

**UNHCR INPUTS TO THE
OHCHR REPORT ON THE PROTECTION OF THE RIGHTS OF THE CHILD IN
MIGRATION CONTEXTS**

Mixed migration consists of movements where refugees, asylum-seekers, victims of trafficking, unaccompanied and separated children (UASC), and other persons, travel internationally, frequently in an irregular manner. The movement involves men, women, boys, and girls with different profiles and protection needs. Children in mixed migration flows are often among the most vulnerable and may be traveling with their families, alone, or in groups of children. Some of the children on the move could also be refugees unaware of their right to seek asylum. Increasingly complicated mixed migration flows demand careful attention as children in these migratory movements are facing a wide range of protection risks.

UASC on the move are in a particularly vulnerable position due to their clandestine means of travel and often being in the hands of smugglers and traffickers. UASC have a lower likelihood of reporting sexual or economic abuse or exploitation to local authorities for fear of being arrested, detained, deported and/or returned to their country of origin. While the reasons for departure vary, children in mixed migration flows, including UASC, are at increased risk of abuse, violence and exploitation and are therefore in need of specific child protection measures. First and foremost, it is the national governments of countries where migrating children find themselves that have an obligation to give these children special protection. However, effective protection responses call for cross-border cooperation and inter-agency coordination.

Implementation challenges for the international child protection framework

Translating international legal instruments and guidance into national practice exposes many implementation challenges. The CRC requires countries to reassess their national child protection systems and ensure that additional safeguards are put into place to fill existing protection gaps for all children, including for children in migratory flows, refugee children, displaced and stateless children. Traditional expectations that child protection falls under the purview of family responsibility and not that of the state may in some countries result in a climate of low political will and weak public support for changes to national child protection systems.

Lack of government capacity

Many countries – whether transit or destination countries – have not been able to establish effective systems for identification, referral, care arrangements, standards, protocols and procedures for cases of children in mixed migration flows. Sometimes this is due to lack of government capacity and lack of understanding and awareness of the issues surrounding children in migratory movements. Systematic capacity-building and coordination are important in order to improve the ability of national and local officials to respond to large migration flows involving children.

Challenges in age assessment

While a number of countries have established special procedures for the protection and assistance of children in mixed migration flows, children might not have access

to these services if they are not able to prove that they are under the age of 18. Therefore issues around documentation and age assessment are important for children in mixed migration flows. Currently, an exact, scientific age assessment technique does not exist. A wide margin of error is often present. If a case is in doubt and the age of the person claiming asylum is not clear, the person should be given the benefit of the doubt and treated as under 18 years of age. Given the subjectivity of visual assessments for determining an undocumented child's age, it is possible that children who have a right to international protection and care are not able to avail themselves of such assistance.

The Separated Children in Europe Programme (SCEP) presented the factors involved in age assessment and offered guidance on determining the age of a child in the 2004 *Statement of Good Practice*. "Age assessment includes physical, developmental, psychological and cultural factors. If an age assessment is thought to be necessary, independent professionals with appropriate expertise and familiarity with the child's ethnic/cultural background should carry it out. Examinations should never be forced or culturally inappropriate. Particular care should be taken to ensure they are gender-appropriate."ⁱⁱ Unnecessary exposure to X-rays, or other unproven age assessment techniques that are not warranted for medical reasons, may be potentially harmful for the child. Additionally, if children under the age of 18 do not perceive a benefit in claiming to be minors, they may also falsely claim to be adults.

UNHCR's 2009 *Guidelines on child asylum claims* offer assistance to governments and agencies carrying out refugee status determination in a child-sensitive manner. They highlight the specific rights and protection needs of children in asylum procedures.ⁱⁱ It is critical for stakeholders to understand that a child who appears to be a migrant may be a child in need of international protection.

Protection challenges

The tendency for national migration policies to criminalize irregular migration may also expose children in mixed migration flows to greater protection risks. In a number of countries children in mixed migration movements may be detained as part of the migration policies of a country. The prolonged detention of children interrupts their development and may have serious long term psychological effects. At times boys and girls may be kept in cells with adults which puts them at further risk of exploitation and abuse, including gender-based violence.

UNHCR Executive Committee Conclusion No. 107 (LVIII) issued in 2007 on children at risk recognizes that detention for children should only be used by States as a last resort.ⁱⁱⁱ Children, as a general rule, should never be detained.

UNHCR, as part of its protection mandate, seeks to prevent refugees, asylum-seekers, internally displaced persons (IDPs), stateless persons and other persons of concern from falling victim to trafficking. UNHCR also has a responsibility to ensure that individuals who have been trafficked and who fear being subjected to persecution upon a return to their country of origin, or individuals who fear being trafficked, are recognized as refugees and afforded the corresponding international protection when their claim to international protection falls within the refugee definition contained in the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.^{iv}

Although the legal actions against trafficking in the international child protection framework are improving, government policies often focus on the criminalization and prosecution of traffickers and not on the protection of trafficking victims. Smuggled or

trafficked children may be given false information or instructed to claim that they are without identification documents. Children may fear reprisals if they report their situation. Thus, the reported number of trafficked children may not accurately reflect the real numbers.

The general lack of access to guardians in host countries for UASC undermines the effective protection of children. This also includes access to the provision of basic services such as appropriate temporary care facilities, education, health, and psychosocial care. The lack of guardianship also causes long delays in finding durable solutions for children and hinders the possibility of a child submitting an asylum claim. An independent, qualified guardian must be appointed immediately for UASC, free of charge.^v

Lack of documentation

As highlighted above, the lack of documentation of children can put children in mixed migration flows at risk. Children without a birth certificate or a legal identity can find it difficult to access essential basic services. They may also face difficulties in adult life in proving their nationality, accessing an inheritance, owning property, or gaining access to credit.

While many countries, with the support of international agencies, have worked to ensure more comprehensive birth registration procedures for all children regardless of nationality, some children, in particular displaced, refugee or stateless children still face great challenges overcoming barriers to birth registration. UNHCR estimates that less than 50% of newborn refugees in camps and urban areas are issued birth certificates. Birth registration challenges may relate to the availability or accessibility of authorized birth registration procedures in the destination country, length of the procedure, cost of filing paperwork or traveling long distances to register children, time limit restrictions imposed by host countries on deadlines for birth registration, and reluctance to register for various reasons (illegal status, cultural bias against single mothers or unresolved issues connected to a nation's preference for determining nationality by *jus sanguinis* or *jus soli*). Low awareness about the need to register births also presents an obstacle.

To ensure that all children around the world have the international protection offered by a legal identity, country-specific responses have been developed by UNHCR in collaboration with UNICEF and OHCHR to improve access to birth certificates. Government officials are assisted in responding to the contextual needs surrounding birth registration for children of foreign nationals.

Guidance relevant to children in migratory movements

Guidance on Best Interests Determination (BID)

In UNHCR's efforts to enhance the protection of children of concern to the organization, UNHCR has sought to operationalize the concept of best interest as a primary consideration in line with Art. 3 of the CRC. In this respect, UNHCR issued in 2008 the Best Interests Determination Guidelines to assist UNHCR and staff of partner organizations in the implementation of best interest procedures. The CRC places the main responsibility with governments in ensuring that the best interests of the child is a primary consideration in all decisions taken that affect the child. UNHCR ExCom Conclusion No. 107 also recommends conducting a BID of the child within a framework of child protection systems. However, at times children of

concern do not have access to national child protection systems and therefore UNHCR has established a procedure for best interests of the child and has now made this procedure an organizational priority in particular for UASC.

The BID Guidelines recommend for a BID to be undertaken in the following three situations: 1) to find durable solutions for refugee UASC; 2) to arrange temporary care for UASC in exceptional situations; and 3) in the case of possible separation of a child from parents against their will.^{vi}

UNHCR's BID process involves the establishment of standard operating procedures (SOPs), and establishing a BID panel. The panel should consist of 3 to 5 persons with child protection expertise ideally representing multiple disciplines with the task of making best interest decisions for individual cases.^{vii}

These BID guidelines could serve as a basis for enhancing national capacities to establish BID procedures as part of national child protection systems, including addressing the protection needs of children in mixed migration flows.

Guidelines, training tools and the promotion of coordinated responses

ARC training materials for humanitarian workers

In 2009, the *Actions for the Rights of Children* (ARC) resource pack was issued as a training tool by six agencies¹ to inform humanitarian actors about international instruments for children's rights and critical issues facing children. This resource pack is one of the most comprehensive training tools developed for humanitarian contexts. ARC shares strategies for prevention, response and monitoring of issues that also arise for children in a migration context related to: 1) abuse and exploitation; 2) education; 3) children with disabilities; 4) sexual and reproductive health; 5) landmine awareness; 6) UASC; and 7) children associated with armed forces or armed groups.

Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997)

The focus of these guidelines is on UASC seeking asylum, but also include some basic principles that should apply to unaccompanied children who are found not to qualify for asylum elaborated upon in paragraphs 9.2 - 9.7. The guidelines also highlight the need to adopt a partnership approach through using the expertise of international agencies.

Inter-Agency Guiding Principles on UASC

The *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* (2004) were developed in close collaboration between the ICRC, IRC, Save the Children UK, UNICEF, UNHCR, and World Vision International. This tool advocates a comprehensive approach to child protection and recognizes the long-term commitment necessary when taking action to assist UASC. Any decision involving UASC should consider all of the child's rights,² the best interests of the child, the

¹ UNHCR, UNICEF, OHCHR, IRC, Terre des hommes, and Save the Children developed the Action for the Rights of Children resource pack as an inter-agency collaboration.

² Rights of particular concern to UASC include the right to 1) a name, legal identity, and birth registration; 2) physical and legal protection; 3) non-separation from their parents; 4) provisions for their basic subsistence; 5) care and assistance appropriate to their age and developmental needs; and 6) participate in decisions about their future (IA Guiding Principles on UASC, 2004).

child's opinion, the principle of family unity where UASC must be allowed access to services intended to reunite them with parents or primary legal care givers as quickly as possible, non-discrimination, and the special needs of girls.^{viii} These actions must take place within an overall protection framework with due consideration for the complementarity and cooperation among all organizations involved in the protection and care of UASC.

The 10-Point Plan of Action

The 10 Point Plan of Action sets out ten key areas in which UNHCR has a role to play and where UNHCR could have an impact on the protection of refugees, including children, in mixed migration flows. This has been followed up with a publication of best practices. The objective of this publication was to develop migration strategies that consider States' sovereignty and security concerns and the rights of people involved in mixed migratory movements. It contains 150 practical examples from 55 different countries.

UNHCR/IOM Standard Operating Procedure

To further improve the working relationship between UNHCR and the International Organization for Migration (IOM) on trafficking matters, a draft Standard Operating Procedure (SOP) was developed. This SOP also applies to child victims of trafficking and outlines the roles and responsibilities for each agency to provide a more coordinated and effective response to trafficking cases.

UNICEF, UNHCR, IOM working group on UASC in mixed migration

In May 2010, UNHCR, IOM and UNICEF formed an inter-agency working group on UASC in mixed migration flows. The focus of the group will be to facilitate the coordination between IOM, UNICEF and UNHCR in relation to UASC. The task will be approached in a staggered way with an initial focus on the issue of UASC arriving in Europe and then expand to address broader issues related to UASC in migratory flows.

Protection of children including child victims of trafficking

CRC General Comment No. 6

General Comment No. 6 issued by the Committee on the Rights of the Child in 2005 addresses the treatment of UASC outside their country of origin. Practical measures must be taken to prevent exposing children to protection risks. Some measures could include: the provision of information for children to understand the risks they face, the prompt appointment of guardians, and priority procedures for child victims of trafficking.^{ix} The comment elaborates on the legal obligations of States parties for all UASC and measures for their implementation, reiterates the CRC principles of non-discrimination (Article 2), best interests consideration, and respect for the principle of non-*refoulement*.

UNCHR 2006 Trafficking Guidelines

UNHCR's policy on trafficking identifies the different circumstances in which trafficking or fear of trafficking may provide grounds for a refugee claim under the 1951 Convention relating to the Status of Refugees. Trafficked children may need international protection. Under the 2006 Trafficking Guidelines, each case involving a

trafficked child needs special attention during the BID process and careful consideration of the actions leading to the trafficking, which may involve family members or caregivers.^x Additionally, certain children belonging to a particular social group within the Convention definition may be more vulnerable to trafficking and can also qualify as refugees before trafficking occurs based on the threat of trafficking. Refugee and asylum-seeking children may be particularly vulnerable to being trafficked.

The Americas: Regional approach to protecting child victims of trafficking

In the Americas, regional efforts to work across borders to combat the trafficking of children have resulted in an annual migration conference that produced regional guidelines. The Regional Conference on Migration (RCM), also known as the “Puebla Process,” developed *Regional guidelines for special protection in cases of the repatriation of child victims of trafficking* in April 2007 during RCM XII.^{xi} The ten countries from the Americas³ published common procedures to ensure the special protection of children in accordance with the definitions of exploitation and trafficking as established by *Articles 3.a and 3.c of the UN Trafficking in Persons Protocol*.

According to the guidelines, after identifying child victims and providing immediate humanitarian assistance, special protection constitutes: a) safe, suitable and specialized lodging; b) an age appropriate diet to the extent possible; c) access to immediate medical and psychological assistance as well as educational and recreational opportunities; d) protection of the victim's identity; e) respect for the child's right to express his or her view, be informed about legal proceedings, and have information translated into a language that can be understood at his or her age and level of maturity.^{xii}

Improving national child protection systems through partnerships

UNHCR is part of an inter-agency effort together with UNICEF and Save the Children that represents a shift towards a systems approach to child protection. A child protection systems approach advocates the non-discriminatory access by children of concern to national child protection systems, and seeks to support and strengthen national capacities where they exist. A systems approach also calls for enhanced partnerships and coordination at the country level, in particular with national institutions, UNICEF and other child protection actors to ensure the optimal use of available resources, capacities and expertise.

Between 2008 and 2009, UNHCR's efforts to operationalize a systems approach focused on developing a manual on child protection systems and the field testing was done in cooperation with Save the Children Sweden and Norway. This complements inter-agency efforts, led by UNICEF to develop a more comprehensive toolkit for child protection systems.

In Ecuador, for example, the implementation of the child protection systems project led to the development of standard operating procedures on child protection both in the capital and the field, and cooperation with relevant stakeholders (including national authorities) has been strengthened. Through the mapping of existing child protection agencies and services in the pilot countries, the project has laid the groundwork for enhanced coordination between UNHCR and governmental and non-

³ The countries in the RCM, or “Puebla Process,” are Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Honduras, Mexico, Nicaragua, Panama, and the United States.

governmental counterparts as part of a “systems approach” to the protection of children of concern.

The systems approach to child protection provides a good basis for advocacy for the inclusion of all children – including children in mixed migration flows – under the umbrella of national child protection systems.

Good practices for improving protection of migrating children

UNHCR and its implementing partners have worked to establish good practices in the protection of migrating children with the assistance of national and local governments.

Mexico: Child protection officers handling UASC caseloads

To address the large number of UASC crossing the border of southern Mexico as part of mixed migration flows, authorities within the Mexican government, together with assistance from international agencies, established two key initiatives to increase the protection space for UASC: the Inter-Institutional Roundtable on Unaccompanied Children and Women Migrants and child protection officers (CPOs).

The roundtable involved 11 different international and national agencies,⁴ and had a major impact on establishing and training a group of national CPOs. The 68 CPOs appointed by the Mexican government in 2007 with the support of UNHCR and IOM were joined by an additional 180 new CPOs in 2008. Upon review, the independence of the CPOs is weakened by their connection with the National Institute for Migration (representing the interests of the government migration authority), and their ability to advocate for children is lessened. Nonetheless, the CPOs have a critical role in identifying and addressing the specific protection needs of children.^{xiii} The increase in national child protection capacity reduced the risks of trafficking, abuse and exploitation with CPOs actively involved in monitoring and acting on behalf of individual UASC cases.

Tunisia: 10-Point Plan of Action expert roundtable number 2: Different people, different needs

The second expert roundtable for UNHCR’s 10-Point Plan of Action on refugee protection in mixed migration took place in Tunis, Tunisia in July 2009. UNHCR, IOM, and IFRC hosted 40 experts from governmental and non-governmental organizations, academia, and their own agencies to explore ways to ensure respect for the human rights of all people on the move. The roundtable discussed cooperation between organizations and the best ways to identify and protect displaced persons with specific needs, such as trafficked persons, asylum-seekers, children and women at risk, soon after arrival. In the immediate post-arrival phase, addressing the different needs of different people would involve an increase in the availability of reception arrangements with basic necessary services at points of arrival, and enhanced cooperation and referral mechanisms to relevant processes and procedures.

Sri Lanka: Protection network for SGBV prevention and response

⁴ IOM, UNHCR, UNICEF, and UNIFEM worked with Mexico’s Department of Family Development, Mexican Commission to Assist Refugees, National Human Rights Commission, National Institute for Migration, Secretary of Health, Secretary of Public Education, and Secretary of Social Development.

A special protection network initiated by UNHCR in northern Sri Lanka assisted in the prevention of and response to SGBV in displaced communities.⁵ A panel of lawyers, policy officers, health officers and local support organizations was formed in early 2004 to address the common knowledge that sexual violence was rampant in the area. UNICEF was also invited to participate considering the high number of child SGBV survivors. The numerous campaigns organized by UNHCR to raise awareness in the communities and the assistance provided to victims/survivors of SGBV through the collective decisions made by the panel, have established a mechanism that takes action in conjunction with the Sri Lankan Red Cross towards finding lasting solutions for SGBV cases. The protection network assisted the displaced and also served the entire population of the district.

Morocco: Legal advocates working towards documentation

Children born to refugees or to migrant parents have often problems to obtain necessary documentation. Moroccan citizenship is very hard to obtain for foreign nationals and their children due to national laws based on *jus sanguinis*, or descent. UNHCR and its legal partners, have been using the amended Nationality Law in an attempt to obtain citizenship for children born to mixed couples (one of the parents is Moroccan). However, only a few of these applications have been successful.^{xiv} This illustrates the challenges faced by children born to migrants or refugees.

Ecuador: Mobile birth registration brigades

UNHCR worked with UNICEF and a number of NGOs in Ecuador to carry out a nation-wide birth registration campaign between 2006 and 2008 in coordination with the Civil Registry. UNHCR also developed information materials in collaboration with UNICEF on the mobile registration brigades organized by the Civil Registry and the documents required for birth registration. Ecuadorian authorities accepted documents issued by the Directorate General of Refugees with UNHCR support attesting to the status of parents as refugees or asylum-seekers as proof of identity to register the birth of their children.

Canary Islands, Spain: Training workshop for lawyers to assist migrating youth^{xv}

As part of an initiative focusing on the needs of children arriving in a mixed migration flows, UNHCR Spain conducted training workshops together with Save the Children for more than 100 lawyers who work with youth and police personnel in the Canary Islands, specializing in legal and social protection of minors in the Canary Islands. The 2008 workshop focused on the rights migrating children have when they arrive on the islands and the fact that children are not receiving asylum information upon arrival nor when they are placed in temporary care shelters. The workshop repeated in 2009.

Italy: Monitoring and responding to deficiencies in guardianship for unaccompanied children seeking-asylum

UNHCR project staff in Italy and particularly Sicily identified in 2007 long delays in guardianship assignment for unaccompanied children seeking asylum. As a result an a procedure for accelerated appointment of guardians was established and therefore

⁵ The *UNHCR Handbook on the Protection of Women and Girls* provides many examples of effective protection field practices along with the context of the protection challenge, a description of which agencies have responsibility in a situation, and how to respond with concrete actions.

formalized asylum claims for unaccompanied children were submitted in an expedited manner, by-passing many obstacles that were causing overcrowding in temporary care facilities. Arrangements made with immigration offices helped unaccompanied children to schedule asylum appointments and provide an outline of the asylum claim in advance. The inter-ministerial directive on unaccompanied asylum-seeking children was adopted in 2007 with substantive contributions from UNHCR Rome. A range of critical areas were covered such as the timely transfer of UASC to temporary care facilities, the provision of information and identification of asylum-seeking children, and assistance in filing an asylum application. Save the Children has also played an important role in setting up monitoring systems and building institutional capacity.^{xvi}

Guidelines and Resource List

- *SCEP Statement of Good Practice*, 2004
<http://www.unhcr.org/refworld/pdfid/415450694.pdf>
- *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2006
<http://www.unhcr.org/refworld/pdfid/48480c342.pdf>
- *UNHCR Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009
<http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>
- *UNHCR Guidelines on International Protection: The application of Article 1(A)2 of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, 7 April 2006
<http://www.unhcr.org/443b626b2.html>
- *UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, February 1997
<http://www.unhcr.org/refworld/pdfid/3ae6b3360.pdf>
- *UNHCR Handbook for the Protection of Women and Girls*, January 2008
<http://www.unhcr.org/refworld/docid/47cfc2962.html>
- *UNHCR Refugee protection and mixed migration: The 10-Point Plan of Action*, January 2007
<http://www.unhcr.org/4742a30b4.html>

ⁱ Separated Children in Europe Programme, *SCEP Statement of Good Practice*, 2004, Third edition, p. 18.

ⁱⁱ UNHCR, *Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, para 1.

ⁱⁱⁱ UNHCR Executive Committee, *UNHCR Executive Committee Conclusion No. 107 (LVII) – 2007 on Children at Risk*, 5 October 2007.

^{iv} UNHCR, *Guidelines on International Protection: The application of Article 1(A)2 of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, 7 April 2006, para 5.

^v UNHCR, *Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, para 1.

^{vi} UNHCR, *Guidelines on Determining the Best Interests of the Child*, May 2006, Geneva, p.22.

^{vii} UNHCR, *Guidelines on Determining the Best Interests of the Child*, May 2006, Geneva, p.53.

^{viii} UNHCR, UNICEF, ICRC, International Rescue Committee, Save the Children (UK), World Vision, *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, 2004, Geneva, p. 16-18.

^{ix} UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, para 24.

^x UNHCR, *Guidelines on International Protection: The application of Article 1(A)2 of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, 7 April 2006, para 20.

^{xi} Regional Conference on Migration (RCM), *Regional guidelines for special protection in cases of the repatriation of child victims of trafficking*, April 2007, XII RCM New Orleans, USA, p. 8.

^{xii} Ibid.

^{xiii} UNHCR, *Refugee protection and mixed migration: The 10-Point Plan in action*, June 2009, Geneva, p. 104.

^{xiv} UNHCR Policy Development and Evaluation Service (PDES), *Refugee protection and international migration: a review of UNHCR's role and activities in Morocco*, March 2010, Geneva p.22.

^{xv} UNHCR Policy Development and Evaluation Service (PDES), *Protección de los refugiados y migración internacional: revisión del papel del ACNUR en las Islas Canarias, España*, Abril de 2009, Geneva p.21.

^{xvi} UNHCR Policy Development and Evaluation Service (PDES), *Refugee protection and international migration: a review of UNHCR's role and activities in southern Italy*, September 2009, Geneva p.27-28.