

## BACKGROUND PAPER

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## I. Introduction

1. The risks faced by children who move across international borders in search of protection (“children on the move”)<sup>1</sup> are significant. In early 2016, UNHCR reported that, on average, two children were drowning every day trying to cross the Mediterranean Sea to Europe. An untold number continue to perish in the Gulf of Aden and other regions. Children on the move have fallen prey to smugglers and traffickers, and are at risk of recruitment into armed groups, sexual and gender-based violence, kidnapping, child labour and child marriage. Some are orphaned or separated from their parents and other family members. In some countries, children on the move are detained, at times for indefinite periods and in inhumane conditions. Millions of refugee children are not in school.<sup>2</sup> Disabled children and those in need of medical treatment may go without care. Durable solutions have become elusive, with ever-larger numbers of refugee children stranded in protracted displacement situations.

2. At the same time, international law and standards identify children as deserving of special protection and assistance.<sup>3</sup> The Convention on the Rights of the Child (CRC) is one of the most widely ratified international treaties, and its provisions are to be applied “without discrimination of any kind”.<sup>4</sup> The Executive Committee of the High Commissioner’s Programme (ExCom) has stressed that all children of concern to UNHCR are entitled to protection of their rights,<sup>5</sup> and UNHCR published its first guidelines on refugee children in 1988. Today, UNHCR’s Framework for the Protection of Children is underpinned by its global strategies on education, detention, sexual and gender-based violence and a global plan to end statelessness.<sup>6</sup> Most recently, in September 2016, the Member States of the United Nations reaffirmed their commitment to addressing the specific needs of children travelling as part of large movements of refugees and migrants, especially children who are unaccompanied or separated from their families, in the New York Declaration for Refugees and Migrants (New York Declaration).<sup>7</sup>

3. Against this background, and in follow-up to the New York Declaration, this year’s High Commissioner’s Dialogue on Protection Challenges (the Dialogue) will explore some of these challenges, with a view to narrowing the gap between States’ commitment to international norms of child protection and the reality faced by children of concern to UNHCR who move across international borders.

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<sup>1</sup> This paper uses the term “children on the move” to refer to children of concern to UNHCR (asylum-seeking, refugee and stateless children) who move across international borders in search of protection and solutions, whether accompanied or alone. In other contexts, such as the Inter-Agency Group on Children on the Move, this term has a broader meaning. See, for example: <http://www.gmfc.org/en/action-within-the-movement/gmc-actions/actions-by-imperatives/other-campaigns-a-actions/current-actions/90-international-conference-on-children-on-the-move>.

<sup>2</sup> UNHCR, *Missing Out: Refugee Education in Crisis*, September 2016.

<sup>3</sup> Article 1 of the [Convention on the Rights of the Child](#) defines a child as “...every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”.

<sup>4</sup> [Convention on the Rights of the Child](#), Article 2.

<sup>5</sup> For ExCom conclusions concerning children of concern to UNHCR: see UNHCR, *A Thematic Compilation of Executive Committee Conclusions*, June 2014.

<sup>6</sup> UNHCR *A Framework for the Protection of Children*, 26 June 2012; UNHCR, *Action against Sexual and Gender-Based Violence: An Updated Strategy*, June 2011; UNHCR, *Education Strategy, 2012-2016*, 28 February 2012; *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees 2014 – 2019*, 2014; *Global Action Plan to End Statelessness*, 4 November 2014.

<sup>7</sup> [New York Declaration for Refugees and Migrants](#), UN Doc. A/71/L.1, paras. 23 and 32.

4. The broad objectives of this year's Dialogue are:
- to share good practices and lessons learned for the protection of children on the move;
  - to strengthen public policies affecting children on the move;
  - to seek renewed commitment to principles governing protection of, assistance to and solutions for children on the move; and
  - to inform the revision and updating of relevant policies and guidelines concerning children.
5. In addition to plenary sessions, the Dialogue will convene three thematic sessions that will focus on:
- pursuing regional approaches to protect children on the move;
  - operationalizing children's rights; and
  - securing solutions for children on the move.
6. In addition to these broad objectives, the discussion at the Dialogue will inform the development of the comprehensive refugee response and the global compact on refugees to be adopted in 2018, as outlined in the New York Declaration – notably to ensure that these processes include a strong focus on the protection of children. Accordingly, where relevant, this paper makes specific reference to State commitments in the New York Declaration, and in the thematic sessions participants will be asked to propose how these commitments can result in improved protection outcomes for children on the move.

## II. Understanding the phenomenon

### Data and data gaps

7. Cross-border movements of children, including those who are alone and those accompanied by family members, take place on a large scale in all regions of the world.<sup>8</sup> A decade ago, UNHCR's ExCom underlined the importance of the systematic collection and analysis of age- and sex-disaggregated data on children of concern to UNHCR.<sup>9</sup> Despite this, there remains an urgent need for better comparative data, including on the characteristics, capacities and needs of children on the move and on their success in securing durable solutions. As recognized by States in the New York Declaration, improved data is essential for policy development and more effective responses.<sup>10</sup>

8. UNHCR statistics show that 51 per cent of the world's refugees are children, with significant variations between regions and countries. In Africa, for instance, 57 per cent of refugees registered with UNHCR are children, up to 70 per cent for certain nationalities.<sup>11</sup> There is also considerable disparity in the availability of age-disaggregated data. UNHCR data is available for 90 per cent of refugees in Africa. However, age- and sex-disaggregated data is available only for 52 per cent of refugees in Asia, 27 per

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<sup>8</sup> UNICEF, *Uprooted: The Growing Crisis for Refugee and Migrant Children*, September 2016.

<sup>9</sup> See [ExCom Conclusion 107 \(LVIII\) 2007](#). A decade later, ExCom appealed for improved data concerning youth of concern to UNHCR: see [ExCom Conclusion 113 \(LXVII\) 2016](#).

<sup>10</sup> [New York Declaration](#), para. 40.

<sup>11</sup> For instance, 70 per cent of South Sudanese and Sudanese refugees in Ethiopia, Kenya, South Sudan, Sudan and Uganda are children: UNHCR et al, [Updated Regional Framework for the Protection of South Sudanese and Sudanese Refugee Children](#), July 2015 - June 2017, p. 2.

cent of refugees in Latin America and the Caribbean, 20 per cent of refugees in Europe, and not at all for North America and Oceania.

9. It is especially difficult to capture information about children at the height of emergencies and in transit situations, as well as in the context of large-scale movements.<sup>12</sup> Children (and their parents) may seek to avoid detection by the authorities, while onward movements or repeated attempts to cross borders can yield both double counting and reports of disappearances.<sup>13</sup> Information on the prevalence of risk factors affecting children is also uneven, in particular for children travelling with family members.<sup>14</sup>

10. There is no global tally of unaccompanied and separated children (UASC) who seek asylum or who are recognized as refugees.<sup>15</sup> Countries use different definitions of such children and do not always record them separately from children who are present with their families – despite the fact that in all child protection systems, children who are deprived of parental care or separated from their primary caregiver are considered particularly vulnerable to exploitation and abuse, and entitled to special protection.

11. Since 2006, UNHCR has sought to compile annual statistics of asylum applications presented by UASC, based on the information available to the Office. In 2015, UNHCR reported that 112,305 UASC applied for asylum in 83 countries – mainly Afghans, Eritreans, Somalis and Syrians.<sup>16</sup> However, this is an incomplete picture, as it did not include data from all countries, including three important asylum countries: the Russian Federation, South Africa and the United States of America. Furthermore, UNHCR’s data compiles asylum applications on an annual basis. It does not include UASC who are recognized as refugees, nor does it reflect total numbers of both asylum-seeking and refugee UASC.

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<sup>12</sup> On data collection challenges see: IOM’s Global Migration Data Analysis Centre, [Children and unsafe migration in Europe: Data and policy, understanding the evidence base](#), Data Briefing Series, Issue No. 5, September 2016. On transit situations, see: Report of the Office of the UN High Commissioner for Human Rights, [The Situation of Migrants in Transit](#), A/HRC/31/35, 27 January 2016.

<sup>13</sup> See: Missing Children Europe, [Summit Report. Best practices and key challenges on interagency cooperation to safeguard unaccompanied children from going missing](#), 2016.

<sup>14</sup> [ExCom Conclusion 107 \(LVIII\) 2007](#) lists environmental and individual factors that may place children of concern to UNHCR in situations of heightened risk. Environmental factors include lack of security, abject poverty and statelessness. Individual factors may include children who are: unaccompanied and separated; girl mothers and their own children; victims of trafficking and sexual abuse; survivors of torture and violence; married under the age specified in national laws and/or in forced marriages; associated with armed forces or groups; in detention; suffering from social discrimination; mentally or physically disabled; living with or affected by HIV and AIDS or other serious diseases; and out of school.

<sup>15</sup> “Unaccompanied” children are those who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. “Separated” children have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives.

<sup>16</sup> Source: UNHCR and Eurostat (Eurostat data last updated on 21 September 2016). The 2015 data has been updated since the publication of UNHCR’s [Global Trends: Forced Displacement in 2015](#), to include asylum applications made in Belgium and Italy, and to update the figure for Germany.

### UASC asylum applications 2006 – 2015

	Applications	# of reporting countries
2006	9,900	64
2007	11,300	58
2008	16,600	68
2009	18,700	71
2010	15,600	69
2011	17,700	69
2012	21,300	72
2013	24,700	77
2014	34,300	82
2015	112,305	83

*Note: Source UNHCR and government data (Eurostat data last updated 21 September 2016)*

12. According to information available to UNHCR, many UASC remain in countries of first asylum in their regions of origin. For instance, of 1 million refugees from South Sudan, there were some 44,600 unaccompanied or separated children, located primarily in Ethiopia, Kenya, Sudan and Uganda in 2016. UNHCR registration data indicates other large UASC populations in countries of first asylum as of October 2016 included children from Somalia (some 15,000), the Syrian Arab Republic (10,500), the Democratic Republic of the Congo (9,700), Burundi (8,400), Sudan (6,800), Eritrea (6,000) and Myanmar (4,300).<sup>17</sup> Those who do move onwards to industrialized countries have a different profile from those who remain in countries of first asylum. While UASC remaining in their regions of origin tend to include significant numbers of girls and children younger than 14 years,<sup>18</sup> in contrast, the majority of UASC who move onward to Europe and apply for asylum are older boys.<sup>19</sup>

13. There is also very little data on durable solutions achieved by refugee children. Some countries publish resettlement and asylum statistics that are disaggregated by age and sex, but there are no global numbers on children – unaccompanied or who remain together with their families – who are able to access one of the three durable solutions. Gathering and compiling such data would facilitate a much better understanding of the extent to which the protection needs of children of concern to UNHCR are being met in a sustainable manner.

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<sup>17</sup> Source: UNHCR data, as of September 2016.

<sup>18</sup> In Africa, registration data for the major UASC groups in their first countries of asylum shows that 40 per cent of these children are female and 66 per cent are under age 14. In Asia, 41 per cent are female and 49 per cent are under age 14. In the Middle East, 42 per cent are female and 53 per cent are under age 14. Source: UNHCR registration data as of October 2016 for countries of first asylum where UASC populations exceed 1,000 persons.

<sup>19</sup> According to European Union data, just 9 per cent of UASC asylum applicants in 2015 were female and just 13 per cent were under age 14: based on Eurostat data, as at 21 September 2016. Similarly, although demographic data is not publicly available for unaccompanied children who seek asylum in the United States of America, of those apprehended at border crossings by the authorities during fiscal year 2015, 32 per cent were female and 17 per cent were age 12 or under: [\*Unaccompanied Immigrant Children – Demographic Data. Research on the Unauthorized Minors arriving at U.S. Border Crossings.\*](#)

## Why are children on the move?

14. Studies show that armed conflict and violence are among the most frequent drivers of displacement of children,<sup>20</sup> but children face many types of violations of their fundamental rights. The refugee definition therefore:

...must be interpreted in an age- and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution...<sup>21</sup>

15. Child-specific forms of persecution are often interconnected with other factors, including the loss of parents to war or disease, acute poverty and food insecurity, and lack of educational and economic opportunity. The particular discrimination and barriers stateless children encounter make them especially vulnerable to forced displacement, trafficking and the worst forms of child labour.

16. Many UASC remain in countries of asylum in their region of origin. But others move onward, frequently with the involvement of smugglers, risking multiple forms of exploitation, including by human traffickers. In many cases, these children are trying to join parents or relatives located in other countries. Children also cite the lack of legal documentation and absence of educational prospects in their first countries of asylum as key reasons for their onward movement. They further identify discrimination, punitive measures such as detention, limited access to food, shelter, health care and jobs, and, above all, the lack of prospects for the future as “push” factors.<sup>22</sup>

17. When children move alone it is often because the family can only afford to send one child, not necessarily the eldest, to seek protection elsewhere. This tendency may be bolstered by a “culture of migration” that has developed over time, backed by a strong diaspora, and sometimes by misconceptions about immigration and refugee policies of destination countries. Families have usually invested heavily in their child’s journey and for these children, failure is not an option; the responsibility to reach the intended country or region and to repay their family’s debt weighs heavily on them.

18. There has been considerable research concerning the motives and journeys of specific groups of UASC arriving in Europe and North America, in particular those from Afghanistan and Eritrea, as well as from Central America, but there is much less information with respect to children on the move in other regions and from other countries of origin. More diverse research would provide a stronger evidence base for policymakers and practitioners and could support the development of more holistic responses,

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<sup>20</sup> In a recent survey, Afghan UASC in Sweden referenced violence and insecurity as their primary reasons for leaving their country. See: UNHCR and the Joint IDP Profiling Service, [\*This is Who We Are. A study of the profile, experiences and reasons for flight of unaccompanied or separated children from Afghanistan seeking asylum in Sweden in 2015\*](#), October 2016.

<sup>21</sup> UN Committee on the Rights of the Child, [\*General Comment No. 6 \(2005\) – Treatment of Unaccompanied and Separated Children Outside Their Country of Origin\*](#), CRC/GC/2005/6, September 2005, para. 74. See also: UNHCR, [\*Guidelines on International Protection No. 8: Child Asylum Claims under Articles A\(1\)\(2\) and 1\(F\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees\*](#), HCR/GIP/09/08, 2009.

<sup>22</sup> See for example: UNHCR and the Joint IDP Profiling Service, [\*This is Who We Are\*](#), October 2016; UNHCR, [\*Live, learn and play safe. Regional Initiative 2014 – 2016. Protecting Children at Risk in Egypt, Ethiopia, Sudan and Yemen\*](#).

including ways to respond to the protection needs of children who do not apply for asylum, and who tend to be “invisible” within large and mixed movements.<sup>23</sup>

### III. Rights in principle versus rights in practice

#### A solid normative framework at international level

19. At the international level, there is broad consensus concerning children’s rights. International human rights law identifies children as a particular category of rights holders. The CRC enjoys near-universal ratification and applies to all children within the jurisdiction of a State Party<sup>24</sup> without discrimination of any kind – including with respect to the child’s legal status.<sup>25</sup> States reiterated their commitment to the obligations in the CRC in the New York Declaration.<sup>26</sup> Article 22 of the CRC reiterates that the rights set out in the CRC extend, without exception, to asylum-seeking and refugee children.

20. Beyond Article 22, many parts of the CRC have particular salience for children on the move, for instance: the right to birth registration and to acquire a nationality (Article 7), respect for family unity (Article 9) and the facilitation of family reunification (Article 10), special protection for children deprived of their family environment (Article 20), the avoidance of detention (Article 37) and the importance of measures to promote psychological recovery and social reintegration (Article 39).

21. The 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol make no distinction between children and adults, and for many years were interpreted largely from the vantage point of adult experiences. In 2007, UNHCR’s ExCom drew attention to the need for States to recognize children of concern to UNHCR as “active subjects of rights” and to the fact that persecution may take child-specific forms.<sup>27</sup> In 2008, UNHCR issued guidelines on international protection specific to children’s asylum claims.<sup>28</sup>

22. Regional human rights law, including child protection law and regional refugee law, in particular in Africa, the Americas and Europe, bolsters this protective framework, as do the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

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<sup>23</sup> One example of recent research into children on the move is: Regional Mixed Migration Secretariat and Save the Children, *Young and on the Move. Children and youth in mixed migration flows within and from the Horn of Africa*, September 2016. This study reviews what is known about children on the move in the Horn of Africa: the routes and means they use, their motivations, the protection risks they face, and the legal and institutional frameworks that respond to them. The report makes eight important recommendations, including to ensure that children and youth are visible in monitoring and programme data.

<sup>24</sup> The Committee on the Rights of the Child has stated that this includes children who are attempting to enter the State’s territory. See: UN Committee on the Rights of the Child, *General Comment No. 6 (2005). Treatment of Unaccompanied and Separated Children outside their Country of Origin*, para. 12.

<sup>25</sup> A number of countries maintain reservations that have the effect of limiting their application of the CRC with respect to non-national children, while others (Germany and the United Kingdom of Great Britain and Northern Ireland, for instance) have removed reservations that pertained to non-national children.

<sup>26</sup> [New York Declaration](#), para. 32.

<sup>27</sup> [ExCom Conclusion 107 \(LVIII\) 2007](#).

<sup>28</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles A(1)(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 2009.

### What do children identify as their major protection challenges?

23. Despite the strong protective framework at the level of international and regional law, children on the move report that they face many acute protection challenges. Consultations undertaken in numerous contexts, including the 2016 Global Refugee Youth Consultations, yield a consistent picture of what children and youth identify as the main protection gaps they encounter.<sup>29</sup> The following paragraphs highlight key protection problems that children and youth themselves pinpoint, and relate these to the goals of UNHCR's Framework for the Protection of Children.

#### *A safe, inclusive and enabling environment*

24. Across all regions, children of concern to UNHCR articulate concerns that relate to the broad environment in which they live. These correlate to the first two goals of UNHCR's Framework for the Protection of Children: children should be safe where they live, learn and play; and children should be consulted and enabled to participate in matters of concern to them.

25. Violence, exploitation and abuse are paramount fears of asylum-seeking and refugee children across a wide range of settings, in countries of transit and destination, in and outside of camps, in rural and urban areas, and in designated reception centres. This includes significant risk of sexual and gender-based violence. Concerns about police harassment and violence are frequently articulated, especially by adolescents living in urban areas, along with a lack of recourse when they are subject to such treatment. Children, both alone and travelling with their families, speak of the traumatic effects of being detained in countries where they are seeking safety.

26. Many children report little positive contact with host communities in their countries of asylum and experiences of xenophobia, racism and discrimination. There is evidence that such experiences, coupled with other hardships of forced displacement, can increase young refugees' vulnerability to recruitment by or victimization at the hands of gangs, other criminal groups and radical extremists.<sup>30</sup>

27. Children on the move in various parts of the world call for more transparency from governments and international organizations, and for enhanced two-way communication enabling them to participate in matters of concern to them and to have their views heard and given due weight. Limited channels of communication, including lack of access to technology, are identified as problems by refugee children and youth, especially those living in remote areas.

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<sup>29</sup> This section draws, inter alia, from: UNHCR and Women's Refugee Commission, [We Believe in Youth. Global Refugee Youth Consultations Final Report](#), September 2016 and individual reports on consultations in Chad, Ecuador, Jordan, Uganda and elsewhere; UNHCR and the Joint IDP Profiling Service, [This is Who We Are](#), October 2016; UNHCR, [I Am Here, I Belong: The Urgent Need to End Childhood Statelessness](#), 3 November 2015; UNHCR participatory assessments with children conducted by various offices worldwide; Save the Children and UNICEF, [Consultation with Children in East Africa for the World Humanitarian Summit. Messages from Children Affected by Emergencies](#), July 2015; and the European Union Agency for Fundamental Rights report of December 2010, entitled [Separated, asylum-seeking children in European Union Member States](#). For the purposes of this paper, we have included concerns expressed by youth, who were in many cases displaced when they were still children, and who provided information about their experience of being displaced children.

<sup>30</sup> UNHCR and Women's Refugee Commission, [We Believe in Youth. Global Refugee Youth Consultations Final Report](#), September 2016, p. 11. [UN Security Council Resolution 2250](#) (2015) stresses the importance of addressing conditions that contribute to the radicalization of young people.



### *Concerns related to access to rights*

28. UNHCR's Framework for the Protection of Children (goals 3, 4 and 5) calls for children to have access to child-friendly procedures, to obtain legal documentation, and to receive targeted support, including education and health care.<sup>31</sup> Across a broad range of consultations, children and adolescents appeal for better information about their rights and for programmes to help them to access their rights. Children with specific needs, such as child survivors or children at risk of sexual and gender-based violence, and children with disabilities, may face particular challenges in accessing information and services, or in having their voices heard, highlighting the importance of ensuring that procedures and services are inclusive, taking into consideration the age, gender and diversity of individual children.

29. Children frequently report that they lack clear information about the asylum process, especially if they do not have access to legal aid and are not supported by guardians. Children who have to navigate the asylum process alone often perceive it as adversarial and manipulated against them. Many find age assessment procedures to be arbitrary, inaccurate and unfair. The appointment of qualified guardians is key to ensuring that UASC are able to exercise their rights, but many report that they do not have a guardian, do not know who he or she is, have never met their guardian or have done so only rarely.

30. In virtually every consultation, refugee children and youth speak passionately about the consequences of not being in possession of personal documents that attest to their status as asylum-seekers or refugees, pointing out that the lack of legal documentation impedes their access to rights and services, in particular to education and health care.

31. Refugee children and young people consistently place educational opportunity at the very top of their concerns, reflecting the reality that only 50 per cent of the world's refugee children attend primary school, only 22 per cent attend secondary school and just 1 per cent go on to university.<sup>32</sup> Many children on the move have never been to school at all or have seen their education interrupted, often for years. Where schooling is theoretically accessible to them, refugee and asylum-seeking children and youth often cite non-recognition of educational credentials from their countries of origin, cost, language barriers and safety issues as obstacles – along with the need to work to support their families. In addition to formal education, older children seek a wide range of opportunities to learn and build their skills.

### *Concerns related to prospects for the future*

32. The sixth goal of UNHCR's Framework for the Protection of Children reads: "Girls and boys achieve durable solutions in their best interests". A durable solution allows the child "to acquire, or to reacquire, the full protection of a State".<sup>33</sup> Refugee children are deeply concerned about their future prospects. In a wide variety of contexts, they express frustration that they are not permitted to integrate in their country of residence – in many cases the only country they have ever known. For such children,

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<sup>31</sup> Refugee youth highlighted the importance of access to comprehensive and quality health care as a major concern. They particularly highlighted the importance of access to information about sexual and reproductive health and appropriate services as well as access to psychosocial and psychological support. UNHCR and Women's Refugee Commission, [We Believe in Youth. Global Refugee Youth Consultations Final Report](#), September 2016, pp. 19-20.

<sup>32</sup> UNHCR, [Missing Out: Refugee Education in Crisis](#), September 2016. These figures compare refugee data for the 2015 – 2016 school year and to global enrolment data from the UNESCO Institute for Statistics referring to 2014. The comparable global figures are 91 per cent, 84 per cent and 34 per cent respectively.

<sup>33</sup> UNHCR and UNICEF, [Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe](#), October 2014, p. 22.

“repatriation” does not mean returning home but, rather, moving to a country where they have never lived. Children and youth are also concerned about the scarcity of resettlement places and what they view as the lack of transparency of the resettlement process.

33. For UASC, finding solutions is even more of a challenge. The Committee on the Rights of the Child has pointed out that the “ultimate aim in addressing the fate of unaccompanied and separated children is to identify a durable solution that addresses all their protection needs [...] and, wherever possible, leads to overcoming the situation of the child being unaccompanied or separated”.<sup>34</sup> Family reunion is a major concern for many of these children, who face heightened risks and integration difficulties due to separation from their families. In many countries, restrictive policies limit the prospects of reunification, even with nuclear family members, for UASC who have been resettled or granted asylum.

#### Why is there a gap between principles and practice?

34. Despite the solid international legal framework governing child protection, and the fact that it has been translated into national law in many countries, children on the move still face many protection gaps.<sup>35</sup> Four intersecting sets of reasons can be identified for this.

35. The first set of reasons relates to the relative strength or weakness of national child protection systems. Effective child protection systems are integrated systems in which all actors are engaged around the common goal of child protection.<sup>36</sup> They are built on a foundation of laws, policies and social norms that protect children from abuse, neglect, exploitation and violence. The implementation of effective national child protection systems depends on awareness of children’s rights and needs, on adequate human and financial resources to provide the necessary government services, on political commitment, and on the support of civil society.

36. Where the ability to protect national children is limited, non-national children, including children of concern to UNHCR, are likely to be at greater risk of abuse and neglect. They may face discrimination, racism and xenophobia. Adolescents may be ignored, not considered as children, or even seen as a threat.<sup>37</sup> The ability to protect non-national children may also be compromised in situations of sudden influx, and countries situated along transit or destination routes who have engaged in preparedness and contingency planning exercises may be better equipped to respond to child protection needs. International assistance can play an important part in helping to strengthen national child protection systems. A “systems mapping” exercise can help to measure the strength of child protection systems for both national and non-national children, and to identify steps that need to be taken to enhance these systems.<sup>38</sup>

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<sup>34</sup> UN Committee on the Rights of the Child, *General Comment No. 6 (2005). Treatment of Unaccompanied and Separated Children outside their Country of Origin*, para. 79.

<sup>35</sup> A simple restatement of protection principles relevant to children on the move can be found in *Recommended principles to guide actions concerning children on the move and other children affected by migration*, 2016, developed by Jacqueline Bhabha and Mike Dottridge.

<sup>36</sup> See: UNICEF, *Adapting a Systems Approach to Child Protection: Key Concepts and Considerations*, 2009.

<sup>37</sup> See: Committee on the Rights of the Child, *General Comment on the Rights of Adolescents*, (forthcoming). This general comment is intended to address the relative invisibility of, and unique challenges faced by adolescents, while emphasizing the need to respect and nurture their evolving capacities in the realization of their rights.

<sup>38</sup> For example, UNHCR and Columbia University’s CPC Learning Network are working to test a child protection index in refugee settings. See: CPC Learning Network, *Measuring Impact through a Child Protection Index. Report of Uganda Baseline Study* (by Sarah Meyer, Mara Steinhaus and Lindsay Stark), September 2015.

37. A second set of reasons for shortcomings in the protection of children on the move is rooted in the tension between immigration enforcement and child protection imperatives. As a result of this tension, even robust national child protection systems may not extend to refugee and asylum-seeking children,<sup>39</sup> or there may be frequent changes in the way State actors respond to these and other non-national children, including changes in the legal and policy framework.

38. UASC are particularly affected by inconsistent responses, often encountering skepticism about their claimed age and reasons for seeking protection, and sometimes facing outright hostility from officials or the general public. A fear that high child protection standards, including the possibility of family reunification, will influence children's choice of destination may lead to the inappropriate subordination of the best interests of the child to the interests of immigration control. Ultimately, where children are concerned, an "ethic of care" should take precedence over an "ethic of enforcement".

39. A third set of reasons relates to the implementation of international refugee law. Not all countries have ratified the 1951 Convention or operate a national refugee status determination process. Some may treat children on the move simply as irregular migrants. Where national asylum procedures exist, they are not necessarily well equipped to respond to children, and may become overwhelmed in situations of increased arrivals or influx.

40. UNHCR and its ExCom have called on States to develop asylum procedures that are adapted to children, including through appropriate evidentiary requirements, prioritized processing of UASC, qualified free legal or other representation for UASC, the appointment of qualified guardians, and an age- and gender-sensitive application of the 1951 Convention. ExCom has also called on States to carry out age assessments in a scientific, safe, child- and gender-sensitive and fair manner.<sup>40</sup>

41. Finally, it can be hard for even the best-resourced child protection services and other State authorities to identify and reach out to UASC. In some cases, the children themselves may resist this contact because they fear interruption of their journeys, detention and deportation. In other cases, this may be due to a lack of information about asylum procedures; or because the children are determined to work, whether legally or not, in order to support their families or to reimburse the debt their family incurred to send them abroad; or because they are under the control of traffickers.

42. This underscores the importance of protection-sensitive entry systems, and close cooperation between law enforcement personnel, who may first encounter at-risk children at the border, and child protection actors. Both groups need to be properly trained and resourced to respond to the needs of children on the move. Whatever the context, identification, registration and documentation of children is the first step to protection.

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<sup>39</sup> Jacqueline Bhabha, "[Minors or Aliens? Inconsistent State Intervention and Separated Child Asylum-Seekers](#)", *European Journal of Migration and Law*, Vol. 3 (2001), pp. 283-314.

<sup>40</sup> [ExCom Conclusion No. 107 \(VLIH\) 2007](#), para. g (viii and ix). See also: Separated Children in Europe Programme, [Position Paper on Age Assessment in the Context of Separated Children in Europe](#), 2012, for more information on the use of age assessments in asylum proceedings. It is UNHCR's position that age assessment procedures should be undertaken as a measure of last resort, where a) there are grounds for serious doubt; and b) other approaches (such as attempts to gather documentary evidence) have failed to establish the individual's age.

#### IV. Thematic sessions

43. Against this background the purpose of the thematic sessions at the Dialogue is to offer an opportunity to deepen the analysis and generate fresh thinking and forward-looking recommendations.

44. Participants in the thematic sessions are invited to keep in mind the overarching imperative of strengthening national child protection systems, and enabling these systems to work in an integrated way to reach all children within the territory of a State, including children of concern to UNHCR. Participants are also asked to reflect on how to apply the central principles articulated in the CRC to children on the move, in particular the principles of non-discrimination, the primacy of the best interests of the child and family unity. Given the importance of data and evidence to designing effective responses and solutions, participants are asked to consider opportunities for strengthening data and evidence on children on the move.

##### **Thematic session 1: Pursuing regional approaches to protect children on the move**

45. There are a number of ongoing, large-scale movements of UASC that have broad regional and cross-regional dimensions. These include:

- children mainly from Afghanistan and Myanmar moving toward Australia, via countries of South-East Asia;
- Afghan children moving from or through the Islamic Republics of Iran and Pakistan and into Turkey, and then onwards to Greece and other parts of Europe;
- the movement of Eritrean children into Ethiopia, Sudan and onward through Egypt and Libya toward Europe; and of Somali and Ethiopian children on this same route;
- children from the Horn of Africa, mainly Ethiopia and Somalia, moving across the Gulf of Aden to Yemen, and onward to Saudi Arabia;
- children from the Horn of Africa and from Central Africa moving along the eastern route toward South Africa;
- Nigerian and other West and Central African children travelling through Niger into Libya and across the Mediterranean Sea to Italy and other European countries; and
- the movement of children from the Northern Triangle of Central America through Mexico to the United States of America, as well as to other countries in Central America.

46. The New York Declaration explicitly recognizes the centrality of international cooperation to the refugee protection regime, and commits to more equitable sharing of responsibility.<sup>41</sup> In line with this, movements of UASC have been the subject of discussion by regional fora dealing with international migration and asylum in various parts of the world<sup>42</sup> Regional legal and policy frameworks, especially in

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<sup>41</sup> [New York Declaration](#), para. 68.

<sup>42</sup> They have been highlighted for instance in the [Brazil Declaration and Plan of Action](#) of December 2014, the [San José Action Statement](#) of July 2016, the [Abuja Action Statement](#) following the Regional Protection Dialogue on the Lake Chad Basin of June 2016, the [Action Plan of the Valletta Summit on Migration](#) of November 2015 and the [Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime](#) of March 2016. [Resolution 2136 \(2016\)](#) of the Parliamentary Assembly of the Council of Europe sets out the broad protection needs of UASC moving toward, into and through Europe. The [New York Declaration](#) also highlights the importance of

Africa, Europe and Latin America have been enhanced in recent years in order to provide a stronger foundation for actions to protect children on the move.<sup>43</sup> Regional courts are also playing a key role in guiding authorities and in ensuring their respect for the best interests of children.<sup>44</sup> Regional organizations and States have increased practical cooperation, in particular in the area of capacity building,<sup>45</sup> while regional organizations are contributing to the body of knowledge about children on the move through research, including with the participation of children and youth, and country-specific human rights studies.<sup>46</sup>

47. Much work has been done to strengthen national child protection systems and services so that States can meet their international obligations, and ensure non-discriminatory access to all children under their jurisdiction, including refugee, stateless and displaced children. However, strategies developed for largely stable asylum situations are not necessarily adequate to address the needs of highly mobile children, particularly where smuggling and trafficking are involved or where the children move within large mixed flows. As such, new initiatives based upon regional approaches and regional cooperation may be needed to supplement national child protection systems strengthening efforts.

48. There are also a number of good examples of regional cooperation between States, international organizations and non-governmental organizations to promote cross-border child protection systems. These include:

- Cross-border coordination groups, supported by Save the Children, between Mozambique and South Africa, South Africa and Zimbabwe, Mozambique and Zimbabwe, and between Zambia and Zimbabwe.<sup>47</sup> The working groups, chaired by governments but also involving non-governmental actors, seek to establish effective communication between social workers and law enforcement agencies; strengthen coordination to identify the best solution for an individual child; improve protocols and guidelines for family tracing and reunification; and ensure the provision of psychosocial support both for children in shelters and for those who have recently returned to their families.

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bilateral, regional and international cooperation in responding to large movements of refugees and migrants, including the importance of international responsibility-sharing, paras. 26 and 38.

<sup>43</sup> Important legislative measures include recognition of child-specific persecution as a basis for refugee status and the creation of forms of complementary protection status for children at risk, such as trafficked children.

<sup>44</sup> OHCHR and UNICEF, [Judicial Implementation of Article 3 of the Convention on the Rights of the Child in Europe: The case of migrant children including unaccompanied children](#), June 2012; Inter-American Court of Human Rights, [Advisory Opinion OC-21/14](#), 19 August 2014 (on “Rights and guarantees of children in the context of migration and/or in need of international protection”).

<sup>45</sup> For instance, a regional workshop under the auspices of the EU/ICMPD “[Migration EU eXpertise \(MIEUX\)](#)” project was organized in June 2016 in Mexico City to strengthen the protection of UASC from Central America. Other capacity-building examples are set out in: UNICEF’s written submissions to the 2012 Day of General Discussion of the Committee on the Rights of the Child ([Access to Civil, Economic and Social Rights for Children in the Context of Irregular Migration](#), Annex II, “Promising legislation and practices across five regions”); and in Human Rights Council, [Technical cooperation and capacity-building to promote and protect the rights of all migrants, including women, children, older persons and persons with disabilities](#), A/HRC/31/80, 25 January 2016.

<sup>46</sup> Extensive work on children’s rights in the context of migration and asylum has been undertaken by the Inter-American Commission on Human Rights, the Commissioner for Human Rights of the Council of Europe, the European Union’s Fundamental Rights Agency and the African Commission on Human and People’s Rights, among others.

<sup>47</sup> Migration Dialogue for Southern Africa, [Addressing Mixed and Irregular Migration in the SADC Region: Protection of the Unaccompanied Migrant Child](#), 2015.

- UNHCR developed its “Live, learn and play safe” regional initiative (2014 – 2016)<sup>48</sup> in response to the protection challenges facing children from the Horn of Africa in Egypt, Ethiopia, Sudan and Yemen. This initiative involves actions in all of these countries to achieve better outcomes for children, and to attempt to reduce dangerous onward movements, including encouraging regional cooperation for the exchange of information on onward movements, efforts to trace and reunify families, and the sharing of knowledge and best practices.
- UNHCR, the United Nations Children’s Fund (UNICEF) and the International Committee of the Red Cross (ICRC) have promoted child and family protection support hubs, also known as “Blue Dots”, in several countries. The hubs are drop-in centres that provide a safe, child-friendly space for children and families. At the hubs, people with specific needs are identified, provided with information and services such as psychosocial support and legal counselling, and are referred to other services such as medical support and safe overnight shelters.
- In the Americas, countries of origin, transit and resettlement are cooperating with UNHCR and the International Organization for Migration (IOM) to enable eligible children at risk in El Salvador, Guatemala and Honduras to be processed for resettlement in the United States of America from a place of safety in Costa Rica.<sup>49</sup>

49. Against this background, participants in this thematic session are invited to consider how to strengthen regional cooperation, potentially involving countries of origin, transit and destination, in order to improve the protection of children on the move. Participants are encouraged to share other examples of regional cooperation, and to propose new forms of cooperation.

50. In particular, participants are invited to consider the following questions:

- How can country-level efforts to strengthen national child protection systems, ensuring non-discriminatory access for all children, inform regional efforts to strengthen the protection of children on the move? Can strategies developed for largely stable asylum situations be adapted to address the needs of highly mobile children?
- What policies and actions of regional organizations or regional processes have strengthened protection of children on the move? Have any regional policies or actions put children in further jeopardy?
- What role can regional courts play in guiding State authorities to respect the best interests of children on the move, including with regards to more protective asylum systems and the identification of solutions in their best interests?
- What types of issues and activities lend themselves to effective regional cooperation? What examples of transnational good practice (programmes and tools) can participants bring

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<sup>48</sup> UNHCR, *Live, learn and play safe. Regional Initiative 2014-2016. Protecting Children at Risk in Egypt, Ethiopia, Sudan and Yemen*, 2014. The initiative focuses on children from the Horn of Africa moving along two routes: from Eritrea to Ethiopia, Sudan and onward to Egypt and Libya (in an effort to reach Europe), and from Somalia and Ethiopia across the Red Sea and the Gulf of Aden to Yemen and onward (towards Saudi Arabia and other Gulf States).

<sup>49</sup> Department of Homeland Security, *U.S. Expands Initiatives to Address Central American Migration Challenges*, Press Release, 26 July 2016.

forward? What suggestions can participants make for new regional programmes and tools? Notably:

- How can regional initiatives help to strengthen child protection systems in countries of origin, transit and destination? Can State commitments in the New York Declaration support regional cooperation in this regard?
- How can regional cooperation support preparedness and response to sudden influxes of children on the move, including UASC?
- How can regional cooperation help to address the reasons behind children's movements? Do efforts to dissuade children from dangerous onward movement work? Do they reduce or increase risks?
- Can regional cooperation support efforts to collect accurate data and to monitor children's movements, taking data protection imperatives into account?
- Can children be supported to engage in peer-to-peer exchanges of information within and across regions?

## **Thematic session 2: Operationalizing children's rights**

51. Refugee children have been described as being “at the intersection of two particularly vulnerable populations – refugees and children”.<sup>50</sup> The CRC emphasizes the principle of non-discrimination, making clear that a child's immigration status cannot be used to justify discrimination against the child. Translating this into national practice has proven to be a challenge however, and there are many gaps between the rights and principles set out in the CRC and the experiences of children who move across international borders. The New York Declaration reiterates States' commitment to comply with their obligations under the CRC,<sup>51</sup> with specific reference to the best interests of the child.

52. A key to operationalizing children's rights is to ensure cooperation between national authorities responsible for child welfare and those for immigration. Participants in this thematic session are encouraged to bring forward examples of cooperation between these authorities to meet the protection needs of children on the move. Participants are also invited to focus on operationalizing children's rights in two critical areas, identified by children themselves as vital: the right to a legal identity and the right to liberty.

### *The right to a legal identity: birth registration, nationality and documentation*

53. Under international law, every child has the right to birth registration, to a name and to acquire a nationality,<sup>52</sup> yet persons of concern to UNHCR often still face significant barriers to registering the birth

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<sup>50</sup> Jacqueline Bhabha, “Minors or Aliens? Inconsistent State Intervention and Separated Child Asylum-Seekers,” *European Journal of Migration and Law*, Vol. 3 (2001), p. 284.

<sup>51</sup> [New York Declaration](#), para. 32.

<sup>52</sup> [Convention on the Rights of the Child](#), Article 7(1). See also, the [Universal Declaration of Human Rights](#) (Article 15), the [International Covenant on Civil and Political Rights](#) (Article 24), the [1961 Convention on the Reduction of Statelessness](#), and relevant human rights instruments in Africa, the Americas, Europe and the Middle East.

of their children.<sup>53</sup> Birth registration provides evidence of a child’s age and legal identity that is critical to the enjoyment of rights and child-specific protections and can help to prevent statelessness by documenting parentage and place of birth.<sup>54</sup> Gaps in nationality laws are a major cause of statelessness, as are discriminatory rules with respect to who can and who cannot pass on their nationality.

54. Sustainable Development Goal 16(9) sets the target of “legal identity for all, including birth registration,” by 2030.<sup>55</sup> Considerable progress has been made since 2006, when ExCom adopted Conclusion 106 (LVII) on “Identification, prevention and reduction of statelessness and protection of stateless persons”. This has since been reinforced by ExCom Conclusion 111 (LXIV) of 2013 on “Civil registration”, ExCom Conclusion 113 (LXVII) of 2016 on “Youth” and by UNHCR’s global campaign to end statelessness launched in 2014.

55. Growing awareness of the importance of birth registration has resulted in legal reforms and efforts to improve birth registration systems in many countries. To cite just one example, UNHCR has since 2010 worked with the Ministry of the Interior in Thailand to support the issuing of birth certificates to babies born to registered refugees in camps on its border with Myanmar, and the Government has committed to issuing birth certificates to babies born to unregistered refugees residing in the camps. These measures contribute to ensuring a legal identity for refugee children and may help to establish their citizenship upon future return, preventing the risk of statelessness.

56. At the same time, whether or not they are in possession of birth certificates, asylum-seeking and refugee children frequently draw attention to their need for documentation of their legal status. Youth taking part in the 2016 Global Refugee Youth Consultations stressed the serious implications of not having legal documents in their countries of residence, including the risk of arrest and detention, and barriers to access services. Stateless children consulted by UNHCR have illustrated the many implications of not having nationality documentation.<sup>56</sup>

57. Against this background, participants are invited to consider the following questions:

- What further measures can be taken to ensure birth registration for children of concern to UNHCR who move across international borders?
- What other good practices can help to prevent statelessness for children on the move?
- What can be done to ensure that the absence of personal documentation does not impede access to basic rights for refuge and asylum-seeking children?

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<sup>53</sup> The [New York Declaration](#) also highlights the importance of birth registration and the prevention of statelessness – see particularly, paras. 71 and 72 – and includes a commitment from States to register all births on their territory (para. 32).

<sup>54</sup> See the Inter-American Court of Human Rights in [Case of the Yean and Bosico children v. The Dominican Republic](#) for discussion of how the lack of identity documents restricts access to other rights, such as education.

<sup>55</sup> The meaning of “legal identity” has been the subject of much discussion among experts. One helpful definition is “the recognition of a person’s existence before the law, facilitating the recognition of specific rights and corresponding duties”: Lucia Gonzalez Lopez et al, “[Civil Registration, Human Rights, and Social Protection in Asia and the Pacific](#),” *Asia-Pacific Population Journal*, Vol. 29, No. 1 (November 2014), p. 77.

<sup>56</sup> UNHCR, [I Am Here, I Belong: The Urgent Need to End Childhood Statelessness](#), 3 November 2015.



## *The right to liberty*

58. The detention of children, even if they are not separated from their families, has a severe impact on children’s physical, emotional and psychological development.<sup>57</sup> There is a growing consensus that depriving a child of liberty for reasons related to that child’s migratory status “can never be understood as a measure that responds to the child’s best interest”.<sup>58</sup> The Committee on the Rights of the Child has called on States to cease the immigration detention of children.<sup>59</sup>

59. For this reason, the first goal of UNHCR’s global strategy to end the detention of asylum-seekers and refugees is to end the detention of children. Most States do not provide data on children detained on immigration grounds, making it difficult to measure progress toward eliminating the practice. At the end of 2015, UNHCR was aware of more than 140,000 children detained for immigration-related reasons in the 12 focus countries of its “Beyond detention” project, 14 per cent fewer than at the end of 2014.<sup>60</sup> In December 2014, the United Nations General Assembly requested that a global study on children deprived of liberty be carried out. When completed, that study should provide a more extensive evidence base including both statistics and good practices, along with recommendations for action.<sup>61</sup>

60. In the interim, rights-based, child-friendly reception and care arrangements for children on the move remain an urgent priority.<sup>62</sup> The global campaign to end immigration detention of children, launched in 2012, urged States to adopt alternatives that are in the best interests of the child, and allow the child to remain with family members or guardians in non-custodial, community-based settings while their immigration status is being resolved. A number of States have begun to do this. For example, in Indonesia there are five shelters (with two more being opened in coming months) that are available for UASC who are refugees or who have applied for asylum. The Government collaborates with UNHCR and its partners, Church World Service and IOM, to ensure that children have access to basic necessities, health and psychosocial care, language and computer classes, and recreational activities. Also notable are the reforms that some States have taken to adopt legislation ending the detention of children on immigration grounds or their pledges to do so.<sup>63</sup>

61. Participants in this thematic session are invited to consider the following questions:

- What good practices can participants share with respect to alternative reception and care arrangements to ensure that children, including children at risk such as UASC and trafficked children, are not detained and to respect their rights?

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<sup>57</sup> UNHCR, *Beyond Detention. A Global Strategy to support governments to end the detention of asylum-seekers and refugees 2014 – 2019*, 2014, p. 5. On the effects of immigration detention on children see also: *Report of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Juan E. Méndez*, A/HRC/28/68, 5 March 2015, paras. 16 and 59 – 62.

<sup>58</sup> Inter-American Court of Human Rights, *Advisory Opinion OC-21/14 of August 19, 2014 on Rights and Guarantees of Children in the Context of Migration*, para. 154.

<sup>59</sup> UN Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration*, November 2012, para. 79.

<sup>60</sup> UNHCR, *Progress Report mid-2016. Beyond Detention. A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014 – 2019*, August 2016, p. 31.

<sup>61</sup> United Nations General Assembly, *Rights of the Child*, A/C.3/69/L.24/Rev.1, 17 November 2014, para. 51 (d).

<sup>62</sup> United Nations General Assembly, *Guidelines for the Alternative Care of Children. Resolution adopted by the General Assembly*, A/RES/64/142, 24 February 2010.

<sup>63</sup> See: International Detention Coalition, *There are Alternatives: A handbook for preventing unnecessary immigration detention*, 13 May 2011.

- What good practices can participants share to ensure that families with children are not detained, thereby respecting the right to family unity?
- Which child protection measures can be taken to reduce the chance of children (and families) abandoning asylum and migration procedures, while still respecting their right to liberty?

### **Thematic session 3: Securing solutions for children on the move**

62. The proportion of refugees who have been able to find a durable solution in recent years is alarmingly low. In 2015, voluntary repatriation and resettlement together provided solutions for just 2 per cent of all refugees (adults and children combined) registered with UNHCR at the start of that year.<sup>64</sup> The extent to which children find solutions through local integration is harder to measure. No comprehensive figures exist for grants of asylum to children (unaccompanied or in families) by countries operating individual refugee status determination procedures, and while definitions of local integration vary, most agree that it is a gradual process that culminates when a refugee acquires the nationality of the host society.<sup>65</sup>

63. While the absence of durable solutions affects all children,<sup>66</sup> it has an especially concerning impact on those who are already at risk for other reasons. The absence of solutions leads many children – alone and in families – to face enormous dangers in an effort to move onward from their first countries of asylum to a country that offers the prospect of a more secure future. The New York Declaration documents important State commitments to increasing access to solutions from the outset of a refugee situation, including through expanded legal pathways, resettlement programmes and humanitarian admission programmes.<sup>67</sup> The New York Declaration also commits States to improving protection and assistance programmes for refugees in countries of first asylum through community-based development programmes that benefit both refugees and host communities and to developing national strategies for the protection of refugees within the framework of national social protection systems. It also encourages host governments to consider opening their labour markets to refugees.<sup>68</sup>

64. In line with this, significant efforts have been made in recent years to develop new approaches.<sup>69</sup> It is important to articulate more fully what this means for children who constitute more than half of the world’s refugees. The 2016 Global Refugee Youth Consultations provided a platform for dialogue with young people about solutions, recognizing that today’s children and youth will play an important role in decision-making in their communities in the future. In these consultations, youth stressed the vital importance of education to their future prospects. Whether refugee children return home, resettle or remain in the country of first asylum, education in particular is key to their protection and to equipping them to live productive lives.

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<sup>64</sup> UNHCR, [Global Trends: Forced Displacement in 2015](#).

<sup>65</sup> In one notable example, the United Republic of Tanzania granted citizenship to Burundian refugees who had been in the country since 1972, as well as their children who had been born in the country. By May 2016, some 162,000 former refugees had been naturalized.

<sup>66</sup> Three quarters of all refugees under UNHCR’s mandate live in protracted situations. More than half of all refugee children under UNHCR’s mandate in 2016 come from just three countries: Afghanistan, Somalia and the Syrian Arab Republic.

<sup>67</sup> [New York Declaration](#), paras. 75-79.

<sup>68</sup> [New York Declaration](#), paras. 80, 83-84.

<sup>69</sup> See: UNHCR, [Solution strategies](#), EC/66/SC/CRP.15, 8 June 2015; UNHCR, [New approaches to solutions](#), EC/67/SC/CRP.14, 7 June 2016.

65. The international community has set the goal of ensuring “inclusive and quality education for all...” by 2030.<sup>70</sup> Yet in 2015, nearly two-thirds of the refugee children of primary and secondary school age under UNHCR’s mandate were not in school.<sup>71</sup> Many good practices in ensuring “inclusive and quality education” can nonetheless be highlighted, beginning with the growing number of countries that give refugee children access to their national education systems, and the multiplication of scholarship opportunities for refugee students.<sup>72</sup> More flexible learning environments such as accelerated programmes for children and youth who have had their education interrupted or who have missed out on school altogether and the development of connected or e-learning opportunities are other positive developments.<sup>73</sup>

66. With respect to access to education for children on the move, participants in this thematic session are invited to consider the following questions, and to provide examples of good and innovative practices:

- How can refugee education be systematically included in national development plans and in education sector planning, and refugees included in national education systems?
- How can the educational needs of children who have missed many years of schooling be met by national education systems? What good practice initiatives exist for adolescents who arrive in countries of asylum after the age of compulsory schooling?
- What good practices exist to address the reasons for low primary and secondary school enrolment among refugee children (limited capacity of local schools; cost; distance; discrimination; safety concerns; language; and other social, cultural and economic factors, including the need for children to work to contribute to their family’s survival)?
- What are the opportunities for increasing access to tertiary education as well as to non-formal education, skills-building and job training for older adolescents?
- Can improved educational and vocational training opportunities in countries of first asylum help to reduce onward movements?
- What strategies can be used to help States meet their commitments with regard to refugee education under the New York Declaration?

67. While education enables refugee children to be productive members of the communities in which they live, expanding access to timely and durable solutions depends on broader and sustained international cooperation.<sup>74</sup> This includes support for voluntary repatriation through rehabilitation, reconstruction and development in countries of origin, as well as efforts to foster reconciliation and

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<sup>70</sup> [Sustainable Development Goal \(SDG\) 4](#) reads in full: “Ensure quality education for all and promote lifelong learning”. States also made important commitments with regard to refugee education in the [New York Declaration](#), paras. 81-82.

<sup>71</sup> UNHCR, [Missing Out: Refugee Education in Crisis](#), September 2016, p. 4.

<sup>72</sup> UNHCR’s scholarship programme, known as [DAFI](#), plays an integral role in enabling refugees worldwide to access higher education. Since its inception in 1992, the DAFI programme has grown considerably, enabling over 2,240 refugee students annually to study at universities and colleges in 41 countries of asylum in 2014. Over the next four years, [Germany will offer 1,700 scholarships](#) for Syrian students – 1,000 of these will be in Turkey, making it the country with the most DAFI scholars.

<sup>73</sup> UNHCR, [Missing Out: Refugee Education in Crisis](#), September 2016, p. 18. Sixty-four out of 81 refugee hosting countries analysed by UNHCR do not place formal restrictions on refugees accessing national systems.

<sup>74</sup> UNHCR, [ExCom Conclusion No. 112 \(LXVII\) 2016](#) on “International cooperation from a protection and solutions perspective”.

dialogue, including with the participation of adolescents and youth. Repatriation programmes will be most effective when they are tailored to take account of children's needs and to prepare them for the profound impact that repatriation, especially to fragile regions and societies, may have on them.

68. UNHCR has also encouraged governments to increase resettlement opportunities, including for children at risk.<sup>75</sup> In order for resettlement to be a durable option for children and families, they should be provided with access to a long-term, ideally permanent, residence status ultimately leading to naturalization. For UASC who are resettled, foster placements with families from the children's communities of origin should be prioritized whenever possible. Complementary pathways to protection such as private sponsorships, expanded family reunification, scholarships schemes and/or admissions directly from the country of origin can benefit children.<sup>76</sup>

69. In particular where UASC and other children at risk are concerned, the search for sustainable solutions needs to be informed by a consideration of what will be in the best interests of the child. The responsibility to implement the best interests principle is first and foremost that of States, stemming from their international legal obligations.<sup>77</sup> Where a State process is not available, UNHCR, in the exercise of its protection mandate, will take steps to ensure consideration of the best interests of children. The greater the impact of a decision on a child, the stronger the procedural safeguards attached to this process need to be.<sup>78</sup>

70. UNHCR and partners have worked to institutionalize best interests procedures and to extend them to larger numbers of children at risk, whether in the form of formal best interests determinations (BID) or less formal best interest assessments (BIA). While significant progress has been made in institutionalizing best interests procedures within UNHCR operations, BIDs continue to be used by UNHCR and partners primarily to determine which durable solution is in the best interests of an unaccompanied or separated child, in particular for resettlement.<sup>79</sup> Significant work has also been done to support States to incorporate best interests procedures within their asylum and border processes.<sup>80</sup>

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<sup>75</sup> On 21 April 2016, for instance, the United Kingdom of Great Britain and Northern Ireland announced the establishment of programme to resettle children at risk from the Middle East and North Africa, including UASC as well as others at risk, such as child carers, those at risk of child labour, child marriage or other forms of neglect, abuse or exploitation. Statement by James Brokenshire, Minister of State for Immigration, [House of Commons Written Statement 687](#), 21 April 2016.

<sup>76</sup> The [Central American Minors Programme](#) in the United States of America is one such example. The programme was established in 2014 and expanded in 2016 and seeks to provide qualified children in El Salvador, Guatemala and Honduras a safe, legal and orderly alternative to the dangerous overland journey.

<sup>77</sup> [ExCom Conclusion No. 107 \(LVIII\) \(2007\)](#) recommends that States "...utilize appropriate procedures for the determination of the child's best interests which facilitate adequate child participation without discrimination; where the views of the child are given due weight in accordance with age and maturity; where decision makers with relevant expertise are involved; and where there is a balancing of all relevant factors in order to assess the best option."

<sup>78</sup> UN Committee on the Rights of the Child, [General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para 1\)](#), CRC/C/GC/14, 2013, para. 20.

<sup>79</sup> A formal BID may also be required in other situations, such as unresolved custody cases or where a child needs to be removed from parental custody owing to abuse or neglect. See: [UNHCR Guidelines on Determining the Best Interests of the Child](#), May 2008, pp. 22, 30 – 31 and UNHCR, [Field Handbook for the Implementation of UNHCR BID Guidelines](#), November 2011, pp. 8, 54 – 55.

<sup>80</sup> UNHCR and UNICEF, [Safe & Sound](#), 2014; Separated Children in Europe Programme, [Statement of Good Practice](#), 4<sup>th</sup> Revised Edition, March 2010.

71. Consideration of solutions also needs to take the principle of family unity into account. Adopting a flexible, culturally-sensitive definition of what constitutes a family is usually in the best interests of the child. In principle, tracing of family members should begin as soon as such a child is identified as unaccompanied or separated, as long as such measures do not carry a risk of harm for the child or his or her family. Providing information and counselling to the child can help to build trust and to prepare him or her for the possible outcomes of tracing and next steps that may lead to family reunification.<sup>81</sup> UASC who are resettled and those granted asylum should be able to be joined by family members if they are subsequently located.

72. Participants in this thematic session are invited to consider what additional steps can be taken to find solutions for children, especially for children at risk, and to provide examples of good practice. The following questions are proposed for discussion:

- What is the relationship between BIDs and solutions? In identifying a durable solution, what weight is to be given to the views of the child?
- What is the relationship between family tracing, family assessment and solutions? What good practice exists regarding family assessments?
- What can be done to improve family reunification processes in order to bring families together as quickly as possible?
- What are the main impediments to the local integration of children, particularly of those born and raised in countries of first asylum, and how can they be addressed?
- How can more resettlement of children at risk be achieved? What new pathways for admission of children at risk to third countries can be identified?
- What needs to be in place in countries of destination, before children at risk are resettled?
- What are the main impediments to voluntary repatriation of children, both UASC and in families? How can these be addressed?

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<sup>81</sup> UNHCR and UNICEF, *Safe & Sound*, 2014, p. 32.