Placement Options

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## II. Protection Needs and Care Assessment

### Living and Care Arrangements

**Suggested Questions:** Whom do you currently live with (name/location in country of origin)? Who has most recently been looking after you? What is your relationship to that person, and how can they be contacted? What are your usual activities (chores) in the household? What are the activities (chores) of the other children in the household? How are you treated in comparison to others?

### Safety and Security

**Suggested Questions:** Who have you had contact with since arriving in the country/part of the country (where identified)? What risks does the individual believe exists for himself/ herself and/ or immediate family members?

### Health and Access to Medical Care

**Suggested Question:** Are you currently feeling any pain or physical discomfort? Please give details.

Does the child have any of the following conditions? (Tick all that apply.)

Pregnancy	Disability: (tick and specify)	Other health concerns: (tick and specify)	
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**Are there signs of:**

Physical abuse?

Sexual abuse?

Psychological abuse?

### Access to Food

**Suggested Questions:** How many meals do you have per day and where do you get your meals/food? Are there any foods you cannot eat? Please give details.

### Water and Sanitation

**Suggested Questions:** Do you have access to water? How do you get it? How much water do you access per day? How far is the water point located from your home?

### Education

**Suggested Questions:** Were you attending school or any educational activities in your country of origin? Please describe (name of the school/training course, grade, etc.). If not, explain why. Are you currently in school? Please describe (name of the school and grade).

### Child's Daily Activities Prior to Leaving Country of Origin

**Suggested Questions:** Who are your friends? If so, what do you do together and where do you usually play/meet with them? How many hours per day? Did you use to work to earn some money? If so, what did you do? How many hours per day? What did you do with the money that you earned?

### Protection and Psychosocial Well-being

**Suggested Questions:** What problems are you facing at home or in your community? With whom are you sharing the problems? Are you receiving any form of assistance? What form of support do you receive from your community? How protected are you at home? Do you have any particular worries?

### Tracing

**Suggested Question:** Share details about your parents and/or guardians for family tracing purposes.

### Others

**Suggested Question:** Is there any other information you would like to share with me?

## III. Information Filled by the Assessor

### **Suggested Questions:**

Does the child have health or medical care needs? If yes, explain.

Does the child have adequate food?

Does the child have sufficient clothing?

Please, describe impressions about the home environment.

Does the child appear frightened/withdrawn/unhappy? (to be assessed/filled out by the assessor; provide details).

Are there (urgent) protection needs or risks to be addressed? Please provide details.



**IV. To be completed by the Assessor: Current Shelter Situation**  
**(Please explain)**

**V. Child's Drawing<sup>93</sup>**

**VI. Summary and Recommendations**

Case summary + Identified needs + Observations

<sup>93</sup> In this part, children who are separated can draw a family tree or their previous home. They can indicate different rooms of the family home and who lives in which room. Such drawings help highlight family relations and other useful tracing information. The child can also draw her or his village, their old neighbourhood or town, and draw important buildings, such as their school or mosque or church. In the case of a child with a history of abuse, the drawing might help the child express what happened.

Recommended Follow-Up Actions/Referral	
<input type="checkbox"/> Safe homes <input type="checkbox"/> Shelters <input type="checkbox"/> Foster care <input type="checkbox"/> Medical assistance <input type="checkbox"/> Psychosocial support <input type="checkbox"/> Counselling <input type="checkbox"/> Immediate basic needs (food, clothing, water/sanitation, etc.) <input type="checkbox"/> Education <input type="checkbox"/> Recreational/Community activities <input type="checkbox"/> Regularization of stay <input type="checkbox"/> Legal assistance <input type="checkbox"/> Assisted voluntary return (BID required) <input type="checkbox"/> Repatriation (BID required) <input type="checkbox"/> Reintegration (BID required) <input type="checkbox"/> Regular home visits	Other specific assistance (specify):          Need for BID: <input type="checkbox"/> Priority <input type="checkbox"/> Normal

### Action plan (in order of priority)

Action/Follow-up required	Agency/Service provider responsible	Action taken + Date	Status <sup>94</sup>

Signature of Child Welfare Officer:	Date of Review of this Case:
Date:	Signature of Review Officer:
	Date:

<sup>94</sup> Indicate in this column the status of the case, for example: on track; delay in implementation, but not a major problem; requires urgent action by management/supervisor of those responsible for follow-up; indicate 'DONE' if all actions have been taken.

# ANNEX B

## Best Interests Determination (BID) Form

(The purpose of the BID is to determine the child's best interests in particularly important decisions that affect the child and to help identify a lasting solution.)

### SECTION 1: OVERVIEW

**REF No.:**

**CASE REFERRED BY:**

**DATE OF REFERRAL:**

**STATUS OF THE CHILD:**

- Unaccompanied ☐  
 Separated ☐  
 Victim of trafficking (VoT) ☐  
 Potential VoT ☐  
 Stranded migrant ☐  
 Stateless migrant ☐  
 Other (specify) ☐

**PURPOSE OF BIA:**

- Long-term ☐  
 Short-term ☐  
 Others ☐ Specify: \_\_\_\_\_

**PRIORITY OF THE CASE:**

**SPECIFY:**

High		
Normal		
Specific needs of the child		

**CHILD'S BASIC BIO-DATA**

(Refer to bio-data form)

	DOCUMENTED
<b>FULL NAME</b>	
<b>ALIAS</b>	
<b>AGE (Indicate if it is an estimate)</b>	
<b>SEX</b>	
<b>DATE OF BIRTH</b>	
<b>PLACE OF BIRTH</b>	

DATE OF ARRIVAL IN THE COUNTRY	
DATE OF ARRIVAL AT CURRENT LOCATION	
NATIONALITY	
ETHNICITY	
RELIGION	
CURRENT ADDRESS	
PHONE No. (Child, caregiver, others)	
CURRENT CAREGIVER	
RELATED CASE(S)	
LINKED BID(S)	
NAME OF FATHER OR SIGNIFICANT OTHER	
NAME OF MOTHER OR SIGNIFICANT OTHER	
NAME(S) OF SIBLING(S)	

TRACING	YES	STARTED ON	
		STATUS	
	NO	N/A	

#### INTERVIEWS

	NAME	ORGANIZATION
Interviewer		
Reviewing officer		
Interpreter		

#### DOCUMENTATION ATTACHED (e.g. medical records)

1	
2	
3	
4	
5	
6	
7	

## SECTION 2: OPTIONS AND RECOMMENDATIONS

### Part I – Brief summary of information on the case

Guardian Situation:

Biological Parents:

Current location of the parent/ guardian:

### Part II – Background information (For case summary, refer to BIA form)

### Part III – Current situation

Current care arrangements:

Protection and risk assessment:

Education:

Physical and mental health:

Assessment of the child's age and maturity:

Parental guardianship:

Legal assistance:

Additional needs of the child:

#### Part IV – Available options and analysis

Views of the child:

Views of the biological parents:

Views of persons close to the child (current guardian):

Assisted voluntary return plans:

Resettlement:

Local integration:

Analysis of options:

#### Recommendations

### SECTION 3: PANEL DECISION

Name of the child:

Date:

#### FULL REASONS FOR THE DECISION

Refer child to: (Please specify) \_\_\_\_\_

**FOLLOW-UP ACTIONS REQUIRED (Tick and specify):**

- ☐ None
- ☐ Provide counseling to the:
  - Child
  - Biological parents
  - Foster parents/caregiver
- ☐ Undertake formal tracing
- ☐ Refer child for:
  - Alternative care arrangements
  - Protection measures
  - Educational assistance
  - Psychosocial assistance
  - Material assistance
  - Medical assistance
- ☐ Others: (Explain)

**COMMENTS**

Assisted voluntary return:

Local integration:

Reintegration plans:

Resettlement:

Case monitoring and follow-up:

**SIGNATURES OF PANEL MEMBERS**

Name	Organization	Signature	Date

DATE: \_\_\_\_\_

# ANNEX C

## BID Confidentiality Form

I, \_\_\_\_\_, holder of ID No. \_\_\_\_\_ of the City/  
District of \_\_\_\_\_ in the \_\_\_\_\_  
Province in the Republic of Zambia, do hereby agree not to disclose, to any person  
and/or authority not involved in the BID process, any information that comes to my  
knowledge as a result of my participation in the BID process. I further undertake to  
adhere to the principle of confidentiality even after my formal role and/or participation  
in the BID process, and that any breach of this agreement and undertaking may  
attract sanctions as the authorities may deem fit in accordance with my Ministry's/  
Department's/Organization's Disciplinary Code.

Signature \_\_\_\_\_  
Place \_\_\_\_\_  
Date \_\_\_\_\_

Witnessed by:

Name \_\_\_\_\_  
ID No. \_\_\_\_\_  
Designation \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_



# ANNEX D

## Interpreter's Undertaking and Confidentiality Form

I, \_\_\_\_\_, holder of ID No. \_\_\_\_\_ of the City/  
District of \_\_\_\_\_ in the \_\_\_\_\_  
Region/Province in the Republic of \_\_\_\_\_, having been  
engaged as an interpreter by \_\_\_\_\_ to offer interpretation  
service during the BIA/BID process, do hereby make an undertaking to provide the  
service to the best of my knowledge and ability. I further agree not to disclose, to any  
person and/or authority not involved in the BID process, any information that comes  
to my knowledge as a result of being an interpreter. I further undertake to adhere  
to the principle of confidentiality even after my formal role. I fully understand and  
appreciate that the breach of this undertaking and the principle of confidentiality may  
attract sanctions as the authorities may deem fit.

Signature \_\_\_\_\_  
Place \_\_\_\_\_  
Date \_\_\_\_\_

Witnessed by:

Name \_\_\_\_\_  
ID No. \_\_\_\_\_  
Designation \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_



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