

Contentious Issues in the Protection of Displaced Children

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Abstract

The importance of the protection of children can never be overemphasized. In times of peace they need protection how much more in war times or in situations of displacement. Displacement and its consequences affect children adversely. The reason is that children are vulnerable and therefore need special protection. The objective of this article is to expose the contentious issues inherent in the protection of children in situations of displacement. Viz: what legal frameworks are in place for the protection of children, are the available frameworks adequate? In the end, the writers found that there is paucity of legal frameworks and argued that the available frameworks are inadequate.

Keywords: protection, children, displacement, contentious, legal frameworks

1. Introduction

Displacement and its negative effects affect children adversely and disproportionately more so by the reason of their tenderness and vulnerability. They in fact occupy a more vulnerable position than women. This is so even though they are always taken together with women when discussing issues of protection. In many societies, children are subjected to violence and refugee claims have been recognized in a number States in instances where children face the risk of being forced to live on the streets in order to escape violence at home, or are otherwise abandoned because of death or absence of family. Commenting on the position of refugee and displaced children, the Special Rapporteur on Human Rights and Disability makes the following sobering observations. He notes that:

It would not be right to ignore the tragic situation of displaced or refugee children, of whom there are approximately 15 million today and who, in addition to the risks from the conflicts themselves, must suffer the heart rendering trauma of being uprooted. In many cases they are also forced to change residence frequently. The displaced are frequently subjected to military controls when travelling from one temporary camp to another, and they are not allowed to resume their normal lives. Unlike refugees, who because they have crossed frontiers can have the immediate support and protection of the United Nations High Commissioner for Refugees, displaced persons usually have greater difficulty in obtaining international protection since they remain in their own countries. This raises a series of problems when one or both parties to the conflict limit or prevent access to aid and rehabilitation (UN, 2012).

Human Rights Watch on its part found that Sierra Leonean children in refugee camps in Guinea who had been separated from their parents and/or guardians were frequently the most vulnerable. In fact the reports revealed that separated children were at the risk of sexual and domestic abuse, forced and hazardous labour, beating and lashing and other physical ill treatments in the camps. Internally displaced children were not left out in these terrible situations. Most of the displaced children lacked access to basic education or only had sporadic access as they were required to work by their “caretaker” families. Refugee and internally displaced children were exposed to serious risks due to the lack of adequate assistance in refugee camps and in displaced situations. Even in the US it was found by Human Rights Watch that inadequate attention was paid to the needs of solitary children and minors in immigration detention, many of whom were held for lengthy periods of time by the US Immigration and Naturalization Service (INS) in secure facilities alongside juvenile offenders, without sufficient access to legal representation or being fully informed of their rights (Human Rights Watch, 2012). Children have not been specially provided for in the 1951 Convention and its Protocol neither have they been specially provided for in 1998 Guiding Principles on Internal Displacement nor the Handbook on Internally Displaced Persons. The same definition of refugee and IDP applies irrespective of the applicant’s age. The UNHCR Handbook, however, provides that “...when it is necessary to determine the refugee status of a minor, problem may arise due to the difficulty of applying the criteria of ‘well-founded fear’ of persecution to the case. If a minor is accompanied by one (or both) of his parents, or another family member on whom he is dependent, who requests refugee status, the minors own refugee status will be determined according to the principle of family unity....” (UNHCR Handbook) In most cases children are unaccompanied and this poses a major problem.

2. Children and Displacement

It is estimated that children constitute approximately half of any refugee population (UNHCR Guidelines 1988). The situation is more or less the same for IDP children. Refugee and IDP children are children strictly speaking and as children are particularly vulnerable. It is the recognition of this fact that gave rise to the UNHCR Initiatives and in particular the Guidelines on the Protection and Care of Refugee Children. The foundation of this protection and care is the need which children have for special care and assistance:

1. Children are vulnerable. They are susceptible to disease, malnutrition and physical injury.
2. Children are dependent. They need the support of adults, not only for physical survival, particularly in the early years of childhood, but also for their psychological and social well-being.
3. Children are developing. They grow in developmental sequences, like a tower of bricks, each layer depending on the one below it. Serious delays interrupting these sequences can severely disrupt development.
4. Refugee children face far greater dangers to their safety and well-being than the average child.

From the foregoing it is noticed that children in refugee and situations of displacement are physically and psychologically less able than adults to provide for their own needs or to protect themselves from harm. Consequently, they must rely on the care and protection of adults. They are psychologically at great risk from the trauma inherent in the situations which cause uprooting and from the uprooting itself. Children are physically less able than adults and adolescents to survive illness, malnutrition or deprivation of basic necessities. In fact when resources are scarce, they are the first to die.

In addition, refugee and internally displaced female children are often more vulnerable than the male children. In some cultural and social contexts, girls are less valued than boys and, consequently, are more subject to neglect and abuse. They are subjected to sexual abuse, assault and exploitation in greater numbers than boys. Among refugee and internally displaced children, the most vulnerable are those who are not accompanied by an adult recognised by law as being responsible for their care. In the absence of special efforts to monitor and protect their well-being, the basic needs of unaccompanied children and the need for special actions on their behalf must be anticipated in every refugee and internal displacement situations. Adolescent refugees and IDPs are an often overlooked sub-group within this category of vulnerable refugees and IDPs. They are a targeted group for forced military recruitment. They can be difficult to be placed in foster homes, which poses a problem both in the camps and when they are seeking asylum.

1. The Frame work for the Protection of Displaced Children

Several international, national and regional attempts have been made (although not very specific) with regard to refugee and internally displaced children by promulgating treaties and conventions. These treaties and conventions make provisions setting out the minimum standard to be accorded to the children. State governments who have ratified these treaties and conventions have invariably promised to accord and abide by the minimum standards therein.

The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees set standards that apply to children in the same way as adults:

- 1) A child who has a “well-founded fear of being persecuted” for one of the stated reasons is a refugee (Article 1A (2)).
- 2) A child who holds refugee status cannot be forced to return to the country of origin (the principle of non-refoulement), (Article 33)and
- 3) No distinction is made between children and adults in social welfare and legal rights.
- 4) Refugees must receive the “same treatment” as nationals in primary education, and treatment at least favourable as that given to non-refugee aliens in secondary education.

The 1969 OAU/AU Convention Governing the specific Aspects of Refugee Problems in Africa makes no distinction between children and adult refugee. The 1984 Cartagena Declaration did not also make provisions for refugee or internally displaced children. The 1998 Guiding Principles on Internal Displacement and the Handbook on Internally Displaced Persons have as well no specific provisions for the protection of internally displaced children.

The only international treaty which appears to have set the most standards concerning children is the 1989 Convention on the Rights of the Child (CRC). Worthy of note is the fact that the CRC is not a refugee instrument; however, refugee and internally displaced children are covered because all CRC rights are to be granted to all persons under the age of 18 years, (Article 1 CRC) without discrimination of any kind (Article 2).

The CRC is important to refugee and internally displaced children because it sets comprehensive standards. Virtually every aspect of a child's life is covered, from health and education to social and political rights. It contains several provisions that specifically deal with refugee children who as children are also beneficiaries of its provisions irrespective of their status. In particular, State parties have recognized that children must be among the first to receive protection and assistance and that the guiding principle of all action on behalf of refugee children must be the best interests of the child and the principle of family unity. Non-state parties to the 1951 Convention and its 1967 Protocol have found the CRC very important for the protection of refugee and internally displaced children.

Article 22 of the CRC provides:

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason as set forth in the present Convention.

The UNHCR advocates the observance of CRC standards by all States, international agencies and non-governmental organisations. The Office of the United Nations High Commissioner for Refugees is committed to protecting and providing adequately for the needs of all children within its competence. Expanding the measures taken by the Office, the UNHCRs Executive Committee has adopted two conclusions specifically regarding refugee children.

The first (Conclusion No 47, 1988) urged action aimed at addressing the human rights and needs of children who are refugees; highlighted the particular vulnerability of unaccompanied and disabled refugee children and the need for action by UNHCR to protect and assist them; recommended regular and timely, people-oriented assessment and review of the needs of refugee children; recognized the need to promote cooperation between the Office and other concerned agencies and bodies; and acknowledged the importance of further study to identify additional support programmes and the reorientation of existing ones as necessary.

Secondly, in its 1989 Conclusion, (No 59 XL) the Executive Committee of the UNHCR reaffirmed and expanded upon the need for particular attention to refugee children; gave examples of how these needs could be assessed, monitored and met; drew special attention to UNHCRs particular need to endeavour to ensure the right of refugee children to education, as well as their protection from military recruitment and irregular adoption. The guiding principles of the UNHCR policy on refugee children are spelt out in Annex A of the UNHCR Guidelines (Ex Com Doc EC/SCP/82)

The primary goals of the UNHCR with regard to children are as follows:

1. To ensure the protection and healthy development of refugee children,
2. To achieve durable solutions which are appropriate to the immediate and long-term developmental needs of refugee children.

The UNHCR further identified central principles to serve as guidance in the pursuit of the above-stated primary goals, namely:

1. In all actions taken concerning refugee children, the human rights of the child, in particular his or her interests, are to be given primary consideration;
2. Preserving and restoring family unity are of fundamental concern;
3. Actions to benefit refugee children should be directed primarily at enabling their primary care givers to fulfil their principal responsibility to meet their children's needs;
4. Where the special needs of refugee children can only be met effectively

- through child-focused activities, these should be carried out with the full participation of their families and communities;
5. Refugee girls and boys must be assured protection and assistance on a basis of equality;
 6. Unaccompanied refugee children must be the particular focus of protection and care;
 7. UNHCR staff are required to make their best efforts both to prevent risk to refugee children and to take additional action to ensure survival and safety of refugee children at particular risk.

On the basis of these principles, UNHCR staff should endeavour to ensure that the protection of children's rights as recognized under national and international law, including their rights to personal security and special assistance, are adequately and consistently addressed in the Office's protection and assistance activities.

To this effect the UNHCR staff will pursue the following specific objectives:

1. The protection of refugee children at risk from detention, armed conflict, military recruitment, sexual assault or abuse, prostitution, torture, hazardous working conditions or any other form of violence, abuse or neglect;
2. The diligent enforcement of national laws regarding all forms of violence and abuse against refugee children in accordance with the relevant international legal obligations of the States concerned;
3. The consistent incorporation, from the beginning of a refugee situation, of protection and assistance criteria, monitoring and addressing the needs and vulnerabilities of refugee children;
4. The compilation and updating of a statistical profile on each refugee population of concern to the High Commissioner, including age/gender disaggregation and identification of unaccompanied minors, for use in planning protection and assistance measures;
5. The identification and provision for the special protection and care of unaccompanied children in every refugee situation, as well as their reunification with their families;
6. The training of UNHCR and implementing partner staff to understand and address appropriately within their areas of competence the particular needs of refugee children in ways consistent with this policy and the UNHCR Guidelines on Refugee Children;
7. The training of police and military forces, other government employees involved with refugee protection and assistance, adults and leaders regarding the specific human rights most relevant to the well-being of refugee children;
8. The sensitization of refugee children themselves to their specific rights;
9. The promotion of awareness of, and response to, the particular needs of refugee children through information strategies directed at the government of both countries of asylum and countries of origin, donors, NGOs, other UN bodies and the public at large;
10. The promotion and facilitation by UNHCR of the technically competent co-operation of governmental and non-governmental organisations and other UN bodies in providing for the protection and care of refugee children.

Also, UNICEF, the UN Children's Fund, provides important support to children in war affected contexts, including protection, support to schools and out-of-school activities, training for young people in landmine awareness and HIV prevention and advocating against the sexual abuse of children.

4. Conclusions and Recommendations

From the foregoing it can be seen that the most provisions for the protection of children as a vulnerable group in situations of displacement have been made by the Child Rights Convention. This is the only instrument targeted at the protection of displaced children. As noted earlier, the Convention is not an instrument on the displacement of children. In fact, the frameworks on ground make no distinction between adults and children. The present writers argue that there is paucity of statutes targeted at the protection of children as refugees or internally displaced persons, therefore future refugee and IDP legislation must be made to give proper attention to the

particular needs of vulnerable groups such as women, young girls and especially children.

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