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CHILDREN AT RISK¹

I. INTRODUCTION

1. All displaced girls and boys, including adolescents, are exposed to risks as a result of their displacement. Many of the wider environmental and individual risk factors faced by refugee children are equally applicable to internally displaced children. Therefore, many of the strategies and activities for prevention, response and solutions are relevant in both sets of situations. Likewise, returnee children may be at risk for many of the same reasons as refugee or internally displaced children, and, at the same time, may also be subject to risks specific to their situation of return. The protection problems and responses which the Executive Committee has previously elaborated upon with regard to refugee children would thus be applicable to most situations of internally displaced children, as well as returnee children.

2. This paper identifies factors in the wider protection environment, as well as individual circumstances, which may place displaced children at heightened risk of violation of their rights. It also suggests a number of strategies and activities for prevention, response and solutions which aim at addressing these wider environmental and individual risk factors, and consequent protection problems. The intention is to build on standards and guidance already set out in previous Executive Committee Conclusions on refugee children, including the Conclusion on women and girls adopted in 2006,² as well as on international developments in the area of child protection, with the aim of guiding the Standing Committee on the areas in which a Conclusion on children at risk could bring added value.³ In doing so, it draws on the findings and conclusions outlined in UNHCR's Report on the High Commissioner's Five Global Priority Issues for Refugee Children submitted to the Standing Committee in June 2006.⁴ The underpinning aim is to improve the framework for the protection of refugee children, as called for in the Agenda for Protection.⁵

¹ This paper refers to asylum-seeking, refugee, internally displaced and returnee children, as applicable.

² Executive Committee Conclusion No. 105 on Women and Girls at Risk.

³ See paper on "Proposals for an Executive Committee Conclusion on Children at Risk", prepared for an Informal Consultative Meeting of the Standing Committee, 16 January 2007.

⁴ See EC/SC/57/CRP.16, 6 June 2006. These 5 Global Priority Issues were identified as part of UNHCR's follow-up to the findings of the Machel Study on the Impact of Armed Conflict on Children.

⁵ UNHCR Agenda for Protection, Goal 6.

II. IDENTIFICATION OF CHILDREN AT RISK

3. The term “children at risk” is intended to be descriptive and to draw attention to the different risk factors alluded to in paragraph 1 above. A more thorough understanding of these factors can help to identify children who may be at heightened risk; to enable preventive actions to be devised and implemented even before the child has been subjected to ill-treatment; and to design effective responses.

4. Identification of children at risk can be particularly challenging. Children’s dependency on others for life, survival and development may render them vulnerable to abuse and exploitation by adults and can make them less willing or able to express their fears and needs. This inability or unwillingness is also linked to the child’s age and maturity. Identifying children at risk therefore requires a proactive engagement on a continuous basis, in order to assess risk factors objectively.

5. Another challenge linked to the identification of children who may be at risk relates to the ability to accurately assess a child’s age where this is contested or in doubt. This has numerous legal and practical implications. For example, in some countries the age of an asylum applicant can dictate whether she or he is detained or given immediate access to the asylum procedure, or whether or not a decision is deferred until she or he has “aged-out”.

6. The environment in which the identification of children at risk takes place affects the modalities of identification. For example, knowledge about the extent of destroyed family support structures, or the presence of armed elements in a situation of mass influx of refugees, is very important in order to enable personnel registering refugees to gather information relevant for identifying children at risk. Mechanisms for identifying individual children at risk therefore need to take into account the wider environmental and situation-specific risk factors, in order to enable rapid and adequate identification, monitoring and assessment of children at risk.

III. RISK FACTORS AND RESULTING PROTECTION PROBLEMS

7. A number of Executive Committee Conclusions have, over the years, examined certain of the international protection needs of refugee children. These Conclusions⁶ have recognized that children, including adolescents, constitute the majority of refugees and other persons of concern to UNHCR⁷ and have noted their “special needs and vulnerability”,⁸ in particular those of unaccompanied and separated children.⁹ The Executive Committee has identified various types of harm to which refugee children can be particularly vulnerable. These include: “family separation”;¹⁰ “physical violence and other violations of their basic rights, including through sexual abuse and exploitation, trade in children, acts of piracy, military or armed attacks, forced

⁶ See paper on “Proposals for an Executive Committee Conclusion on Children at Risk”, prepared for an Informal Consultative Meeting of the Standing Committee, 16 January 2007, for references to specific Conclusions.

⁷ Executive Committee Conclusion No. 84.

⁸ Executive Committee Conclusions Nos. 47(a); 71 (w); and 84.

⁹ Executive Committee Conclusion No. 59 (g).

¹⁰ Executive Committee Conclusion No. 84.

recruitment, political exploitation or arbitrary detention;”¹¹ “irregular adoption”;¹² and “nutritional deficiency diseases and malnutrition.”¹³ In general, these Conclusions fall short of identifying the wider environmental and individual factors which can place displaced children at heightened risk.

8. Some of the following risk factors in the wider protection environment can be found during specific phases of the displacement cycle, such as in accessing protection, asylum procedures, protracted displacement situations or post-conflict environments, while others prevail throughout. Some are exclusively or particularly relevant to only one or several of the categories of asylum-seeking, refugee, internally displaced or returnee children, while others may be applicable to all categories.

- a) lack of adherence by various stakeholders (including camp management, community and leadership structures) to the principle of the best interests of the child at every stage of the displacement cycle, as well as lack of respect for other rights and capacities of children, including their right to participation in all matters affecting the child, and protection from harmful traditional practices;
- b) lack of access to adequate national legal and institutional mechanisms which provide for the protection and well-being of children, such as judicial procedures or traditional justice systems that adhere to international standards, and fair and efficient administrative or judicial procedures in which decisions can be made on the separation of a child from his or her abusive or negligent parents or on assigning sole custody to a parent who has been found eligible for resettlement;
- c) lack of registration and documentation, including birth registration, for asylum-seeking and refugee children;
- d) lack of age- and sex-disaggregated data to help identify children at risk;
- e) disruption of family and community support structures;
- f) lack of mechanisms for identifying unaccompanied and separated children with international protection needs, e.g. when arriving as part of a mixed migration flow, and for referring these children to the appropriate protection mechanisms that can, *inter alia*, provide for protection against *refoulement*;
- g) asylum procedures, which are neither adapted to the specific needs, rights and capacities of children, nor do they recognize child-specific forms and manifestations of persecution;
- h) lack of reception conditions catering for the specific developmental, educational and recreational needs of children, which can put asylum-seeking children, in particular those who are unaccompanied or separated, at heightened risk of abuse and exploitation, including trafficking;
- i) practice of detaining asylum-seeking children;

¹¹ Executive Committee Conclusions Nos. 47 (c); and 84.

¹² Executive Committee Conclusion No. 59 (h).

¹³ Executive Committee Conclusion No. 59 (e).

- j) parents'/families' lack of livelihood and self-reliance opportunities, resulting in dependency on humanitarian aid, coupled with chronic food shortages leading to (i) malnutrition; and (ii) heightened mortality and morbidity from communicable diseases, in particular among children below two years; and (iii) other protection problems including exploitation, such as trafficking and "survival sex", and school drop-out;¹⁴
- k) protracted displacement situations and extended stays in camps,¹⁵ resulting in stress and anxiety, and a heightened risk of violence and abuse, including sexual abuse and exploitation, trafficking and under-age military recruitment;
- l) insecurity, including the presence of armed elements in refugee and IDP settlements, which places children at heightened risk, e.g. of under-age military recruitment;
- m) lack of access to quality education and safe school environments; discontinuation of education in countries of asylum and places of displacement before it can be guaranteed in areas of return; and lack of post-primary education, vocational training and recreational opportunities for adolescents;
- n) lack of access to child-friendly health services, including HIV and AIDS prevention, treatment, care and support, and antiretroviral therapy;
- o) destroyed or occupied homes and demolished infrastructure such as schools, health and child welfare facilities in places of return, putting returnee children at risk;
- p) discrimination and xenophobia in countries of asylum/resettlement and lack of an enabling environment to help refugee children integrate into the local society.

9. In addition to these wider environmental risk factors, a child's vulnerability to certain protection problems can be aggravated by factors resulting from her or his individual circumstances. Children who may be at a heightened risk include: (i) unaccompanied and separated children, particularly those in child-headed households; (ii) unregistered or undocumented children; (iii) adolescents; (iv) child survivors of violence, abuse or exploitation such as sexual and gender-based violence, trafficking, harmful traditional practices and under-age military recruitment; (v) detained children; (vi) children with mental or physical disabilities; (vii) children living with or affected by HIV/AIDS; (viii) children out of school; (ix) girls who have been exposed to under-age and forced marriages; and (x) girl mothers. Other groups may well find themselves at heightened risk, depending on their situation. Boys and girls are likely to be exposed to different risks, or the same risks may affect them differently. While both are at risk of sexual, physical violence and exploitation, girls are more likely to be subject to sexual and gender-based violence and forced into prostitution, while boys are more likely to be recruited by an armed force or group and are more at risk of drug and alcohol abuse.

¹⁴ See "Nutrition", EC/57/SC/CRP.17, 7 June 2006.

¹⁵ Executive Committee Conclusion No. 47 (m).

IV. FUNDAMENTALS OF PREVENTION AND RESPONSE

10. A number of fundamental principles underpin any action to prevent and respond to violations of the rights of displaced and returnee children. A key principle is that children must be among the first to receive protection and assistance.¹⁶ Previous Executive Committee Conclusions have called upon States and relevant parties to respect and observe the rights and principles that are in accordance with the relevant international instruments, especially on safeguarding child and adolescent refugees, and for UNHCR to continue to integrate fully the rights of the child into its policies and programmes. Actions thus need to be rights-based.¹⁷

11. The Executive Committee has also reaffirmed the 1989 United Nations Convention on the Rights of the Child (CRC) as the core international legal and normative framework for the protection of children, including adolescents, and for promoting their best interests.¹⁸ The CRC contains four general principles that are of fundamental importance to its implementation: non-discrimination; the best interests of the child; the right to life, survival and development; and participation. The Executive Committee has repeatedly confirmed that the best interests of the child, should be a primary consideration in all actions concerning children;¹⁹ in other words, at every stage of the displacement cycle.²⁰ General Comment No. 6 provides detailed guidance on the application of the CRC to unaccompanied and separated children.²¹ The Executive Committee has also confirmed the importance of participation and a community-based approach through its call for the full and equal participation of children in matters affecting them,²² and their meaningful participation in decision-making processes.²³

12. The Executive Committee has also highlighted the need for continuing and expanded cooperation between UNHCR and other agencies and bodies concerned, and thus the importance of *partnerships*.²⁴ Another fundamental principle relates to the importance of assessing and understanding how the age, gender and diverse background of each child of UNHCR's concern affects the impact of an action on that particular child. In this respect, the Executive Committee has recognized the importance for States to promote an *age and gender-sensitive approach in the application of international refugee instruments* and for UNHCR to continue mainstreaming age and gender into its policies and operations.²⁵ In order to do this, UNHCR employs a two-

¹⁶ Executive Committee Conclusions Nos. 47 (c); and 84 (PP2).

¹⁷ Executive Committee Conclusions Nos. 84 (a) and (c); 64 (PP4);,and 73 (PP5).

¹⁸ Executive Committee Conclusions Nos. 71 (w); and 84.

¹⁹ Executive Committee Conclusions Nos. 47 (d); 84 (a)(i); and 96 (c).

²⁰ CRC General Comment No. 6, para. 19.

²¹ Committee on the Rights of the Child General Comment No. 6 (2005) on the Treatment of Unaccompanied and Separated Children outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005 (“CRC General Comment No. 6”), of which para. 5 clarifies that while the Comment primarily applies to unaccompanied and separated children outside their country of origin, States are encouraged to apply relevant aspects in relation to the protection, care and treatment of such children who are displaced within their own country.

²² Executive Committee Conclusion No. 100 (d).

²³ Executive Committee Conclusion No. 98 (a) (iii).

²⁴ Executive Committee Conclusions Nos. 47 (s); and 84 (c).

²⁵ Executive Committee Conclusion No. 95 (LIII), para. (f).

pronged approach within a rights- and community-based framework to identify protection risks and gaps and preventing and responding to these: age, gender and diversity mainstreaming (AGDM) and targeted action through empowerment.²⁶

V. STRATEGIES FOR PREVENTION, RESPONSE AND SOLUTIONS

13. The Secretary-General's Study on Violence against Children²⁷ asserts that "no violence against children is justifiable; all violence against children is preventable." Strategies and actions aimed at preventing wider environmental, and where possible, individual risk factors from arising, must be a priority.

14. In order to strengthen prevention and response strategies to protect children at risk, a thorough understanding of the wider environmental and individual risk factors and strong commitment to the fundamental principles outlined above are essential. Moreover, State actors, UNHCR and its international and non-governmental partners need to work together in a coordinated and complementary manner, building on each other's comparative advantages to maximize the beneficial impact of different interventions to establish a comprehensive child protection system. It is hoped this can help prevent displaced and returnee children, including those at heightened risk, from "falling through the cracks". There is a serious risk of this occurring when local services are disrupted during conflict or fragmented in places of asylum or return, and the substitute facilities set up by United Nations agencies and non-governmental organizations do not adequately fill those gaps.

15. A starting point for such a system is the development and strengthening of national legislative, judicial and administrative structures for the protection of children. These need to adhere to international human rights standards; be extended to refugee and asylum-seeking children; and provide for their specific needs. It is also important that States facilitate birth registration and the issuance of birth or other appropriate certificates. For asylum-seeking and refugee children, mechanisms for ensuring the registration and documentation can be used for identifying children at risk. The establishment of formal mechanisms to continuously monitor and evaluate the situation of children at risk is also critical. Targeted action may also be relevant to empower families, teachers and the community at large to assume their key role in monitoring the safety and well-being of their children.

16. Other elements of such a system, which the Office suggests could benefit from further elaboration in a Conclusion, include the implementation of the principle of the best interests of the child; age- and gender-sensitive asylum procedures; education and livelihoods; nutrition; and health.

17. As highlighted above, the best interests of a child is one of the fundamental principles which should permeate any assessment or decision made in respect of a child. One tool to ensure that the displaced child's best interests are respected is a Best Interests Determination (BID). This can be defined as a formal process with specific procedural safeguards and

²⁶ Executive Committee Conclusions No. 100 (d); and No. 89.

²⁷ Secretary-General's Study on Violence Against Children, A/61/299, 29 August 2006.

documentation requirements. Individuals with different areas of expertise weigh and balance the relevant factors in a particular case to ensure that decisions having a fundamental impact on a child's life are reached, following a comprehensive assessment which respects the child's rights. UNHCR considers formal BID necessary in at least three cases: (i) prior to identifying durable solutions for unaccompanied and separated refugee or internally displaced children; (ii) when arranging temporary care for unaccompanied and separated children in particularly complex situations; and (iii) before deciding on the separation of a child from his or her parents against their will. The life-changing impact of such decisions places a particular responsibility on those involved.

18. A BID can serve as a vital tool to prevent a child from being subjected to further violations of her or his rights by abusive or negligent parents, for example in situations where the authorities responsible for making decisions on separation and securing the protection of such a child²⁸ are inaccessible. A BID is also a useful tool for deciding the best interests, in situations where one parent or a child is subject to violence or abuse by the spouse or parent, and the parent found eligible for resettlement is unable to secure sole custody of the child from the competent national authorities. This type of problem is particularly acute as their resettlement will often be delayed due to the unresolved issue of custody. A BID would be complemented by efforts to reach mutual agreement between the parents. The role to be played by UNHCR and other actors could be clarified.

19. With regard to the establishment of age- and gender-sensitive asylum procedures, this involves ensuring that children seeking asylum are interviewed and have their applications assessed by officials qualified in interviewing children and determining claims in a manner which respects the best interests of the child concerned. This includes adapting rules of procedure and evidence to make them less intimidating, and facilitating the child's participation by providing relevant information and access, free of charge, to a qualified legal representative.²⁹ It also involves applying the refugee criteria in an age- and gender-sensitive manner, including by recognizing child-specific forms and manifestations of persecution, such as claims based on a fear of under-age military recruitment or participation in hostilities.³⁰ As far as age assessments are concerned, these need to be conducted in a scientific, safe, child- and gender-sensitive and fair manner, taking into account both physical appearance and psychological maturity, respecting human dignity, and, in the event of uncertainty, according the individual the benefit of the doubt.³¹ In order to reduce further the situations in which asylum-seeking children are detained, which should in any case be a measure of last resort and for the shortest appropriate period of time,³² alternatives to detention could also usefully be examined.³³

²⁸ CRC, Article 9.

²⁹ CRC Article 12, and CRC General Comment No. 6, para. 36 and paras. 68-72.

³⁰ CRC General Comment No. 6, paras. 28, 58-59 and 74.

³¹ CRC General Comment No. 6, para. 31 (i).

³² CRC, Article 37.

³³ See for example Article 37 of the CRC and General Comment No. 6, paras. 61-62 and UNHCR's Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers, February 1999, Guideline 6. See also CRC General Comment No. 6, para. 63.

20. Strategies to ensure access to safe and quality education include: (i) the systematic inclusion of displaced and returnee children in national education plans and strategies; (ii) their equal access to education facilities³⁴ during all phases of the displacement cycle, i.e. from the emergency phase, throughout the reintegration phase and beyond;³⁵ (iii) adolescents' access to post-primary education, vocational training, recreation and sports; and (iv) access to language courses for asylum-seeking and refugee children.

21. With regard to livelihoods, nutrition and health, relevant strategies and actions could include: (i) measures to remove obstacles to families' attainment of self-reliance, such as legal restrictions on the right to work and freedom of movement and discriminatory inheritance laws, as well as facilitation of families' ability to enjoy their right to work, for example, through support for micro-credit projects; (ii) the inclusion of national health care services to refugees; (iii) the provision of targeted interventions, e.g. in the form of supplementary feeding programmes, particularly for pregnant women and infants during their critical first years of development; (iv) the provision to asylum-seeking and refugee children,³⁶ internally displaced and returnee children of equal and non-discriminatory access to existing national health and HIV programmes, including to HIV and AIDS prevention, treatment, care and support and to antiretroviral therapy, including, for instance, prevention of mother-to-child transmission;³⁷ and; (v) provision, with the support of WHO, UNICEF, UNAIDS and UNHCR as necessary, of education on HIV and AIDS, reproductive health and life skills for displaced and returnee children and future mothers.

22. In addition, in relation to the categories of children who may be at heightened individual risk as identified in paragraph 10 above, more specific strategies and actions for prevention and response could include:

- a) the establishment of mechanisms for identifying unaccompanied and separated children arriving in mixed migration flows, based on which a decision reflecting the child's best interests can be made on their referral to the appropriate agencies, including those responsible for asylum applications, child welfare and protection; or to institutions and organizations responsible for family tracing, reunification or voluntary repatriation;
- b) the inclusion of unaccompanied and separated refugee and asylum-seeking children in national structures responsible for appointing guardians and finding alternative care for children deprived of their family environment,³⁸ the institutionalized monitoring of these care arrangements,³⁹ and the conduct of a formal BID for each such child, ideally by the State concerned, but with the support of UNHCR if necessary in particularly complex situations;

³⁴ See CRC General Comment No. 6, para. 41.

³⁵ CRC General Comment No. 6, para. 41.

³⁶ See Committee on Economic Social and Cultural Rights (CESCR) General Comment No. 14, para. 34.

³⁷ See Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern, section B2, UNHCR, 5 April 2006.

³⁸ CRC General Comment No. 6, para. 40.

³⁹ See EC/SC/57/CRP.16, para 4, 6 June 2006.

- c) the clarification, by States, UNHCR, ICRC, UNICEF and other relevant actors, of roles and responsibilities for conducting tracing where these are unclear, and if in the child's best interests, for facilitating family reunification,⁴⁰ including in countries in which unaccompanied and separated children have had their international protection needs recognized;⁴¹
- d) measures to ensure adolescents' active participation in the identification of needs and priorities and in planning and implementing programmes;
- e) initiatives to improve identification of children formerly associated with armed groups, regardless of their roles, and support for their release and (re)integration as an integral part of broader support to conflict-affected communities;⁴²
- f) giving high priority to enabling refugee, internally displaced and returnee children with disabilities to have access to special assistance and to adequate health and social services, including psychosocial recovery and social reintegration;⁴³
- g) medical and psycho-social support for survivors of violence, abuse and exploitation, including trafficking, sexual and gender-based violence and female genital mutilation as well as for pregnant girls, girl mothers and children forced into marriage; and
- h) tracking and monitoring of children who have dropped out of, or are not attending, school and working with parents and child-care providers to enable children to attend and stay in schools.

VI. CONCLUSION

23. Drawing on the analysis outlined above, UNHCR welcomes suggestions for issues to be included in a Conclusion on children at risk within the following areas:

- a) risks in the wider protection environment;
- b) risks related to the child's individual circumstances;
- c) fundamental principles underpinning prevention and response;
- d) elements of a comprehensive child protection system;
- e) roles and responsibilities of the various actors involved.

⁴⁰ Executive Committee Conclusion No. 47 (d); CRC General Comment No. 6, paras. 13, 31 (v) and 79-80.

⁴¹ CRC General Comment No. 6, paras. 82-83.

⁴² Executive Committee Conclusion No. 94 (c)(viii).

⁴³ See CRC General Comment No. 9 (2006): The rights of children with disabilities, CRC/C/GC/9, 29 September 2006, para. 79 and the Convention on the Rights of People with Disabilities, adopted by the General Assembly on 13 December 2006.