

IRC/CCJHR Seminar on Separated Children in Ireland

(Cork, 28 November 2007)

Statement by Manuel Jordao
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Good afternoon, ladies and gentlemen.

I wish to thank the Irish Refugee Council and the Centre for Criminal Justice and Human Rights at University College Cork for giving UNHCR the opportunity to contribute to your discussions on the current situation of separated children in Ireland.

With a Bill on immigration, residence and protection matters about to be published, we believe this will be a crucial time for agencies with experience and concerns to offer some constructive ideas for moving the protection agenda forward.

The Bill on Immigration, Residence and Protection, in particular, offers an opportunity to address a number of issues that might be relevant for improving the situation of separated children in Ireland. In the area of children, there is of course also an on-going national debate on the best ways to strengthen children rights in Ireland, which might lead to a referendum and a possible revision of the Constitution in 2008.

International Legal Framework

Child rights are set forth in a number of international legal instruments, including general human rights, international humanitarian, refugee and criminal law.

Among those listed in the slides before you, the 1989 Convention on the Rights of the Child is, as you are aware, the most authoritative international legal instrument for the protection of the human rights of children, given its almost universal acceptance.

More recently, its importance has been reinforced by the adoption of the two additional Protocols [Slide 3]. Three UN Security Council Resolutions on children and armed conflict adopted in the period 2000-2006 (Resolutions 1612, 1674 and 1325) are the other main international developments registered to date in relation to child protection

UNHCR's mandate

As you know, in the case of children, the 1951 Refugee Convention does not set out any specific obligations on States other than what applies to all refugees irrespective of their age. However, bearing in mind the fact that approximately half of the world's refugees are children, UNHCR's work to protect refugee and asylum-seeking children, as well as stateless children, remains central to the fulfillment of UNHCR's mandate.

In this endeavor, UNHCR has developed a policy on refugee children which besides establishing the grounds for special action on behalf of refugee children, is also in keeping with the Convention on the Rights of the Child (CRC). As a UN convention, it is a vital frame of reference for UNHCR's action. Moreover, the CRC provides a comprehensive framework for the responsibilities of its State Parties to all children within their borders, including those of concern to UNHCR.

Key principles in child protection

The slide shows some of the key policy statements produced by the Office on this subject since 1987, in particular a number of UNHCR EXCOM Conclusions, the 1993 UNHCR Policy on Refugee Children and the 1997 Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum.

These documents outline some of the key principles of refugee protection adapted to suit the needs of children, including definitions, special provisions on access to the asylum procedures, approaches to refugee status determination, finding durable solutions, as well as care arrangements.

More recently, in October 2000 the Separated Children in Europe Program, a joint program established in 1997 with Save the Children, developed a Statement of Good Practice document, which further addresses many of the issues facing countries in Europe dealing with separated children seeking asylum. That Statement makes recommendations on good practice in relation to a number of key child protection issues, including *access to the territory; anti-trafficking measures; identification, registration and documentation; family tracing and family reunification; age assessment* among other key topics of interest such as the one chosen as the subject of this seminar, the *appointment of guardians or advisers*.

Taken together, the above mentioned policy documents propose that States adopt a series of principles and measures with a view to securing the basic human rights of

children who are outside their country of origin and entitled to international protection under a broad range of international instruments.

The basic guiding principle in any child care and protection action is the principle of the “*best interests of the child*”, about which UNHCR has recently published a set of guidelines regarding how it is determined (May 2006).

The other notable child protection principles that should guide State policy and practice generally are the principle of non-discrimination, the facilitation of family unity, protection against abuse, exploitation and neglect, as well as the full enjoyment of a child’s basic social rights in a “participatory” process that takes into account their views and wishes.

Irish State Practice

To date, Ireland has shown interest and determination in putting in place child protection policies and mechanisms that should enable the State to meet its international obligations. In its second periodic report on Ireland’s implementation of the Convention on the Rights of the Child (September 2006), the Committee on the Rights of the Child welcomed the creation of the *National Children’s Strategy*, including the public consultations undertaken in its development; the establishment of the *Irish Human Rights Commission*, the *National Children’s Office* and of the *National Children’s Advisory Council* in 2001; the appointment of the *Ombudsman for Children* in 2004; the creation of the *Office of Minister for Children* in 2005; the awareness raising activities undertaken by the State to make the Convention known; and the establishment of the *National Action Plan against Racism*, among others.

As regards the concerns and recommendations part of this report, the Committee regretted among others, that the Convention (CRC) had not yet been incorporated into domestic law; the insufficient allocation of resources to implement outstanding provisions in the Children Acts of 1997 and 2001 that are relevant for the protection of children rights; and the lack of systematic and comprehensive data on children, disaggregated by age, sex, ethnicity, rural and urban background, which would enable analysis of the situation of particularly vulnerable children.

The Committee further noted that the *principle of the best interests of the child* was still insufficiently addressed and needed to be applied in all political, judicial and administrative decisions, as well as projects and services that have an impact on children; that a high number of complaints received by the Ombudsman for Children related to a lack of respect for the views of the child and finally, that the existing

provisions to ensure the use of independent representations (*guardian ad litem*) were insufficient and not used in a systematic and comprehensive manner.

In this connection, the report also addressed the situation of refugee and asylum seeking children by stressing the Committee's concern with the fact that, I quote *unaccompanied children or children separated from their parents might still not receive adequate guidance during the asylum process, in particular with respect to access to services and an independent representation.*

As a result the report further recommends the State to take the necessary measures to bring its policy, procedures and practice in line with its international obligations, as well as principles outlined in other documents, including the Statement of Good Practices produced by UNHCR and Save the Children.

UNHCR, of course, subscribes the observations made by the UN Committee on the Rights of the Child and for obvious protection related reasons, continues to cooperate with the Committee as well as with six other UN treaty monitoring bodies.

UNHCR' recommendations

One of the key recommendations of UNHCR/Save the Children's Separated Children in Europe Program and its Statement of Good Practice document (both referred to by the Committee), relates to the appointment of guardians and their role, the main topic of this seminar.

As outlined in the discussion paper distributed at this seminar, we share the belief that the guardian should not be involved in taking decisions on the child's rights and entitlements. Instead, he/she should be able to assist the child in respect to issues of confidentiality and ensure that the best interests of the child is the guiding principle in all decisions related to the provision of the child's care, protection and recommended solutions.

As you may be aware, UNHCR is currently finalising the mapping of guardianship systems in Europe. This overview of European countries will document guardianship systems, legislation and practices for unaccompanied and separated children seeking asylum in the 42 countries covered by UNHCR's Bureau for Europe.

It was initiated and undertaken jointly by the Separated Children in Europe Programme (SCEP) and the Bureau for Europe in recognition of the lack of information regarding guardianship provisions in Europe and the crucial role that guardians are expected to play in ensuring appropriate and adequate protection and care for unaccompanied and separated children. Unfortunately, the results of this study are still at draft stages, but I would hope that we will soon be in a position to share something with you, as a basis on which to look further at what works well, or not so well, in other countries.

Today, let me briefly look at what measures UNHCR would like to propose as suggested ways forward for Ireland in the area of guardian services for separated children.

UNHCR would advocate for an independent service providing each unaccompanied and separated child with a guardian, who's role should include ensuring that the best interest of the child is taken into consideration in all decisions relating to the child, including whether or not an application for protection in the State should be made. The guardians would be qualified for the task and be able to give moral support and advice and have full knowledge of the legal rights and obligations of the child. The guardian would also play an important role in relation to family tracing and finding durable solutions. In line with the observations made in 2006 by the UN Committee on the Rights of the Child, UNHCR would also further encourage the adoption of appropriate measures to ensure the use of independent representations (*guardian ad litem*) in a systematic and comprehensive manner.

We hope today's discussion on the topic will generate into some concrete action in line with best practices and international recommendations on standards.

Once again thank you for this opportunity to be here with you. I look forward to further discuss this issue and related child protection issues with you.