

## **CONTENTS**

### EXECUTIVE SUMMARY

#### **1. INTRODUCTION**

#### **2. INTERNATIONAL STANDARDS**

#### **3. DEFINITIONS**

3.1 Unaccompanied child

3.2 Children accompanied by adults who are not their parents

#### **4. ACCESS TO THE TERRITORY**

#### **5. IDENTIFICATION AND INITIAL ACTION**

5.1 –5.5 Identification

5.6 Registration and documentation

5.7 Appointment of a Guardian or Adviser

5.8- 5.10 Initial interviews

5.11 Age assessment

5.12 Interviewers

5.13 Interpreters

5.14- 5.15 Consultation

5.16 Confidentiality

5.17 Tracing

5.18 Tracking

5.19 Statistics

#### **6. ACCESS TO ASYLUM PROCEDURES**

#### **7. INTERIM CARE AND PROTECTION OF CHILDREN SEEKING ASYLUM**

7.1 General

7.2 -7.5 Care and accommodation

7.6 -7.8 Detention

7.9- 7.11 Health Care

7.12 Education

#### **8. REFUGEE STATUS DETERMINATION FOR UNACCOMPANIED CHILDREN**

8.1 Procedures

8.6 Criteria

#### **9. IDENTIFICATION OF DURABLE SOLUTION**

9.1 Children who are found to qualify for asylum

9.2- 9.7 Children who are found not to qualify for asylum

9.8 Criteria

#### **10. IMPLEMENTATION OF DURABLE SOLUTION**

10.1 General

10.2 -10.4 Local integration

10.5 Family Tracing/Reunion

10.6 -10.10 Care, accommodation and long-term placement

10.11 Resettlement

10.12 -10.14 Repatriation

#### **11. STAFF TRAINING**

#### **12. COOPERATION AND COORDINATION**

## **ANNEXES**

## **EXECUTIV 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 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.

### **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 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 childcaring, 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 biodata 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 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, willingly 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<sup>1</sup>. 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<sup>2</sup>. 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 best interests of the child shall be a primary consideration. "**

## **2. INTERNATIONAL STANDARDS**

- 3.2.1 In the treatment of issues concerning unaccompanied children seeking asylum, the following are the main international standards which should be taken into account: (For more exhaustive list, see Annex I.)
  - 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

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<sup>1</sup> "Refugee Children -Guidelines on Protection and Care", UNHCR, 1994

<sup>2</sup> Article 22 (1) of the CRC provides that "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 by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present

parents and is not being cared for by an adult who by law or custom has responsibility to do so”<sup>3</sup>

**Children accompanied by adults who are not their parents :**

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. (See Annex II)
- 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 2<sup>4</sup>, 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.

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<sup>3</sup> "Refugee Children: Guidelines on Protection and Care", *op.cit.*, p.121

<sup>4</sup> "States Parties shall respect and ensure the right set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status" Article 2 paragraph 1

### **Registration and documentation**

- 5.6 Unaccompanied children should be registered through interviews. (For more details, see 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"<sup>5</sup> can be used as a guiding document in the data gathering exercise. "Interviewing Applicants for Refugee Status"<sup>6</sup> 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

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<sup>5</sup> UNHCR (Community Services/PTSS) Geneva, May 1996

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 determination of refugee status) should be carried out by professionally qualified and specially trained (UNHCR (Community Services/P~S), Geneva, May 1996; 6UNHCR Training Module RLD 4, 1995, Chapter 5) 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<sup>7</sup>**

- 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 Asylum-Seekers in Europe 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 E-38, 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<sup>8</sup>. 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

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<sup>7</sup> Please also refer to "Detention of Asylum-Seekers in Europe", EUROPEAN SERIES Volume 1, N°4, UNHCR October 1995

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<sup>9</sup>. To facilitate such recovery and reintegration, culturally-appropriate mental health care should be developed and qualified psycho-social counselling be provided.

### **Education**

- 7.12 Every child, regardless of status, should have full access to education in the asylum country.<sup>10</sup> 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**<sup>11</sup>

### **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

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<sup>9</sup> Article 39 of the CRC

<sup>10</sup> Article 28 of the CRC

<sup>11</sup> Please also refer to paragraphs 213-219 in "Handbook on procedures and criteria for determining refugee status",

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."<sup>12</sup> If the will of the parents cannot be ascertain 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 he 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 I 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.

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<sup>12</sup> "Handbook on procedures and criteria for determining refugee status", para 218

- 9.4 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 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 recommendations. 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 be 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 I 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 national 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, accommodation 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 advice 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.

**LIST OF INTERNATIONAL AND REGIONAL STANDARDS**

- Convention relating to the Status of Refugees, 1951
- Protocol relating to the Status of Refugees, 1967
- Universal Declaration of Human Rights, 1948
- Convention relating to the Status of Stateless Persons, 1954
- International Covenant on Civil and Political Rights and Optional Protocol thereto, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966 European Convention for - the Protection of Human Rights and Fundamental Freedoms and Protocols, 1950
- Hague Convention for the Protection of Minors, 1961
- Convention on the Civil Aspects of Child Abduction, 1980
- Convention on the Rights of the Child, 1989
- Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993
- United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, 1990
- UNHCR EXCOM Conclusions No.47 and No.59
- EU Resolution on Minimum- Safeguards for Asylum Procedures, 1995

**Other Guidelines:**

- "The Handbook on Procedures and Criteria for Determining Refugee Status", UNHCR, 1992
- UNHCR Policy on Refugee Children, 1993<sup>13</sup>
- "Refugee Children --Guidelines on Protection and Care", UNHCR, 1992

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<sup>13</sup> Presented to UNHCR Executive Committee, October 1993 as Document EC/SCP/82

**CHILDREN ACCOMPANIED BY ADULTS WHO ARE NOT THEIR PARENTS****Principal caregivers**

1. 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, the following specific but non-exhaustive guidelines may assist in identifying and measuring the quality of the relationship between a child and a potential principal caregiver.
2. Where a child is not with his/her parents in the first asylum country, then s/he will be, prima facie, unaccompanied.
3. The attachment of a child to the refugee claim of an adult principal caregiver for the purpose of refugee status determination should only be made after a careful assessment of all known facts. Caution should be exercised when considering such a claim. The consequences of an erroneous judgement or an ill-advised finding that a child is accompanied by an adult principal caregiver for the purposes of refugee status determination under the principle of family unity are serious:
  - (a) It may deprive the authority of the opportunity properly to investigate the child's history in the presentation of the refugee claim in an age-appropriate way;
  - (b) It may prevent the authority from being alerted to the particular vulnerability and needs of the child and from assessing the best interest durable solution for the child once refugee status determination has been completed.
4. If the interviewer is in doubt as to the veracity of the account presented or the nature of the relationship between caregiver and child, then the child should be processed as an unaccompanied child.
5. Where a child is accompanied by an adult caregiver, the quality and durability of the relationship between the child and the caregiver must be evaluated to decide whether the presumption of "unaccompanied status" should be set aside. If, on evaluation of the nature of the relationship between the child and the caregiver, it is concluded that the child is not unaccompanied, then the child's case may be processed for refugee status under the regular status determination procedures with the adult caregiver according to the principle of family unity. (See paragraph 10)
6. The primary parental responsibilities of a natural parent are the upbringing and development of the child to meet his/her fundamental needs (physical, psychological and spiritual requirements) in accordance with the child's rights under the Convention on the Rights of the Child. For cultural, social or other reasons, a child may not have been raised by his/her natural parents. If a child is in a first asylum country with an adult other than the natural parent but who has nevertheless assumed the principal caretaking responsibilities towards the child, then this arrangement should be respected even if it has not been legally formalised. In this respect, it should be noted that the terms "adoption" and "fostering" are sometimes used informally by custom in certain cultures and should not be confused with the legal use of such terms in industrialized countries. On the other hand, care should be exercised to ensure that the situation presented by the caregiver actually reflects the true relationship and is not open to abuse.
7. As the primary caregiving responsibilities for the upbringing and development of a child usually rest with the natural parents, the competent authority should be satisfied that the natural parents of the child have entrusted caregiving responsibility to the accompanying adult principal caregiver. This adult principal caregiver should take full account of the longer-term consequence of taking on the responsibility for an extra child.
8. The competent authority should also be satisfied that the principal caregiver has the maturity, commitment and expertise to adequately assume these responsibilities (i.e. the assumption of responsibility must be enduring and not simply transitory and will continue whatever the outcome of the refugee status determination procedure.) When meeting the basic needs of the family becomes a daily struggle, the child should not be put at risk of

9. Where the child has been under the guidance of several de facto caregivers over a significant period during his/her upbringing in the country of origin, then the principal caregiver should be identified. Where the natural parents are included in this household structure, it may not be appropriate for the child to be attached to any other caregiver unless clear evidence is available that the natural parents had entrusted the long term care of the child to another relative for reasons unrelated to the departure from the country of origin.
10. If the principal caregiver is not recognized refugee status, "there is nothing to prevent anyone of his dependants, if they can invoke reasons on their own account, from applying for recognition as refugees under the 1951 Convention or the 1967 Protocol relating to the Status of Refugees. The principle of family unity operates in favour of dependents, and not against them"<sup>14</sup>. Therefore, the substance of a child's circumstances should be evaluated for refugee status even if the child forms part of a family unit.

### **Adult siblings**

1. A child accompanied by an adult sibling should be processed with that sibling through the refugee status determination procedure on the presumption that:
  - (a) they have a shared or common history and;
  - (b) the adult sibling is aware of and able to articulate the child's claim for refugee status.
2. If evidence suggests that the assumption of similar backgrounds is not valid or the adult sibling is not capable of articulating the child's claim for refugee status on his/her behalf then the child should be treated as an unaccompanied child for the purposes of his/her refugee status determination procedures. These should then be followed by an assessment of the durable solution in the 'best interests' of the child.
3. The option of review to assess the durable solution in the best interests of each child should remain open, even if their cases have been processed together for refugee status determination. It should be a fluid rather than a static process which reflects the evolving nature of a child's legal or personal circumstances. If the background is shared and leads to a determination that the child and the adult sibling are refugees, then the durable solution for both will be either local integration or resettlement in the third country .

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<sup>14</sup> "The Handbook on Procedures and Criteria for Determining Refugee Status" UNHCR, 1992. paragraph 185