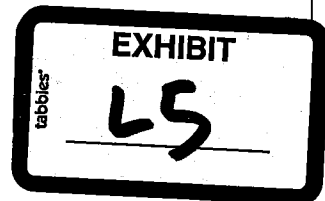


Working with Refugee and Immigrant Children

Issues of Culture,
Law & Development



Lutheran Immigration and Refugee Service

APPENDICES



Selected Articles of the *UN Convention on the Rights of the Child* Adopted by the General Assembly of the United Nations on November 20, 1989.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason as set forth by the present Convention.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest period of time;

(c). Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account

the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provision of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation or his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed on penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

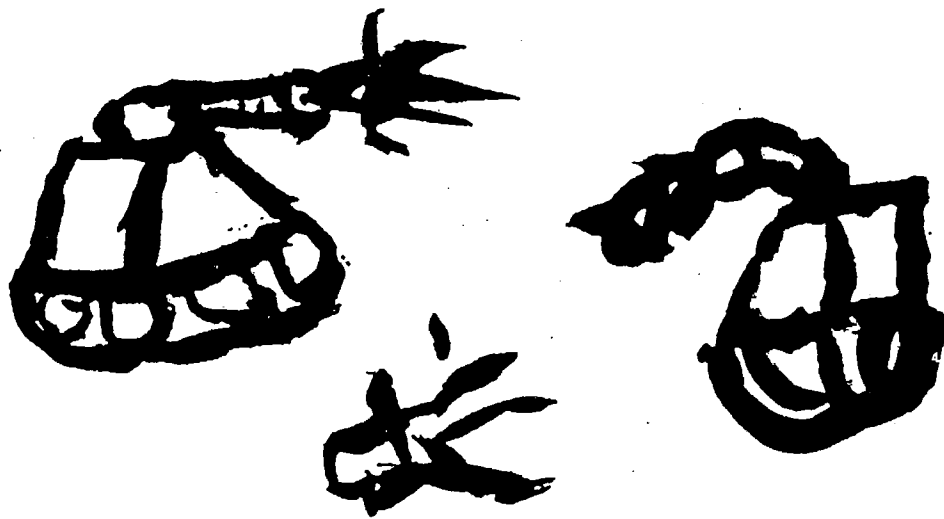
(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate to both their circumstances and the offence.



Caught in the Crossfire. Courtesy of LSS of Iowa.



Suggestions for Questioning Children

Ann Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective*. Washington, DC: ABA Center on Children and the Law, 1994, pp. 95-98. [Copyright 1994 by The American Bar Association. Reprinted by permission.]

General precepts

1. Reduce the processing load that children must carry: aim for simplicity and clarity in your questions. If the child uses simple words and short sentences, so should you.
2. Be alert for possible miscommunication. If a child's answer seems inconsistent with prior answers, or doesn't make sense to you, check out the possibility that there is some problem 1) with the way the question was phrased or ordered, 2) with a literal interpretation on the part of the child, or 3) with assumptions the question makes about the child's linguistic/cognitive development or knowledge of the adult world.

Some specifics

1. Break long sentences/questions into shorter ones that have one main idea each.
2. Choose easy words over hard ones: use Anglo-Saxon expression like "show," "tell me about," or "said" instead of Latinate words "depict," "describe," or "indicate."
3. Avoid legal jargon or "frozels" (my term for frozen legalisms) like "what, if anything," "did there come a come."
4. It is important that you and the children use words to mean the same thing, so run a check now and then on what a word means to each child. Although children are generally not good at definitions, you can still ask something like, "tell me what you think a _____ is." Don't expect an adult-like answer, even if the word is well-known. The inability to define, for example, "wind" does not mean that the person does not know what the wind is. Definitions require a linguistic skill.
5. Avoid asking children directly about abstract concepts like what constitutes truth or what the difference is between the truth and a lie. In seeking to judge a young (under 9 or 10) child's knowledge of truth or lies, ask simple, concrete questions that make use of a child's experience. Ex.: What did you have for breakfast today? (Pause) If you said you had chocolate cake and cherry pie, would you be telling me the truth, or would you be telling me a lie? [Young children equate truth with fact, lies with non-fact.]
6. Avoid the question of belief entirely (Do you believe that to be true?).
7. Avoid using the word "story." (Tell me your story in your own words.) "Story" means both "narrative account of a happening" and "fiction." Adults listening to adults take both meanings into consideration. Adults listening to children, however, might well hear "story" as only the latter. "Story" is not an ambiguous concept, it can be prejudicial.
8. With children, redundancy in questions is a useful thing. Repeat names and places instead of using strings of (often ambiguous) pronouns. Avoid unanchored "that"'s, "there"'s and "where"'s. Give verbs all of their appropriate nouns (subjects and objects), as in "[I want you to] Promise ME that YOU will tell ME the truth," instead of "Promise me to tell the truth."
9. Watch your pronouns carefully (including "that"). Be sure they refer either to something you can physically point at, or to something in the very immediate (spoken) past, such as in the same sentence, or in the last few seconds.
10. In a related caution, be very careful about words whose meanings depend on their relation to the speaker and the immediate situation, such as personal pronouns (I, you, we), locatives (here, there), objects (this, that) and verbs of motion (come/go; bring/take).
11. Avoid tag questions (e.g., "You did it, didn't you?"). They are confusing to children. Avoid, too, Yes/No questions that are packed with lots of prepositions. (Example of a bad simple-sounding question, with prepositions numbered: '[1] Do you remember [2] when Mary asked you [3] if you knew [4] what color Mark's shirt was, and [5] you said 'Blue'?' What would a "Yes" or "No" answer tell you here?) It does not help the fact finder to rely on an answer if it's not clear what the question was.

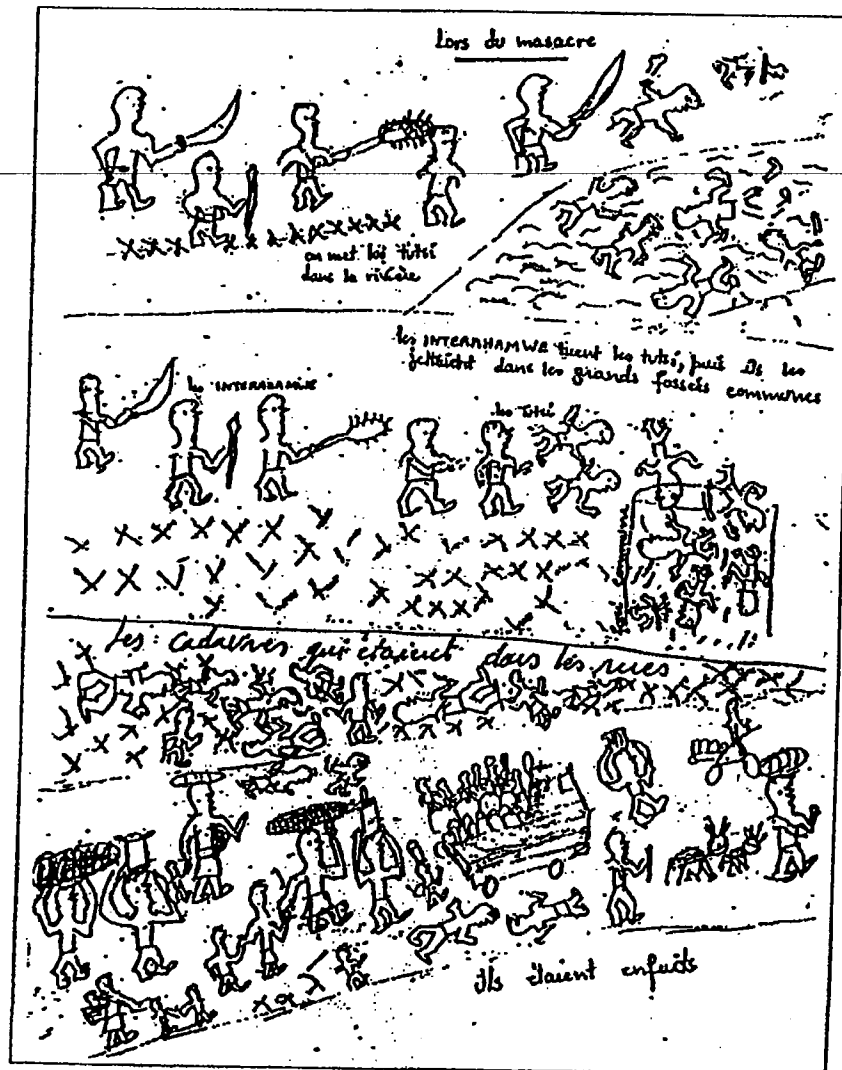
12. See that the child stays firmly grounded in the appropriate questioning situation. If you are asking about the past, be sure the child understands that. If you shift to the present, make that clear too. If it's necessary to have the child recall a specific time/date/place in which an event occurred, keep reminding the child of the context of the questions. And don't use phrases like "Let me direct your attention to." Try instead, "I want you to think back to....," or "Make a picture in your mind....," or "I'm going to ask you some questions about..."

13. Explain to children why they are being asked the same questions more than once by more than one person. Repeated questioning is often interpreted (by adults as well as children) to mean that the first answer was regarded as a lie, or wasn't the answer that was desired.

14. Be alert to the tendency of young children to be very literal and concrete in their language. "Did you have your clothes on?" might get a "No" answer; "Did you have your PJ's on?" might get a "Yes."

15. Don't expect children under about age 9 or 10 to give "reliable" estimates of time, speed, distance, size, height, weight, color or to have mastered any relational concept, including kinship. (Adults' ability to give many of these estimates is vastly overrated.)

16. Do not tell a child, "Just answer my question(s) yes or no." With their literal view of language, children can interpret this to mean that only a Yes or No answer (or "Yes or No"!) is permitted — period, whether or not such answers are appropriate. Under such an interpretation, children might think that answers like "I don't know/remember" and lawfully permitted explanations would be forbidden.



Umuksha, 16, recounts militia violence and fleeing victims in Rwanda. Courtesy of Reinhild Kauenhoven Janzen.



Children's Reaction to Trauma

National Organization for Victim Assistance.
"Children's Reaction to Trauma and Some Coping Strategies for Children." In Susan D. Somach (Ed.), *Issues of War Trauma and Working with Refugees: A Compilation of Resources*. Washington, D.C.: Center for Applied Linguistics, 1995. [Reprinted by permission.]

1. Developmental Stages of the Child

A. Age: Birth-2 years

1. Language capability: pre-verbal
2. Communication mode: physical activity
3. Thought processes: distinguishes self from others and other things.
4. Growth emphasis: sensory perception and response
5. Primary need: physical human contact for reassurance
6. Primary relationship: with caretaker(s)

B. 2 years-6 years: preschool

1. Language capability: development of language/verbal expression
2. Communication mode: expression of feelings primarily through play, but communication of needs often through words
3. Thought processes:
 - pre-conceptual thinking but engages in primitive problem-solving
 - active imagination but grounded in reality — fantasies are about things similar to those they have experienced
 - minimal concept of time and space
 - inability to concentrate on any one thing for more than a few minutes
4. Growth emphasis: physical independence; dressing, feeding and washing self
5. Primary need: nurturing
 - "who will take care of me?"
 - wants structure and security
6. Primary relationship: with family

C. 6-10 years: school age

1. Language capability: language well developed
2. Communication mode: still uses play for primary expression but supplements play with emotive language
3. Thought processes:
 - uses problem-solving techniques but also trial and error approach to problems
 - understands time and space concepts

- strong orientation to the present but has some sense of future and past
- makes choices

4. Growth emphasis: toward independence in establishing new relationships; exploring new environments
5. Primary need: trust
6. Primary relationship: still family but movement toward establishing strong peer relationships

D: 10-12 years: girls' pre-adolescence

12-14 years: boys' pre-adolescence

1. Language capability: language may be more advanced than concepts
2. Communication mode: "acting out" is common form of expression; poetry developing
3. Thought processes:
 - prone to extreme feelings and idealized emotions or life-styles
 - judgmental about the world and self
 - thought becomes integrated with feeling and engenders beliefs, biases and prejudices

4. Growth emphasis:

- towards emotional independence; involves swings back and forth from child-like states to imitations of adult life
 - growth of sexuality and concern with sexual identities
 - emotional turmoil heightened by physical changes
5. Primary need: support and self-esteem
 6. Primary relationship: back and forth from family and peers

E. 12/14 years-adult

1. Language capability: uses and creates language to express self
2. Communication mode: drama and physical activity is preferred recreation since it provides a socially accepted way of acting out feelings; poetry still intense
3. Thought processes:
 - understands "cause and effect"
 - can consider possibilities and explore options without experiencing them
 - judgmental about everything — sees things in black and white
 - can conceive of future activities but does not think of future in terms of self — the Peter Pan dream
 - prone to taking irresponsible risks and failing to

- think through the consequences of actions
 - reflection on symbols and possibilities
 - decentering
 - development of critical faculties
 - emotional turmoil may include periods of depression and euphoria
4. Growth emphasis: independence from adult world — particular target of conflict is usually parents
- ego-orientation and self-centeredness
 - feels strong need for privacy and secrecy
 - body and sexual image is highly important
 - sense of immortality
 - creation of dance, style, world
5. Primary need: stability, limits and security
6. Primary relationship: with peers

II. Child Reaction to Trauma

A. Overview: Children's reaction to a trauma will involve not only the impact of a catastrophe on their lives (what they saw, heard, felt, smelled and so on) but a sense of crisis over their parents' reactions. The presence or absence of parents and terror over a frightening situation — one that has rendered the children's parents helpless — all contribute to a child's distress.

"A central theme that emerges from exploration of children's responses to disaster situations is that, in a way that is not generally appreciated, they, too, experience fear of death and destruction... Particularly influential in the young child's experience are the presence or absence of his parents and the terror of overwhelming physical forces that seem to render the 'all powerful' adult parents frightened and powerless."

B. Birth-2 years

- High anxiety levels manifested in crying, biting, throwing objects, thumb sucking and agitated behavior
- While it is unlikely that the child will retain a strong mental memory of the trauma, the child may retain a physical memory

C. 2 years-6 years

- Children may not have the same level of denial as do adults so they take in the catastrophe more quickly
- Engage in reenactments and play about the traumatic event — sometimes to the distress of parents or adults
- Anxious attachment behaviors are exhibited toward caretakers — may include physically holding on to adults; not wanting to sleep alone; wanting to be held

- May become mute, withdrawn and still
- Manifest a short "sadness span" but repeat sadness periods over and over.
- Regress in physical independence — may refuse to dress, feed or wash self; may forget toilet training; may wet bed
- Sleep disturbances, particularly nightmares, are common
- Any change in daily routines may be seen as threatening
- Does not understand death (no one does) and its permanency — reaction to death may include anger and a feeling of rejection

D. 6 years-10 years

- Play continues to be the primary method of expression. Often art, drawing, dance or music may be integrated into play
- The sense of loss and injury may intrude on the concentration of the child in school
- Radical changes in behavior may result — the normally quiet child becoming active and noisy; the normally active child becoming lethargic
- May fantasize about event with "savior" ending
- Withdrawal of trust from adults
- May become more tentative in growth towards independence
- Internal body dysfunctions are normal — headaches, stomach aches, dizziness
- May have increasing difficulty in controlling own behaviors
- May regress to previous development stages

E: 10-12 years: girls' pre-adolescence

12-14 years: boys' pre-adolescence

- Become more childlike in attitude
- May be angry at the unfairness of disaster
- May manifest euphoria and excitement at survival
- See symbolic meaning to pre-disaster events as omens and assign symbolic reasons to post-disaster survival
- Often suppress thoughts and feelings to avoid confronting the disaster
- May be self-judgmental about their own behavior
- May have a sense of a foreshortened future
- May have a sense of meaninglessness or purposelessness of existence
- Psychosomatic illnesses may manifest themselves

F. 12/14 years-adult

- Adolescents most resemble adults post-traumatic stress reactions

- May feel anger, shame, betrayal and act out their frustration through rebellious acts in school
- May opt to move into the adult world as soon as possible — to get away from the sense of disaster and to establish control over their environment
- Judgmental about their own behavior and the behavior of others
- Their survival may contribute to the sense of immortality
- They are often suspicious and guarded in their reactions to others in the aftermath
- Eating and sleeping disorders are common
- Depression and anomie may plague the adolescent
- May lose impulse control and become a threat to other family members and him/herself
- Alcohol and drug abuse may be a problem as a result of the perceived meaninglessness of the world
- Fear that disaster or tragedy will repeat itself adds to the sense of a foreshortened future
- May have psychosomatic illnesses

III. Some Coping Strategies for Children

- A. Rebuild and reaffirm attachments and relationships. Love and care in the family are a primary need. Extra time should be spent with children to let them know that someone will take care of them and, if parents are survivors, that their parents have reassumed their former role as protector and nurturer is important. Physical closeness is needed.
- B. It is important to talk to children about the tragedy — to address the irrationality and suddenness of disaster.

Children need to be allowed to ventilate their feelings, as do adults, and they have a similar need to have those feelings validated. Reenactments and play about the catastrophe should be encouraged. It may be useful to provide them with special time to paint, draw or write about the event. Adults or older children may help pre-school children reenact the event since pre-school children may not be able to imagine alternative “endings” to the disaster and hence may feel particularly helpless.

C. Parents should be prepared to tolerate regressive behaviors and accept the manifestation of aggression and anger especially in the early stages after the tragedy.

D. Parents should be prepared for children to talk sporadically about the event — spending small segments of time concentrating on particular aspects of the tragedy.

E. Children want as much factual information as possible and should be allowed to discuss their own theories about what happened in order for them to begin to master the trauma or to reassert control over their environment.

F. Since children are often reluctant to initiate conversations about trauma, it may be helpful to ask them what they think other children felt or thought about the event.

G. Reaffirming the future and talking in “hopeful” terms about future events can help a child rebuild trust and faith in his own future and the world. Often parental despair interferes with a child’s ability to recover.

H. Issues of death should be addressed concretely.



Guidelines for Interviewing Children

United Nations High Commissioner for Refugees, Community Services Guidelines, *Working with Unaccompanied Children: A Community-based Approach*, (2nd edition). Geneva: UNHCR, Revised May 1996.

Interviewing Children

Keep it simple, informal and friendly. Let the exchange be as human as possible.

The Child's Belief: You must be very clear with the child about the purpose of the interview. If necessary, work with someone else whom he already trusts. This is in order to minimize the child's possible misperception which in turn may distort his responses.

Observation: Remember to note what is not said or significant omissions.

Physical signs: Note physical (nonverbal) forms of communication and record them in the light of the child's own culture. Body language is as important as what is spoken.

Listening: Resist giving advice, relating stories, passing judgement; all these will interrupt the child's story.

Questioning: How you ask questions will affect the child's response. Ask open-ended questions; resist filling silences which you find uncomfortable.

Talking: Limit your comments to those which put the child at ease or which encourage him, for example, by repeating a key phrase.

Trust: The child must sense that you accept and respect his story.

The Unconscious: Behaviour is not always planned or consciously understood. Knowledge of this will help you know yourself, be less judging of the child's story and help you understand possible underlying explanations of the child's response/behaviour.

Objective Experience/Subjective Response: For every objective factual experience, there is the internal, maybe unconscious subjective response to it. You must try to understand this relationship.

Know yourself: Try to become aware of your own shortcomings and prejudices so that you do not impose them on the child.

Judging: Your job as interviewer is to elicit and record the child's objective/ subjective history without imposing your own.

Role of the interviewer: The child will respond to you as 'you' As interviewer, you will touch off many subjective reactions in the child, Such as fear, anger, hope. You will be attributed with many preconceived perceptions such as your power over their future. Do not react too subjectively.

Honesty: The more consistent you are, the greater the trust he will have in you. This will also affect your work with other children in the camp. Be consistently honest about your role and consistently accurate with information.

Public image: Remember that children, adolescents and others in the camp will quickly know who you are and form impressions about you and your role. How you behave publicly and professionally will therefore affect your task.



Policies and Procedures for Unaccompanied Children Seeking Asylum

Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum. Geneva: UNHCR, 1997

Executive Summary

General principles

The basic guiding principle in any child care and protection action is the principle of the "best interests of the child."

Effective protection and assistance should be delivered to unaccompanied children in a systematic, comprehensive and integrated manner.

Definition

An unaccompanied child is a person who is under the age of eighteen, unless under the law applicable to the child, majority is attained earlier who is separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so.

Access to the territory

Because of their vulnerability, unaccompanied children seeking asylum should not be refused access to the territory.

Identification and initial action

Authorities at ports of entry should take necessary measures to ensure that unaccompanied children seeking admission to the territory are identified as such promptly and on a priority basis.

Unaccompanied children should be registered through interviews. Effective documentation of the child will help to ensure that subsequent actions are taken in the 'best interests' of the child.

A guardian or adviser should be appointed as soon as the unaccompanied child is identified. The guardian or adviser should have the necessary expertise in the field of child-caring, so as to ensure that the interests of the child are safeguarded and that his/her needs are appropriately met.

Initial interviews of unaccompanied children to collect biographical and social history information should be done immediately after arrival and in an age-appropriate manner.

It is desirable that all interviews with unaccompanied children be carried out by professionally qualified and persons, specially trained in refugee and children's

issues. Insofar as possible, interpreters should also be specially trained persons.

In all cases, the views and wishes of the child should be elicited and considered.

Access to asylum procedures

Children should always have access to asylum procedures, regardless of their age.

Interim care and protection of children seeking asylum

Children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection.

Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children.

Refugee status determination

Considering their vulnerability and special needs, it is essential that children's refugee status applications be given priority and that every effort be made to reach a decision promptly and fairly.

Not being legally independent, an asylum-seeking child should be represented by an adult who is familiar with the child's background and who would protect his/her interests.

Interviews should be conducted by specially qualified and trained officials.

Appeals should be processed as expeditiously as possible. In the examination of the factual elements of the claim of an unaccompanied child, particular regard should be given to circumstances such as the child's stage of development, his/her possibly limited knowledge of conditions in the country of origin, and their significance to the legal concept of refugee status, as well as his/her special vulnerability.

Identification of durable solutions

If the child is granted asylum or permitted to stay on humanitarian grounds, possible durable solutions are either local integration or resettlement in a third country, normally on the grounds of family reunification.

If the child is found not to qualify for asylum, either as a refugee or on humanitarian grounds, an assessment of the solution that is in the best interests of the child should follow as soon as practicable after the negative result of his/her application is confirmed.

The identification of the most appropriate solution requires that all the various aspects of the case be duly considered and weighed. One way in which this objective may be ensured is by the establishment of multidisciplinary panels in charge of considering on a case-by-case basis which solution is in the best interests of the child, and making appropriate recommendations.

Implementation of durable solution

In recognition of the particular vulnerability of unaccompanied children, every effort should be made to ensure that decisions relating to them are taken and implemented without any undue delays.

As soon as the child has been recognized refugee status or permitted to stay on humanitarian grounds, long-term placement in a community should be arranged.

Should repatriation be considered as the most appropriate durable solution, the return will not be carried out unless, prior to the return, a suitable care-giver such as a parent, other relative, other adult care-taker, a government agency, a child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate protection and care.

Special efforts must be made to ensure the provision of appropriate counselling for a child who is to be returned.

The possibility of using the expertise of international agencies could be explored, notably for initiating contacts and establishing an assistance programme for the family.

Cooperation and coordination

The process above will involve information-sharing and networking between agencies and individuals. The close cooperation of a variety of government bodies, specialized agencies and individuals in delivering an effective continuum of care is crucial.

1. Introduction

1.1 In recent years, States have expressed concern about unaccompanied children seeking asylum either at their borders or at some later time after entry. The circumstances in which these particularly vulnerable individuals find themselves are varied and often complex. Some may be in fear of persecution, human rights abuse or civil unrest in their home countries. Others may have been sent, will-

ingly or otherwise, to secure a better future in what their caregivers have perceived to be more developed countries. In others; the motives and reasons may be mixed.

1.2 Notwithstanding any of these motives, unaccompanied children have often had little or no choice in the decisions that have led to their predicament and vulnerability. Irrespective of their immigration status, they have special needs that must be met.

1.3 The recommendations set out below should be applied in conjunction with the UNHCR Guidelines on Refugee Children. The purpose of this note is three-fold: to promote awareness of special needs of unaccompanied children and the rights reflected in the Convention on the Rights of the Child; to highlight the importance of a comprehensive approach; and to stimulate internal discussions in each country on how to develop principles and practices that will ensure that needs of unaccompanied children are being met.

1.4 Receiving countries have responded to the plight of these children through a range of governmental and non-governmental activities. Nonetheless, UNHCR considers it imperative to ensure that effective protection and assistance is delivered to unaccompanied children in a systematic, comprehensive, and integrated way. This will inevitably require the close cooperation of a variety of government bodies, specialized agencies and individuals in delivering an effective continuum of care and protection.

1.5 For this reason, UNHCR embraces the universal, cardinal principles of child care and protection that are embodied in the Convention on the Rights of the Child, in particular, Article 3 paragraph 1 which 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 interests of the child shall be a primary consideration."

2. International Standards

2.1 In the treatment of issues concerning unaccompanied children seeking asylum, the following are the main international standards which should be taken into account:

- Convention relating to the Status of Refugees, 1951
- Protocol relating to the Status of Refugees, 1967
- Convention on the Rights of the Child, 1989

2.2 In addition, it is recommended that the UNHCR Guidelines 'Refugee Children — Guidelines on Protection and Care' (1994) be consulted.

3. Definitions

Unaccompanied child

3.1 An unaccompanied child is a person who is under the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier and who is "separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so.

Children accompanied by adults who are not their parents

3.2 In many cases the child will be accompanied by an adult caregiver who may or may not be a relative of the child. In order to determine whether or not a child is considered unaccompanied, see Annex II for practical guidelines.

4. Access to the Territory

4.1 Because of his/her vulnerability, an unaccompanied child seeking asylum should not be refused access to the territory and his/her claim should always be considered under the normal refugee determination procedure.

4.2 Upon arrival, a child should be provided with a legal representative. The claims of unaccompanied children should be examined in a manner which is both fair and age-appropriate.

5. Identification and Initial Action

Identification

5.1 Specific identification procedures for unaccompanied children need to be established in countries where they do not already exist. The main purposes of these procedures are two-fold: first, to find out whether or not the child is unaccompanied and second, to determine whether the child is an asylum seeker or not.

5.2 Identification of a child as being unaccompanied should be done immediately upon the arrival of the child at ports of entry. Where available, persons specially trained or who have otherwise the necessary experience or skills for dealing with children should assist in the identification. Children may be accompanied not by their own parents but by other relatives or other families. Care should be taken in assessing the nature and implications of those relationships.

5.3 Some children may already have been living in the country when they come to the notice of the authorities. The process outlined below should apply equally to such children, taking into consideration additional experiences they may have had while living in the country of asylum. Efforts should be made to coordinate information-sharing between various agencies and individuals (including health, education and welfare agencies), so as

to ensure that unaccompanied children are identified and assisted as early as possible.

5.4 When the child is classified as "unaccompanied" according to the criteria mentioned in Annex II, then the next course of action should be to establish whether the child is indeed seeking asylum in the country. If it is confirmed that the child is an asylum seeker, every effort should be made to process the examination of his/her claim as expeditiously and as child-appropriate as possible. If, on the other hand, there is no reason to believe that the child is seeking asylum or family reunion, return of the child should, in general, be facilitated. In such a case, the principle of non-discrimination stipulated in Article 27, the 'best interests' provision in Article 3 of the Convention on the Rights of the Child, as well as similar safeguards mentioned under the section 10.12 should be taken into consideration.

5.5 There may be a situation where families are split between countries. If one of the child's parents is in another asylum country, every effort should be made to reunite the child with that parent at an early stage before status determination takes place.

Registration and documentation

5.6 Unaccompanied children should be registered through interviews. (For more details, see 5.8-5.16) In addition to the initial registration of basic biographical data, the dossier should include a social history of the child which should be compiled over time and must accompany the child whenever there is a transfer of his/her location or care arrangements. Effective documentation of the child, his/her story and all relevant information will help to ensure that subsequent actions are taken in the 'best interests' of the child.

Appointment of a Guardian or Adviser

5.7 It is suggested that an independent and formally accredited organization be identified/established in each country, which will appoint a guardian or adviser as soon as the unaccompanied child is identified. The guardian or adviser should have the necessary expertise in the field of childcaring, so as to ensure that the interests of the child are safeguarded, and that the child's legal, social, medical and psychological needs are appropriately covered during the refugee status determination procedures and until a durable solution for the child has been identified and implemented. To this end, the guardian or adviser would act as a link between the child and existing specialist agencies/individuals who would provide the continuum of care required by the child.

Initial interviews

5.8 Initial interviews of unaccompanied children to collect biodata and social history information should be done immediately after arrival and in an age-appropriate

manner. The information should be updated periodically. This is essential for subsequent action to determine the status of the child and to promote durable solutions.

5.9 Apart from the child's general bio-data, it is desirable that the following additional information be recorded:

- a) Family information (in the country of origin and elsewhere)
- b) Information on non-family members important to the child
- c) Circumstances when the child was found/identified
- d) Information concerning the child's separation from the family
- e) Information about the child's life before and since the separation
- f) Child's physical condition health and past medical history
- g) Educational background (formal and informal)
- h) Present care arrangements
- i) Child's wishes and plans for the future
- j) Preliminary assessment of the child's mental and emotional development and maturity
- k) Age assessment (See 5.11)

5.10 The guidelines contained in UNHCR's "Working with Unaccompanied Children: A Community-Based Approach" can be used as a guiding document in the data gathering exercise. "Interviewing Applicants for Refugee Status" also provides useful guidance with regard to interviewing children.

Age assessment

5.11 If an assessment of the child's age is necessary, the following considerations should be noted:

- a) Such an assessment should take into account not only the physical appearance of the child but also his/her psychological maturity.
- b) When scientific procedures are used in order to determine the age of the child, margins of error should be allowed. Such methods must be safe and respect human dignity.
- c) The child should be given the benefit of the doubt if the exact age is uncertain.

Where possible, the legal consequences or significance of the age criteria should be reduced or downplayed. It is not desirable that too many legal advantages and disadvantages are known to flow from the criteria because this may be an incentive for misrepresentation. The guiding principle is whether an individual demonstrates an "immaturity" and vulnerability that may require more sensitive treatment.

Interviewers

5.12 It is desirable that all interviews with unaccompanied children (including the interview for the deter-

mination of refugee status) should be carried out by professionally qualified and specially trained persons with appropriate knowledge of the psychological, emotional and physical development and behaviour of children. When possible, such experts should have the same cultural background and mother tongue as the child.

Interpreters

5.13 Insofar as possible, interpreters should be skilled and trained in refugee and children's issues.

Consultation

5.14 Children should be kept informed in an age-appropriate manner about the procedures, what decisions have been made about them, and the possible consequences of their refugee status. This consultation and advice is particularly important when a durable solution is sought and implemented.

5.15 In all cases, the views and wishes of the child should be elicited and considered, as stipulated in the Convention on the Rights of the Child Article 12 paragraph 1:

"States Parties shall assure to the child who is capable of forming his or her 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."

Confidentiality

5.16 In obtaining, sharing and preserving the information collected, particular care must be taken in order not to endanger the well-being of persons still within the child's country of origin, especially the child's family members. Care must be taken that information sought and shared for one purpose is not inappropriately used for another purpose.

Tracing

5.17 Tracing for parents or families is essential and should begin as soon as possible. To that end, the services of the National Red Cross or Red Crescent Societies and the International Committee of the Red Cross (ICRC) should be requested where necessary. In cases where there may be a threat to the life or integrity of a child or its close relatives, particularly if they have remained in their country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardizing their safety.

Tracking

5.18 It is important to keep track of each unaccompanied child (location, care arrangements, etc) in order to ensure that each child receives appropriate care and to avoid any risk of abuse taking place. Where possible,

UNHCR recommends the establishment of a centralized electronic register that can be regularly updated as the child's legal and social status evolves.

Statistics

5.19 Accurate statistics on unaccompanied children should be kept and updated periodically. These should be disseminated amongst relevant agencies and authorities in the interest of information-sharing and network-building.

6. Access to Asylum Procedures

Children should be entitled to access to asylum procedures, regardless of their age.

7. Interim Care and Protection of Children Seeking Asylum

General

7.1 Children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection.

Care and accommodation

7.2 In order to ensure continuity of care and bearing in mind the best interests of the child, changes in residence for unaccompanied children should be limited to a minimum.

7.3 Siblings should be kept together in conformity with the principle of family unity.

7.4 A child who has adult relatives arriving together or already living in the country of asylum should be allowed to stay with them, pending determination of his/her status. In view of the child's vulnerability and the potential for abuse, regular assessments should be made by the appropriate social welfare authorities.

7.5 Whether they are accommodated in foster homes or special reception centres, children seeking asylum should be under regular supervision and assessment by qualified persons, to ensure their physical and psychosocial well-being.

Detention

7.6 Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children.

7.7 States which, regrettably and contrary to the preceding recommendation, may keep children seeking asylum in detention, should, in any event, observe Article 37 of the Convention of the Rights of the Child, according to which detention shall be used only as a measure of last resort and for the shortest appropriate period of time. If children who are asylum seekers are detained in airports, immigration-holding centres or prisons, they must not be

held under prison-like conditions. All efforts must be made to have them released from detention and placed in other appropriate accommodation. If this proves impossible, special arrangements must be made for living quarters which are suitable for children and their families. 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 access may be unavailable.

7.8 During detention, children have the right to education which should optimally take place outside the detention premises in order to facilitate the continuance of their education upon release. Under the UN Rules for Juveniles Deprived of their Liberty, States are required to provide special education programmes to children of foreign origin with particular cultural or ethnic needs.

Health Care

7.9 The Convention on the Rights of the Child declares that the child has the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health. Children seeking asylum should have the same access to health care as national children. In the countries from which they have fled, basic preventive care such as immunizations and education about health, hygiene and nutrition may have been lacking; these deficiencies must be remedied in a sensitive and effective manner in the country of asylum.

7.10 Unaccompanied children have all experienced separation from family members and they have also in varying degrees experienced loss, trauma, disruption, and violence. The pervasive violence and stress of a country afflicted by war may create deep-rooted feelings of helplessness and undermine a child's trust in others. Reports constantly reflect the existence of profound trauma in many children, which calls for special sensitivity and attention in their care and rehabilitation.

7.11 The Convention on the Rights of the Child 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, inhuman and degrading treatment or armed conflicts. To facilitate such recovery and reintegration, culturally-appropriate mental health care should be developed and qualified psychosocial counselling be provided.

Education

7.12 Every child, regardless of status, should have full access to education in the asylum country. The child should be registered with appropriate school authorities as soon as possible.

7.13 All children seeking asylum should have the right to maintain their cultural identity and values,

including the maintenance, and further development of their mother tongue.

7.14 All juveniles should be allowed to enroll in vocational/professional training or education which would improve their prospects, especially when returning to their country of origin.

8. Refugee Status Determination for Unaccompanied Children

Procedures

8.1 Considering their vulnerability and special needs, it is essential that children's refugee status applications be given priority and that every effort be made to reach a decision promptly and fairly. All appeals should be processed fairly and as expeditiously as possible.

8.2 Minimum procedural guarantees should include determination by a competent authority, fully qualified in asylum and refugee matters; where the age and maturity of the child permits, the opportunity for a personal interview with a qualified official before any final decision is made; and a possibility to appeal for a formal review of the decision.

8.3 Not being legally independent, an asylum-seeking child should be represented by an adult who is familiar with the child's background and who would protect his/her interests. Access should also be given to a qualified legal representative. This principle should apply to all children, including those between sixteen and eighteen, even where application for refugee status is processed under the normal procedures for adults.

8.4 The interviews should be conducted by specially qualified and trained representatives of the refugee determination authority who will take into account the special situation of unaccompanied children, in order to carry out the refugee status assessment.

8.5 An asylum-seeker or his/her legal representative should be able to seek a review of the decision. Appropriate deadlines should be set out for a child to appeal a negative decision. Every effort should be made to reach a decision in an efficient manner in order not to keep children in limbo for a long period of time regarding their status and their future. All appeals should be processed fairly and as expeditiously as possible. This may require children's appeals to be prioritized over other outstanding appeals

Criteria

8.6 Although the same definition of a refugee applies to all individuals regardless of their age, in the examination of the factual elements of the claim of an unaccompanied child, particular regard should be given to circumstances such as the child's stage of development, his/her possibly

limited knowledge of conditions in the country of origin, and their significance to the legal concept of refugee status, as well as his/her special vulnerability. Children may manifest their fears in ways different from adults. Therefore, in the examination of their claims, it may be necessary to have greater regard to certain objective factors, and to determine, based upon these factors, whether a child may be presumed to have a well-founded fear of persecution.

8.7 It should be further borne in mind that, under the Convention on the Rights of the Child, children are recognized certain specific human rights, and that the manner in which those rights may be violated as well as the nature of such violations may be different from those that may occur in the case of adults. Certain policies and practices constituting gross violations of specific rights of the child may, under certain circumstances, lead to situations that fall within the scope of the refugee Convention. Examples of such policies and practices are the recruitment of children for regular or irregular armies, their subjection to forced labour, the trafficking of children for prostitution and sexual exploitation and the practice of female genital mutilation.

8.8 It is also important to take into account the circumstances of the family members as this may be central to a child's refugee claim. Principles of confidentiality should not be compromised in this regard. While the child may have personally fear or have experienced persecution, more often s/he may fear or have been affected by other discriminatory or persecutory measures affecting the entire family.

8.9 Children often do not leave their country of origin on their own initiative. They are generally sent out by their parents or principal caregivers. "If there is reason to believe that the parents wish their child to be outside the country of origin on grounds of their own well-founded fear of persecution, the child him/herself may be presumed to have such a fear." If the will of the parents cannot be ascertained or if such will is in doubt, then a decision will have to be made regarding the well-foundedness of the child's fear on the basis of all known circumstances.

8.10 The final decisions should be based on a case-by-case examination of the unique combination of factors presented by each child, including the child's personal, family and cultural background. Therefore, it is important that persons involved in the refugee status determination procedures have an understanding of the history, culture and background of the child.

9. Identification of Durable Solution

Children who are found to qualify for asylum

9.1 If the child is granted asylum or permitted to stay on humanitarian grounds, possible durable solutions are either local integration or resettlement in a third

country, normally on the grounds of family reunification. (Also see relevant paragraphs in section 10)

Children who are found not to qualify for asylum

9.2 If the child is found not to qualify for asylum, either as a refugee or on humanitarian grounds, an assessment of the solution that is in the best interests of the child should follow as soon as practicable after the negative result of his/her application is confirmed.

9.3 In order to make appropriate arrangements for return, tracing and home assessment would be of particular importance. Effective assessments may require that home assessment or tracing be conducted in the country of origin. This entails tracing the child's family and clarifying the family situation, by, for example, making an assessment of the ability of the child's family in the country of origin to receive the child and to provide appropriate care. It may also entail gauging the need for eventual material assistance to the family concerned. Information collected through tracing and home assessment can often provide a firm basis for a best interest decision with regard to the child's future. Such information could be gathered through existing NGO's which may already have presence in the country of origin and are equipped to do such activities.

9.4 The best interests of an unaccompanied child require that the child not be returned unless, prior to the return, a suitable care-giver such as a parent, other relative, other adult care-taker, a government agency, a child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate protection and care.

9.5 Special efforts must be made to ensure the provision of appropriate counselling for a child who is to be returned. This is particularly important in case of individual reluctance, as well as family pressure not to return. If possible, the child should be encouraged to communicate with his/her family members prior to return.

9.6 The possibility of using the expertise of international agencies could be explored, notably for initiating/maintaining contacts both with the child's family and with the authorities in the country of origin and establishing an assistance programme for the family, when deemed necessary and appropriate.

9.7 It is acknowledged that many different perspectives will need to be taken into account in identifying the most appropriate solution for a child who is not eligible for asylum. Such a multidisciplinary approach may, for example, be ensured by the establishment of panels in charge of considering on a case-by-case basis which solution is in the best interests of the child, and making appropriate recom-

mendations. The composition of such Panels could be broad-based, including for instance representatives of the competent governmental departments or agencies, representatives of child welfare agencies (in particular that or those under whose care the child has been placed), and representatives of organizations or associations grouping persons of the same national origin as the child.

Criteria

9.8 In identifying a solution, all circumstances, should be taken into consideration. As a guiding concept, principles of family reunification and best interests are usually compatible. Thus, reunification with parents will generally be in the best interests of a child. However, where best interests and family reunification principles are incompatible, the best interests of the child should take precedence. Circumstances may exist which call into question the appropriateness of a child reuniting with his/her parents or other principal caregiver. Examples where there are substantiated allegations of sexual abuse or similarly serious considerations.

10. Implementation of Durable Solution

General

10.1 In recognition of the particular vulnerability of unaccompanied children, every effort should be made to ensure that decisions relating to them are taken and implemented without any undue delays.

Local integration

10.2 As soon as the child has been recognized refugee status or permitted to stay on humanitarian grounds, long-term placement in a community should be arranged. Authorities, schools, organizations, care institutions and individuals involved in the care of the unaccompanied refugee child in the community, should co-ordinate their efforts to keep to a minimum the number of different official entities with which the child is in contact.

10.3 To facilitate the integration of the child into the host country a structured orientation programme in which the child is given a thorough explanation of his/her legal status and a brief introduction to the host culture should be provided. The information should be adapted to the age of the child.

10.4 Although the placement of a child depends on the standards and practices of each country of asylum's social welfare system, the decision should always be in the child's best interests and without discrimination of any kind. (Art.2 of the Convention on the Rights of the Child) A careful individual assessment taking into account such factors as the child's age, sex, emotional state, family background, continuity/discontinuity of care, possibilities of family reunion, reasons for flight, educational background etc should be carried out. The UNHCR Guidelines "Working with Unaccompanied Children: A Community-

Based Approach" could be an important tool for obtaining information with the view of documenting the social history of the child. It is important that the social welfare officers/reception centre staff involved have time to assess the conditions of the child and ask him/her about expectations of care before making a definite decision.

Family Tracing/Reunion

10.5 Family reunion is the first priority and it is essential that unaccompanied children are assisted in locating and communicating with their family members. Advice may be sought from the ICRC Central Tracing Agency or, if need be, from the tracing services of other international institutions. Assistance from the International Red Cross and Red Crescent Societies may be required to restore such links. All attempts should be made to reunite the child with his/her family or other person to whom the child is close, when the best interests of the child would be met by such a reunion. When family reunion takes place the family may have been separated for a long period of time. They must therefore be given time and support to re-establish family relationships. (See also 9.4)

Care, accomodation and long-term placement

10.6 Children who have been living with relatives/adult friends since arrival should be allowed to continue to live with them if the social welfare authorities or another competent body has assessed that the child's needs are being met adequately. Depending on the child's age, developmental level and future family reunion possibilities the following long-term placements are recommended.

10.7 In most cultures children less than fifteen years of age are still primarily dependent upon the family for developmental progress and guidance. When they are likely to be separated from their own parents for a longer period they should be provided the opportunity to benefit from a stable family environment. It is preferable that, whenever possible, a child should be placed in a family from his/her own culture. When a child is placed in a foster home or with relatives, a contact with the social welfare authorities should be established. Professional support is often needed, especially in the initial phase.

10.8 Small group homes that are integrated into the host community and staffed by adults with a cultural sensitivity should be considered when placement in foster families is not feasible. Adolescents might have difficulties accepting other adults as parental figures. For them small group homes might be the best alternative, although the importance of the presence of adults to guide them in their daily life cannot be over-emphasized. The goal of a group home should not be to replicate a family but to assist adolescents to become increasingly independent and self-sufficient.

10.9 Young adults who have left their "care" environment should be given access to "after care". They should be assigned a contact person and should have access to information and advise on issues like welfare rights, housing, education etc. Such services should be available to the young adult as long as considered necessary.

10.10 All the children's rights, that is, legal, medical, education and others, mentioned in the Interim Care (Section 7) should be consolidated in their long-term welfare. Refugee children should be ensured all the rights stipulated in the Convention on the Rights of the Child.

Resettlement

10.11 When it is considered that resettlement is in the best interest of the child, generally on the ground of family reunification, swift implementation.

Repatriation

10.12 Should repatriation be considered as the most appropriate durable solution, the return will not be carried out unless all the conditions indicated in above paragraph 9.4 have been met and the corresponding arrangements have been made.

10.13 Special efforts must be made to ensure the provision of appropriate counselling for a child who is to be returned. This is particularly important in case of individual reluctance, as well as family pressure not to return. If possible, the child should be encouraged to communicate with his/her family members prior to return.

10.14 The possibility of using the expertise of international agencies could be explored, notably for initiating/maintaining contacts both with the child's family and with the authorities in the country of origin and establishing an assistance programme for the family, when deemed necessary and appropriate.

11. Staff Training

It is desirable that agencies dealing with unaccompanied children establish special recruitment practices and training schemes, so as to ensure that persons that will assume responsibilities for the care of the children understand their needs and possess the necessary skills to help them in the most effective way.

12. Cooperation and Coordination

The process above will involve information-sharing and networking between agencies and individuals from different disciplines, often with different mandates and agenda. The close cooperation of a variety of government bodies, specialized agencies and individuals in delivering an effective continuum of care is crucial.