

BACKGROUND PAPER 6

SEPARATED CHILDREN IN CANADA: FAMILY REUNIFICATION

Prepared by Sara Austin, Erin O’Neill, and Kathy Vandergrift,
World Vision Canada

The purpose of this paper is to provide background information on family reunification and separated children in both the international and Canadian context, and to identify key areas for action in accordance with the *Best Practices Statement*. The paper is a non-exhaustive overview of separated children and family reunification, and the authors are open to pursuing further research, analysis, and recommendations beyond what is contained in herein.

Family Reunification in the International Context

Separated childrenⁱ account for 3-5 percentⁱⁱ of world’s refugees, which has been estimated to be nearly 12 million adults and childrenⁱⁱⁱ. Children are separated from their families as a result of many causes, including armed conflict, displacement, and trafficking, among others.^{iv} In Rwanda alone, by the end of 1994, more than 100,000 children had been separated from their families — the highest number of such children registered by UNICEF since the agency was founded in 1946.^v

The aim of the United Nations High Commissioner for Refugees (UNHCR) and many other humanitarian organizations and institutions is “to prevent separations, to identify children who have become separated from their families, to ensure that such children receive the protection and assistance they need, and to reunite them with their families,”^{vi} and the UNHCR and the International Committee of the Red Cross (ICRC) have assumed responsibility for initiating family reunification programs.

While the vast majority of separated children remain in refugee camps and settlements in developing countries,^{vii} every year as many as 20,000 separated children seek asylum in Europe, North America and Oceania.^{viii} Unfortunately, because many of these children do not meet the criteria or standards of potential host countries, they grow up in refugee camps with little hope of being reunited with their families or of receiving the necessary care and support for a healthy development. Separated children are at high risk of having their rights violated: they are among the most likely to be killed, tortured, raped, robbed and recruited as child soldiers; they often lack the most basic means of survival.^{ix}

Preventing Separation

The separation of a child from his or her family can have devastating effects on their physical and psychological health and development; this impact can be further exacerbated when the separation involves geographic or cultural dislocation. The prevention of separation should, therefore, be a priority in all emergency response programmes and policies. Indeed, the prevention of separation should be undertaken at the community level, through increased coordination, planning and awareness raising, and enhancing the quality of programmes.^x In cases where children are separated, their identification and reunification with family members should be a top priority.

The ICRC has stated that “most separated or unaccompanied children can be reunited with parents, siblings, extended family, relatives, or other adults whom they know and who are willing to provide for their care”^{xi}. Moreover, the ICRC has identified four basic objectives concerning the treatment of separated children:

1. Identifying and registering separated and unaccompanied children as quickly as possible;
2. Ensuring the survival and well-being of separated children through interim care which meets their developmental needs;
3. Tracing their parents and relatives, and reuniting them with their families as soon as possible; and
4. Securing appropriate long-term care for those children who cannot be reunited with their own families. (ICRC, 2003)

Best Interests of the Child

Decisions and plans concerning family reunification should be guided by the:

- Convention on the Rights of the Child (1989)
- Convention Relating to the Status of Refugees (1951)
- Hague Convention on the Protection of Children (1996)
- Rules for the Protection of Children Deprived of their Liberty (1990)
- Guidelines on Protection and Care of Refugee Children (1994)
- Guidelines on Policies and Procedures in Dealing with Separated Children Seeking Asylum (1997)
- UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1979)
- Inter-Agency Guiding Principles on Separated Children (^{xii})

When cases involving separated children are being assessed, their opinions must be sought and carefully considered when determining what action will be taken. As such, the child’s opinion must be given due weight with respect to their age and maturity, and they must be given the opportunity to participate in the decisions and plans being made on their behalf. It is critical that children be fully informed of their rights, of the options available to them, so that they can fully participate in decisions concerning their placement, care, tracing, and reunification.

While the reunification of a child with their family is generally understood to be the most appropriate response, in some cases it may not be in the child’s best interest. In situations where children have fled from an abusive or exploitative home environment, it may in fact be better for the child to be placed with other family members, or otherwise placed with an appropriate guardian.

Birth Registration

Roughly 50 million children worldwide were not registered at birth in 2000,^{xiii} therefore leaving them without any legal identity. The lack of birth registration is a significant barrier to the process of family tracing and reunification, as legal documents certifying the name and nationality of separated children are critical to expediting the process of reunification.

Significant efforts have been undertaken to register separated children and provide them with a legal identity, while other creative measures are also being utilized to reconnect such children with their families. The ICRC, UNICEF, UNHCR, and several non-

governmental organizations have worked together to improve the coordination and accuracy of databases. They have collaborated with Kodak to enter the photographs and personal data of displaced children into computers; printouts are then distributed in refugee camps in an effort to reunite families. More than 67,000 children were reunited with their families in Africa's Great Lakes region between 1994-2000, as a result of a global tracing program organized by humanitarian organizations.^{xiv}

While there has been significant progress in the reunification of children with their families in their country of origin, several thousand separated children end up in potential resettlement countries each year. In many cases, refugee and asylum seeking separated children are kept in detention centers, because they lack legal documentation, are deemed a security risk or unlikely to appear for their immigration hearing or removal. While these are the same grounds on which an adult would be detained, the UNHCR has stated that as a rule, children should not be detained.^{xv} Indeed, the detention of children leads to the denial of many of their fundamental rights, as they are deprived of such things as family life, liberty, legal counsel, educational opportunities, health care, and recreation. Children in detention are also often kept alongside adults, many of whom may be criminals, which may expose them to even greater harm.

Another reason for the detention of children is simply the lack of adequate resources to provide appropriate care, including the appointment of an interim guardian and legal counsel, which results in further delaying the process of reunification.

The legal provisions for separated children to pursue family reunification vary widely from country to country: some prohibit separated children who are recognised as refugees from applying for family reunification, while others do permit reunification but the conditions are so restrictive that it is nearly impossible for them to be met.^{xvi} While the rationale for such measures may be to discourage families from sending their children alone as a means for all of them to gain access to a resettlement country, these policies denying children who are genuinely separated from pursuing their right to be reunited with their families.

Family Reunification in Canada

Canada has played a significant role in supporting and encouraging family reunification of unaccompanied children. In 1996, Canada became the first country with a refugee determination system to issue specific guidelines on children seeking asylum.^{xvii} As a State Party to the Convention on the Rights of the Child, Canada is obligated under Article 22 to ensure that children seeking receive refugee status, or who are determined to be refugees, receive appropriate protection and humanitarian assistance.^{xviii} Moreover, Article 39 stipulates that State Parties take "all appropriate measures to promote the physical and psychological recovery of refugee children"^{xix}.

There are, however, significant gaps in the implementation of relevant policies and procedures. In the 1994 report by the Committee on the Rights of the Child to the Canadian Government, the lack of sufficient measures to deal with family reunification was highlighted as an area of particular concern.^{xx} Although the correct legislation appears to be in place for dealing with separated children and their expedient reunification with family members, the implementation has been weak and inconsistent, and many children are subsequently not receiving the help they need.

Currently there are no detention standards for refugee and asylum-seeking children who arrive in Canada, and the refugee determination system is slow and the long wait prolongs the sense of uncertainty in the lives of children and their families. Detention may also result in delaying the process of family reunification. Family reunification is rarely dealt with in a positive and expeditious manner, and the interests of children are often not taken into account in decisions to deport their parents.^{xxi}

Due to Canada's tightening immigration laws, an increasing number of refugees are being left in "legal limbo".^{xxii} The causes of legal limbo are many, but include a lack of proper identification documents, unsatisfactory background/security check, and inability to pay landing fees. The results can be years of waiting, deportation, or detention. From November 2001-2002, twelve minors, including two separated children were kept in detention in Canada.^{xxiii} With respect to the protection of the rights of separated children in detention, Canada has reserved "the right not to detain children separately from adults where this is not appropriate or feasible"^{xxiv}, and the conditions under which children remain in detention vary from province to province. Given the detrimental impact detention has on a child's well-being, and the delays that detention imposes on the process of family reunification, the impetus to keep children out of detention becomes all the more significant in expediting their reunification with their families.

Priority Action Areas

While Sections B5 and B13 of the *Best Practice Statement* deal specifically with family tracing, contact and reunification, other sections of relevance to this issue include: B1, B4, B6, B9, B10, B11, and B12.

The following is a list of suggested priority action areas:

At the international level:

- The Canadian government and Canadian humanitarian organizations must devote greater attention and resources to supporting the prevention of separation and facilitating family tracing and reunification.^{xxv}
 - With respect to the prevention of separation, this includes increased emphasis on awareness raising, coordination and planning, and improvements in the quality of programmes.
 - With respect to family tracing and reunification, this includes increased aid for agencies/institutions involved in the facilitation of tracing and reunification in their country or region of origin, in order that children can be reunited with their parents or other extended family members as soon as possible, without dislocating them from their geographic or cultural context.
- The Canadian government must coordinate with the relevant authorities abroad in cases where a separated child refugee claimant has re-established contact with family members who are refugee claimants in another country (in such cases where *either* the child or the family are refugee-claimants in Canada). The coordination should involve facilitating the reunification of the child with his/her family in whichever country will grant full access to refugee status to the child and family, and where the best interests of the child will be fully respected.

At the national level:

- As a matter of urgency, a system for immediate interview and interim guardianship should be established to take effect from the point a separated child enters Canada.

- High priority should be placed on hearing the cases of separated children as soon as possible to determine their status and proceed with long-term placement.
- Guidelines and training for consulting with separated children should be developed and provided to all relevant Government and non-governmental persons handling their cases, in order that they may be more effective in keeping the children informed and engaging them in the decisions concerning tracing and reunification with their families.
- When handling cases of family tracing and reunification, there must be a thorough assessment of the family member(s) with which the separated child is to be reunited, in order to establish that the child will not be at risk of abuse or exploitation.
- Family members arriving at the Canadian border seeking refugee status must be permitted to enter and join a separated child who has already arrived in Canada, irrespective of the child's status, if it is determined that it be in the child's best interest.
- In such cases where family reunification is not possible, the relevant provincial and municipal child welfare authorities and guardians must be responsible for ensuring that the separated child is able to maintain contact with their family if it is deemed appropriate.
- To fulfill its obligations under the Convention on the Rights of the Child, the federal government should develop a clear and consistent national policy framework to protect the rights of separated children.

ⁱ The UNHCR's definition of a separated child is one "who is separated from both parents and [is] not being cared for by an adult who, by law or custom, is responsible to do so." Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, Geneva, February 1997, Par. 3.1.

ⁱⁱ While there are no specific statistics measuring the total number of separated children, the report *Unaccompanied Children in Emergency Situations* (Audrey Moser and Jan Williamson. International Social Service, 1987) has estimated that they represent 3-5% of the world's total refugee population.

ⁱⁱⁱ <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics>

^{iv} United Nations International Children's Emergency Fund, <http://www.unicef.org/graca/alone.htm>, *Impact of Armed Conflict on Children: Unaccompanied Children*

^v United Nations International Children's Emergency Fund, <http://www.unicef.org/graca/alone.htm>, *Impact of Armed Conflict on Children: Unaccompanied Children*

^{vi} *Global Consultation on International Protection: Refugee Children*, 4th meeting, UNHCR, 25 April 2002.

^{vii} Ayotte, Wendy. *Separated Children Seeking Asylum in Canada*. UNHCR, July, 2001.

^{viii} The United Nations High Commissioner for Refugees, <http://www.unhcr.ch/children/glance.html>, (2001), *Children: The World of Children at a Glance*

^{ix} United Nations International Children's Emergency Fund <http://www.unicef.org/graca/alone.htm>, *Impact of Armed Conflict on Children: Unaccompanied Children*

^x "Chapter 3: Protection of Separated Children." *Protection of Children and Adolescents in Complex Emergencies Conference Report*, Oslo/Hadeland, 9-11, 1998.

^{xi} International Committee of the Red Cross, <http://www.icrc.org/Web/Eng/siteeng0.nsf/d268e7e7eea08ab74125675b00364294/09f1947f371542abc1256b66005f140f?OpenDocument>, (2003), *War and Family Links: General Overview*

^{xii} At the time of writing, these guidelines are still in draft form.

^{xiii} <http://www.childinfo.org/eddb/birthreg/index.htm>

^{xiv} The United Nations High Commissioner for Refugees, <http://www.unhcr.ch/children/glance.html>, (2001), *Children: The World of Children at a Glance*

^{xv} Guidelines on the Detention of Asylum-Seekers. UNHCR, February 26, 1999.

^{xvi} *Global Consultation on International Protection*, 4th meeting, 25 April 2002, <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+AwwBmepGVaswwwwwwwwwwhFqA72ZR0gRfZNFqrpGdBngBAFqA72ZR0gRfZNFqzgrocmGnDaDzmwwwwww1FqhRI200/opensdoc.pdf>, (20 September 2002), *Refugee Children*

^{xvii} The United Nations High Commissioner for Refugees, <http://www.unhcr.ch/children/glance.html>, (2001), *Children: The World of Children at a Glance*

^{xviii} The Canadian Coalition of the Rights of Children, <http://www.rightsofchildren.ca/pdf/ngo.pdf>, (Feb 2001), *Canada's Non-Governmental Organizations Report*.

^{xix} Ibid.

^{xx} Ayotte, Wendy. *Separated Children Seeking Asylum in Canada*. UNHCR, July, 2001. P.13.

^{xxi} http://www.hreoc.gov.au/human_rights/children_detention/submissions/castan.html#can

^{xxii} Brouwer, Andrew; Caledon Institute of Social Policy, <http://www.caledoninst.org/maytree/full01.htm>, *Refugees in Legal Limbo*

^{xxiii} Canadian Council for Refugees, <http://www.web.net/~ccr/state.html>, *State of Refugees in Canada*

^{xxiv} Reference taken from *Separated Children Seeking Asylum in Canada*, UNHCR, July, 2001, which refers to the report *Does Ontario and Federal Legislation Comply with the U.N. Convention on the Rights of the Child?* Summary Report, Child Welfare League of Canada., Ottawa, 1999.

^{xxv} With respect to the recommendation put forth in Graca Machel's report on *The Impact of War on Children*, such that the "survival and protection of unaccompanied and separated children must be ensured, giving priority consideration to family tracing. When family members cannot be identified, extended family and community care should be arranged." (UNICEF, 2000).