

REFUGEE CHILDREN

I. INTRODUCTION

1. Refugee children, including adolescents under the age of 18, make up 45 per cent of refugee populations world-wide; yet despite the many valuable guidelines and standards developed to ensure their protection and care, inadequate implementation of protection activities for refugee children, including limited accountability, have often rendered these guidelines ineffectual. A recently conducted independent evaluation¹ of the impact of UNHCR's activities in relation to refugee children also concluded that, in practice, refugee children "are often overlooked and considered 'on-the-sidelines' of core protection and assistance work." Although an evaluation of UNHCR's programmes, findings can equally apply to the actions of States and others on behalf of refugee children.

2. This paper analyses the six most salient and sometimes inter-related protection concerns facing refugee children today: separation; sexual exploitation, abuse and violence; military recruitment; education; detention; and registration and documentation. After briefly discussing the problems and their underlying causes, the paper proposes concrete recommendations for action, drawn from the independent evaluation of UNHCR's activities for refugee children, international human rights law, Executive Committee Conclusions, guidelines and policies. It builds on a series of meetings held over the last two years within and outside the Global Consultations process.²

3. To facilitate discussion and help to identify follow-up, the proposed core action identified under each of the six subject headings is framed in boxes. Fundamental to any action on behalf of refugee children is the need to ensure their survival and development, their best interests and their participation in any decisions that may affect them. A community development and multi-sectoral approach, which mainstreams age and gender-sensitivity, has to be the framework for their implementation.

II. SEPARATION

4. By its very nature, displacement often results in the separation of families. Given the fundamental role the family plays in the protection, physical care and emotional well being of its members,³ separation from families is particularly devastating for refugee children. Separated children, whether unaccompanied⁴ or separated from their previous primary caregiver, face a greater risk of sexual exploitation and abuse, military recruitment, child labour, denial of access to education and basic assistance, and detention.

¹ See Valid International, *An independent evaluation of the impact of UNHCR's activities in meeting the rights and protection needs of refugee children*, EPAU/2002/02, forthcoming (May 2002).

² See updated *Overview of events relating to the protection of refugee women and refugee children*, at www.unhcr.ch, under Global Consultations.

³ See *Summary conclusions on family unity* of the Expert Geneva Roundtable, 8–9 November 2001.

⁴ Use of the term "unaccompanied children" has declined. It was used to define those who are separated from both parents and are not being cared for by any adult who, by law or custom, is responsible for doing so.

5. Experience has shown that in emergency situations refugee children may be with an extended family member (e.g. uncle who is not the previous primary caregiver), therefore "accompanied", but they may still face risks similar to those faced by unaccompanied refugee children. To ensure that all such children benefit from efforts to trace and to reunify them with their previous primary caregivers, UNHCR, UNICEF, ICRC, the International Save the Children Alliance and other organisations have adopted the broader concept, "separated child". UNHCR, in its conference room paper presented to the Standing Committee in February 2000, sought and received wide support for the adoption of this broader understanding.⁵

6. In many countries, separated children are routinely denied entry or detained by border officials or immigration officials and given no opportunity to seek asylum. In some countries, they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age-sensitive manner. In some situations, children have no access to proper and appropriate identification, registration, age assessment, family tracing, legal advice and guardianship systems. Even where guardians are appointed, there is no consistency in practice: in some States, guardians have wide-ranging and long-term responsibilities for the child, whilst elsewhere only short-term guardianship is an option.

7. Some countries prohibit separated children who are recognised as refugees from applying for family reunification; others do permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many separated children are granted temporary status that ends when they turn 18; and there are few effective return programmes for separated children.

8. The aim of UNHCR, UNICEF and other organisations is to prevent separations, to identify children who have become separated from their families, to ensure that such children receive the protection and assistance they need, and to reunite them with their families. Various initiatives have been launched in recent years to address the problem of separation, including:

- Separated Children in Europe Programme (SCEP), a joint UNHCR and the International Save the Children Alliance initiative on behalf of separated children arriving in Western and Central European countries. Because of this project, a number of countries, particularly in Central Europe, have included in their asylum legislation provisions ensuring the protection of separated children. Some States have provided appropriate accommodation and guardianship systems and improved interviewing arrangements.
- Together with UNICEF, ICRC and specialized NGOs such as the International Rescue Committee (IRC), World Vision International and the International Save the Children Alliance, UNHCR has helped strengthen the tracing and reunification of separated children in developing countries (e.g. the Great Lakes Region of Africa) by improving coordination and accuracy of databases and by using such tools as "photo-tracing albums" and radio broadcasts.

⁵ See EC/50/SC/CRP.7 of 7 February 2000, which provides the following definition: "Separated children are thus defined as children under 18 years who are separated from both parents or from their previous legal or customary primary caregiver."

9. To address the protection concerns of separated children, the following recommendations are made:

- States are encouraged to apply the expanded definition of "separated children".
- Early identification, proper registration,⁶ appropriate interim care and family reunification⁷ should be ensured for separated children. In particular:
 - Border officials should be trained on appropriate identification and registration of children, including age-and gender-sensitive interview techniques;
 - States, UNHCR and NGOs, should work with the refugee community, including foster families, in order to establish an appropriate system for the placement of children with foster families, and the monitoring of this arrangement as well as that of children in child-headed households.
- Governments, public and private bodies should ascertain the impact of their actions on children in order to ensure that the best interests of the child are a primary consideration. Children should be consulted and their views taken into account whenever decisions affecting them are made.
- Separated children should be provided with a guardian or advisor, well trained in child welfare matters, who promotes decisions in the best interests of the child and assists them in the asylum process, including in contacts with other governmental authorities.
- States and UNHCR should ensure an age-sensitive approach to refugee status determination. In particular:⁸
 - Children should be properly heard in the refugee status determination process;
 - Eligibility officers and others involved in the refugee status determination process should be specially trained in interviewing children and take account of child-specific forms of persecution in the assessment of the claim;
 - If age assessments need to be carried out, methods used should be safe and respect human dignity and the "benefit of doubt" principle.
- States which have not yet done so should accede to the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption. Those States which have signed this Convention should ensure the establishment of adequate mechanisms for the application of the Convention, including the necessary legal reforms conducive to the full implementation of the Convention.⁹
- Adoption should not be considered during the emergency phase of any operation. In the event of adoption to separated children, States should ensure that their adoption is consistent with the 1993 Hague Convention, and its recommendation concerning the application to refugee children and other internationally displaced children of the aforementioned Convention.
- All requests for family reunification should be dealt with in a positive, humane and expeditious manner, with particular interest being paid to the best interests of the child¹⁰.
- Rejected child asylum-seekers should only be returned after final determination that they are not in need of international protection, and subject to the identification of an appropriate family member or caregiver in the country of origin, willing to receive and care for the child.

⁶ For more details on registration, see section VI below.

⁷ See reference in footnote 3.

⁸ See the *Statement of good practice*, jointly published by the International Save the Children Alliance and UNHCR in 1999. The Statement has been translated into 14 European languages and has become an acknowledged reference document for European Governments in their asylum processes with regard to separated children. See also paragraphs 46, 47 and 50(n) of EC/GC/01/12, *Asylum processes (fair and efficient asylum procedures)*, 31 May 2001, as well as the recommendations for the EU Seminar on *Children Affected by Armed Conflict and Forced Displacement - A Child Rights Perspective in Development Co-operation and Migration Policies*, Norrköping (Sweden), 1-2 March 2001.

III. SEXUAL EXPLOITATION, ABUSE AND VIOLENCE

10. In most refugee and returnee situations, children face an increased risk of sexual exploitation, abuse and violence¹¹ given their age and circumstances. Weak or ineffective legal systems, limited investigative capacities of the local police force, and isolation and social stigma associated with reporting contribute to the incidence of sexual abuse and violence. Such abuse violates the most fundamental rights of the child set out in the Convention on the Rights of the Child (CRC)¹² and has a devastating effect on the children, their families and their communities.

11. Both boys and girls are at risk of sexual exploitation, abuse and violence, but girls are the principal targets. Separated girls, including those living in foster care, with relatives or heading a household, are particularly at risk. As most cases involve female victims and male perpetrators, sexual exploitation, abuse and violence should be analysed in terms of its disproportionate impact on women and girls. Consequently, an effective response to sexual exploitation and abuse requires an understanding of inequitable gender/power relations in a given society.

12. During October and November 2001, a joint UNHCR/SC-UK assessment mission visited West Africa to look into the issue of sexual violence/exploitation as it affects refugee children. A summary of these findings, released in February 2002, reported allegations of sexual exploitation of refugee children, noting that some workers of national and international NGOs and UN agencies, including UNHCR, were allegedly using "the very humanitarian aid and services intended to benefit the refugee population as a tool of exploitation." The report also cited allegations of sexual exploitation against children by international peacekeepers and community leaders. UNHCR is now strengthening implementation of a comprehensive programme of action to combat child abuse not only in the region but also in all operations world-wide. Specific measures being undertaken are reflected in para.14 below.

13. UNHCR's Guidelines on the prevention of and response to sexual violence first published in 1995, have been extensively revised and are now being field-tested. A number of training programmes, including UNHCR's Protection Learning Programme and the Action for the Rights of the Child Training and Capacity Building Initiative (ARC), incorporate measures on preventing and responding to sexual exploitation, abuse and violence. UNHCR has also launched multi-sectoral initiatives to meet the needs of adolescent girls in a variety of refugee settings. In support of broader efforts to address reproductive health needs, UNHCR has developed projects for young people in this area, especially regarding HIV/AIDS¹³.

⁹ See Berlin Conference, on children in Europe and Central Asia, 16-18 May 2001

¹⁰ See footnote 3.

¹¹ This includes female infanticide; child marriage; female genital mutilation; sexual abuse by family members and acquaintances; rape; sexual harassment and sexual exploitation for access to protection, goods and services.

¹² This would include: the rights to survival and development; to protection from all physical or mental violence, injury or abuse, neglect or negligent mistreatment, maltreatment or exploitation, including sexual abuse; to the enjoyment of the highest attainable standard of health; to protection from all forms of sexual exploitation and abuse. These rights are also set out in other international as well as regional human rights instruments.

¹³ Many of these projects are supported by the United Nations Foundation which allocates Ted Turner Funds.

14. To address sexual exploitation, abuse and violence, the following recommendations are made:

- States should accede to and implement the 1989 Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.
- Measures should be taken to prevent sexual exploitation, abuse and violence, as well as trafficking, addressing the rights and needs of child victims through the provision of appropriate legal and rehabilitative remedies and by following up on the Yokohama Global Commitment.¹⁴
- States and UNHCR in, collaboration with other humanitarian actors, should develop and implement comprehensive gender and age-sensitive programmes to prevent sexual exploitation of children, including educational and awareness-building programmes to combat harmful traditional practices, such as female genital mutilation. Children, including adolescents, particularly those who are themselves survivors, are to be encouraged to participate in this process¹⁵.
- States, UNHCR, and other humanitarian actors should develop or strengthen programmes to respond to sexual and gender-based violence (SGBV), in particular, to provide basic health and psycho-social rehabilitative services¹⁶ as well as confidential age-sensitive complaints mechanisms to protect and assist child victims to report perpetrators. In this context, community support structures, such as drop in centres, where girls and boys could gain the confidence to discuss problems and to seek help, require strengthening.¹⁷
- Working with males of all ages on the root causes of SGBV and gender inequalities and their impact on families is crucial to prevention and changing attitudes. To this end, UNHCR and NGOs should work closely with men in order to increase an understanding of the value of gender equality and in order for men, and women alike, to understand their roles and responsibilities in ending sexual exploitation, abuse and violence.¹⁸
- United Nations agencies and their partners should implement fully the Policy on Protection from Sexual Exploitation, which is being developed by the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation.
- UNHCR should vigorously ensure that a Code of Conduct is respected in all humanitarian operations.
- States, UNHCR and other actors should conduct training and capacity-building on the rights and needs of child survivors of sexual exploitation, abuse and violence, using in particular the module "Abuse and Exploitation" as developed under ARC.¹⁹
- Given that poverty is frequently a root cause leading to prostitution and abuse, States, UNHCR and other humanitarian actors should take all possible steps to meet the basic humanitarian needs of refugee children.²⁰

¹⁴ Second World Congress Against the Commercial Sexual Exploitation, held in Yokohama (Japan), 17-20 December 2001.

¹⁵ Recommendation from the Inter-Agency Lessons Learned Conference on *Prevention and Responses to Sexual and Gender-Based Violence in Refugee Situations* (Inter Agency Conference on SGBV), held in Geneva, 27-29 March 2001.

¹⁶ See the *Agenda for action* relating to the promotion of health and well-being, as agreed at the International Conference on War-affected Children in Winnipeg.

¹⁷ See the suggested actions to be taken to address the safety and security of refugee women, as outlined in EC/GC/02/8, which are equally applicable to refugee children.

¹⁸ Recommendation from the Inter-Agency Conference on SGBV.

¹⁹ *Ibid.*

²⁰ *Ibid.*

IV. MILITARY RECRUITMENT

15. Refugee children become child soldiers in many ways: some are conscripted, others are press-ganged, and yet others join as a way to protect their families from victimization. In some situations, the proximity of refugee camps to conflict zones exposes adolescents to the risk of forcible recruitment, either by State or non-State entities. Separated children face a greater risk of military recruitment. Most child soldiers are adolescents, but there are also many who are under 10 years. Recruitment affects boys and girls in different ways: boys are used in combat and other military activities, whereas girls are more frequently used for sexual slavery and forced labour.

16. UNHCR continues to advocate against the use of child soldiers in all circumstances and encourages States that have not yet done so to accede to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict. In some countries, UNHCR, in close collaboration with UNICEF, supports "children's zones of peace" that provide alternatives to child recruitment by, for example, creating education and recreational opportunities.

17. To prevent military recruitment, and work towards the rehabilitation and reintegration of former male and female child soldiers into their communities, the following recommendations are made:

- States should accede to and implement the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict. Consistent with Article 3 of the Protocol, States should submit a binding declaration setting 18 as the standard minimum age for voluntary recruitment and participation in hostilities.
- States and non-State entities should prevent the recruitment of refugee and returnee children, *inter alia*, by providing the financial resources for educational, vocational, economic or recreational activities.²¹
- States, UNHCR and other actors should raise awareness and conduct training on the prevention of recruitment, demobilization and social reintegration based on the CRC and its Optional Protocol, using in particular the module "Child Soldiers" as developed under ARC.
- Special programmes to disarm, demobilize and reintegrate child soldiers should be set up by States and other actors, including UNHCR where needed. Programmes seeking to support child soldiers should equally benefit and address the particular situation of male and female child soldiers.

V. EDUCATION

18. Education is not only a fundamental human right, but it is also an important protection tool. Refugees often say that education is a priority, even before shelter and food, because going to school gives children some sense of normalcy and stability and protects them against forced labour, military recruitment and sexual exploitation. Education must, therefore, be available throughout the displacement cycle.

19. While more refugee children are attending primary school – an estimated 44 per cent in 2000 compared to 36 per cent in 1993 – more can be done to increase primary education opportunities and ensure equal access for all refugee children, including adolescents. Even when girls have, in theory, access to education, responsibilities for childcare and household tasks, and the lack of sanitary products, often result in irregular attendance and higher female drop-out rates.

20. Secondary, vocational and tertiary education opportunities for refugee teenagers must also be expanded, and pupils must have their schooling certified so that they are assured a smooth re-entry into the educational system in their country of origin.

²¹ For details of actions see section V below.

21. To address education-related problems, the following recommendations are made:

- States should not discriminate against children on their territories, regardless of the child's and the parents' legal status, and should provide equal access to primary and secondary education for all children.²²
- The approach to education should be broadened to include subjects such as conflict resolution skills, life-skills training (including nutrition), landmine awareness (if applicable), HIV/AIDS prevention, human rights, peace education and psycho-social support within the core education curriculum.²³
- The necessary financial means should be provided to trust funds (e.g. Refugee Education Trust) or scholarship schemes (e.g. Albert Einstein Academic Scholarship Programme for Refugees) to expand secondary, vocational and tertiary education opportunities for refugee teenagers.
- In addition, education budgets and programming should be broadened to include non-formal opportunities for all adolescents, with special consideration for youth clubs and expanded curriculum linkages to sexual and reproductive health and life skills.
- Refugee girls should have equal access to formal and informal education, including vocational programmes at all levels, and barriers should be removed so that they are able to take advantage of educational opportunities.²⁴ In this respect recruitment and training programmes for potential female teachers should be supported to redress the gender imbalance among teachers.
- States, in co-operation with relevant agencies, should ensure that the learning environment enhances prevention of possible sexual exploitation or abuse and military recruitment. Of equal importance is an infrastructure providing physical security and emotional stability.
- States should certify educational qualifications earned abroad by refugee children and establish systems of validation of such certificates.
- States should assist, where necessary, in rehabilitating school facilities in the country of origin; in addition, host States and countries of origin should support voluntary return programmes targeting professionals, including teachers, to ensure the immediate availability of education upon return.

VI. DETENTION

22. In principle, asylum-seeking children should not be detained. Detention of asylum-seekers may be resorted to in individual cases only for reasons set out in the UNHCR Guidelines on Detention,²⁵ and as long as the detention is clearly prescribed by national law and in conformity with international human rights law. Yet asylum-seeking children are detained in many countries around the world. Too many of them are held in detention facilities and prisons along with adults,

²² See Article 28 of CRC and paragraph 18 of the Preamble of the Berlin Conference, 16-18 May 2001.

²³ See *Framework for commitment to war-affected children* of the International Conference on Children, 10-17 September 2000, Winnipeg (Canada).

²⁴ This could be realized through a variety of measures, such as: monitoring attendance statistics for girls at regular intervals; identifying root causes, including any discriminatory practices, for lower attendance of girls in schools (e.g. lack of sanitary products, household chores); sensitizing parents and the general community about the importance of education for girls; in collaboration with parents, the community, younger and adolescent girls, devising ways of ensuring equal access and continued attendance in school for girls.

²⁵ See *Guidelines on applicable criteria and standards relating to the detention of asylum-seekers* (UNHCR., February 1999)

including convicted criminals, which has damaging consequences for the psychological development of these children.

23. To protect asylum-seeking children from arbitrary detention, the following recommendations are made:²⁶

- States, in principle, should not detain asylum-seeking children.
- States, keeping in mind that detention should be a measure of last resort and for the shortest possible period of time and in light of the best interest of the child principle, should provide appropriate alternatives to the detention of children, exploring in full the options of reporting obligations, guarantor requirements, supervised group accommodation or quality extra-familial care services through fostering or residential care arrangements.²⁷
- States should consider all appropriate alternatives to detention in the case of children accompanying their parents and detention, in such cases, should be considered only if it is the sole means of maintaining family unity.
- Where exceptional circumstances necessitate the detention of asylum-seeking children, States should apply in full, the standards and principles contained particularly in the CRC and the UNHCR Guidelines on Detention. In particular:
 - Provision should be made for independent monitoring of the mental health of detained asylum-seeking children and facilitated by access to appropriate NGOs and other competent service providers. Monitoring of mental health should continue after release to preclude any long lasting adverse effects on the child;
 - During detention, children should retain their right to education, which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release;
 - Additional steps should be taken to guarantee that child specific needs, such as the right to leisure and playtime, are fully respected during detention.

VII. REGISTRATION AND DOCUMENTATION

24. Registration is an important protection tool for all refugees, but it is particularly important for refugee children as it can provide protection against refoulement and military recruitment, ensure access to basic rights, including assistance, and facilitate family reunification. Proper registration can also help to identify the specific needs of adolescents, separated children, disabled children and child-headed households. Birth registration and the issuance of birth certificates are critical as they ensure a refugee child's right to identity and legal status and thus prevent statelessness or the creation of a "shadow" population in the host country. Valid birth certificates also help to deter under-age military recruitment.

²⁶ See paragraph 11 of the *Summary conclusions on Article 31 of the 1951 Convention* of the Geneva Expert Round Table, 8-9 November 2001.

²⁷ See paragraph 22 of the recommendations from the Berlin Conference, 16–18 May 2001.

25. To ensure proper registration and the issuance of basic documentation to refugee children, the following recommendations are made:

- States and UNHCR should strengthen registration and data management procedures in line with Executive Committee Conclusion No. 91 (LII) of 2001 to ensure that information is available for protection and assistance purposes concerning refugee children, including adolescents.
- States and UNHCR should use the registration process as one of the initial mechanisms to identify separated children and to ensure appropriate follow-up.
- States, with the support of the international community where necessary, should institute legislative measures and administrative mechanisms to ensure that all births are registered and certified.²⁸

VIII. CONCLUSION

26. In all actions undertaken concerning refugee children, whether by public or private actors, the best interest of the child, as contained in Article 3 of the CRC, must be a primary consideration. Non-discrimination and the right to participation should also be respected. In addition, the ability of the refugee community to respond to the needs of its children should be strengthened. Incorporating, or “mainstreaming”, children’s issues into all protection and assistance activities is also crucial, as is co-ordinating with other UN agencies, particularly UNICEF, and with NGOs. The overall purpose of all these actions is to ensure the survival and development of the refugee child.

²⁸ See footnote 25, States were also encouraged at the Winnipeg Conference to ensure universal implementation of birth registration by 2015, with particular attention to children who are refugees, internally displaced or belonging to minority groups.