

**UNHCR contribution
to the general discussion of the
Committee on the Rights of the Child on
“Children without parental care”**

1. UNHCR welcomes the timely initiative of the Committee on the Rights of the Child to hold a full day general debate on “children without parental care”, appreciates the high interest given to the event in particular by the NGO community and, in continuation of its close co-operation with the Committee, is pleased to contribute to the debate by sharing the following observations.

2. UNHCR understands that refugee-, asylum-seeking, stateless, internally displaced and other children of concern to the office constitute only a small group among the many children and situation to be addressed by the debate. UNHCR would not like to promote an over-proportional attention being given to children of concern to it, but rather would like to see the particular aspects concerning such children being mainstreamed into the different levels and sub-topics of the discussions. UNHCR’s observations will therefore be confined to the following elements:

- A) Displacement as root cause for absence of parental care and resulting vulnerabilities/protection risks;
- B) Entitlement to protection;
- C) UNHCR’s co-operation with the Committee on the Rights of the Child and other efforts related to the setting of standards and provision of practical guidance;
- D) Need for consistency of future guidelines with existing international human rights and refugee law and doctrine.

A) Displacement as root cause for absence of parental care and resulting vulnerabilities/protection risks

3. Forced displacement and in particular underlying persecutory measures against parents as well as the turmoil of conflict and flight put children at an increased risk of becoming separated from their families and caregivers, which in turn puts them in a situation of increased vulnerability.

4. Unaccompanied and separated children, girls and boys, face *inter alia* an increased risk of sexual exploitation, military recruitment, abuse and violence, trafficking, discrimination, forced labour and lack of access to education and recreational activities. Any efforts, guidelines and policies designed to address their fate must take into account that such children – in addition to losses and violence experienced by all children in emergencies - also suffer the sudden loss of those people most important to them and that their psycho-social well-being is as important as their physical health.

5. In consequence, a two-pronged approach covering both these aspects must be pursued in offering immediate protection and assistance using a rights- and community-based framework, with targeted actions, and solidly premised on mainstreaming gender equality, age sensitivity and diversity.

B) Entitlement to protection

6. Unaccompanied and separated girls and boys are entitled to international protection under international human rights, refugee and humanitarian law which are of complementary nature. Such protection obligations have to address all established risks of violations of children's rights and must most notably encompass protection against military recruitment; sexual exploitation, abuse and violence; forced labour; irregular adoption; trafficking; discrimination; and lack of access to education and recreational activities.

7. The 1989 Convention on the Rights of the Child (CRC) and its Optional Protocols, in conjunction with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as other relevant international and regional instruments, constitute also the normative framework on which UNHCR and other organizations base their international protection and assistance activities for refugee girls and boys and for other displaced children.

C) UNHCR's co-operation with the Committee on the Rights of the Child and other efforts related to the setting of standards and provision of practical guidance

8. UNHCR and the Committee on the Rights of the Child have put into place a well established mechanism for exchange of information and views on issues related to displaced children, in particular refugee and stateless children. Such co-operation is well embedded in the mandate of UNHCR,¹ governed by the rules of procedures and working methods of the treaty bodies,² and has been explicitly acknowledged and encouraged by the Commission on Human Rights.³

9. Recently and closely linked to the debate today is UNHCR's comprehensive contribution to the drafting of the Committee's General Comment No. 6 on the "*Treatment of Unaccompanied and Separated Children Outside their Country of Origin*"⁴ adopted by the

¹ Reference may be made to the UNHCR Executive Committee, which in EXCOM Conclusion No.95 (2003) *inter alia* (para(1)) "notes the complementary nature of international refugee and human rights law as well as the possible role of the United Nations human rights mechanisms in this area and therefore encourages States, as appropriate, to address the situation of the forcibly displaced in their reports to the United Nations Treaty Monitoring Bodies, and suggests that these bodies may, in turn, wish to reflect, within their mandates, on the human rights dimensions of forced displacement".

² Confer, e.g., rule 70 of the Provisional Rules of Procedure of the Committee on the Rights of the Child, U.N. Doc. CRC/C/4/Rev.1 (2005).

³ The Commission on Human Rights in its Resolution 2005/48 on Human Rights and Mass Exoduses explicitly "welcomes with appreciation the ongoing contributions of the United Nations High Commissioner for Human Rights, the United Nations High Commissioner for Refugees and the Representative of the Secretary General on human rights of internally displaced persons to the work of the Commission, its special procedures and to other international human rights bodies and mechanisms, and invites them to exchange relevant information on mass exoduses and displacements with all United Nations bodies, including human rights treaty bodies, acting within their mandates, and invites the United Nations High Commissioner for Refugees to address the Commissioner at each of its future sessions." (emphasis added).

⁴ See CRC/GC/2005/6.

Committee on 3 June 2005. The document *inter alia* draws attention to the particularly vulnerable situation of these children and outlines and addresses the multi-faceted challenges faced by States and other actors in ensuring that such children are able to access and enjoy their rights. The general comment has become a valuable protection and argumentation tool for UNHCR in its daily international protection efforts as it provides detailed guidance on the protection, care and proper treatment of these children.⁵

10. UNHCR's Agenda for Protection,⁶ a programme of action to improve the protection of people of concern to office, which was explicitly welcomed by the General Assembly,⁷ addresses the protection of refugee children under its objective of *Meeting the Protection Needs of Refugee Women and Refugee Children*. The specific needs of unaccompanied and separated refugee children during asylum procedures are highlighted, as are the need to arrange for their temporary placement in foster families or for the appointment of State or non-State guardians and to monitor such arrangements.

11. Following up on its Agenda for Protection, UNHCR is presently developing a number of guidelines including on family unity in the refugee protection context, on age-related persecution and on the eligibility of victims of trafficking for refugee status.

12. An ongoing effort, in context of which a number of NGOs present during this general debate are currently consulted is the drafting of UNHCR guidelines on "Best interest determination", which are part of the commitment⁸ by UNHCR to disseminate materials on the rights of refugee children, drawing on the Convention on the Rights of the Child and other international human rights law. The Guidelines shall address inconsistencies observed in present field practice and are aimed for the benefit of UNHCR staff and operational partners who are required to make and document a formal determination at field level of the best interests of the child.

13. The guidelines set out the legal and other principles that will guide decision-makers in:

- When to make a formal best interests determination;
- Who should make the determination and what procedure should be followed;
- How criteria should be applied to take a decision in a particular case.

14. UNHCR is ready to share the draft with further NGOs practically engaged in best interest determination efforts for comments, in particular from a field perspective. NGOs interested in reviewing the text are encouraged to contact UNHCR as soon as possible.⁹

D) Need for consistency of future guidelines with existing international human rights and refugee law and doctrine and issues to be looked at in follow-up work

15. As much as the present elaboration of specific UNHCR guidelines benefits from the General Comment No. 6 and the standards clarified in the Committees concluding

⁵ Based on the entire legal framework provided by the CRC and giving particular attention to the principles of non-discrimination, non-refoulement and the best interests of the child as well as the right of the child to express his or her views freely.

⁶ A/57/12/Add.1, Annex IV.

⁷ See resolution 57/187 of 4 December 2002.

⁸ See Agenda for Protection Goal 6.2.

⁹ Mail addressed to UNHCR; 94, rue de Montbrillant; BID focal point POS/DIP; 1202 GENEVA.

observations on State reports, as much we hope that the a/m UNHCR guidelines under preparation will inform and contribute to the follow-up of today's general debate at the Committee of the Right of the Child and in particular to the development of guidelines on children without parental care, which has been proposed. UNHCR welcomes such proposal to elaborate detailed guidelines on the treatment of children without parental care.

16. UNHCR – acknowledging that other agencies and NGOs benefit from better oversight on this broad topic and shall take the lead – wishes, however that a format will be developed which allows to insert UNHCR's sectoral, but quite extensive experience.

17. The general debate organized by the Committee on the Right of the Child is not the forum to extensively report on UNHCR's activities in relation to unaccompanied and separated children and reference can be made to the Report by the Secretary General titled "Assistance to unaccompanied refugee minors".¹⁰

18. It may, however, be helpful to outline the scope of UNHCR's activities and thereby indicate the scope for potential advice to the preparation of more elaborate guidelines on children without parental care.

19. UNHCR activities in relation to those children who fall under its mandate entail *inter alia*:

- Family tracing and reunification efforts (in co-operation with UNICEF and other United Nations bodies, the International Committee of the Red Cross (ICRC), the International Rescue Committee (IRC), Save the Children, NGOs and other partners), based on the principle that family reunification, provided it is in the best interests of the child as verified by suitably qualified staff, is a key priority;
- Prevention of military recruitment;
- Education, which plays a key role in the empowerment of separated and unaccompanied minors;
- Prevention of sexual abuse and violence and trafficking;
- Registration efforts, both to reduce vulnerabilities, to prevent displacement as well as to ease family tracing and re-unification following separation.

20. Despite the variety of already existing guiding documents issued by a number of fora, agencies and NGOs,¹¹ often of rather specific sectoral nature, there would be significant added value in a comprehensive consolidated document addressing all aspects of the treatment of children without parental care and it would serve raising the awareness of issues of concern to UNHCR if aspects relating to refugee and other children of concern to UNHCR would be mainstreamed into such an effort.

21. From the particular perspective of UNHCR such future guidelines should *inter alia* emphasize, based on article 2 CRC,¹² the applicability of all the national norms and protection

¹⁰ "Assistance to unaccompanied refugee minors- Report of the Secretary- General", August 2005, publication pending; document number not yet available.

¹¹ Reference may be made to the "Inter-agency Guiding Principles on Unaccompanied and Separated Children" (2004) which constitutes a good example of inter-agency and NGO cooperation and involved, *inter alia*, ICRC, IRC, Save the Children UK, UNHCR, UNICEF and World Vision International.

¹² See also the elaborations of the Committee on the Rights of the Child in General Comment 6, Chapter IV a: "State obligations under the Convention apply to each child within the State's territory and to all children subject to its jurisdiction (art. 2). These State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State's territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State. Moreover, State obligations under the Convention apply within the

and assistance mechanisms designed to address the protection and assistance needs of children without parental care for non-citizen children, including refugee, asylum-seeking and stateless children on a state's territory, whose specific additional protection needs should be addressed in an integrated manner.

22. Beyond the issues explicitly addressed in the Committees General Comment No. 6, which may benefit from elaboration by guidance on practical implementation measures and good practices, future guidelines may, amongst others, also address the following aspects:

- Interstate clearing house mechanism to trace parents and care givers and to arrange, following proper best interest determination, for the return of those separated and unaccompanied children who have crossed an international border and are not in need of international protection;
- The challenge of finding interim care solutions for adolescent (refugee) girls and boys;
- Monitoring of care arrangements;
- Responses to child headed households;
- Inheritance and succession rights (e.g. in relation to voluntary repatriation);
- Gender- based considerations (i.e. how does absence of parental care affect girls and boys differently, challenge of identification of separated girls, care arrangements).

23. In all these efforts to prepare elaborate guidelines it is decisive that such guidelines represent consolidated standards and are fully consistent with existing international human rights and refugee law and doctrine. Wishful thinking, conflicting standards or advice may undermine the present protection regime and be detrimental to the interest of those children whose situation is to be enhanced: children without parental care, including those of them who are refugees or otherwise of concern to UNHCR.

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borders of a State, including with respect to those children who come under the State's jurisdiction while attempting to enter the country's territory. Therefore, the enjoyment of rights stipulated in the Convention are not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness.

*Obligations deriving from the Convention vis-à-vis unaccompanied and separated children apply to all branches of government (executive, legislative and judicial). They include the obligation to establish national legislation; administrative structures; and the necessary research, information, data compilation and comprehensive training activities to support such measures. Such legal obligations are both negative and positive in nature, requiring States not only to refrain from measures infringing on such children's rights, but also to take measures to ensure the enjoyment of these rights without discrimination. Such responsibilities are not only limited to the provision of protection and assistance to children who are already unaccompanied or separated, but include measures to prevent separation (including the implementation of safeguards in case of evacuation). The positive aspect of these protection obligations also extend to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage, including at the border, to carry out tracing activities and, where possible and if in the child's best interest, to reunify separated and unaccompanied children with their families as soon as possible.
[...]"*