

INTERNATIONAL SOCIAL SERVICE & UNICEF

*IMPROVING PROTECTION FOR
CHILDREN WITHOUT PARENTAL CARE*

**Care for Children
In Emergency Situations:
Implications for
International Standards**

This paper is one of a series that deal in greater depth with selected complex issues broached in the Working Paper prepared by UNICEF and International Social Service on "Improving Protection for Children in Out-of-Home Care: a Call for International Standards". It focuses on special concerns and problems that need to be taken into account when considering out-of-home care for children affected by armed conflicts and other emergency situations, and looks at the ramifications for future international standards in this sphere.

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1. Factors affecting alternative care provision in emergencies

Many of the issues to be confronted in determining and providing appropriate care for child victims of armed conflicts and other emergencies (particularly natural catastrophes) are essentially the same as for out-of-home care for children under "normal" circumstances. The problems involved in tackling them, however, are usually significantly amplified or compounded by a number of factors, including some or all of the following:

Lack of preparedness: while increasing emphasis is being placed on the need for preparedness in the case of emergencies, it is clear that a significant proportion of the immediate response – with its longer-term ramifications – continues to be carried out on an ad hoc, spontaneous basis, often involving numerous and diverse actors. Under these conditions, conventional principles and priorities may be discarded, by some at least, when devising and undertaking programmes for the children affected.

The sheer numbers of children concerned: the number of children requiring care provision can obviously create tremendous pressure on existing and potentially feasible out-of-home solutions. Probably more than half a million children (at least a fifth of the child population) were deprived of parental care as a result of the 1994 genocide in Rwanda¹. Up to 1,500 of the children who survived the earthquake that devastated Bam, Iran, at the end of 2003 lost their parents.²

The reduced capacity of the community to provide care: naturally, communities affected by emergencies are materially and psychologically in a much diminished position to look after children who have lost – permanently or temporarily – their parents. While many react with extraordinary courage and empathy, the solutions they are able to provide cannot be expected to be sufficient either in quality or in quantity, meaning that recourse to traditional forms of alternative care will likely be compromised or limited, in the first instance at least.

Lack of professionals: local professionals working in child protection and related spheres will inevitably be among those killed or otherwise affected by an emergency, and many may have fled the area. The burden placed on those remaining, in the face of unprecedented need for their services, will therefore be all the greater.

Partial or total destruction of infrastructure: over and above the destruction of basic health, education, water/sanitation facilities and administrative systems, communication of all kinds – transport, phone lines, radio – is often severely jeopardised in emergencies, adding to the difficulties of those attempting to organise and provide alternative care for children.

Weak or non-existent government presence: under-resourced governments, and those that have lost effective control of given regions, have little or no impact in emergencies, and will not be able to ensure adherence to pre-determined policies and priorities in the child protection sphere.

Insecurity and rights violations: it is well-known that in emergencies – particularly armed conflict – societal values tend to be quickly eroded, leading to a significant increase in criminal and anti-social activity. Often it will be impossible to impose the rule of law. Armed forces – governmental or other – may abuse their power by, for example, abducting children from their caregivers or from residential facilities and camps. Taking advantage of the chaos, individuals and groups may also

¹ See Cantwell, N: Starting from Zero, the promotion and protection of children's rights in post-genocide Rwanda, July 1994-December 1996, UNICEF ICDC, Florence 1997. Incomplete estimates at the time suggested that up to 400,000 children were informally fostered (including with kin), 85,000 were in child-headed households, and at one point over 12,000 were in residential facilities. Thousands of other children were "on the streets" or incarcerated on suspicion of having participated in the genocide.

² UNICEF Situation Report # 5, 1 January 2004.

seek to exploit children who cannot be protected by their parents. The protective facet of child care provision therefore takes on very special importance in emergency situations (see "4" below).

Major presence of foreign organisations: assistance and relief in emergencies invariably requires the intervention of non-domestic agencies: inter-governmental, governmental, and international and foreign NGOs. However, the wider the response and the weaker the national authorities, the greater is the risk that programmes for children requiring out-of-home care will be uncoordinated, in violation of children's rights, and contrary to prevailing policy. Post-genocide Rwanda provides an unfortunate example of how resource-driven projects, inexperience and the willingness of some "humanitarian organisations" to circumvent government policy combined to compromise government-supported efforts to prevent undue recourse to residential care and to carry through family tracing and reunification (see also "Residential projects" under "2" below).

2. Care initiatives in emergencies

Against this troubling background to the provision of care in emergencies, it is important to note that all forms of out-of-home care may be considered – and may indeed be appropriate and feasible to a greater or lesser extent – in such circumstances, with their inherent risks and advantages. However, certain care initiatives are particularly characteristic of – albeit not confined to – emergency situations: the following are the main ones among them, and they bring with them their own special concerns.

Displacement abroad: emergencies – particularly armed conflicts – provoke cross-border movement of various kinds. While some types of movement involve "spontaneous decisions" by those concerned (e.g. migration, seeking asylum), others are organised in the form of out-of-home care for children, notably evacuation, respite care and medical treatment abroad.

- *Evacuation:* experience of evacuating children abroad from situations of conflict has shown that such moves are often more harmful than helpful. The risks are particularly high when children are evacuated alone. Thus, in her "Impact of Armed Conflict on Children" study³, Graça Machel states that where – as they may be in certain extreme circumstances – evacuations are essential, "whole families should move together" or "children should at least move with their primary caregivers and siblings". Additional Protocol I to the 1949 Geneva Conventions gives more leeway, its Article 78 allowing for temporary evacuation of children to a foreign country, inter alia, "should their safety so require" (unless they are in occupied territory), without specifying any conditions as to accompaniment by family members. Guidelines developed by the Inter-Agency Working Group on Separated Children,⁴ however, set out a list of pre-conditions to be met before evacuation is carried out.⁵ The relatively recent examples of Bosnia and Rwanda in the 1990s nonetheless show that such principles are easily flouted, and that organisations are still undertaking unwarranted and/or ill-prepared evacuations. Among the many problems documented in those two situations are: lack of prior research on the family situation, inadequate efforts to ensure appropriate documentation, absence of consent from families and of information enabling the latter to remain in contact with the children, evacuation under unnecessarily dangerous conditions, and removal to inordinately far-flung destinations. Clearly the conception of some "evacuators" is not the provision of a temporary place of safety, but the child's definitive removal to a foreign land. Consequently, the traces of many children seem

³ The Impact of Armed Conflict on Children: report of the Expert of the Secretary General, Ms Graça Machel, UN Doc A/51/306, 26 August 1996.

⁴ ICRC, UNICEF, UNHCR, Save the Children Fund, International Rescue Committee and World Vision

⁵ Inter-agency Guiding Principles on Unaccompanied and Separated Children, International Committee of the Red Cross, Geneva, January 2004.

to have been irrevocably lost, or have only been discovered (e.g. Rwandan children evacuated to Italy) after lengthy investigation. In the light of the above, and notwithstanding existing texts, inclusion of relevant standards in an international instrument adopted by the highest authority of the United Nations would seem to be a necessary and appropriate action on this issue.

- *Respite care*: this international form of foster care is generally informal in nature and as such notoriously unregulated. It is said to have begun in earnest as a Western European phenomenon in the wake of the Chernobyl disaster. Although it rapidly extended to embrace temporary provision of care for economically disadvantaged children from a number of Central and Eastern European countries, it has also involved children from European countries that have experienced armed conflict, including Bosnia, Kosovo and Northern Ireland. Many problems have been identified, often arising from the virtual "self-selection" of host families. And as the Machel Study notes: "Difficulties often arise when the foster family, thinking the child will have better opportunities in the host country, does not want to allow the child in their care to return to the original family". Indeed, a limited number of successful applications to adopt a hosted child have been noted, though there is no indication of whether or not these have contravened international standards in any way. For the vast majority of children who return to their country of origin after such placements, there is virtually no recorded follow-up to assess the impact and ramifications of the exercise for the children involved, despite major concerns expressed in the past over some children's readjustment to the insecure situation in the country and their attitude towards their parents who they may see as incapable of offering them the quality of life they experienced abroad. International standards on the selection and preparation of children and host families, and monitoring and following up respite care in such instances are clearly required.
- *Medical treatment abroad*: temporary evacuation of children abroad is permitted under Optional Protocol I to the 1949 Geneva Conventions when there are "compelling reasons of health or medical treatment". Like respite care, it invariably involves hosting by a family in the country where treatment is provided, and often for a prolonged and initially indeterminate period of convalescence. This time-span – perhaps many months, as opposed to a few weeks' respite care – can exacerbate the potential problems surrounding return, which are in essence those described under "respite care" above, as well as posing the problem of maintaining contact between the child and parents during the former's stay abroad. Again, international standards are needed on this question.
- *Care for child victims of emergencies who migrate or seek asylum*: children who move abroad to escape armed conflict or the consequences of emergencies will also often require special care arrangements in the country of destination, and invariably so when they travel without a caregiver ("unaccompanied children"). International standards should set out responsibilities, principles and guidelines in this regard, taking into account existing texts of a regional or inter-agency nature.

Residential projects: in the immediate aftermath of an emergency, depending on circumstances, it may be necessary to foresee alternative care for children in the form of shelters or centres, to facilitate primary tracing efforts and pending the feasibility of identifying, and providing necessary support to, informal fosterers in the community. An attempt to avoid setting up centres for unaccompanied children in the Rwandan refugee camp in Ngara, Tanzania, by counting on informal foster care from the start, for example, proved unsustainable. The problem is clearly to ensure that any such facilities are designed to play – and do play – temporary care roles for most children. In emergency situations, however, they are all too prone to doing just the opposite. Thus, Graça Machel noted that "there is always a risk that temporary centres may become permanent.

The creation of centres may also in itself generate higher numbers of unaccompanied children." During her visit to the Great Lakes region, the Expert was deeply concerned that, "as a result of media attention, many centres had been created as a way of profiting from humanitarian aid." The risk is multiplied when foreign agencies manage, or are allowed, to come into an emergency situation with the sole aim – and the necessary earmarked funds – of setting up an "orphanage", or when foreign donors decide to support from afar local initiatives of that nature. Examples abound of such facilities defying agreed policies, refusing to cooperate with tracing efforts or to facilitate transfer of children into foster care, in order to preserve their *raison d'être*. Appropriate standards contained in an instrument approved at the highest international level would be one vital component in efforts to combat such actions.

Child-headed households: the precariousness of child-headed households, and the vulnerability of their members – especially girls – to exploitation is well-recognised, but there has been uncertainty (and therefore frequently inaction) as to the appropriate response to their existence and needs. While it has not so far been suggested that children be actively encouraged or helped to set up such households, there is a growing lobby (and consequent action) in favour of legal recognition and of the provision of support and assistance to them when they already exist. Under these conditions, it is held that they can constitute a positive solution for many of the children concerned, more especially if community monitoring mechanisms are established to ensure their protection. The Machel Study recommended that concerned intergovernmental organisations "give urgent attention" to developing "policy and programme guidelines" for the protection and care of these children. This has not yet been done on a cooperative and systematic basis, but in any case policy directives and standards incorporated in a fully-fledged international instrument would usefully back up such guidelines and potentially have wider ramifications.

3. Emergency-specific issues for care

Concerns and phenomena mentioned so far in this paper relating to types of care are exacerbated by emergencies but may also be fostered by other factors and/or quite simply be present under "normal" circumstances. They would – or should – therefore anyway figure in comprehensive international standards on out-of-home care for children, although their importance may well be enhanced by considerations based on experience in emergencies, and certain additional facets inspired by the latter would undoubtedly merit inclusion. But there are also a number of issues that, to all intents and purposes, can be considered as specific to care – of whatever kind – in emergency situations, and these would surely need explicit mention in an international instrument:

- *Family tracing:* this is clearly a pre-requisite to implementing the basic principle of out-of-home care, which is to ensure that all efforts are made to maintain or reintegrate a child in his or her family. Standards setting out the responsibility of carers, institutional or individual, to effect or cooperate with tracing efforts are vital.
- *Family reintegration:* while this is the primary goal of out-of-home care in general, family reintegration takes on special importance in an emergency context. First, it will very often presuppose that successful family tracing has proved possible. Second, attention may frequently be focused almost exclusively on "family reunification" – i.e. bringing children and their parents physically together – to the detriment of efforts to ensure successful "reintegration", which can require careful preparation of all concerned as well as on-going support once they are "reunited". Thus, in addition to concerns that a "reunification at any cost" mentality may prevail, regardless of the wishes of the children concerned and the context in which it takes place, *Action Nord-Sud*, an NGO working in post-genocide Rwanda, stated that "the constant failures... of reunifications are unfortunately too numerous and are caused essentially by a lack of preparation, but also by a lack of follow-

up. In effect, even if preliminary work is performed well and under the best conditions, if no follow-up activity is put into place, the success of the reunification or reinsertion cannot be assured." It follows that family reunification and reintegration processes in emergency or post-emergency situations would no doubt require explicit and separate mention in international standards.

- *Rehabilitation of child soldiers:* care for children who have in some way participated in an armed conflict, or who may be perceived, suspected or accused of involvement in some form, demands special consideration. The complexities of ensuring their psycho-social recovery and social reintegration are such that derogations from certain "basic principles" of out-of-home care may be required, particularly regarding residential placement. Considerable literature now documents the issues and should inspire provisions in international standards that would help to avoid the repetition of certain gross errors recorded in rehabilitation efforts.
- *Responding to widespread trauma among children and the population in general:* special account may need to be taken in out-of-home care standards of children in communities where many or most of the population – including the children themselves – are suffering from trauma as a result of events they have witnessed or directly suffered. In such situations, care solutions may need to be adapted significantly in comparison with "normal" practice.

4. The protection factor in out-of-home care in emergencies

The risk of violation of rights of children in out-of-home care in emergencies is – as noted under "1" above – massively heightened because of the likely context of overall insecurity, the breakdown of social control and societal values, and the absence of rule of law.

In addition to ensuring the protection of children's rights in processes that determine appropriate out-of-home care and with regard to care providers, therefore, particular attention has to be paid to preventing abuse and exploitation of children by third parties while they are in care. Such violations can include revenge killings or mutilation, abduction, forced recruitment into armed groups, trafficking (for adoption or other purposes) and sexual abuse and exploitation.

In emergency situations, parents themselves may be unable to take on their protective role effectively, but alternative care solutions must clearly strive at the very least to provide no less security to children than they would have with their parents.

It may be that a decision to formulate international standards on out-of-home care could provoke a debate that has yet to take place in fruitful terms: in emergencies, and taking account of good practice in the sphere of substitute care for children, are there caveats or restrictions that may be appropriate and necessary in relation to accepted care principles in order to prevent rights violations by third parties? And if so, how could they be accommodated in an international instrument on out-of-home care designed to cover children in all situations?

5. Implications for international standards

While there are *inter-agency* guidelines on the care of unaccompanied and separated children⁶, these apply only at the level of these partners. There remains a need for standards which are endorsed by United Nations member states. Some of the main required thrusts of such standards have been set out in this paper and are reflected in the Inter-agency guidelines. As regards emergencies in particular, the role of the international community and the accountability of care providers, especially foreign agencies, are vital elements for explicit inclusion in an international instrument on out-of-home care. In addition to setting generic standards for out-of-home care, such an instrument also needs *inter alia* to require:

- special training for all involved in determining and providing out-of-home care for children in emergencies;
- special attention to protection of out-of-home children in emergencies;
- special attention to recovery and reintegration (child soldiers, exploited children, children who have suffered injury, displaced children);
- cooperation in family tracing and reunification on the part of all care providers, including the registration and declaration of all children in their care;
- strict conditions regarding cross-border displacement of children.

A number of treaties, guidelines and voluntary codes of ethics already deal wholly or in part with child care provision in emergencies. However, they are variously not comprehensive, insufficiently detailed, and/or lacking the force of an internationally recognised instrument. Ensuring compliance with international standards is recognised as particularly difficult in emergency situations, especially armed conflict. This is no less true in the case of agencies and individuals who are responsible – or who take responsibility – for child care. Efforts to maximise their respect for standards would nonetheless be substantially bolstered by the existence of detailed rights-based guidelines covering all aspects of the question and approved at the highest international level. There is now an urgent need to draw up such a document.

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⁶ Inter-agency Guiding Principles on Unaccompanied and Separated Children, International Committee of the Red Cross, Geneva, January 2004.