



BRIEFING PAPER

Enhancing Cooperation on the Protection of Unaccompanied Migrant Children and Youth

UNICEF, IOM and UNHCR

Policy Recommendations

- Ensure that the best interests of the child remains at the heart of interventions related to unaccompanied migrant children and youth and that all procedures ranging from entry, identification, returns, guardianship, status determination, integration, third country resettlement, repatriation, interception (while en route), are child sensitive and gender responsive.
- Ensure that unaccompanied children and youth are treated as children and youth first and that their rights and immediate protection needs are identified and fully considered/addressed regardless of their migratory status.
- Care, support, treatment and provision of services including promotion of access to health and other social services in destination settings in line with international norms and standards should be assured regardless of the child's migration status.
- Ensure that in cases of age disputes, a holistic approach be adopted in assessing the age which is culturally sensitive and age appropriate and is only undertaken as a measure of last resort in cases where serious doubt exists.
- Unaccompanied Children should have access to child friendly information regarding asylum procedures and their right to seek asylum, in order to allow for those in need of international protection to seek asylum.
- Ensure that focus is on addressing the protection needs and finding a durable solution for each unaccompanied child and youth, bearing in mind that each comes with individual circumstances, vulnerabilities and protection needs.
- Ensure that measures needed for meaningful participation in line with the age and maturity of the children are in place, whenever decisions affecting them are being made taking into consideration children's views, experiences and recommendations.
- Ensure that children are not detained nor decisions about deportation made without taking into consideration the best interests of the child, while ensuring full implementation of the set of international standards involving family tracing as well as holistic situational and family assessment that takes into account the safety and protection of the children as well as their right to development as per the CRC on a case by case basis.
- Ensure that in addition to a full and comprehensive system of protection which includes those faced by children and youth prior to undertaking migration at the community of origin as well as,

interventions that address stigma and discrimination faced by unaccompanied children and young migrants throughout the whole migratory process is addressed. This involves strengthening the protection systems and a change in social norms, values and practices at source, transit and destination.


Introduction

The Convention on the Rights of the Child (CRC) defines children as those under 18 while the United Nations for statistical purposes defines youth as persons between the ages of 15 and 24. Observing an increasing number of unaccompanied children in migration and their particular vulnerability, the Committee on the Rights of the Child issued a General Comment No. 6 (GC.6) on the Treatment of unaccompanied and separated children outside their country of origin. While unaccompanied *migrant* children and youth have not been defined GC 6, it defines unaccompanied children as “*children who have been separated from both parents and other relatives and not being cared for by an adult who, by law or custom, is responsible for doing so*”. While this panel focuses on the issue of unaccompanied migrant children and youth, it is important to note that they are a *sub-group* of an increasing number of children and youth who are in migration. IOM (2004), defines migration as “a process of moving, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, uprooted people, and economic migrants”.

While the migration of unaccompanied children cannot be assumed to be exploitative, there are nevertheless ingrained vulnerabilities associated with the process of unaccompanied migration. The Committee on the Rights of the Child noted that unaccompanied migrant children are in a situation of particular vulnerability including to sexual exploitation and abuse, military recruitment, child labour, human trafficking and detention. Additionally, it further observed that these children are “routinely denied entry to or detained by border or immigration officials... denied access to asylum procedures or their asylum claims are not handled in an age and gender sensitive manner”. This observation by the Committee actually points to potential rights violations in two specific points in the migratory process, namely at borders or *in transit* and secondly *in destination*.

Reasons for children migrating unaccompanied are many and at times overlap with those migrating *accompanied by adults*. These overlapping reasons include, among others escape from persecution of the child or the parents; international conflict and civil war; response to natural disasters; being trafficked; desire to reunify with parents or other members of their family, adventure, curiosity as well as searching for better economic and/or educational opportunities.

Responses by States, and to some extent other stakeholders to the movement of children can be placed generally into three categories: One that seeks to respond to the issue through an asylum perspective; another from a human trafficking perspective and a third from a socio-economic child migrant perspective. There is, however, a fledgling fourth perspective that responds to this issue from a “child protection response perspective” with Spain being the case in point. These sector-specific responses by States and other key stakeholders are not surprising given that they are reflective of the international instruments that provide the milieu for the response. Responses in the first category, for example, are underpinned by the 1951 Refugee Convention as well as the 1967 Protocol relating to the Status of the Refugees, the 1954 and 61 Conventions on Statelessness; the second by the 2000 Convention on Transnational Organized Crime and related Trafficking in Persons Protocol as well as by the Optional Protocol on the Sale of Children and Child Pornography and the third by the 1990 Migrant Workers Convention and various ILO conventions including the 1973 Minimum Age Convention and the 1999



Worst Forms of Child Labour Convention. The fourth perspective is buttressed by the CRC. The problem with these responses is that these sector-specific responses, working in tandem with specialized standards set in these instruments, either implicitly or explicitly focus on adults, leaving a gap on the special vulnerabilities, needs and rights of children. The Convention on the Rights of the Child in many ways compliments and further strengthens these instruments in the area of child-specific protection needs while at the same time it should be recognized that they bolster up the CRC in areas that it does not sufficiently address, such as the specific issue of a migrant child or that of unaccompanied migrant children.


Evidence (current state of knowledge)

Review of some of the policies and initiatives taken by governments, regional bodies and other stakeholders indicate that some positive measures have been or are being put in place in response to concerns raised and gaps in standards set by international norms. The 2010 Annual Report to the General Assembly by the High Commissioner for Human Rights and the Secretary-General noted for example that the governments of Panama, Venezuela, the UK and Australia put an end to the policy of detaining migrant and asylum-seeking children. The acclamation of the Ecuadorian Constitution that “no person shall be identified nor considered as illegal due to his or her migration status” and putting into place the Patria Grande programme in Argentina in 2006 that regularized nearly 800,000 undocumented migrants are examples that reflect positively on efforts underway, in coming to terms with the challenge at hand.

The picture is not all rosy. A number of studies on the issue of unaccompanied children as well as independent child migrants undertaken in recent years paint a mixed picture - successful stories intermingled with stories of exploitation. Cases of undocumented migrant children being exploited at the hands of border officials, violence, exploitation, extortion, and discrimination including xenophobia towards unaccompanied migrant children have been documented. The 2008 review by University of Sussex on independent child migrants in Burkina Faso, Ghana, Bangladesh and India have led to the observation that children and youth on the streets have been portrayed by politicians and media as “petty criminals who lack proper adult supervision”. Voicing publically of such sentiments fuels xenophobia and legitimizes abuse, violence and exploitation of unaccompanied child migrants. The study also found girls forced to provide sexual services to be able to cross national borders. That they are girl children with no adult protection only exacerbated the situation. .

At the same time, there have been other studies that have documented views of children who have chosen to migrate unaccompanied and who have circumvented exploitation and saw their decision positively. As one child working as a shoeshine puts it, “... when we walk around in search of customers, we see lots of things that we’d never seen in the village and we also get a better understanding of how life is. If you are hungry back home, you can make some *to* (millet porridge) but here you’ll need to get your money, otherwise you won’t eat. In my opinion, this is why migrant life in the city is a way to mature, because you’ll know that without sweat you won’t eat” (University of Sussex, Independent Child Migration, 2008).

Responsibilities lie across the board in countries of origin, transit and destination. Breaches to international standards and norms for the protection of unaccompanied migrant children have been noted. They include not being given access to due process in cases when claims for asylum are made or being put in detention as a result of their immigration status or kept in detention or in circumstances which are not conducive to their best interests while the process of determination is being made. Other violation of internationally agreed upon obligations include among others *de facto* treatment of children



as adults because they are unable to provide proof of their age or because the document of proof children have is not recognized by the authorities, thus impinging special protection rights due to them, such as accessing and other social services including provision of alternative care or else subjecting children to age and culturally insensitive procedures to assess their age. Cases of repatriation of children and youth outside of the standards set in international instruments or deportation are too many to ignore. Thorough discussion with children, tracing of families and (risk) assessment in the country of origin are often by-passed and instead a quick fix approach such as building reception centres in countries of origin, whatever the situation, prevails. Such an approach not only totally ignores the principle of the best interests of the child and in some cases that of *non-refoulement* but also leads to an unsustainable solution. Without addressing the push factors that have led children to leave their homes, these children are likely to become involved in the *revolving door phenomenon*.

Responsibilities in the countries of origin that leads to children migrating unaccompanied as a result of push factors are also evident. Furthermore, the onset of emergencies such as civil war or natural disasters, which in most circumstances are beyond the control of national governments, may also contribute to a sudden outflow of unaccompanied as well as separated children. On the other hand, movement of children necessitated by absolute poverty, lack of alternatives, abuse and exploitation in the home community, lack of equitable access to protection mechanisms and social services can be addressed strategically in the country of origin. Interviews with children who were working in the streets in destination countries as well as those who have returned home highlighted one aspect of this challenge. One 15 year old child who was interviewed says, “I would get children back to school, I would get jobs for their parents so they won’t have to make their children work or go out and beg ... only with education can something good be achieved... otherwise the problem will only continue...”(GMC, Leaving Home, 2010). This view is not limited to one child in one country cuts across different parts of the world.

Gaps and Challenges


Gaps and challenges can be generally categorized as follows:

Gaps all the way through, from policy to practice: This basically refers to situations where there is currently no legal framework or policy to address the issue of unaccompanied migrant children. Such a policy void exists in countries of origin, transit and destination.

Gaps between policy and practice: In such a situation, it is recognized that a breakthrough has been made at the policy related to the situation of unaccompanied migrant children and youth as well as identification of requisite responses including the process of identification, documentation, service provision, protection, integration, resettlement or repatriation. However, the policies, frameworks including legislation have not translated into actions either as a result of lack of political commitment or lack of human and financial resources or both.

Gaps in implementation: This is somewhat related to the point above. As a result of sporadic and/or ad hoc changes, the impact is not systematic or sustained or because changes put in place are not supported by existing social norms, there can be gaps in the implementation. Another relates to capacity gap where the number of staff responsible for implementation simply does not match the number of children needing various services or where the staff’s understanding of key issues are limited.

Gaps in coordination: Even for those children and youth that are able to access services (*and there are many who fall through the cracks*), there still remains a challenge with the gap between service providers on the one hand and law enforcement authorities on the other. This includes coordination



challenges arising out of differences in what is considered to be different and at times opposing primary areas of responsibilities. Social welfare or other service providers focus on the protection and welfare irrespective a person's immigration status while immigration authorities and other law enforcement agencies place high premium on securing the border and keeping it intact. In practice, however, immigration legislation may take precedence over that of the child welfare's. Similar challenges can be found among agencies with differing (even if overlapping) mandates¹.

Conclusion

Given that the protection challenges faced by unaccompanied migrant children and youth are multifaceted, the issue needs to be addressed multi-sectorally, requiring better coordination within a country and across countries of origin, transit and destination involving Ministries of Interior, Justice, Foreign Affairs, Social Welfare, Health, and Education among others. The issue also touches upon the mandate of several agencies including IOM, UNHCR, UNICEF as well as NGOs, civil society organizations, regional organizations such as the European Union, African Union, ASEAN with national governments taking the lead. Existing studies on the issue, while limited, indicate that interventions are mainly focused on the immediate needs and less on finding a durable solution. Advocacy around this, supported by key principles such as the best interests of the child, non-discrimination, child participation and children's right to survival and development is not lacking. Implementation continues to be the challenge. Political commitment is critical if durable solutions as per the above recommendations and principles are to be acted upon.

¹ In recognition of this gap, IOM, UNHCR and UNICEF came together in early 2010 to form an interagency working group on unaccompanied and separated children. This has facilitated regular dialogues and better understanding of each other work. While a good start, there is no doubt that such mechanisms need to go further

Sources/Acknowledgements (selected):

Committee on the Rights of the Child, Thirty-ninth session, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 2005.

Global Movement for Children (GMC), Leaving Home: Voices of Children on the Move, Barcelona, 2010.

Hamilton, C., et.al. Administrative detention of children: a global report (A Discussion Paper), UNICEF and CLC, 2011

Hague Conference on Private International Law, Convention on Protection of Children and Co-operation of in Respect of Inter-country Adoption, 1993.

ICRC, IRC, SCUUK, UNICEF, UNHCR, WVI, Interagency Guiding Principles on Unaccompanied and Separated Children, 2004

IOM, Glossary on Migration, 2004

University of Sussex, Independent child Migration: Introducing children's Perspectives (A Briefing Note), 2008.

Palmary, I., For Better Implementation of Migrant Children's Rights in South Africa, UNICEF 2009

Reale, D., Away from Home, Protecting and Supporting Children on the Move, Save the Children UK, 2008.

Separate Children in Europe Programme, Statement of Good Practice (4th Revised Edition), 2009

Smith, T and Laura Brownlees, Age assessment practices: a literature review and annotated bibliography, UNICEF (Discussion paper), 2011

Terres des Hommes International Federation, Kids Abroad: Ignore them, abuse them or protect them? 2008.

UNHCR, 2008 (and 2009) Global Trends: Refugees, Asylum Seekers, Returnees, Internally Displaced and Stateless Persons, 2009.

UNHCR, Note on the Principle of Non-Refoulement, 1997

United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Study of the Office of the UNHCR on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration, July 2010.

UNICEF Innocenti Research Center, Independent Children, Inconsistent Adults: International Child Migration and Legal Framework (Discussion Paper), 2008

About the GMG The Global Migration Group (GMG) is an inter-agency group bringing together 16 agencies including ILO, IOM, OHCHR, UNCTAD, UN/DESA, UNDP, UNESCO, UNFPA, UNHCR, UNICG, UNITAR, UNODC, UN Regional Commissions, UN Women, World Bank, and WHO to promote the wider application of all relevant international and regional instruments and norms relating to international migration, and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to the issue of international migration. The GMG is particularly concerned with improving the overall effectiveness of its members and other stakeholders in capitalizing upon the opportunities and responding to the challenges presented by international migration. For further information: www.globalmigrationgroup.org