

ISIL YEARBOOK
OF
INTERNATIONAL
HUMANITARIAN
AND
REFUGEE LAW



(REPRINT)

VOL. V 2005

THE INDIAN SOCIETY OF INTERNATIONAL LAW
NEW DELHI

THE POLICY PERSPECTIVES OF UNHCR IN PROTECTING AND PROMOTING THE RIGHTS OF REFUGEE CHILDREN*

R. RAMASUBRAMANIAN** AND T. S. N. SASTRY***

1. INTRODUCTION

"Children are dropping out of childhood. We must envision a society free of conflict, where children can grow up as children, not weapons of war. The international community should shoulder responsibilities to safeguard the refugee children from the scourge of uncertainty"¹

– Kofi Annan, *Secretary-General of the United Nations*

Refugee children constitute approximately one-half of the world's refugee population. In an average refugee population anywhere in the world, at least 50 percent are youngsters, a figure that rises to 70 percent in some situations². The number of child refugees is increasing by an estimated 5,000 per day, swelling the overall population of more than 22 million people. The global community has often been ambivalent towards babies, adolescents and teenagers. While many societies have nurtured and protected their young, the refugee children for centuries have also been exploited and abused. In recent decades, especially in the frightening world of peoples ripped from their homes and trying to reach a safe haven, this unstable balance has tilted even further against the young refugees. In regions gripped by war, the exercise today is "*to target the population, mainly women and children, to displace them, humiliate them, and destroy them.*"³ This is evident in the recent conflict

* This paper has been prepared on the basis of a year long research made for the M.A. Project work done by Mr. R. Ramasubramanian, submitted to Pondicherry University, under the supervision of Dr. T. S. N. Sastry.

** R. Ramasubramanian, Research Scholar, Centre for South Asian Studies, School of International Studies, Jawaharlal Nehru University, New Delhi – 110 067.

*** Reader and Coordinator, Centre for Human Rights, School of Social Sciences and International Studies, Pondicherry University, Pondicherry 605 014.

1. Statement of the Secretary-General to the General Assembly on Protection and Assistance to Unaccompanied and Separated Refugee Children, September 7, 2001 (A/56/333).

2. UNICEF Annual Report 2004, p. 45.

3. Therese Blanchet, *Lost Innocence, Stolen Childhoods* (University Press, Dhaka, 1996), p. 64.

erupted in Sudan's Western region of Darfur where in at least 32,000 children fled to the neighboring Chad.

The healthy development of children is crucial to the future well-being of any society because they are the sensitive barometers of social and economic change⁴. The breakdown of infrastructure and disruption of family structure due to refugee situations has devastating long term effects on the future of children, in addition to the loss of education and community network⁵. Missed education and lost vocational skills takes years to replace, making overall task of post-repatriation even more difficult⁶. These children wandering around as refugees, often separated from their families, are continually threatened by sudden attacks, shelling and landmines. Be that as it may, children by reason of their tender age, immaturity and utter innocence are peculiarly vulnerable and are exposed to all forms of neglect and exploitative abuses and as such they are in need of special protection. Girls, in particular, are subjected to gender based violence, such as sexual abuse and mutilation, prostitution and trafficking. Rape and sexual exploitation are a continual threat in these refugee situations.

For the past half century, the Office of the United Nations High Commissioner for Refugees has been at the heart of many of the gravest breakdowns⁷ such as, social and political order and tragic human loss in recent history. As the UNHCR itself claims, 'if the Office did not exist, hundreds of thousands, if not millions, of refugees would be left unassisted and unprotected'⁸. While the UNHCR has had many successes over the past 50 years, it also had many failures. Slow and inadequate responses to refugee emergencies and protection crises have sometimes risked the lives of countless numbers of refugees. The UNHCR is confronted with persistent problems of lack of learning and policy effectiveness. But in case of protecting the refugee children, the UNHCR has played a commendable role in protecting and promoting their rights. The Office has clearly charted out the policy framework and policy decisions for the betterment of the refugee children. In late 1996 the United Nations issued a report on the "*Impact of Armed Conflict on*

4. *The Best Interests of the Child: Reconciling Culture and Human Rights* (Clarendon Press, Oxford, 1994), p. 122.
5. Rachel Stohl, "Targeting Children: Small Arms and Children in Conflict", *The Brown Journal of World Affairs*, vol. 9, Issue 1 (Spring 2002), p. 45.
6. Symposium: "UN Convention on Children's Rights", *Human Rights Quarterly*, vol. 12, no. 1, February 1990, p. 32.
7. *Refugee Children: Guidelines on Protection and Care*, UNHCR Geneva, 1994, p. 43.
8. "*UNHCR Policy on Refugee Children*", Executive Committee of The High Commissioner's Programme, Forty-Fourth Session, Sub-Committee of The Whole On (International) Protection, 23rd Meeting, EC/SCP/82 - 6 August 1993, p. 21.

Children" which for the first time pulled together in one comprehensive study the complex nightmare world in which millions of children live. Using the report as a base, UNHCR has begun re-orientating policies and placing more emphasis on programs specifically targeting the young. Taking this into consideration a modest attempt is made in this paper to study the role of UNHCR in protecting the refugee children and to examine the policy perspectives of UNHCR. This paper further probes the financial weakness of the UNHCR and suggests the ways and means to overcome such obstacles which will strengthen the capability of UNHCR to effectively disseminate knowledge about human rights and to frame suitable policies and operational frameworks in protecting the human rights of the refugee children.

2. REFUGEE CHILDREN

There is currently no universally accepted definition for the term "refugee children," and this expression will therefore be used to include refugees, asylum-seekers and displaced persons of concern to UNHCR, up to the age of 18 as specified by the UN Convention on the Rights of the Child.⁹ However the states are free to have different criteria with respect to the age limit according to the priorities of their national law. The United Nations Convention on the Rights of the Child also adopts this formula.

The European Convention defines a child *as* every person below the age of 18. It defines a "refugee child" as every child who is seeking refugee status or other international protection, which includes:

- considered a refugee in accordance with applicable international or domestic law and procedures, whether unaccompanied or accompanied by his or her parents or by any other adult, or who is
- forced to flee across an international border (as a result, for example, of war, civil war or generalised violence).

The 1951 Refugee Convention and the 1967 Protocol (Relating to the Status of Refugees) set standards that apply to children in the same way as to adults:

- (1) a child who has a "well-founded fear of being persecuted" for one of the stated reasons is a "refugee",
- (2) a child who holds refugee status cannot be forced to return to the country of origin (the principle of *non-refoulement*), and

9. Refugee Children: Guidelines on Protection and Care, UNHCR Geneva, 1994. p. 4.

(3) no distinction
welfare and
standards wh
must receive
education, as
non-refugee

The Organiza
Specific Aspects
of "refugee" to
events that seem
makes no distinc
Declaration has
binding since it
States do apply

The horrend
world wars and
particularly on
alerted the mem
instituting cred
for the protect
declarations and
among the declar
Rights of the Ch
was frustrated
World War. Late
of the II World
was charted. The
particularly rele
Declaration lay
discrimination
well as, in their
and the 1967 Prot
of refugees also

10. For the recomm
Documents on
11. Coles Gervase, I
York, 1989, p. 4
12. Note 3, p. 58

(3) no distinction is made between children and adults in social welfare and legal rights. One article in the Convention sets standards which are of special importance to children: refugees must receive the "same treatment" as nationals in primary education, and treatment at least as favorable as that given to non refugee aliens in secondary education (Article 22).

The Organization of African Union Convention, 1969 (Governing the Specific Aspects of Refugee Problems in Africa) broadened the definition of "refugee" to include persons in Africa who flee from war and other events that seriously disrupt public order. The OAU Convention too makes no distinction between children and adults. Though 1984 Cartagena Declaration has expanded concept of refugee, the standard is not legally binding since it is only a declaration. However, several Latin American States do apply it¹⁰.

A. A Glimpse on the Protection of Refugee Children Globally

The horrendous destruction and ravages wrought by the last two world wars and their devastating impact on civilian populations, particularly on its most vulnerable segments, namely, children and families alerted the attention of the international community to the urgency of instituting credible legal steps towards the creation of global standards for the protection of the child. Initially these steps took the form of declarations and later more binding instruments¹¹. In 1924, the earliest among the declarations was the *League of Nations Declaration on the Rights of the Child*. But the noble objectives, which inspired it largely was frustrated by the demise of the League in the wake of the Second World War. Later United Nations was formed at the wake of the end of the II World War. In 1948, Universal Declaration of Human Rights was charted. The UDHR enunciates certain core principles, which are particularly relevant in the context of the rights of the child. The Declaration lays down the root principles of equality and non-discrimination (Article 2), which must apply to refugee children, as well as, in their capacity as persons¹². The 1951 Refugee Convention and the 1967 Protocol that forms the basic instruments for the protection of refugees also dealt with the refugee children for they are important

10. For the recommendations of the Cartagena Declaration see, *Basic International Legal Documents on Refugees* 5th ed., (New Delhi, 2004), pp. 196-201.

11. *Colin Gervase, Refugees and International Relations* (Oxford University Press, New York, 1989), p. 67-69.

12. *Ibid.*, p. 56.

and the most vulnerable class of refugees. The two U.N Covenants of 16th December 1966 on Civil and Political Rights and on Economic, Social and Cultural Rights which are built on the bed rock principles of the Declaration also enunciate important safeguards for and rights of the Children.

In 1974, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict addressed the plight of the vulnerable section of the society. In 1986, the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally expressed its concern for the rules and regulations regarding the welfare of children. In 1979, the International Year of the Child¹³ marked the starting point of the debates that led to the formulation of the full fledged Convention on the Rights of the Child, which was adopted unanimously in 1989 and ratified in less than a year by a great majority of states. This 1989 Convention emphasizes four forms of rights to every child, which are civil, political, social, economic and cultural. In socio economic sense these are the vital rights for Survival, Protection, Development and Participation. In 1993, the Vienna Declaration and Programme of Action of the World Conference on Human Rights stressed the need and the steps to be taken by the states in ensuring respect in the protection and promotion of rights of children. In October 2002, the Twenty-seventh Special Session of the General Assembly of the United Nations brought out a document entitled 'A World Fit for Children'¹⁴. A World Fit for Children is one in which all children, (including Refugee Children) get the best possible start in life and have access to a quality basic education, including primary education that is compulsory and available free to all, and in which all children, including adolescents, have ample opportunity to develop their individual capacities in a safe and supportive environment. Thus the international community has taken special cognizance for the betterment of the refugee children.

3. SPECIFIC ISSUES RELATED TO REFUGEE CHILDREN

Though the international community takes measures to protect the refugee children, it was not successful in preventing the violations

13. F. L. Ahearn, and J. L. Athey, *Refugee Children: Theory, Research and Services* (Johns Hopkins University Press, Baltimore, 1991), p. 239.

14. A World Fit for Children a Resolution adopted by the General Assembly on the Report of the Ad Hoc Committee of the Whole (A/S-27/19/Rev.1 and Corr.1 and 2) Twenty-seventh Special Session, 6th plenary meeting, 10 May 2002.

incutting upon them suffered violations or in countries of border to seek refuge hazardous labour and violence and explosion camps, and recruit sustain serious physical security may come outside the country forces, political face population and other different issues are children. They are preventing sexual education and primary

Each child shall "the right to acquire

Every child who "protection and the rights that are one to refugees (Article

The 1951 Convention Refugees define a provision for the "well founded" fear rise to any problem accompanied by one status of unaccompanied consideration. Firmly manner in which refugees mature enough to have the case may be treated this degree of maturity situation prevailing in

15. Rosa Ehrenreich, "Some Rights Watch" (1997)

16. Larry Minear, "Partners New Issues in Refugee" pp. 8-9.

incurring upon them. Refugee children, like refugees in general, have suffered violations of their security, either during the flight to safety or in countries of asylum. Even after traveling across an international border to seek refuge in neighboring country, they remain vulnerable to hazardous labour exploitation, physical abuse, denial of education, sexual violence and exploitation, cross-border attacks, militarization of refugee camps, and recruitment as child soldiers¹⁵. Many die, many others sustain serious physical and psychological injuries. Threats to personal security may come from a variety of agents (both from within and outside the country of asylum) including bandits, military or irregular forces, political factions, police, border guards, elements of the local population and other refugees¹⁶. For the purpose of the paper, six different issues are identified that are associated with the refugee children. They are Status determination, preventing military conscription, preventing sexual abuse, addressing the separated children, focus on education and priority to health.

A. Status Determination

Each child "shall be registered immediately after birth" and has "the right to acquire a nationality" (Article 7)

Every child who is seeking refugee status has a right to "protection and humanitarian assistance in the enjoyment" of the rights that are contained in treaties and declarations pertaining to refugees (Article 22.1).

The 1951 Convention and 1967 Protocol relating to the Status of Refugees define a refugee regardless of age, and make no special provision for the status of refugee children. Applying the criterion of "well founded" fear of persecution to children does not normally give rise to any problem when, as in the majority of cases, they are accompanied by one or both of their parents. Determining the refugee status of unaccompanied children is more difficult and requires special consideration. Firstly, the degree of maturity of the child bears on the manner in which refugee status must be determined. Where the child is mature enough to have and to express a well-founded fear of persecution, the case may be treated in a manner similar to that of an adult. Where this degree of maturity does not exist, objective factors such as the situation prevailing in the country of origin and the circumstances of

15. Rosa Ehrenreich, "Slipping Through the Cracks: Unaccompanied Children", *Human Rights Watch* (1997).

16. Larry Minear, "Partnerships in the Protection of Refugees and Other People at Risk," *New Issues in Refugee Research*, Working Paper No. 13, Geneva: UNHCR, July, 1999, pp. 4-9.

family members there should be accorded greater weight. Secondly, the difficulties, which children may face in expressing themselves, call for a very careful examination of their case, bearing in mind the need to grant the benefit of the doubt. If sufficiently mature, the children should be heard, provided that this would not be detrimental to their well-being. In some countries, arrangements are made for children to be represented in the determination procedure by a competent adult.¹⁷

i. Key Challenges

- (1) If a refugee movement is too large to make individual status determinations possible, granting refugee status to all members of the group becomes a problem.
- (2) When the head of a household is granted refugee status, the common practice of States is to grant refugee status to the dependents. This could result in the relative being granted refugee status but the child's claim being denied. When this happens, the child is split apart from the relative, and may become an unaccompanied minor. In practice, dependents should be considered if they are living in the same household.
- (3) If a child who is in the care of a parent, relative or other adult care-taker makes an individual claim, speaking on behalf of the child or making a decision on behalf of the child. By in contrast, an unaccompanied child will have none of this support when making an individual claim.

B. Protection of Separated Children

By its very nature, displacement often results in the separation of families. Families are the basic unit of society. In almost all cases the family provides the best environment in which the child's basic developmental needs can be met. Ways of caring for children vary, but generally all societies recognize that the best place for a child to be is with his or her family. Given the fundamental role the family plays in the protection, physical care and emotional well being of its members, separation from families is particularly devastating for refugee children. Separated children, whether unaccompanied 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.¹⁸

"Separated Children" are defined by UNHCR as children less than

17. Refugee Children: Guidelines on Protection and Care, UNHCR Geneva, 1994.

18. *Ibid.*

18 years of
their previous

All such child
range of internat
profound effect
the long term
impact dependi
emotional matur
will also be sign
patterns of child
children become
refugee situatio
events: a separa
violent events
of parents and
security that com

Children can b
- two broad cat
both can result
separations occu
movements, partic
to life.

During conflict
population displac
or those who are
particularly traum
what is happening
are:¹⁹

- children who
- children who
- capture or
- children who
- labour etc.
- disabled mem
- of the family
- police or

19. Ross E. E. E. E.
Fight War 1990

18 years of age who are separated from both parents or from their previous legal or customary primary caregiver.

All such children are entitled to international protection under a broad range of international and regional instruments. Separation can have a profound effect on the developing child, both in the short term and in the long term. Experiences of separation and loss will have differing impact depending on the child's age, level of intellectual development, emotional maturity and the nature and duration of the separation. There will also be significant cultural variations, reflecting the very different patterns of childcare, and in particular the different ways in which children become attached to parents, older siblings, relatives etc. During refugee situations, separation does not occur in isolation from other events: a separated child may also have witnessed frightening and possibly violent events, and may have experienced loss on a huge scale - loss of parents and family, of home, relatives, friends, school and the security that comes from a familiar environment.

Children can become separated from their families in various ways - two broad categories will be explored here but it should be noted that both can result in children becoming unaccompanied. The risk of separations occurring is likely to increase during large refugee population movements, particularly where there is (or people think there is) a threat to life.

i. Accidental Separations

During conflict or natural disasters, especially where this results in population displacement, children can become separated from their family or those who are caring for them. Accidental separations may be particularly traumatic for the child, as they may simply not understand what is happening. Among the reasons why these separations occur are:¹⁹

- children wandering away from their parents or carers;
- children flee when their home is attacked;
- capture or arrest of family members;
- children are abducted for ransom, sale, military conscription, labour etc.;
- disabled children are unable to keep up with other members of the family;
- police or others taking a "lost" child to an institution without

¹⁹ Rosa Ehrenreich, "Slipping Through the Cracks: Unaccompanied Children", *Human Rights Watch* (1997).

properly seeking;

- information on the circumstances;
- agency-induced separations.

ii. Deliberate Separation

The second category refers to separations where a conscious decision has been made on either the part of the child or the parents or carers.²⁰ It may be that parents or carers have had an opportunity to explain to the child what is about to happen but the impact of separation on the child is still likely to be very distressing. Typically, circumstances may include:

- families under threat (from poverty, breakdown of informal welfare or extended family structures, the death or disability of parents etc.);
- the abandonment of children during flight (children of single parents may be especially vulnerable);
- families handing over children for their safety (to other local people, centres or aid workers);
- children left behind by their foster families (for example, during repatriation) - children of a different ethnic group from that of their carers may be especially vulnerable;

iii. Agency - Induced Separation

In certain situations, agencies themselves may be responsible for causing both accidental and deliberate separations by not attaching sufficient importance to family unity. At worst, this can result in agencies setting up forms of institutional care, which then receive children who do have parents or other carers, which fail to document children adequately, and do not make strenuous attempts to enable the child to return. Other typical examples of situations where intervention by outside agencies contributes to child separation include:

- badly-organised population movements, careless policies for the movement of children;
- inadequate record-keeping by the agencies providing emergency assistance;
- taking children to residential centres without following the correct procedures for documentation or liaising with specialist

20. Guidelines on Policies and Procedures in Dealing with Separated Children Seeking Asylum, UNHCR Geneva, 1997.

child-care agencies;

- fostering or adoption that does not follow guidelines.

iv. Military Induced Separation

In situations of conflict, it should also be noted that actions by military groups can, and do, lead to separations. This may be as a result of protagonists targeting civilian populations leading to chaotic flight, detaining parents, or could be through children forcibly recruited into armed forces or abducted to act as human shields or to take on other tasks (including sexual). In addition, it should be remembered that peace-keeping forces also have the potential to inadvertently create separations if their interventions are not appropriately planned and informed. This issue has received increased attention in recent years and, notably, the UNHCR has been actively involved in providing training to military peace-keepers.

v. Key Challenges

1. 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.
2. 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.
3. The protection of separated children underscored the need of awareness-raising and capacity building in the communities on how separations can be avoided.
4. In addition, institutions and agencies must be made aware of how outside interventions - whether in the form of children's centers or badly organized relief assistance - can contribute to separations.
5. It is also important to have open discussions about the perceptions held by international organisations concerning dependent populations' abilities to solve their own problems.

C. Recruitment of Children to Military Service

According to the Convention on the Rights of the child (1989), Article 38, children below the age of 15 should not be recruited into armed forces. Today, around 300 000 children below the age of 18 are

shall not be the object of attack' (Article 13 APII).

The Statute of the International Criminal Court (ICC), adopted in Rome on 17 July 1998, includes in its list of war crimes within the Court's jurisdiction the active involvement in hostilities of children under 15 or their recruitment into national armed forces during an international armed conflict (Article 8) or into the national armed forces or other armed groups during a non-international armed conflict (Article 8). According to the principle of complementarity, the Court has jurisdiction in situations where a State is unable or unwilling to prosecute. In order not to take advantage of this principle and to ensure repression at the national level, States should adopt legislation enabling them to prosecute the perpetrators of such crimes.²²

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.

Military service is a serious problem for many refugee boys and young men. Refugee children become child soldiers in many ways.

- Sometimes they are conscripted, or forced, into combat duty in government or opposition armies.
- Some times they join voluntarily, for a variety of reasons: physical protection, food and other care, belief in a cause, social pressure, revenge, and adventure.
- Sometime they join as a way to protect their families from victimization.
- In some conflicts, refugee girls and young women occasionally are conscripted or volunteer.
- 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.

22. Refugee Children: Guidelines on Protection and Care, UNHCR Geneva, 1994, pp. 85-88.

International law permits each State to decide whether adolescents who is 15 years old and above can be soldiers. But, when this happens, older adolescents must be recruited before younger ones. UNHCR advocates that no refugee, neither adult, nor adolescent nor child, be conscripted. Under its mandate, UNHCR's work is "entirely non-political" and is "humanitarian and social." Forcing refugees to be soldiers violates the principle that refugees are a neutral population in an asylum country.

UNHCR follows the Principle of Incompatibility, where in the military activities are incompatible with refugee status and once a refugee voluntarily takes up arms or otherwise takes direct part in hostilities, he/she can no longer enjoy UNHCR's protection.²³ However, children who may be constrained to take up arms, even if they do so voluntarily, as minors not be considered as responsible for their own actions. Also the former combatants of any age who lay down their arms and who otherwise meet the definition of a refugee under Article 1 of the 1951 Refugee Convention is eligible for protection.

1. Key Challenges

- A child-focused analysis should be done at an early stage in every conflict/potential conflict, to identify specific factors that contribute to the problem, assess opportunities to intervene, and develop further strategies. UNICEF should co-ordinate the analysis, share information with all players and enable the relevant actors to analyse the situation.
- On the basis of this, a balanced approach to the prevention of recruitment should be developed. This should incorporate the implementation of international legal standards and instruments, but also the development of practical initiatives, which respond to and are informed by the reality confronting the children, their families and communities.
- Community-based, child-focused prevention strategies should be developed at all levels.
- Adolescents must be given priority by all agencies and donors, especially older adolescents. All communities have to focus on groups of children who are more at risk than others.
- Education is seen as a key tool for prevention of recruitment.

23. *Progress Report on Refugee Children and Adolescents, including UNHCR's Strategy for Follow-Up to the Report on the Impact of Armed Conflict on Children*, EXCOM 7th meeting, EC/47/SC/CRP.19 - 1, October 2001.

Children must be active participants in advocacy.

D. Preventing Gender-Based Violence and Sexual Abuse

In most refugee and returnee situations, children face an increased risk of sexual exploitation, abuse and violence given their age and circumstances. The incidence of Sexual abuse and violence is contributed by the weak or ineffective legal systems, limited investigative capacities of the local police force, and isolation and social stigma associated with it. Such abuse violates the most fundamental rights of the child set out in the Convention on the Rights of the Child (CRC) and has a devastating effect on the children, their families and their communities. Both refugee boys and girls are at risk of sexual exploitation, abuse and violence, but refugee girls are the principal targets²⁴. 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 analyzed in terms of its disproportionate impact on refugee women and girls. Consequently, an effective response to sexual exploitation and abuse requires an understanding of inequitable gender/power relations in a given society.

In addition, there are documented evidences for the sexual violence against girls in the refugee camps, a problem that remains largely unaddressed. Neither UNHCR nor the host government had made sufficient efforts to determine the scale of the violation or respond to incidents of sexual violence in the camps. There is also a serious problem of child prostitution in the camps, where refugee girls as young as twelve reported that they feel compelled to "play sex for money" in order to support themselves and, in some cases, their families. As with the problem of sexual violence, very little has been done by UNHCR to understand the problem of child prostitution in the camps and to prevent it. In addition, little has been done to protect the human rights of refugee girls forced into the practice, including their rights to education and reproductive health care.

During October and November 2001, UNHCR 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

²⁴ Information note on refugee children: UNHCR's efforts to address some persistent protection problems. (EC/1993/SCP/CRP.4).

and UN agencies 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 refugee child abuse not only in the region but also in all operations worldwide.

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/AIDS.

UNHCR takes every effort to protect refugee children from abuse and to ensure that victims of abuse receive remedial assistance for their recovery. Evidence of torture, physical and sexual assault, abduction and similar violations of the safety and liberty of refugee children call for extraordinary measures. UNHCR along with other international organizations, spare no effort to collect all the relevant facts, including corroborative evidence and identification of the culprits with a view to their apprehension.

It had released a "Note on Certain Aspects of Sexual Violence against Refugee Women," in the Executive Committee during 1993, which addresses rape and other forms of sexual violence in refugee situations. Women and girls are most often victims of sexual violence, but sexual abuse of refugee boys is also reported. The note presents legal and practical measures to prevent sexual violence and will be helpful to field staff also in protecting children against sexual exploitation and abuse (CRC, Article 34).

i. Key Challenges

- Local traditional values must be reinforced in order to strengthen the protective networks for children and to raise the community awareness on the protection needs of vulnerable groups.
- Continuous advocacy and awareness rising must be conducted in order to create and promote a climate in which measures to prevent gender-based violence and sexual abuse are given priority.
- Focus has to be kept on the necessity of including the prevention

attacks. In others, they themselves participated in harassment or violence against each other due to lack of proper orientation. Discrimination, harassment, and violence hampered students' ability to get an education and took a tremendous toll on their emotional well-being. Perhaps because so many lesbian, gay, bisexual, and transgender youth experienced abuses on a daily basis, these youth were more likely than their heterosexual peers to use alcohol or other drugs, engage in risky sexual behaviors, or run away from home. A study by UNICEF in 1998 reveal that a disproportionate number of lesbian, gay, bisexual, and transgender youth attempted or considered suicide—youth who report attractions to or relationships with persons of the same sex were more than twice as likely as their heterosexual counterparts.

i. Key Challenges

- Awareness-raising & advocacy at national and international levels: National governments and UN bodies should make a strong commitment to providing appropriate forms of education as prevention of recruitment/abduction. International donors should make appropriate forms of education eligible for funding as preventive and protective measures in emergencies. A poster, listing the principles, and various targeted brochures of practices should be produced to highlight the importance and global challenge for investing in a better future.
- Capacity building of organisations to handle these situations: There is a great need for training of resource persons to handle emergency education. Concerned parties should identify staff to handle education and consider setting up an international training body or a pool of trainers for rapid assistance. Existing standby-force personnel could provide resource persons or be given special training. There should be a link to education packages, and case studies could provide code of practice.
- Systematic collection of data: In order to make best possible use of experiences, there should be an ongoing collection of case studies, relevant data and good/bad practices.
- Prioritisation when funds are limited: The following prioritisation target groups was suggested: 1. Lower primary, 2. Upper primary, 3. Secondary, 4. Pre-school children may be given first preference.
- Curriculum, issues in addition to basic learning (literacy, numeracy etc.): human rights, health education, life skills, AIDS, environmental education, (not in order of priority) can be incorporated.

F. Attending

Refugee children living in a group, face nutritional and health problems and quantity of food available in emergency phase and in the absence of facilities to prevent communicable diseases and their mothers.²⁶ The health programmes in such situations and promotion of children's health to the essential services of health care have access to the education. Sometimes supplementary health services specifically for refugee children are provided to address the unique health needs.

Irrespective of the situation, to refugee children and their families in place. Children and their families are often the most vulnerable segment of a refugee population. Special health care is needed for poor nutrition, malnutrition, and the absence of basic services such as tuberculosis, malaria, and other infectious diseases. Tuberculosis, malaria, and other infectious diseases are expanding in some refugee camps. National health services are often cover and rehabilitation services in the greater world.

To avoid communication gaps, to ensure the communication of health care services, health care workers should be trained in the local language. Health care workers should be trained in the local language. Health care workers should be trained in the local language.

F. Attending to the Health Needs

Refugee children living in camps, whether or not part of a vulnerable group, face nutritional and health risks due to over-crowding, poverty, type and quantity of food available. These risks exist both during the emergency phase and in the long term. However, primary health care facilities to prevent communicable diseases are geared towards children and their mothers.²⁶ They are being improved upon and included in health programmes in more and more countries of asylum. Protection and promotion of children's health requires that children have access to the essential services of a health system. Refugee children should have access to the national health services of the host country. Sometimes supplementary health mechanisms must be established specifically for refugee populations. Special efforts are always required to address the unique health needs of refugee children.²⁷

Irrespective of who provides health services, the health risks unique to refugee children must be recognized and appropriate safeguards put in place. Children under five years of age usually constitute 15-20 per cent of a refugee population and are the group at greatest risk. The special health risks to these children are often related to over-crowding, poor nutrition, unsafe water, unsanitary environments, injuries, disruption or absence of basic immunizations against vaccine-preventable diseases such as Poliomyelitis, Whooping cough, Tetanus, Diphtheria, Tuberculosis, and Hepatitis B. In addition to immunization, UNHCR is expanding its participation in joint immunization projects with various national Ministries of Health, UNICEF and WHO. These projects also cover oral rehydration services to refugee children. Continued efforts in the primary health care and immunization areas are necessary as many refugee children benefit from neither.²⁸

To avoid preventable deaths and to promote health, UNHCR strives to ensure that appropriate health care is available to all refugee children. It also ensures that dependable health assessment and monitoring mechanisms are put in place from the onset of a refugee emergency. *Epidemiological surveillance* is an important health management system developed by UNHCR for the establishment of baseline data, identification of disease patterns, determining health risks and defining appropriate actions. As an emergency initiative UNHCR ensures that the following

²⁶ Delcey Fowler, "Children for Health", Report of Child-to-Child Trust and UNICEF, London, 1993.

²⁷ Policy for Acceptance, Distribution and Use of Milk Products in Refugee Feeding Programme, UNHCR 1989 (IOM/88/89; FOM/76/89).

²⁸ *Ibid.*

health interventions are provided to refugee children as first initiatives in an emergency situation and appropriately thereafter.

1. Key Challenges

1. Ensuring availability of clean water and adequate sanitation: In camps and settlements where children are expected to carry water from watering points to their homes, the size and type of water containers should be taken into consideration.
2. Children should be trained to keep water clean and help pass the message about clean, safe water and adequate sanitary habits on to other children and to their own families.
3. Increasingly, the shelter and spatial environment imposed upon refugees is so minimal and crowded as to violate all humane standards. With the well-being of children particularly in mind, strong positions should be taken in defence of a humane standard of shelter, accommodation and size of individual family homesteads.
4. The general refugee camp layout should have enough space for playgrounds and other needs of children. The availability, distribution and location of shelter, schools, playgrounds, water points, health centres and recreational facilities all affect the safety and well-being of refugee children.
5. Primary health care programmes should include the following services, such as family health services, basic curative care, immunization programmes (includes Expanded Programme of Immunization - EPI) for major diseases like poliomyelitis, diphtheria, tetanus, pertussis and tuberculosis and Health education regarding HIV, AIDS, STD infections.

G. Contribution of UNHCR

Though the statistical size of the refugee children is large, the international community has devoted very limited resources to address children's issues. Among international agencies, United Nations High Commission for Refugees (UNHCR) is the leading actor with respect to refugee children. United Nations International Children's Emergency Fund (UNICEF), the primary U.N. agency responsible for children, plays a limited role in most refugee situations.²⁹ With some exceptions, UNHCR has been responsible for refugee children while UNICEF has assumed responsibility for children who are internally displaced within their own

29. Ramesh, M, "Broadening the Edges: Refugee Definition and International Protection Revisited", *Refugee Quarterly*, The Hague (1997), p. 342.

countries. Several international NGOs, including International Red Cross (IRC), the Women's Commission for Refugee Women and Children, and members of the International Save the Children Alliance, have played a particularly active role in bringing the issue of refugee children to the forefront.

The former High Commissioner for UNHCR, Sadako Ogata, has instructed all UNHCR field offices to draw up individual action plans covering five key areas: the needs of children, sexual violence and exploitation of minors, education, recruitment of child soldiers and the problems of separated minors. The agency has deployed six special senior advisers for children to Africa, Europe, Central Asia and countries of the former Soviet Union to help reshape UNHCR's overall approach. In cooperation with the Save the Children Alliance, training programs for humanitarian, government and NGO personnel are being expanded³⁰. The United States, Nordic and other countries are providing seed money for some of these activities. The U.S. Congress earmarked \$5 million for new refugee children's programs for the year 2003-2004 and Washington has made it clear efforts in these areas should be progressively expanded. Sweden, a longtime champion of children's rights, made international protection for young people a top priority this year. Norway has traditionally supported education and will soon devote 20 percent of all its foreign aid to this field. Such support is vitally needed. Only 25 percent of refugee children receive any meaningful education, causing grave concern that millions of deprived youngsters will eventually become not only an 'invisible generation' but also a 'lost generation' without the educational skills to survive in an increasingly complex and demanding world.

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 project "Save the separated child during refugee situations". 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.

It was underlined that the UNHCR Policy on Refugee Children and the Guidelines on Protection and Care not only helps to define the structure of interventions and the setting up of agendas, but also call for a joint re-thinking of design and implementation of existing programmes. Urgent attention should be given to meeting the basic

30. *UNHCR Policy on Refugee Children, Executive Committee of the High Commissioner's Programme, 44th Session, Sub Committee of the Whole on International protection, 23rd meeting, EC/SCP/82 - 6 August 1993.*

primary education needs of refugee children, even in the early stages of an emergency. The special needs of unaccompanied children in the refugee population should also be considered at the earliest possible stage in an emergency. The Office also utilizes the support of the local NGOs and international NGOs for the benefit of the refugee children at various stages of protection. The EXCOM meetings of the UNHCR suggest few recommendations for the welfare of the refugee children with respect to the role of NGOs. They are:

Recommendation 82: NGOs should evaluate their own refugee projects in light of the Policy and the Guidelines on Refugee Children. They should ensure that all their staff members working with refugee children are familiar with the Policy and Guidelines, and share their experiences in this area. The impact on refugee children of projects designed for other target groups should also be reviewed.

Recommendation 83: UNHCR and NGOs should provide culturally sensitive psychologists; social workers and medical staff specialized in assisting children. They should also assume psychological trauma will be present and give special attention to children who have been forced into combat and who witnessed or committed atrocities. They should provide increased protection of children against unscrupulous child labour practices, child prostitution, and other forms of child abuse both within the refugee and host communities. Particular attention should be given to unaccompanied minors in all aspects of programme planning.

Recommendation 84: UNHCR and NGOs should raise awareness of governments and the public of the need for organized learning activities and access to education, even in the early stages of an emergency; cooperate in the establishment of common guidelines and standardization of tools for rapid response to education and social welfare needs of refugee children. Education should be geared towards durable solutions with appropriate curricula and languages.

Recommendation 85: UNHCR, NGOs and concerned authorities should cooperate in the early identification and registration of unaccompanied minors admitted into families other than their own. UNHCR and NGOs should jointly facilitate foster care arrangements within the refugee community, monitor their placement, including the quality of the care provided, and conduct follow-up activities, as well as set up procedures for effective family tracing and reunion, in cooperation with ICRC.

4. CONCLUSION

It is generally recognized that action taken on behalf of refugee children should be guided by the principle of the best interests of the

child and by the
over the years
refugee children
as quickly as
reviewed by
children should
family and
the appropriate
where individ
the needs of
should be met
of assessment
community
of the refuge
offered, the

1. Children
refugee
Approach
of unaccom
examined
benefit
2. Violence
which
many
explicit
refugee
and
essenti
promot
3. Altho
child
child
deter
simpl
date
4. Un
the
fac
car

ren, even in the early stages
unaccompanied children in the
ferred at the earliest possible
lizes the support of the local
of the refugee children at
meetings of the UNHCR,
of the refugee children

evaluate their own refugee
Guidelines on Refugee Children.
members working with refugee
Guidelines, and share their
refugee children of projects
to be reviewed.

Os should provide culturally
and medical staff specialized in
the psychological trauma will
children who have been forced
armed atrocities. They should
and unscrupulous child labour
of child abuse both within
lar attention should be given
of programme planning.

Os should raise awareness of
organized learning activities
ly stages of an emergency;
guidelines and standardization
and social welfare needs of
ed towards durable solutions

s and concerned authorities
lication and registration of
families other than their own.
foster care arrangements
their placement, including the
follow-up activities, as well
ly tracing and reunion, in

taken on behalf of refugee
of the best interests of the

child and by the principle of family unity. The experience of UNHCR over the years has demonstrated that effective protection on behalf of refugee children requires correct identification and proper documentation as quickly as possible.³¹ Their needs must then be assessed and regularly reviewed by qualified personnel. If practicable, the needs of refugee children should be assessed on an individual basis, as the age, personality, family and cultural background can affect the reaction of the child and the appropriate treatment and solutions. In large refugee populations, where individual assessment is not possible, sample surveys to project the needs of children at large can be used. Once assessed, the needs should be met through culturally appropriate responses. The effectiveness of assessment and responses can be significantly increased if the refugee community itself is actively involved. Thus in helping out for the welfare of the refugee children, apart from the various suggestions that are offered, the following needs a meritorious consideration.

1. Children who are accompanied by their parents should be granted refugee status if the head of the family is determined to be a refugee. Appropriate procedures should be adopted for determining the status of unaccompanied refugee children; their situation calls for a careful examination of their case, bearing in mind the need to grant the benefit of the doubt.
2. Violations of the physical safety and security of refugee children, which occur in different areas of the world, are to be deplored. In many instances refugee children are exposed to physical violence, exploitation, forced recruitment, and detention. Along with other refugees, they continue to be victims of military or armed attacks and piracy. Further action on the national and international levels is essential to prevent such violations, to assist the victims, and to provide treatment for resulting psychological and social harm.
3. Although some States have taken measures to register refugee children and certain States grant their nationality to stateless refugee children, these practices are not universal. Such universality is desirable in order to stop refugee children facing difficulties of an administrative nature in everyday life, e.g. establishment of their date and place of birth and the determination of their nationality.
4. Unaccompanied refugee children should be identified at an early stage, their needs should be assessed by qualified personnel and placement facilities provided, where possible and appropriate, through family care within the refugee community. Efforts to trace parents or

31. G. J. L. Coles, "UNHCR and the Political Dimension of Protection", UNHCR, Belley, August (1995), p. 46.

families should be undertaken immediately. Decisions on durable solutions for unaccompanied refugee children should be taken by competent expert bodies with appropriate participation of the refugee child. In line with Executive Committee Conclusion No. 24 (XXXII) on Family Reunification, the adoption of unaccompanied refugee children should not be encouraged as long as the family situation has not been satisfactorily determined.

5. Children separated from their parents and living with an adult, who may or may not be a family member, frequently have special needs such as support for the person or family caring for them, prevention of exploitation and tracing of parents or other relatives. In many situations, refugee children face extended stays in camps because the international community is unable to solve particular refugee problems. The resulting detrimental effects on these children have been addressed to a limited extent by States, non-governmental organizations and UNHCR. More action is necessary, but a complete answer lies only in durable solutions for refugee children and in solutions to the refugee problems themselves.
6. Children living in refugee camps face particular nutritional and health risks. Efforts should be made to ensure that they receive an adequate and well-balanced diet, and that they are not exposed to foodstuffs, which may be dangerous for them. Access to general immunization programmes and primary health care facilities, geared towards preventive services for children and their mothers, is essential.
7. Because of their situation, refugee children are often deprived of their fundamental right to education. Whereas some action has been taken to meet their educational needs, more efforts are necessary to ensure that, as far as possible, all refugee children have access to primary education of a satisfactory quality, which is oriented towards their cultural identity and understanding of the country of asylum.
8. The importance of meeting the special religious, cultural and recreational needs of refugee children is becoming generally recognized. The adoption of programmes and policies to meet these needs is essential in order to ensure the emotional stability and development of refugee children.
9. Refugee children may face integration problems in the country of durable solution. When programmes are established to facilitate their adjustment to the new society, special allowance has to be made for the refugee children's social and cultural background.
10. In a number of countries programmes exist which are geared to preventive action, special assistance and rehabilitation for disabled

refugee children
or More
of disabled
efforts
and accom
children

11. Apart from
the relief
means
countries
states
of the
institutions
etc.
to spe
What
be ac
shou
econo
ing
part

refugee children. In addition, several countries, through the "Twenty or More" Plan or other arrangements, provide for the resettlement of disabled refugee children as appropriate. International and national efforts in these areas should be increased to assist such children, and account be taken of the needs of mentally disturbed refugee children.

11. Apart from the above, taking into consideration the magnitude of the refugee problem, it is imperative to find out new ways and means to increase the funding of the UNHCR apart from the contributions of the nation-States such as, requesting the member states by the UN to amend their tax laws to exempt the contributions of the Individuals from their income, donations given by charitable institutions, Philanthropists, and other non-governmental organizations etc.³² The UN also should take steps to request the member States to sponsor specialized schemes to help the refugee children. Whatever one may suggest, without financial support nothing can be achieved. Hence, the UN and the nation-states and their citizenry should come forward to strengthen the hands of the UNHCR economically. Then only it can be able to achieve its goals in protecting the rights of the refugees in general and the refugee children in particular.

32. See, T.S.N.Sastry, "Refugee Problems and the Role of the UNHCR", *Andhra University Law Journal*, vol. 3 (1999), pp. 64-69.