



WINTER 2008 SPOTLIGHT:

The Best Interests of the Child in a Global Perspective

Introduction

U.S. child welfare laws are local—established at the state or county level—but they share a common foundation with international child welfare standards by emphasizing “best interests” in decisions about children.

This best interests principle has become enshrined in international law through the Convention on the Rights of the Child (CRC). [1]

*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.*

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and to this end, shall take all appropriate legislative and administrative measures. [2]

Within the U.S. context, the best interests principle has been further defined through these core goals of the child welfare system:

- Safety
- Permanency
- Well-being [3]

A comprehensive review of U.S. state laws found that best interests are a child welfare consideration in all parts of the U.S.:

All States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. territories of American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands require that the child's best interests be considered whenever decisions regarding a child's placement are made. [4]

Migrating Children and “Best Interests”

The application of the best interests principle to children in migratory situations was recently examined as part of a three-day transnational conference, hosted by George Mason University and focused on “[Protection of Unaccompanied and Separated Children](#).” Government agencies from four U.S. federal departments assisted in the planning and organization of the conference, including the U.S. Departments of State, Homeland Security, Health and Human Services, and Justice, with conference attendees coming from more than 40 countries.

While set against an international backdrop, many of the conference issues addressed are similar in principle to protection issues for children in U.S. foster care:

- Temporary and long-term care arrangements
- Psychosocial issues
- The role of interested adults, advocates and guardians
- Family tracing and reunification
- Protection from exploitation

At the same time, certain issues are specific to migrating children separated from their parents:

- Migration experience and migratory flows
- Refugee camp issues
- Immigration practices and legal remedies
- Repatriation

Separated refugee and migrant children lack the immediate protection of parents and homeland. While small in number—typically 3-5% of any refugee flow, but at times more or less in particular migration situations—separated children are both overlooked and exploited, putting them among the most vulnerable populations in any migration flow. Research, resource development, and conferences such as the one described here, continue in hopes of improving services and protections for this at-risk group. (See the [List of Highlighted Resources](#) that accompanies this article that includes recent international reports on separated child asylum seekers.)

Operationalizing “Best Interests”

The “Protection of Unaccompanied and Separated Children” conference highlighted the United Nations High Commissioner for Refugees’ (UNHCR) recent release of [Guidelines on Determining the Best Interests of the Child](#). The guidelines establish a concrete interdisciplinary process for making best interests decisions with refugee children, thus moving “best interests” from vague principle to formal practice. Recognizing the tenuous reality facing many refugee children, particularly those who are separated from their families, the UNHCR best interests determination (BID) process does not replace existing and functioning child protection systems, but rather fills the void when such systems cannot, or do not, provide permanency planning and protection for children falling under UNHCR’s competence.

The BID guidelines are designed for a refugee context, and use some terminology particular to the refugee field. Nonetheless, American child welfare workers will recognize the underlying principles of safety, permanency and well-being within the guidelines, and the challenge of making best interests decisions in worst case scenarios.

Specifically, the BID guidelines are intended for decision-making with children in the following circumstances.

- **Identifying “durable solutions” for unaccompanied and separated refugee children.** Durable solutions—roughly comparable to permanency planning for refugee children—include the possibilities of:
 - *Voluntary return* to the refugee child’s country of origin
 - *Integration* into the country where the refugee child has sought refuge
 - *Resettlement* to a third country willing to welcome and care for the refugee child
- **Making temporary care decisions for unaccompanied and separated children in exceptional circumstances.** Most temporary care arrangements for refugee children happen promptly, without the need for a BID procedure, however in certain cases more deliberation is required, such as the following.
 - A child may be at risk for abuse or neglect with an accompanying adult, or there are concerns about the legitimacy of the relationship.
 - Existing care arrangements are not suitable for the child, perhaps due to a child’s disability, the child’s ethnic or religious background, or the child or caregiver’s connection to armed groups.
- **Separating a child from parents, against their will, such as in cases of severe child abuse.** Such decisions are typically the government’s responsibility where the child has sought refuge, but in rare cases when governments fail to fulfill this role, UNHCR may use the BID process to make protection decisions regarding the child.

Best interests determinations are carried out by a “multi-disciplinary, gender-balanced [panel] and normally composed of 3 to 5 persons with professional expertise in child development and child protection.”[5] Together, such panels make weighty placement decisions about refugee children in complex situations.

Before final release of these guidelines, UNHCR and partners tested them in field operations, such as in Ethiopia, [Guinea](#), Kenya, Malaysia and Thailand, using feedback to refine and improve the guidelines. Released in May 2008, UNHCR is now disseminating the guidelines and training staff globally on their usage.

Best Interests in National and International Programs

Beyond UNHCR, various non-governmental organizations (NGO’s) also apply best interests decision-making in cross-national and cross-cultural situations, as in the two examples that follow.

- [International Social Service—USA Branch](#) (ISS-USA), based in Baltimore, MD, conducts international home studies through its network of ISS branches, bureaus and correspondents. States such as Arizona, Louisiana and New Jersey contract directly with ISS-USA to conduct formal home studies on relatives abroad, in order to consider all appropriate family reunification options for children in the child welfare system. Other states—such as California, Connecticut, Massachusetts, New York, Virginia and others—use ISS-USA as a resource on a case-by-case basis to investigate potential relative caregivers abroad for children in foster care or other out-of-home situations.

According to Julie Rosicky, ISS-USA Executive Director, family members outside the U.S. are too rarely considered as family reunification resources for children in U.S. foster care. Just as family reunification and kinship care are priorities for children with relatives inside the U.S., such family placements should likewise be considered for children with appropriate relative caregivers outside the U.S. “We need to expand permanency options to include international family placements.”[6] ISS-USA coordinates cross-national home studies to facilitate the determination of best interests by child welfare professionals, both inside and outside the U.S.

Read more about ISS-USA’s work regarding international home studies [here](#).

- [Heshima Kenya](#) promotes the best interests of refugee children living without parents in Nairobi, Kenya, by providing education, foster care and emergency shelter. Started in January 2008, the agency’s founders state “children deserve to live as children, to grow and develop with integrity and flourish in communities where their rights and best interests are respected.”[7]

In Kenya, refugees living within designated refugee camps receive government recognition and protection. However, camps can be crowded, having limited food supplies, and minimal education and employment opportunities. Separated refugee children who live on their own in Nairobi receive little or no protection or support. Heshima is working to identify new foster families, to monitor and support existing informal foster care arrangements, and to place newly identified children with families. In the coming year, Heshima Kenya will be working with dedicated refugee leaders—especially mothers—to strengthen informal networks of care, to identify new caregivers and mentors within the community, and to facilitate dialogue within Nairobi’s refugee communities about child protection, health education and community resources.

Like foster care programs in the U.S., Heshima Kenya seeks recruitment of families similar in culture to the children needing care: refugee children, largely girls, from countries such as Congo, Ethiopia, Eritrea, Somalia and Sudan. While Heshima’s context and methods differ in some ways from U.S. child welfare, their goals and challenges share similarities with U.S. foster care programs by working to protect the best interests of refugee children in out-of-home care, and by recruiting and supporting foster families and separated children from diverse backgrounds.

One challenge facing Heshima is the Kenyan government’s requirement that formal caregivers for children be permanent residents of Kenya, an immigration status requirement that eliminates many of the potential caregivers most suited to providing culturally competent care to refugee children. This requirement may sound familiar to some U.S. child welfare workers in states or counties that require foster parents to meet certain immigration status requirements. Heshima’s on-going work with the Kenyan government to reach a resolution on this requirement exemplifies good practice by working with government structures on policy issues to support the interests of children.

Read more about Heshima Kenya’s program [here](#), and see the [List of Highlighted Resources](#) that accompanies this article, which includes resources related to serving diverse populations in U.S. foster care.

Best Interests in Foster Care in the United States

The Unaccompanied Refugee Minor (URM) Program, funded by the [Office of Refugee Resettlement](#) of the U.S. Department of Health and Human Services, provides a unique intersection between professional child welfare and refugee services. These programs, located across the U.S., provide examples of successful strategies learned from over 25 years of serving refugee children and youth. See the following BRYCS Clearinghouse resources for more information about this national network of programs: [Unaccompanied Refugee Minors \(URM\) foster care program](#) and [URM program Frequently Asked Questions \(FAQ\)](#).^[8]

Following are just some examples of effective culturally competent practices demonstrated by URM programs that can be replicated by other child welfare service providers in the U.S.:

- ***The programs look at family reunification options, not just in the United States, but internationally:*** Staff regularly work together with organizations such as ISS-USA to assist with family reunification in other countries, when appropriate.
- ***Targeted foster family recruitment:*** The programs network within their community to locate foster families with the same language and/or ethnic background as the children when possible. Although each foster care placement must be made individually, based on a particular child's best interests, interviews with URM program staff revealed that the following benefits can develop from culturally matched placements:
 - Better communication and less misinterpretation due to language or cultural barriers
 - Better reactions to certain negative behaviors
 - A strong ethnic identity
 - Familiarity with food, language and customs
 - More emotional support
 - Increased stability of placement when there is a shared common culture
 - Awareness of the situation in the child's country of origin
 - Reduced need for caseworker intervention due to cultural or linguistic misunderstandings
 - Greater comfort level due to similar history, understanding and philosophy of life
 - Smoother initial placement transition
 - Ability to maintain language, culture and ethnic ties
 - Ability to maintain religious heritage, if family is of the same faith.[9]
- ***Additional foster family training:*** URM programs provide specialized training to educate foster parents about: the migration experience of children in care; cultural norms of specific groups; trauma experienced by refugee and trafficked children; and the stages of resettlement experienced by children new to the United States. URM staff provide ongoing consultation and support to families in these areas, as well.
- ***Coordination with public school systems:*** URM staff educate and advocate continuously with the school system to ensure that schools are prepared to work with refugee children and that these children receive appropriate assessment, enrollment in the "English as a Second Language" program or other language assistance, and access to additional school-based services, as needed.
- ***Culturally and linguistically-appropriate services:*** Each new child is assigned a bilingual worker, generally from that child's same culture, to assist with interpretation and to ensure the appropriateness of services. Or, where a bilingual case worker specific to the child's language is not available, the programs may recruit mentors for additional one-on-one attention, and link the child with his or her own ethnic community. These programs also ensure that refugee children have the opportunity to participate in cultural activities and celebrations.
- ***Programs connect with local refugee and immigrant service providers:*** The foster care programs know the other providers in their community serving foreign-born children. They know the local community leaders of the same ethnic groups of the children they serve. They enroll their children in the after-school programs run by the refugee and immigrant service providers. They partner with the local ethnic community leaders to recruit potential foster families and mentors for their children.
- ***Programs understand the immigration status situation of the children in their care:*** URM staff recruit pro bono attorneys to assist them in applying for any immigration status for which they may be eligible.

In past Spotlights, BRYCS has featured examples from the Unaccompanied Refugee Minors (URM) network of programs that specialize in professional foster care services to refugees.

- The [Unaccompanied Refugee Minors Program of Lutheran Social Services, Fargo, North Dakota](#) provides foster care services to refugee youth through a multicultural and professionally trained staff. In addition to meeting their physical and emotional needs within a family or family-like setting, this program provides a broad range of services, including independent living skills and job training. The program also offers an environment that encourages maintenance of cultural identity through ethnic role models, cultural celebrations, and opportunities to practice their religion. See their [Program Description](#) for more information on these services.

- The [Refugee Foster Care Mentoring Program of Bethany Christian Services, Grand Rapids, Michigan](#) is a creative approach to supporting the transition of refugee foster care youth to adulthood by matching these youth with mentors from the community. Unique program features include youth participation in choice of mentors, separate monthly support groups for both mentors and youth, and bi-monthly support groups for youth who have been in the U.S. for six months or less. Bethany Christian Services has a long and successful track record of serving refugee youth through their Unaccompanied Refugee Minor program. See their [Program Description](#) for more information on their mentoring services.

Conclusion

Determining the core notion of the “best interests of the child” remains a fundamental principle in child welfare decisions, both nationally and internationally. While “best interests” can at times seem vague and elusive, resources and models exist to aid in such decisions. Learning about national programs serving cross-national populations, as well as international programs serving diverse populations, can help child welfare professionals expand their understanding of the world while making connections to their own local service provision with diverse populations. The best interests of the child is a familiar and respected principle nationally and internationally, connecting child welfare work across national borders.

Resources

BRYCS General Resources

- [Best Interest Determination for Refugee Children: An Annotated Bibliography of Law and Practice](#) (2007).
- [Brighter Futures for Migrating Children](#) (in particular, see Appendix F, *Meeting the 5 Universal Needs of Foreign Born Children*) (2006).
- [Determining Child Abuse & Neglect Across Cultures](#) (Spotlight, April 2005).

BRYCS Resources on Foster Care and Diverse Populations

- [Caring for Muslim Minors: Guidelines for Non-Muslim Families](#)
- [Developing Refugee Foster Families: A Worthwhile Investment](#)
- [Foster Care: A Fact Sheet for Prospective Muslim Families](#)
- [Foster Care at a Cultural Crossroads: Refugee Children in the Public Foster Care System \(July 2003 Roundtable Report\)](#)
- [Serving Foreign-Born Foster Children: A Resource for Meeting the Special Needs of Refugee Youth and Children](#)
- [Serving Refugee Children in Foster Care: Fundamental Considerations](#)
- [Special Immigrant Juvenile Status \(SIJS\) Caseworker's Toolkit for Children in Federal Custody](#)

Additional Resources

- See the accompanying [List of Highlighted Resources](#) for:
 - U.S. Resources on the “Best Interests of the Child”
 - BRYCS Practice-Related Resources
 - International Standards on the “Best Interests of the Child”
 - Country/Regional Reports on Unaccompanied and Separated Child Asylum Seekers

REFERENCES

- ¹ Please note that the [Convention on the Rights of the Child](#) has not been ratified by the United States.
- ² United Nations (1989). [Convention on the Rights of the Child](#), Article 3.
- ³ “Safety, permanency and well-being” are the motto and mission of the Children’s Bureau, U.S. Department of Health and Human Services, which has primary responsibility for administering Federal child welfare programs.
- ⁴ Child Welfare Information Gateway (July 2005). [Determining the Best Interests of the Child: Summary of State Laws](#), p. 2.
- ⁵ United Nations High Commissioner for Refugees (May 2008). [UNHCR Guidelines on Determining the Best Interests of the Child](#), p. 53.
- ⁶ Telephone interview with Julie Rosicky, ISS-USA Executive Director, November 5, 2008.
- ⁷ http://www.heshimakenya.org/about_background.html
- ⁸ This section on the URM program is adapted from BRYCS (2006) [Brighter Futures for Migrating Children: An Overview of Current Trends and Promising Practices in Child Welfare](#).
- ⁹ BRYCS (2004). [Developing Refugee Foster Families: A Worthwhile Investment](#), p. 1-2.