

**'UNACCOMPANIED MINOR REFUGEES AND THE
PROTECTION OF THEIR SOCIO-ECONOMIC
RIGHTS UNDER HUMAN RIGHTS LAW'**

**Submitted in partial fulfilment of the requirements of the
degree LLM (Human Rights and Democratisation in Africa)**

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3 November 2008

DECLARATION

I, SARAH JEAN SWART, declare that the work presented in this dissertation is original. It has not been presented to any other University or Institution. Where the work of other people has been used, references have been provided. It is in this regard that I declare this work as originally mine, and it is hereby presented in partial fulfilment of the requirements for the award of the LLM Degree in Human Rights and Democratisation in Africa.

Signature: _____

Date: _____

Supervisor: Mr EY Benneh

Signature: _____

Date: _____

DEDICATION

I would like to dedicate this work to the one true God, Lord of heaven and earth, King of kings and Saviour of my soul. Everything I do, I do in His strength and to His glory.

Also to the children who don't know about the law, but need the protection of the law so desperately.



'Lucky-Boy', ARCH orphanage, Buduburam camp, 26 September 2008

ACKNOWLEDGEMENTS

I would firstly like to acknowledge my family. Mom, dad and Jono, you are the best family and best support a girl could ask for. I love you all so much. Thank you for everything, and thank you mom for your editing assistance. I would also like to thank Kez and Cath for being the best sisters a girl could ask for: thank you for keeping me sane this year!

In Ghana I received assistance from a number of people. I would like to thank Mr Benneh for his very competent, enthusiastic and encouraging supervision. I would also like to thank Mr TA Browne at Children Better Way for the welcome, the information, and the assistance in the Buduburam camp. Lastly, I would like to thank Mr V Sambola of the Liberian Welfare Council for his time, information and willingness to assist me within the Buduburam camp. I must also thank the Centre for Human Rights for this opportunity.

Finally, to the Ghana group - Fasil, Taz, Charles, Mati and Aqui – thank you for your friendship, the great memories, and for looking after me when I had malaria!

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LIST OF ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
AMR	Accompanied Minor Refugee
CBW	Children Better Way
CRC	Convention on the Rights of the Child
IOM	International Office for Migration
MSF	Médecins Sans Frontières
NCS	National Catholic Secretariat
NGO	Non-governmental organisation
UMR	Unaccompanied Minor Refugee(s)
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
WFP	World Food Programme

CHAPTER ONE

INTRODUCTION

1.1 Background to study

According to the office of the UNHCR, the world's refugees¹ problem is one of the most complicated issues before the world community today.² In Africa, both internal and external conflicts, as well as factors such as poverty and environmental disasters, have led to a widespread phenomenon of refugees in numerous countries on the continent. According to several estimates, there are millions of refugees in Africa who are vulnerable to abuse and who therefore need to be protected in order to ensure that their human rights are not violated. Certain groups of refugees, most particularly children, require special protection as a consequence of their exceptional vulnerability.³ More than half the world's refugees are children, and some of these child refugees are unaccompanied minors.⁴ Unaccompanied minor refugees (UMR) require special protection because of their personal situation and their immediate need for nurturing and care. They lack the basic protection provided by parents and families. Children depend upon adults to nurture and support their development. Where there is no suitable adult to assume that role, a third party must step in to address the child's developmental needs, or the child's special vulnerability may be exploited. According to Ressler et al, 'unless special assistance is provided, unaccompanied children are dependent on the chance charity of others, which can fall short of even minimal care and protection'.⁵

Refugees are entitled to all the rights and freedoms contained in international human rights instruments, as well as to protections provided for in guidelines, conventions and policies which specifically address the problem of child refugees.⁶ There is however concern that child refugees, particularly UMR, are abused and exploited as a result of insufficient protections, and that existing protections are not properly implemented and enforced. In South Africa there have recently been allegations in the news of abuse of child refugees in

¹ For the purposes of this study the term 'refugees' also refers to asylum seekers and, to the extent applicable, illegal immigrants.

² <http://www.unhcr.ch/html/menu6/2/fs20.htm> (accessed 20 August 2008).

³ C Nicholson 'A first call on available resources for child refugees in South Africa' (2005) 38 1 *De Jure* 71.

⁴ Nicholson (n 3 above) 72.

⁵ EM Ressler et al *Unaccompanied children: care and protection in wars, natural disasters, and refugee movements* (1988) 4.

⁶ Article 3(1), 20 and 22 CRC and Article 4 and 23 ACRWC.

refugee reception offices as well as at Lindela, a detention centre for illegal immigrants in Gauteng. Such allegations prompted an interest in this particular topic.

1.2 Objectives of study

The main objective of this study is to investigate the practical treatment of UMR in Ghana and South Africa, and to explore whether such treatment is in accordance with existing international norms and standards for the protection of refugee children. The study will focus on the realisation of children's socio-economic rights in order to measure treatment. This study also seeks to address the obstacles which prevent the full and proper treatment of UMR, and to make recommendations as to how the international community can better regulate the treatment of UMR. In essence, this paper aims to investigate whether there is a discrepancy between the rights of child refugees acknowledged in international law and the situation of UMR in practice, and, if so, how this can be remedied. This paper seeks to show, through the case studies of Ghana and South Africa, that UMR are, to a certain extent, lost in the system.

1.3 Significance of study

'A century that began with children having the most powerful legal instruments that recognise and protect their human rights will end with the realisation of those rights at every level'.⁷

There is concern that the international law of the child, at the point where principles move into practice, is incomplete and narrowly defined.⁸ Although legal instruments which offer protection to children do exist, these instruments may not be broad enough and may not be implemented sufficiently at the national level. Children are the future of this world, and it is the responsibility of our generation to protect and to nurture them. It is vital, therefore, that where the most vulnerable of all children – unaccompanied minor refugees – are not sufficiently protected, the law develop to ensure such protection. The plight of UMR has been largely ignored by the international community, and this study seeks to place a focus on this vulnerable group. According to Ressler et al, 'unaccompanied children have existed in virtually every past war, famine, refugee situation and natural disaster...on the basis of past and present experience, it is certain that the future will produce its share of

⁷ Nicholson (n 3 above) 74.

⁸ G S Goodwin-Gill 'Protecting the human rights of refugee children: some legal and institutional possibilities' in Doek, J, van Loon, H and Vlaardingerbroek, P (eds) (1996) *Children on the move: how to implement their right to family life* 97.

unaccompanied children as well'.⁹ It is clear that this is a concern which is relevant now, and it will continue to be relevant. Ressler et al state¹⁰ that

no attempt has been made to document the number of unaccompanied children in present-day emergencies, but on the basis of scattered information available, it is safe to say the total is very likely in the range of hundreds of thousands of children'.

The cases of South Africa and Ghana are used as they offer two different types of refugee situations, in two countries with different economies and capacities.

1.4 Research Questions

This study will pose the following questions:

- a. What type of protection does international, regional and domestic law offer to UMR?
- b. Are these protections implemented in the field?
- c. Are there gaps in the international legal system which need to be filled in order to provide UMR with greater protection and support?
- d. What are the obstacles to implementation (legal and otherwise)?
- e. How can these obstacles possibly be remedied?

1.5 Research Methodology

The research conducted for this study is socio-legal in nature, as the study examines the relevant law but also the impact and implementation of that law in society. The study requires desk research for researching the international law standard on UMR, and what human rights protections it offers for these children. In addition, research is done through 'email interviews' with NGO's operating in the area of UMR in South Africa. This study requires non-participative observance of the treatment of UMR at refugee camps in Ghana, and interviews with relevant parties in Ghana. All interview subjects remain anonymous, and are referenced according to the name of their organisation and date of the interview.

1.6 Literature Review

There is a focus in the existing body of literature relating to refugees on child refugees, but not specifically on UMR.¹¹ There are limited articles and books written on the plight of

⁹ Ressler et al (n 5 above) 3.

¹⁰ Ressler et al (n 5 above) 12.

¹¹ See for example GS Goodwin-Gill (n 8 above).

these unaccompanied minors, but those which do exist focus more on reunification with family members and on the asylum-seeking process rather than on actual human rights abuses experienced by minors in their host country.¹² Of the material available, there is a focus on the legal duties, documents and initiatives in regional and international law providing for the protection of refugees,¹³ but in the research conducted there was no evidence of a reported investigation or case study into the practical treatment of child refugees.

A handful of past LLM students (from the LLM in Human Rights and Democratisation in Africa) have written on the subject of child refugees. In 2000 Mwalimu wrote on the socio-economic rights of refugees in Africa with a special focus on children. In 2006 Esom wrote on an assessment of the unaccompanied refugee child's right to family unity and reunification. In 2007 Bizimana wrote on the child refugee's right to education as a case study of Burundi and Rwanda, and Sen'gendo wrote on refugee laws for the protection and survival of the African refugee's child's language of his inheritance in the country of asylum. This study, however, aims to focus on an aspect of child refugees which has not been specifically focussed on in the above-mentioned studies: the practical treatment (and possibility of mistreatment) of UMR in relation to socio-economic rights in their host countries, and how such treatment can be improved.

1.7 Limitations of study

There are various obstacles which are encountered in conducting this study. Firstly, this paper largely relies on the participation of interview subjects, and it was found that some people were unwilling to be interviewed. In addition, those people who were interviewed undoubtedly brought a bias to their answers – refugees sometimes exaggerate the hardships they suffer in the hope that it will increase their chance of receiving aid; and individuals from organisations sometimes exaggerate the good work they are doing in order to protect their organisations. Finally, recent documents which would have been valuable to this study, such as an internal assessment of the refugee camps in Ghana done by the UNHCR in October 2008, were not available to the public. As a result of these obstacles, this paper is limited to information from the investigations which were able to be carried out. It must also be noted that the lack of existing literature focussing specifically on the practical treatment of UMR made the investigations carried out and recorded in chapter three a main source of

¹² R Fernhout 'Asylum-seeking children: how to implement their right to family life' in Doek, J, van Loon, H and Vlaardingerbroek, P (eds) (1996) *Children on the move: how to implement their right to family life* 113.

¹³ Nicholson (n 3 above) 70.

information. It is also important to note here that this paper does not address the plight of urban UMR: it focuses on UMR in camps (in Ghana) and in ad-hoc sites and rural areas (in South Africa).

1.8 Definitions

Unaccompanied minors are children (as defined in article 1 of the CRC)¹⁴ who have been separated from both parents, as well as from other adults who have a legal or customary duty to care for the child.¹⁵ This definition includes minors who are with minor siblings but who, as a group, are unsupported by any adult responsible for them, as well as minors who are with informal foster families.¹⁶ The term UMR must be distinguished from the term 'separated children', which refers to children who have been separated from both parents but may be accompanied by other relatives.¹⁷

1.9 Overview of Chapters

The first chapter sets out the context of the research question, and briefly reviews the methodology used in investigating the research question. It also covers an overview of the existing relevant literature, and sets out the limitations of the study. In addition, Chapter One includes the necessary definitions. Chapter Two is a study of the relevant international law, including 'hard' law and 'soft' law. This chapter establishes the standards for the treatment of UMR. The third chapter sets out the results of a practical investigation into the treatment and protection of UMR in Ghana and South Africa. It is based on information received from interviews, questionnaires, desk research and non-participative observance of UMR. This chapter establishes how UMR are treated in reality, in relation to their socio-economic rights. Chapter Four addresses the obstacles which prevent the full implementation of the standards set out in Chapter Two. This chapter highlights specific obstacles which need to be addressed in order to sufficiently realise the socio-economic rights of UMR. Finally, Chapter Five summarises the findings of the study, provides concluding remarks and sets out the recommendations to overcome the obstacles to implementation.

¹⁴ 'For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'.

¹⁵ General Comment No. 6 (2005) Committee on the Rights of the Child 'Treatment of Unaccompanied and Separated Children outside their Country of Origin' (para 7); <http://www.ccrweb.ca/uam.htm> (accessed 28 August 2008).

¹⁶ <http://www.unhcr.org/excom/EXCOM/43bce4782.pdf> (accessed 22 September 2008).

¹⁷ <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/64DJ58> (accessed 22 August 2008).

CHAPTER TWO

INTERNATIONAL AND REGIONAL LAW

2.1 Introduction

UMR are entitled to protection under international law, more specifically, under international human rights law, international refugee law and various regional instruments.¹⁸ These laws provide the framework within which decisions and actions relating to UMR take place.¹⁹ It has been noted that all actions on behalf of UMR should be taken in accordance with international instruments, primarily the CRC, as well as with regional and national instruments.²⁰ In addition, it is important when examining the legal framework governing the treatment of UMR to also consider the Guidelines which have been created by the UNHCR for dealing with refugee children, as well as non-binding documents such as the 2004 Inter-agency Guiding Principles on Unaccompanied and Separated Children.

2.2 International and Regional Human Rights law

Human rights belong to all human beings, regardless of citizenship. Non-citizens in countries are therefore equally entitled, without being unfairly discriminated against, to the rights outlined in the Universal Declaration of Human Rights and other agreements that have been signed and ratified by South Africa and Ghana. These two countries are under an obligation to uphold the socio-economic rights of non-citizens in their countries.²¹ It is interesting to note that in neither the European system nor the Inter-America system is there a convention specifically dealing with the issue of refugees. In Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended, makes no reference to refugees or to children, although it does guarantee general fundamental human rights. The Statement of Good Practice, prepared by the Separated Children in Europe programme, does set out the fundamental principles to be applied to UMR, but this document is non-binding. The American Convention on Human Rights of 1978 deals in article 19 with the Rights of the Child by stating that 'every minor child has the right to the measures of protection required

¹⁸ (n 16 above).

¹⁹ Ressler et al (n 5 above) 3.

²⁰ [http://216.239.59.104/search?q=cache:MdSYBD9a1qIJ:www.savethechildren.net/arc/files/c_sepchil.pdf+Key+concept:+Action+for+the+Rights+of+Children+\(ARC\)+Separated+children+%E2%80%93+December+2004+Foundations.&hl=en&ct=clnk&cd=1&gl=gh](http://216.239.59.104/search?q=cache:MdSYBD9a1qIJ:www.savethechildren.net/arc/files/c_sepchil.pdf+Key+concept:+Action+for+the+Rights+of+Children+(ARC)+Separated+children+%E2%80%93+December+2004+Foundations.&hl=en&ct=clnk&cd=1&gl=gh) (accessed 22 August 2008).

²¹ <http://64.233.183.104/search?q=cache:4g88RGW0UoJ:www.genderjustice.org.za/project-materials/refugees/joint-aids-law-project-treatment-action-campaign-submission-on-the-refugees-amendment-bill/download.html+ALP+TAC+submission+to+Parliament.&hl=en&ct=clnk&cd=1&gl=gh> (accessed 22 September 2008).

by his condition as a minor on the part of his family, society, and the state'. However, there is no specific reference to refugee children, or to refugees generally. In comparison, Africa has a regional instrument focussing on the rights of refugees, which will be discussed below.

2.2.1 Convention on the Rights of the Child (CRC)

The CRC is an international human rights instrument which entered into force in September 1989, and which sets the most international standards concerning children. Ghana was the first country to ratify the instrument in February 1990. It was ratified by South Africa on 16 June 1995. Although it is not specifically a refugee treaty, its provisions directly affect and apply to refugee children, as the provisions of the CRC are granted to all persons under the age of 18 (article 1).²² Article 2 protects children against all forms of discrimination, and this includes an obligation on governments to provide the same standards of care to all children within their jurisdiction.²³ Any child within a State's jurisdiction thus holds all CRC rights without regard to citizenship, immigration status or any other status. Refugee children are entitled to all the rights provided for in the CRC.²⁴ In fact, according to Steinbock, its terms now constitute 'the normative frame of reference for actions concerning refugee children'.²⁵

The standards set by the CRC are comprehensive as they cover most aspects of a child's life. Although the realisation of some social welfare rights, such as health, education and an adequate standard of living, is subject to a State's financial capability, the non-discrimination clause in the CRC ensures that whatever benefits are given to children who are citizens of a State must also be given to children who are refugees in the territory of the State.²⁶ The 'near-universal ratification'²⁷ of the CRC has ensured that CRC standards have been agreed to and accepted by most countries of the world. The universality of the instrument is demonstrated by the fact that the UNHCR applies the standards of the CRC as Guiding

²²<http://216.239.59.104/search?q=cache:SzafmD-qv6AJ:www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf%3Ftbl%3DPROTECTION%26id%3D3b84c6c67+Refugee+Children:+Guidelines+on+Protection+and+Care&hl=en&ct=clnk&cd=1&gl=gh> (accessed 22 August 2008).

²³[http://64.233.183.104/search?q=cache:MdSYBD9a1qIJ:www.savethechildren.net/arc/files/c_sepchil.pdf+Action+for+the+Rights+of+Children+\(ARC\)+Separated+Children+%E2%80%93+December+2004+Foundations.&hl=en&ct=clnk&cd=2&gl=gh](http://64.233.183.104/search?q=cache:MdSYBD9a1qIJ:www.savethechildren.net/arc/files/c_sepchil.pdf+Action+for+the+Rights+of+Children+(ARC)+Separated+Children+%E2%80%93+December+2004+Foundations.&hl=en&ct=clnk&cd=2&gl=gh) (accessed 14 September 2008).

²⁴ (n 22 above).

²⁵ DJ Steinbock 'Unaccompanied Refugee Children in Host country foster families' (1996) 8 1/2 *International Journal of Refugee Law* 6.

²⁶ (n 22 above).

²⁷ (n 22 above).

Principles.²⁸ It is important to note that 'by ratifying the CRC, governments undertake to put in place systems to protect children ... [who] are separated from parents or caregivers'.²⁹

The socio-economic rights of refugee children are protected under various articles of the CRC. Article 6 grants every child the inherent right to live, and obliges states to ensure the survival and development of the child to the maximum extent possible. Article 24 recognises the right to the highest attainable standard of healthcare, which includes an obligation on states to take appropriate measures to ensure the provision of necessary medical assistance and healthcare to *all* children. Article 27 provides for the right of every child to an adequate standard of living. Article 28 grants the right to education on the basis of equal opportunity. According to this article, states should encourage the development of different forms of education and make them available and accessible to *every* child.

The CRC also contains provisions offering protection to refugee children specifically. Article 22 provides that states should guarantee protection and humanitarian assistance to children seeking refugee status even if they are unaccompanied.³⁰ Refugee children who are not being cared for by their parents are entitled to further protections;³¹ they must be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment, according to article 20 of the CRC. Article 20 provides that such a child is entitled to special protection and assistance from the state. In addition, article 38(4) states that State parties should take all feasible measures to protect and care for children who are in their territory and who have been affected by an armed conflict. Refugee children are thus entitled to special protection under article 38 if they became refugees due to an armed conflict. Lastly, it is important to note article 3 of the CRC. This article stresses that the best interests of the child should be considered at all times. The *best interests principle* has three main implications for states, agencies and individuals who act on behalf of UMR: such parties are under an obligation to protect and assist the child at all times; put the child's welfare ahead of all other considerations; and meet the child's developmental needs.³² According to Ressler et al,³³

²⁸ 'In all actions taken concerning refugee children, the human rights of the child, in particular his or her best interests, are to be given primary consideration' para 26(a).

²⁹ www.savethechildren.net/arc/files/c_sepchil.pdf (accessed 23 September 2008).

³⁰ (n 23 above).

³¹ <http://www.hrw.org/campaigns/crp/promises/> (accessed 20 August 2008).

³² Ressler et al (n 5 above) 282.

³³ Ressler et al (n 5 above) 239.

Given the widespread adherence to the 'best interests of the child' as the guide for decisions in national law and the universal acceptance of this standard in all national legislation concerning children, measures taken by national authorities that are not in conformity with this standard should be regarded as contrary to public policy.

2.2.2 African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC entered into force in 1999. South Africa ratified the instrument in January 2000, and Ghana ratified it in June 2005. The ACRWC states in article 2 that a child is every person under the age of 18; in article 3, that every child is entitled to enjoy the rights contained in the instrument without discrimination on any basis; and in article 4 that the best interests of the child are to be the primary consideration in all actions concerning children. Article 5(2) provides that state parties must provide to the maximum extent possible for the survival, protection and development of the child. The ACRWC has an extensive provision relating to education,³⁴ which obliges states to provide free primary education, and in article 14 it provides for the best attainable state of health and for health services. Article 23, which applies directly to refugee children, requires that states co-operate with existing international organisations in their efforts to protect and assist the child. Article 25 applies to children who have been separated from their parents, and it states that such children are to be provided with special care and assistance.

2.2 International and Regional Refugee Law

2.3.1 1951 UN Refugee Convention & 1967 Protocol

Ghana acceded to the Convention on 18 March 1963, and to the Protocol on 30 October 1968. South Africa acceded to the Convention as well as to the Protocol on 12 January 1996. In these two documents no distinction is made between adults and children with regard to socio-economic rights. Article 22 of the Convention does however set standards which are of special importance to children. It states that refugees must receive the 'same treatment' as nationals in primary education, and treatment at least as favourable as that given to non-refugee aliens in secondary education.

³⁴ Article 11.

2.3.2 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

Ghana ratified this Convention on 19 June 1975, and South Africa ratified it on 15 December 1995. Although similar in many respects to the above UN Refugee Convention, the definition of a refugee in article 1 of this Convention is significantly wider than that provided for in the UN Convention.³⁵ Article 1(2) states that the term 'refugee' also applies to

every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

There is no article in the Convention which specifically refers to refugee children.

2.4 United Nations High Commissioner for Refugees (UNHCR)

The UNHCR has issued numerous policies and guidelines concerning refugees, some of which focus on the treatment of child refugees, and UMR in particular. According to Ressler et al, these policies 'constitute a broad body of substantive rules for decision on the issue of care and placement of the unaccompanied children falling within the agencies' jurisdiction'.³⁶ They are important as they constitute the '*de facto* legal and administrative structures of...international organisations [which] must be recognised as one part of the legal framework which has come to influence the treatment of unaccompanied children'.³⁷

2.4.1 Refugee Children: Guidelines on Protection and Care

The UNHCR Guidelines on Refugee Children were first published in 1988. They were initiated by the 1987 Note on Refugee Children, which finally drew a distinction between refugee adults and refugee children, and acknowledged that over half of the world's refugees are children.³⁸ The Guidelines were then updated in 1994 in light of the 1993 UNHCR Policy on Refugee Children. Central to these Guidelines is the acknowledgement of the need that refugee children have for special care and assistance, and, as such, the Guidelines recognise

³⁵ C Heyns & M Killander (Eds) *Compendium of key human rights documents of the African Union* 3rd ed (2007) 57.

³⁶ Ressler et al (n 5 above) 275.

³⁷ Ressler et al (n 5 above) 272.

³⁸ CP Cohen 'The rights of the child: implications for change in the care and protection of refugee children' 34 *International Journal of Refugee Law* (1991) 683.

that children are vulnerable, dependent and developing. These Guidelines are intended to guide the staff of UNHCR and other organisations, as well as governments. According to the UNHCR, they are not merely suggestions but rather tools for reaching policy objectives, and so they cannot be dismissed without good reason. In addition, most of the Guidelines are intended to be universal. They are based on human rights law, as they were created in light of the CRC and the notion of human rights. There is thus an obligation under human rights law to follow these Guidelines.³⁹

Chapter 5 of the Guidelines deals with health and nutrition. It sets out the standards for the quantity of water and quality of shelter and sanitation which should be provided per person. It also requires that refugee children receive appropriate food to ensure nutritional adequacy, acceptability and palatability. The Guidelines state that children must have access to the essential services of a health system including, where necessary, supplementary health mechanisms to the host country's national health services, established specifically for refugee populations.

2.4.2 UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum

According to section 5(19) of these Guidelines, which were created in 1997, accurate statistics on unaccompanied children should be kept and updated periodically for dissemination amongst relevant agencies and authorities. Section 7(1) of the Guidelines states that all children seeking asylum, *particularly* if they are unaccompanied, are entitled to special care and protection. Such care includes accommodation in foster homes or special reception centres, where the children are under regular supervision and their well-being is assessed.⁴⁰ Such care also includes access to healthcare. Section 7(11) of the Guidelines reiterates the duty that is on states to provide rehabilitative services to children where necessary, to facilitate recovery and reintegration, and to provide culturally-appropriate mental healthcare and counselling. In addition, the Guidelines state that every child should have access to education in their asylum country.⁴¹

³⁹ (n 22 above).

⁴⁰ s7(5).

⁴¹ s7(12).

2.5 Inter-agency Guiding Principles on Unaccompanied and Separated children

The Head of the Central Tracing Agency and Protection Unit of the ICRC has stated that the 'range and complexity of situations in which children become...unaccompanied, and the diverse needs of the children themselves, means that no single organisation can hope to solve the problem alone'.⁴² For this reason, the Inter-agency Working Group on Unaccompanied and Separated Children was initiated in 1995, bringing together the ICRC, UNHCR, UNICEF, the International Rescue Committee, Save the Children/UK and World Vision International. The Inter-agency Guiding Principles on Unaccompanied and Separated Children were a product of this working group and they are intended to guide future action for 'national, international and non-governmental organisations, as well as for governments in their efforts to meet their obligations, and for donors in making decisions on funding'.⁴³ The Principles seek to ensure that all actions and decisions taken in respect of separated and unaccompanied children are anchored in a protection framework, and that the best interests of the child are respected at all times.⁴⁴ As with the UNHCR Guidelines, these Principles are anchored in the CRC, as well as in the Geneva Conventions and their Additional Protocols, and the UN Refugee Convention. The Principles acknowledge that of particular relevance to separated and unaccompanied children are the right to physical protection; the right to provisions for their basic subsistence; the right to care and assistance appropriate to their age and developmental needs; and the right to education.

2.6 General Comment 6 of 2005: Treatment of unaccompanied and separated children outside their country of origin

The General Comment was adopted by the Committee on the Rights of the Child on 3 June 2005. It identifies the vulnerable situation of unaccompanied and separated children and provides guidance on the protection, care and proper treatment of these children based on the legal framework of the CRC with particular reference to the principles of non-discrimination and the best interests of the child.⁴⁵ The General Comment discusses the care and accommodation of UMR as provided for in articles 20 and 21 of the CRC. It notes in paragraph 40 that mechanisms established under national law for regulating the

⁴² (n 17 above).

⁴³ <http://www.icrc.org/web/eng/siteeng0.nsf/html/p1101> (accessed 16 August 2008).

⁴⁴ (n 43 above).

⁴⁵ (n 16 above).

accommodation of children must apply to unaccompanied children, with options such as foster-care, adoption and institutionalisation suggested. It also states that regular visits by social welfare workers should be conducted, given the particular vulnerability of these children. The General Comment is also clear that states, as well as other organisations, should take measures to ensure the effective protection of the rights of unaccompanied and separated children living in child-headed households.

Articles 28, 29(1)(c), 30 and 32 of the CRC provide for access to education, and with regard to these articles the General Comment states in paragraph 41 that every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered. In addition, states should accept and facilitate assistance from UNICEF, UNESCO, UNHCR and other UN agencies in order to meet the educational needs of unaccompanied and separated children. This is of particular importance where government capacity in the host state is limited. The General Comment also addresses in paragraph 44 the right to an adequate standard for living, which is provided for in article 27 of the CRC. The Comment requires that states 'ensure that separated and unaccompanied children have a standard of living adequate for their physical, mental, spiritual and moral development'. This should include 'material assistance and support programmes, particularly with regard to nutrition, clothing and housing'. In addition, the Comment again makes reference to UN agencies and other organisations requiring states to accept and facilitate their assistance. Finally, the General Comment in paragraph 46 refers to the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health, which reflects articles 23, 24 and 39 of the CRC. It provides that states are obligated to ensure that unaccompanied and separated children have the same access to healthcare as national children.

2.7 General Assembly Resolution 51/77

In this resolution on the rights of the child passed in 1996, the General Assembly made specific reference to the plight of UMR and urged that coordinated efforts be made by all agencies to address their specific needs as 'the [CRC] itself calls for co-operation in protection, care and tracing of unaccompanied minors, and the Committee on the Rights of the Child attaches great importance to [their] situation'. The resolution also calls on states

and United Nations bodies, as well as other organisations, to ensure the continual monitoring of the care arrangements of UMR.⁴⁶

2.8 Conclusion

From the foregoing discussion, it may be concluded that both international and regional African law require the provision of special protection and care of UMR. The UNHCR Guidelines reflect these legal standards, as they require treatment of UMR in line with the standards set in the international instruments. UMR must have access to education, particularly primary education, as well as healthcare, shelter, water and food. They must receive special attention, and their best interests must at all times be the primary consideration in any decision affecting their well-being. What is unclear, however, is whether these legal standards are being met and whether UMR are, in fact, receiving the special care and protection which the law demands.

⁴⁶ (n 16 above).

CHAPTER THREE

THE PROBLEM OF ACCESS TO SOCIO-ECONOMIC RIGHTS OF UMR: THE CASES OF SOUTH AFRICA AND GHANA

3.1 Introduction

Despite the existence of legal instruments which provide for special care and assistance in the case of UMR, the plight of UMR has largely been ignored by the international community. Various international instruments touch on the issue, and can be used in advocating for the rights of these children, but there is no specific instrument or body which regulates the treatment of UMR. The UNHCR – the primary actor responsible for the assistance and protection of refugees - has used international law as the basis for specific Guidelines to protect refugee children, yet these Guidelines are not always followed. They do not constitute 'hard international law' and so there are no sanctions, and few consequences, to the lack of implementation. According to Ressler et al, 'in a number of emergencies, unaccompanied children have been left without food, medical care, shelter...in these and other instances, relevant national and international law has been ignored and violated by those who have acted or should have acted upon the children'.⁴⁷

Although it is clear that the law requiring special care and protection of UMR exists, it is also clear that the law is not always implemented and that many UMR suffer as a result. In addition, the Guidelines and Principles set by agencies such as the UNHCR and ICRC are also not always followed: Ressler et al⁴⁸ have stated that

in many past emergencies...policy and programme staff have not been prepared to make these decisions and have been uncertain as to what actions should be taken, and, therefore, some unaccompanied children have received no help at all...they have been neglected, abused, abducted or exploited; some have become mal-nourished; some have died...where there has been assistance, it has sometimes been inadequate or misdirected.

This chapter seeks to demonstrate that maltreatment of UMR does occur. It explains the treatment of UMR in South Africa, a relatively wealthy African State, in a recent refugee emergency. It also explains the treatment of UMR in Ghana, a poorer African state, where refugees have resided in a camp situation for approximately 20 years and the situation is no longer considered as an emergency. These two countries were chosen in order to

⁴⁷ Ressler et al (n 5 above) 300.

⁴⁸ Ressler et al (n 5 above) 4.

demonstrate that in either type of national economy, and in either type of refugee crisis, UMR are still lost in the system, despite the efforts of the parties involved. This chapter will study the access that UMR have to education, healthcare, food and water, and sanitation and shelter in order to address the realisation of the socio-economic rights of UMR.

3.2 South Africa

3.2.1 Introduction

According to Landau and Jacobsen, 'since its transition to majority rule in 1994, South Africa has become the destination for tens of thousands of migrants and refugees from across the African continent'.⁴⁹ South Africa holds hope for many African refugees – hope of political and economic stability, and the opportunity of an improved standard of living. In fact, according to the IOM there are more than 125,000 registered refugees in South Africa.⁵⁰ Yet many refugees are faced with maltreatment at the hands of the police and South African citizens. Many refugee advocates 'frequently criticise the police and the Department of Home Affairs for their treatment of refugees...the data indicate that such complaints are justified'.⁵¹ In 2008, the number of refugees entering South Africa drastically increased due to the political crisis in neighbouring Zimbabwe. This influx of Zimbabwean refugees into South Africa was described by government as a 'serious problem' requiring action.⁵² In addition, refugees living in South Africa faced increased challenges in 2008 due to the outbreak of xenophobia, and xenophobia-related attacks. These attacks began in May and resulted in tens of thousands of immigrants and refugees being displaced within the country. By June of this year there were over 50 000 people who had been displaced, many of whom were sheltered in community halls, local shelters and refugee sites across the country.⁵³ The UNHCR stated that in May 2008, during a period of only 2 weeks, more than 17,000 people (including refugees and asylum seekers) were estimated to have fled xenophobic attacks. According to the UNCHR, this group was in urgent need of assistance and protection. This group of displaced refugees generally have no money or property.⁵⁴ As a result of this

⁴⁹ L Landau & K Jacobsen 'Refugees in the new Johannesburg' 19 *Forced Migration Review* (2004) 44.

⁵⁰ http://www.polity.org.za/article.php?a_id=134092 (accessed 14 September 2008).

⁵¹ Landau & Jacobsen (n 49 above) 45.

⁵² http://www.news24.com/News24/Africa/Zimbabwe/0,,2-11-1662_2158024,00.html (accessed 15 September 2008).

⁵³ <http://www.tac.org.za/community/node/2332> (accessed 15 September 2008).

⁵⁴ (n 50 above).

displacement, the government set up various 'sites' around the province, but UMR are described as 'very vulnerable' when it comes to receiving aid and assistance in the sites.⁵⁵

Amongst this group of refugees in South Africa, there are a number of UMR. Lawyers for Human Rights, together with partner NGO's, recently attempted to obtain statistics of the exact number of UMR in South Africa, but they were unsuccessful. They have stated, however, that there are 'a few hundred'⁵⁶ living in Musina alone, a town bordering Zimbabwe. In August 2008 a Child Protection Rapid Assessment was carried out in the Musina Municipality of the Limpopo Province, in South Africa. This assessment was done because of worrying reports about the number of children migrating to South Africa, as well as existing knowledge of the issue of UMR in the area. The assessment concluded that more than 600 unaccompanied children were living in the town of Musina, more than 200 of whom had arrived in the previous month from neighbouring Zimbabwe. Save the Children's Resource Centre in Musina alone registered 60 new unaccompanied children from Zimbabwe in two months,⁵⁷ and the Centre for Positive Care, a local NGO, has registered over 1000 unaccompanied children from Zimbabwe since it opened its doors in 2004.⁵⁸ 92% of these unaccompanied children were found to be living on the streets or in other dangerous places, such as the bushes, and yet services for these children were found to be ad hoc and reactive as opposed to proactive.⁵⁹ There is therefore no doubt that UMR do exist in the current refugee emergency in South Africa.

3.2.2 Education

In the words of a teenage refugee child from Rwanda living in South Africa, 'we find it very hard to experience and enjoy our childhood...we don't access easily to public education facilities...this in most cases leads to illiteracy amongst refugee children'.⁶⁰ Legally, child refugees living in South Africa are entitled to an education, however many do not gain access to state schools. 35% of children who enter South Africa as refugees do not attend school, due to the problems of school fees, schools being under-resourced, and the language in which the school operates.⁶¹ At 8 refugee sites established in Cape Town, children have

⁵⁵ Email from employee at Lawyers for Human Rights, South Africa, on 1 October 2008.

⁵⁶ (n 55 above).

⁵⁷ Child Protection Rapid Assessment Musina Municipality Limpopo Province, South Africa, August 2008.

⁵⁸ (n 57 above).

⁵⁹ (n 57 above).

⁶⁰ K Kadende 'The Plight of the Refugee Child' (2007) World Refugee Day Speech, Cape Town.

⁶¹ http://www.sagoodnews.co.za/education/school_offers_hope_to_child_refugees.html (accessed 15 September 2008).

had no access to education.⁶² In Johannesburg, there are 110 children who have been denied access to state schools. They are currently enrolled at a school which runs in the afternoons for refugee children who otherwise would have no education at all.⁶³ The school is run by a group of civil society organisations.

In the Child Protection Rapid Assessment for UMR conducted in 2008, it was established that lack of access to education was a recurrent issue. Apparently refugee children were asked to provide documents, such as birth certificates, as a pre-condition to their enrolment, documents which UMR almost never had. Even when UMR do enrol, school drop-out rates are high, partly because of language barriers but mainly because, in the absence of adequate care structures, unaccompanied children need to earn an income to survive. In town and in farming areas alike, schools do not have the capacity and space to accommodate the large number of new arrivals from Zimbabwe, and need support and training if they are to fulfil their constitutional obligation to provide basic education to children.⁶⁴

3.2.3 Healthcare

According to the South African Constitution, everybody present in South Africa is entitled to access to health services. UMR children should be identified and placed in places of safety, and if they are placed in such places of safety then they should receive free healthcare. Yet what at times occurs is that UMR are not identified by social workers and, as such, they are not placed in places of safety. Most of these children end up on the streets,⁶⁵ without the possibility of healthcare.

For UMR arriving from Zimbabwe, there is one public hospital and one clinic in Musina, as well as a presence of Médecins Sans Frontières (MSF) in townships and farming areas. Access to health facilities for unaccompanied children was not a major issue in theory, although many had never tried to access these in practice. Children who had used the facilities reported having been treated adequately and receiving the drugs they needed. Many children said that language barriers posed a problem and that they were too scared of

⁶²<http://64.233.183.104/search?q=cache:QXnKvsPVZ4J:www.tac.org.za/community/files/file/xenophobia/MEMORANDUM%2520TO%2520THE%2520MINISTER%2520OF%2520EDUCATION%2520FROM%2520THE%2520JOINT%2520REFUGEE%2520LEADERSHIP%2520COMMITTEE%2520OF%2520THE%2520WESTERN%2520CAPE.pdf+Memorandum+to+the+Minister+of+Education+from+the+Joint+Refugee+Leadership+Committee+of+the+Wes+tern+Cape+24+July+2008.&hl=en&ct=clnk&cd=1&gl=gh> (accessed 15 September 2008).

⁶³ (n 61 above).

⁶⁴ (n 57 above).

⁶⁵ (n 55 above).

deportation to access any government service. MSF has reported that only accompanied South African children report for consultations, as there is a problem with reaching unaccompanied children.⁶⁶

3.2.4 Food and water

For UMR who were displaced in South Africa, most of them were sheltered in sites set up around the country. Yet some of these sites were not provided with food, and other sites which were provided with food did not necessarily provide appropriate food. According to a human rights advocate working in South Africa, 'it took a few days for management to realise that different religions could not eat certain foods'.⁶⁷ For the UMR entering South Africa from Zimbabwe, access to food was also a problem. In Musina there were numerous feeding schemes making feeding available to unaccompanied children. Nevertheless, securing access to food was mentioned as a problem by some children, especially girls working on neighbouring farms, who do not benefit from feeding schemes and are only provided with food when there is work available. The Centre for Positive Care is a local NGO which provides support to unaccompanied and separated children, mainly from Zimbabwe, and here children are provided with lunch five days a week. It also runs a drop-in centre at the border that provides children sleeping in the surrounding bush with meals at lunchtime. However, Save the Children has reported that this centre had to be closed due to complaints about the children stealing. The Roman Catholic Church has a feeding programme for all vulnerable adults and children, irrespective of nationalities. Save the Children UK provides support to orphans and vulnerable children of all nationalities and legal status, mainly through its feeding scheme that covers 6 Drop-in Centres and 3 feeding points in the Musina Municipality.⁶⁸ Although there are certainly projects in place to feed UMR, it must be noted that they are all run by civil society and faith-based organisations and not by the South African government nor the UNHCR; and that they are not sufficient to address the nutrition needs of all the UMR living in northern South Africa.

3.2.5 Sanitation and shelter

There is a chronic shelter shortage for refugees in South Africa, both for UMR entering the country and UMR displaced due to the xenophobia. Regarding children entering the country, the 2008 Child Protection Rapid Assessment noted the lack of safe and adequate shelter as a

⁶⁶ (n 57 above).

⁶⁷ (n 55 above).

⁶⁸ (n 57 above).

major protection concern for unaccompanied children. There are only two shelters available for unaccompanied children in the Musina Municipality, which cater for around 50 children in total: one shelter is run by a church (with 31 UMR) and the other by the South African Police Service.⁶⁹ According to the report, hundreds of children are left with no access to shelter at all and have to sleep in the streets or in the bush. Not only are these shelters insufficient in the number of UMR that they cater for, but also due to the fact that they only provide shelter for boys.⁷⁰

Regarding UMR who have been displaced within South Africa, sites have been set up around the country to accommodate the refugees but still there are refugees, specifically UMR, who are left without shelter. In Cape Town, 150 refugees were at one point living on the street, even though 15 community halls in the province were already housing refugees.⁷¹ Displaced refugees in Cape Town, Salt River and Muizenberg are currently living in mosques, NGO offices and accommodation paid for by NGO's, yet there is an increasing likelihood that, due to the lack of funds, these groups will 'end up sleeping outside in the cold and rain'.⁷² Another problem is that refugees already in sites are at risk of being evicted from the sites, or having the sites closed down by the government. In August 2008, the Department of Home Affairs requested refugees in Johannesburg shelters to sign a document which stated that refugees who registered at camps would lose their rights to social assistance. Those who questioned the documents, or refused to sign, were immediately sent to the Lindela deportation centre. It is however illegal to deport refugees, and so the group were released on the side of the highway with no money to go any further.⁷³ In addition, hundreds of refugees and asylum-seekers at the Kerksoord temporary shelter sought answers from the UN and government after the tents in which they had been living were removed with no warning and no government or UN officials visible on site.⁷⁴ These cases illustrate the triviality with which the right to shelter of refugees is considered in South Africa.

⁶⁹ (n 57 above).

⁷⁰ (n 57 above).

⁷¹ <http://www.mg.co.za/article/2008-06-12-cape-officials-to-meet-on-refugee-crisis> (accessed 14 September 2008).

⁷² <http://www.tac.org.za/community/node/2343> (accessed 4 October 2008).

⁷³ <http://www.lhr.org.za/news/2008/refugees-make-mistake-knowing-their-rights-business-day> (accessed 14 September 2008).

⁷⁴ http://www.iol.co.za/index.php?art_id=nw20081006172807464C184214 (accessed 4 October 2008).

3.3 Ghana

3.3.1 Introduction

Buduburam is a refugee camp established in 1990. It is located just west of the town Kosoa, 30 miles from the capital city of Accra. It was founded on 140 acres of land, which was initially intended to serve 3 000 refugees only.⁷⁵ Despite its size, the camp soon became home to approximately 42 000 refugees (although this number is now largely reduced due to UNHCR efforts to encourage resettlement and repatriation).⁷⁶ As a result, the refugees live in an environment of poor sanitation, overcrowded and under-resourced schools, expensive and limited access to healthcare, and a lack of vocational opportunities.⁷⁷ Most of the refugees in Buduburam are Liberians who fled to Ghana during the 18-year long civil war in their country. The camp comprises dirt roads, cinder-block houses, sporadic electricity and very little running water.⁷⁸ As a result of this poor environment, many of the hundreds of unaccompanied children living in the camp are uneducated and often work as child labourers.⁷⁹ It is clear that there are many 'orphans and children without guardians'⁸⁰ living in Buduburam, but it is unclear what the exact figures are as the children are being resettled, repatriated, reunited with family, or they are simply lost within the system. Reverend Osei-Agyemang stated in 2004 that there were 214 children in the camp who had been separated from their parents as a result of the conflict in Liberia, as well as a group of 569 children who 'accompanied their parents to Ghana, but were abandoned, and had to fend for themselves as a result'.⁸¹ The employee of an orphanage at the camp has stated that 'there are so many of them [UMR], but it is difficult to trace them all'.⁸² A 2000 survey conducted by the UNHCR and National Catholic Secretariat identified 214 children who are orphans in the camp, as they were separated from their parents as a result of war. The survey also identified 567 children who have been abandoned in Ghana by any family and were as a result unaccompanied.⁸³ There is also an official UNHCR list of unaccompanied and separated children which, as of 2003, showed that there were at least 700 separated and unaccompanied children between the ages of one and 20 on the camp, 335 of whom

⁷⁵ <http://www.brcinternational.org/> (accessed 15 September 2008).

⁷⁶ Personal observations, August – October 2008.

⁷⁷ (n 75 above).

⁷⁸ <http://www.childrenbetterway.org/> (accessed 15 August 2008).

⁷⁹ In Buduburam, there are children who earn a living by pushing rented wheelbarrows full of goods for shop owners. These children are often orphans with nowhere to sleep, and no money or time to attend school. ('Children push wheelbarrows to survive in Buduburam' *The Vision* 21 May 2007; 'Survival of the Fittest: Pushing Wheelbarrows to live in Buduburam' *The Vision* 4 August 2007).

⁸⁰ LS Nyan 'Teacher volunteers for Buduburam' (2004) 1 4 *ExileNews* 6.

⁸¹ AA Dulleh 'Child rights abuses at Buduburam' (2004) 1 4 *ExileNews* 7.

⁸² Interview with employee at ARCH, 3 October 2008, ARCH premises, Buduburam camp.

⁸³ 'How Liberians Live on the Camp at Buduburam in Ghana' *The Perspective* 14 June 2004.

were verified as belonging in that category, and 100 of those who were classified as truly unaccompanied, as opposed to separated.⁸⁴ The Liberian Welfare Council believes, however, that this list is not complete as many more UMR exist and are simply not documented.⁸⁵

These unaccompanied children face life-threatening problems every day as refugees living alone in a foreign country. The biggest problems faced by UMR in the camp are the lack of shelter, food, clothes, healthcare, education and water, i.e. the basic amenities of life.⁸⁶ In the same above-mentioned 2000 survey conducted by the UNHCR and National Catholic Secretariat, it was noted that child labour is prevalent in Buduburam, and the causes of this problem include lack of money to access medical care and lack of opportunities for education. The General Secretary of the National Catholic Secretariat stated that 'these minors, having nobody in Ghana to look after them, had to struggle on their own'.⁸⁷ These challenges for UMR prompted the creation of non-governmental organisations in the camp, such as Children Better Way (CBW). CBW was created in 1996; it is an organisation which aims to solicit assistance from caring organisations to cater for UMR. According to the programme manager of CBW, most UMR have been taken in by unrelated families, but many of them are lost in the system. There are too many problems and the children are largely silent.⁸⁸ Those children who live in institutions are taken care of by the institution, but there are very few orphanages in the camp, and the majority of UMR live in informal foster homes. Some families thus have as many as 13 or 14 children to look after, with only 2 of them being biological children.⁸⁹

3.3.2 Education

There are numerous schools in Buduburam, both primary and secondary level (although there are notably fewer secondary schools),⁹⁰ which provide the children in the camp with education. In 2004 there were 43 registered schools under the supervision of the central education board (run by the residents of the camp), most of which were run by NGO's, faith-based organisations or private entities. Education is not free, however, and most families

⁸⁴ Interview with social welfare officer, 26 September 2008, Social Welfare office, Buduburam camp.

⁸⁵ 'Survival of the Fittest: Pushing Wheelbarrows to live in Buduburam' *The Vision* 4 August 2007.

⁸⁶ Interview with employee at CBW, 29 August 2008, CBW Offices, Buduburam camp and Interview with social welfare officer, 26 September 2008, Social Welfare office, Buduburam camp.

⁸⁷ (n 83 above).

⁸⁸ Interview with employee at CBW, 29 August 2008, CBW Offices, Buduburam camp.

⁸⁹ (n 88 above).

⁹⁰ (n 83 above).

cannot afford to pay the tuition of these schools.⁹¹ The UNHCR built the Buduburam Secondary Senior Secondary and the Buduburam Junior Secondary School in the camp, but they handed over management of the school to the Liberian Welfare Council, and the fees are now too expensive for most refugees. CBW has built a school, which is the cheapest in the camp, but it only goes up to the grade 9 level.⁹² Even where children are able to attend school, the quality of their education is questionable. Existing classrooms are overcrowded, with the student/classroom ratio sometimes being as high as 130:1, although usually it is 50:1. There are inadequate instructional materials, a lack of school administration, a student/teacher ratio of approximately 90:1, and more than 70% of the teachers are untrained.⁹³

In 2004 it was reported that 4000 school-going children in the camp were not attending a school, due to a lack of funds,⁹⁴ and this figure must clearly incorporate UMR. Statistics for the 2003/2004 year showed that almost half of the children who had enrolled in schools dropped out 'due to the inability...to pay school fees'.⁹⁵ Following the survey, the UNHCR committed itself to absorb 2000 registered children into schools located in the camp, and to give similar assistance to the remaining 2000 children after their registration.⁹⁶ This challenge to go to school is obviously more difficult for UMR: they can rarely afford to go to school, and, as a result, spend their time trying to earn money, or become involved in adult activities. 'Many kids living on their own...are vulnerable to exploitation and varying types of abuses, including child labor, prostitution and crimes...wayward children as young as 10 are seen pushing wheelbarrows while others especially girls go around [washing] clothes for a living'.⁹⁷ Even UMR living in foster families may battle to attend school, as their foster parents receive no financial assistance for caring for the UMR.⁹⁸

Despite the high cost of education on the camp, NGO's and the UNHCR are attempting to send as many refugee children as possible, including UMR, to school. Some UMR enjoy sponsored education from the UNHCR (32 children are sponsored, a few of whom are UMR), and others receive sponsorship from Point Hope, an NGO operating in the camp.⁹⁹ In addition, there is meant to be one tuition-free school in the camp, namely the Carolyn A.

⁹¹ <http://www.pointhope.org/site/c.fdKIIONoEmG/b.4323915/k.E6B9/Education.htm> (accessed 27 September 2008).

⁹² (n 88 above).

⁹³ (n 83 above).

⁹⁴ AA Dulleh '4000 children out of school at Buduburam' (2004) 1 6 *ExileNews* 6.

⁹⁵ (n 83 above).

⁹⁶ Dulleh (n 94 above) 6.

⁹⁷ (n 83 above).

⁹⁸ (n 84 above).

⁹⁹ (n 84 above).

Miller Elementary School.¹⁰⁰ The school was apparently founded in 2003 with the mission to provide a tuition-free education for the neediest children, namely orphans and UMR.¹⁰¹ There are meant to be nine classrooms serving over 500 children. Yet although the Carolyn A. Miller schools are tuition-free, they cannot accept every child in need of tuition-free education. On their website, it is estimated that 80-90% of the children on the camp do not attend school: 'many do not attend because of tuition fees and basic school costs'.¹⁰² This study is however unable to confirm that this school does indeed provide free education, and some residents on the camp dispute this claim.¹⁰³

3.3.3 Healthcare

'The healthcare system in the camp is grossly inadequate at best and simply terrible at worst'.¹⁰⁴ There is no free healthcare on camp, and the healthcare which is provided at a fee is generally less than adequate. Adequate healthcare is of great importance to the refugees in Buduburam: statistics show that 1 in 4 children die before the age of 5, as 'the camp is plagued by waterborne diseases, malnutrition, malaria, and untreated sexually transmitted diseases'.¹⁰⁵ The UNHCR has reported that by 2004 1,438 children were identified to be suffering from micronutrient deficiencies, with 225 children seriously malnourished (although the actual number is expected to be considerably higher).¹⁰⁶ Despite this fact, no service in the camp is free, therefore people who need medical attention often go without.¹⁰⁷ Regarding the UNHCR clinic in the camp, 'residents see the clinic and its modern facilities as mere cosmetics intended to paint a good picture for camp and UNHCR authorities'.¹⁰⁸ On the other hand, it is reported that 95% of the children under 5 in the settlement have been vaccinated against measles.¹⁰⁹ Breast-feeding is generally promoted and the use of bottles discouraged, and children have been trained in minimal personal hygiene.¹¹⁰

¹⁰⁰ Interview with employee at UNHCR, 7 October 2008, UNHCR offices, Accra.

¹⁰¹ <http://www.vaafd.com/programs.php> (accessed 22 October 2008).

¹⁰² (n 101 above).

¹⁰³ Interview with employee at ARCH, 3 October 2008, ARCH premises, Buduburam camp and Interview with employee at CBW, 29 August 2008, CBW Offices, Buduburam camp.

¹⁰⁴ (n 83 above).

¹⁰⁵ <http://www.pointhope.org/site/c.fdkIIONoEmG/b.4323909/k.C2D4/Medical.htm> (accessed 27 September 2008).

¹⁰⁶ (n 83 above).

¹⁰⁷ (n 83 above).

¹⁰⁸ (n 83 above).

¹⁰⁹ (n 83 above).

¹¹⁰ Results of a questionnaire (see Annexure 2) posed to a volunteer who lived in Buduburam for 3 months working with refugee children, and to an employee of an NGO operating in Buduburam for the welfare of refugee children.

In a system where healthcare is not readily accessible, UMR often suffer. An officer at the Department of Social Welfare has stated that the UNHCR clinic in the camp has offered free treatment for UMR since 2004,¹¹¹ and an official at the National Catholic Secretariat stated that if a child is recommended to the clinic by Social Welfare for free treatment (i.e. where the child is an UMR), the child receives free treatment.¹¹² Yet a resident in the camp, who is aware of issues affecting UMR, stated that 'everyone pays for everything, including the first consultation. UMR pay too, unless they are in an orphanage then the orphanage pays'.¹¹³ In addition, a newspaper article reported an unaccompanied minor in the camp as stating that 'mosquitoes are eating me up and I get sick sometimes...I go to the clinic, but they ask for \$10 US...so I have to push wheelbarrows to get money to get better'.¹¹⁴ It is therefore unclear whether this principle of free treatment for UMR is only a theory or if it is readily practised.

3.3.4 Food and water

Food is the most pressing need facing refugees.¹¹⁵ 'In Buduburam, very few children ever get the luxury of a full and satisfying meal...tiny portions of rice are just about the only thing that any of them ever get to eat'.¹¹⁶ Most refugees can only afford 1 meal a day, often consisting of small onions and peppers, and perhaps one small piece of dried fish.¹¹⁷ Most families have many mouths to feed, and so UMR living with foster families may receive their portion last, or not at all. Even children who do get fed are not always given food of sufficient nutritional value to help build a healthy immune system. 'In Buduburam, the combination of starvation and disease kills one in four children under the age of five'.¹¹⁸

According to the Camp Manager at Buduburam, UMR are classified as a vulnerable group and as such they are given food rations in the targeted feeding programme organised by WFP and UNHCR. Distribution is done by the NCS.¹¹⁹ The food is distributed once a month to identified vulnerable individuals, unless there is a pipeline break in commodities from WFP, and includes a package of grains, vegetable oils, beans and a corn soy blend.¹²⁰ Some food is given to the child and some to the foster parents. There are 104 UMR who received

¹¹¹ (n 84 above).

¹¹² Interview with employee at NCS, 6 October 2008, National Catholic Secretariat, Accra.

¹¹³ Interview with camp resident B, 26 September 2008, CBW guest house, Buduburam camp.

¹¹⁴ (n 85 above).

¹¹⁵ (n 88 above).

¹¹⁶ http://www.pointhope.org/site/c.fdKIIONoEmG/b.4323913/k.844F/Feed_A_Child.htm (accessed 27 September 2008).

¹¹⁷ Personal observations, 26 September 2008.

¹¹⁸ (n 116 above).

¹¹⁹ Interview with Camp Manager, 26 September 2008, Camp Manager's Offices, Buduburam camp.

¹²⁰ (n 112 above).

food rations from January to October 2008 (according to the NCS Beneficiary Statistics Media Report 2008). The UMR who are beneficiaries of the targeted feeding are identified through the Department of Social Welfare, which means that only those children of which the Department is aware are being reached. Point Hope is attempting to provide vulnerable children with nutritional food through a nutrition centre where the children who need it most can receive balanced, nutritionally complete meals.¹²¹ NCS has a malnourishment centre: it has identified 202 children based on annual nutritional surveys. These children are assisted with food (targeted feeding as well as supplementary feeding), and the programme is funded by the UNHCR and WFP.¹²² Despite these feeding programmes, it is believed that children are not receiving adequate quality and quantity of food; there is evidence of deficiency diseases among children; appropriate measures are not being taken to prevent and reduce micro-nutrient deficiencies; and the use of milk products is not being monitored and adhered to according to UNHCR policy.¹²³ In addition, the WFP is ending the targeted feeding programme at the end of 2008, as they only offer assistance where there are more than 5000 people needing food. Due to refugees leaving the camp, the number of refugees remaining who require feeding is currently 4693 (October 2008) as opposed to approximately 6000 in September 2008.¹²⁴

There is a serious problem concerning the availability and adequacy of water in Buduburam. UNHCR does not provide residents in the camp with water,¹²⁵ and running water has only been introduced very recently (May 2008)¹²⁶ into the camp by the UNHCR and Point Hope, but it is not free as refugees have to pay for it per bucket.¹²⁷ Apparently, the refugees are being charged the 'lowest possible price', but even this is sometimes too much.¹²⁸ Even where there are working taps, there is no adequate drainage around water points.¹²⁹ Because of costs, many refugees cannot afford to pay for water from commercially operated mobile tankers or for potable water in plastic sachets, and so 'this leaves a considerable number of refugees without safe water'.¹³⁰ Even the water that is sold is only of reasonable

¹²¹ (n 116 above).

¹²² (n 112 above).

¹²³ Results of a questionnaire (see Annexure 2) posed to a volunteer who lived in Buduburam for 3 months working with refugee children, an employee of an NGO operating in Buduburam for the welfare of refugee children, and an officer of LWC.

¹²⁴ (n 112 above).

¹²⁵ (n 83 above).

¹²⁶ http://www.pointhope.org/site/c.fdK11ONoEmG/b.4323927/k.8D2A/Living_Waters.htm (accessed 27 September 2008).

¹²⁷ (n 88 above).

¹²⁸ (n 126 above).

¹²⁹ (n 110 above).

¹³⁰ (n 83 above).

quality, as it is not systematically tested.¹³¹ There is a stream that sometimes runs through the area, but the sanitary conditions of that water source are not reliable.¹³² There is only adequate water available for bathing and washing if the people fetch the water from the available wells. Children are often used to collect and carry water.¹³³ Some measures have been taken to improve access of water for the refugees, including the building of 18 wells by CBW throughout the camp which provide the residents with free water,¹³⁴ and three hand pumps throughout the camp which were donated by the Church of Jesus Christ.¹³⁵ Water that is available from wells is used for drinking, bathing, washing, cooking and watering of the few gardens. The water for washing is often dirty and therefore inappropriate.¹³⁶ Additional measures are certainly needed to improve the availability of potable water, particularly for young children.¹³⁷ In an assessment done by Africa Aid, it was concluded that 'clean water sources were determined to be a top priority...and water-borne illness and high saline prohibited residents from drinking groundwater sources'.¹³⁸ For UMR who generally have less money than other refugees in the camp, the cost of water is a serious concern. In fact, the NCS has suggested to the UNHCR that UMR be given some assistance in obtaining water.¹³⁹

3.3.5 Sanitation and shelter

There are not enough rubbish bins in Buduburam to handle the volume of garbage generated by the thousands of refugees who reside in the camp. In response to the obvious need for a refuse system, CBW has provided the camp with numerous rubbish bins.¹⁴⁰ Yet there is still litter all over the camp, with children playing in mounds of garbage. When it rains, litter is often swept into the water supply of the camp.¹⁴¹ 'The inescapable filth in the camp contributes to the spread of disease and despair'.¹⁴² According to an article written in *The Perspective* in 2004, the two main sanitation problems facing the residents of the camp are limited or no latrine facilities and poor refuse collection and the lack of a functional waste

¹³¹ (n 83 above).

¹³² (n 126 above).

¹³³ (n 110 above).

¹³⁴ (n 88 above).

¹³⁵ (n 83 above).

¹³⁶ Results of a questionnaire (see annexure two) posed to a volunteer at ARCH orphanage, Buduburam camp.

¹³⁷ (n 110 above).

¹³⁸ www.africaaid.org/water.htm (accessed 23 September 2008).

¹³⁹ (n 112 above).

¹⁴⁰ (n 88 above).

¹⁴¹ <http://www.pointhope.org/site/c.fdKIIONoEmG/b.4323919/k.22A2/Sanitation.htm> (accessed 27 September 2008).

¹⁴² (n 141 above).

management system.¹⁴³ There are inadequate and unaffordable toilet facilities for refugees. It has been reported that most refugees use an area of woodland on the outskirts of the camp to relieve themselves. Many children were raped and murdered from this woodland, however, and this, together with the fact that the woodland is being encroached by the extension of the camp, has resulted in most people relieving themselves in their backyards. Regarding the waste management system,¹⁴⁴

the improper waste water (often sewer) disposal practice in the settlement, insufficiency and poor maintenance of drainage; poor garbage collection and disposal system and the conspicuous absence of trained volunteer sanitation workers to manage the sanitation activities, have compounded the mounting sanitation crisis in the settlement.

Despite the refugees attempting to carry out periodic cleaning up exercises, which have been encouraged and assisted by the UNHCR and the Assembly in whose district the camp exists, and despite the donations by a Paramount Chief of three refuse containers and the UNHCR of a refuse truck, the refuse management system in Buduburam is still of great concern. 'The settlement lacks properly maintained drainage facilities [and] the sewage system, constructed in the 1990's, is filled with rubbish and other filths due to the lack of maintenance'.¹⁴⁵ The result of this poorly constructed and maintained refuse system is the proliferation of mosquitoes and other dangerous insects. 'The sanitation problem at the camp has been causing health hazards [such as] cholera, diarrhea, water borne diseases and other tropical diseases'.¹⁴⁶ Children thus live in an environment where litter and trash covers most surfaces, where they are forced to play in piles of garbage, where there is a continuous stench of sewerage, and where they have no toilets in which to relieve themselves. The UNHCR identified various gaps in its services to refugees, including the need for additional toilets, fumigation, additional refuse collection points and the establishment of a waste disposal system and the distribution of soap to needy refugees. Yet by 2004 the UNHCR had yet to address these gaps, and it is clear that by 2008 soap was still not being distributed to needy refugees.¹⁴⁷

The general cleanliness of the camp is dissatisfactory, with certain areas of the camp prone to flooding. Children in the camp have not been sensitised to or involved in the cleaning and

¹⁴³ (n 83 above).

¹⁴⁴ (n 83 above).

¹⁴⁵ (n 83 above).

¹⁴⁶ (n 83 above).

¹⁴⁷ (n 88 above).

maintaining of sanitary facilities.¹⁴⁸ Residents in Buduburam pay for the use of public toilets, but in principle children under the age of 12 shouldn't pay. Despite this, there are rumours that these children are still made to pay. The NCS has realised that there is a need to provide family toilets,¹⁴⁹ and the UNHCR has reported that more toilets are now being built, including family toilets. To date, there are 30 toilets in the area, in both the host and camp communities. Last year some more toilets sponsored by the UNHCR were built. A problem is that the refugees apparently do not care for the toilets, leaving them in a bad condition.¹⁵⁰ Regarding shelter, those UMR identified by the Department of Social Welfare have been incorporated into informal and formal foster homes, and so they are provided with shelter by their foster families. Other UMR on the camp either live in one of the few institutions available, or they sleep outside without any access to shelter. The NCS reported that they have, in the past, rehabilitated houses which accommodate UMR.¹⁵¹

3.4 Conclusion

'Many UMR came here. Nobody helps them'.¹⁵²

(Refugee living in Buduburam camp, who arrived in Ghana alone at 14 and has never been educated)

This section concludes with brief observations. Firstly, in South Africa, UMR fleeing Zimbabwe, as well as refugees who have recently become displaced within the country, do not receive adequate attention. Their access to education is severely hampered, and many of them battle to access food or appropriate shelter. Secondly, in Ghana, UMR living in the Buduburam Refugee Camp suffer, perhaps more than most of the residents in the camp. Their socio-economic rights are certainly not being fully realised: an official from a NGO operating in the camp stated that the problem of access for UMR to their socio-economic rights is a large problem, and the realisation of their rights 'all depends on the resources'.¹⁵³ It is clear that there are individuals, organisations and government officials who are attempting to address the situation of UMR in South Africa and in Ghana but, despite these efforts, access to food, water, education, healthcare and adequate sanitation is still a large problem for these children. It is therefore necessary to identify the obstacles which inhibit the full protection of the socio-economic rights of UMR, and to address the reasons for the gaps in their protection.

¹⁴⁸ (n 110 above).

¹⁴⁹ (n 112 above).

¹⁵⁰ (n 100 above).

¹⁵¹ (n 112 above).

¹⁵² Interview with camp resident A, 26 September 2008, bench outside Social Welfare office, Buduburam camp.

¹⁵³ Interview with employee at Point Hope, 6 October 2008, Point Hope office, Buduburam camp.

CHAPTER FOUR

OBSTACLES TO IMPLEMENTATION

4.1 Introduction

This chapter will be devoted to a discussion of the obstacles to the implementation of the socio-economic rights of UMR. Numerous obstacles to the full realisation of these rights exist. The first obstacle concerns the law: in Ghana there are insufficient protections in legislation, which result in an inferior system of protection for UMR; and in South Africa, the protections exist to some extent in law yet the law is not always properly implemented. In addition, international law blocks the proper realisation of the rights of UMR by not expressly providing for them. The second obstacle is the lack of financial resources: the parties involved in the protection of UMR often lack the necessary funds to adequately address their socio-economic needs. The third obstacle is presented by the limited capacity of the parties involved. Addressing the needs of UMR requires co-operation between various parties, but these parties sometimes lack the resources, regulation or direction to participate effectively, or to co-operate sufficiently. The fourth obstacle is the lack of communication: this can be a lack of communication between government departments, but also a lack of communication between governments and refugees. These four obstacles to the implementation of the socio-economic rights of UMR are addressed in detail below.

4.2 Legal obstacles

4.2.1 South African domestic law

The protections of the rights of UMR in South African law are extensive. These rights are expressly protected in the Constitution, in legislation, as well as in case law. The 1996 Constitution of South Africa guarantees fundamental rights to all individuals, including refugees, in the Bill of Rights. These rights include the right to human dignity,¹⁵⁴ to food and water,¹⁵⁵ and the right of everyone in South Africa to have access to housing and healthcare.¹⁵⁶ In addition, section 28(1)(c) of the Constitution deals specifically with the

¹⁵⁴ s10.

¹⁵⁵ s27.

¹⁵⁶ ss26 & 27.

rights of children, and provides that 'every child has the right to basic nutrition, shelter, basic healthcare services and social services'. South Africa is under a constitutional duty to respect, promote, protect and fulfil the rights contained in this Bill of Rights.¹⁵⁷ There is also specific legislation in South Africa which regulates the treatment of refugees. The Refugees Act, Act 130 of 1998, which came into effect in 2000, outlines the rights and obligations of refugees and asylum seekers,¹⁵⁸ and includes special provisions for unaccompanied children.¹⁵⁹ Both the Constitution and the Refugees Act guarantee and recognise the right of 'everyone' to access healthcare; refugees, asylum seekers and undocumented persons are therefore equally protected.¹⁶⁰ The Children's Act, Act 38 of 2005, is a far-reaching and progressive piece of legislation which requires that children regarded as in need of protection and care (which incorporates UMR through the provision 'any child who has been abandoned or orphaned and is without visible means of support')¹⁶¹ should be brought to the attention of the relevant authorities.¹⁶² It therefore governs the way in which UMR, as children in need of protection and care, should be treated.¹⁶³ There is currently a Refugees Amendment Bill which will incorporate the above-mentioned provisions of the Children's Act into the Refugees Act.¹⁶⁴ Regarding the right to education, refugees and asylum seekers cannot be refused admission to a public school, and payment of school fees, registration fees and uniforms are not conditions for registration to public schools.¹⁶⁵ Finally, there is currently a structure being formed under the new Children's Act which will serve as a monitoring body for service delivery to children in South Africa.¹⁶⁶

It is also important when considering domestic law to have regard to pertinent case law. In the case of *Centre for Child Law v Minister of Home Affairs*,¹⁶⁷ the Court declared that all unaccompanied foreign children found in need of care should be dealt with in accordance with the provisions of the Child Care Act (which has been replaced by the Children's Act), and the South African government is directly responsible for the socio-economic and education needs of unaccompanied foreign children in South Africa, including the needs of

¹⁵⁷ s7(2).

¹⁵⁸ s27.

¹⁵⁹ <http://hrw.org/reports/2005/southafrica1105/4.htm> (accessed 3 October 2008); see s32(1).

¹⁶⁰ s27(g) Refugees Act & s28(1)(c) Constitution.

¹⁶¹ s150(1)(a) Children's Act 38 of 2005.

¹⁶² s151(1) Children's Act 38 of 2005.

¹⁶³ Email from employee at Lawyers for Human Rights, South Africa, on 17 October 2008; see also ss151 to 160 Children's Act 38 of 2005.

¹⁶⁴ s21A.

¹⁶⁵ <http://www.google.com.gh/search?hl=en&q=Black+sash%3A+fact+sheet%3A+legal+rights+for+refugees+and+asylum+seekers> (accessed 1 October 2008).

¹⁶⁶ Email from employee at Lawyers for Human Rights, South Africa, on 17 October 2008).

¹⁶⁷ 2005 6 SA 50 (T).

refugee children. In the case of *Bishogo v The Minister of Social Development*,¹⁶⁸ it was held that there should not be a bar on refugees accessing social services, whether the bar is direct or indirect.¹⁶⁹

From the foregoing, it is evident that the legal framework in South Africa adequately addresses the plight of UMR. Yet the law is not always adequately implemented. In a 2000 report commissioned by the UNHCR on the development of health and welfare policies for refugees in South Africa, there was concern that there is a lack of uniformity amongst government departments in dealing with UMR. For example, the Children's Court in Johannesburg was not aware that it had jurisdiction over refugee children. In addition, Home Affairs personnel at the Johannesburg Refugee Reception Office have been accused of not assisting minors, and of not communicating with the Department of Welfare when a case involving a vulnerable child arose.¹⁷⁰ In the workshop summary of a recent strategy workshop on vulnerable children in South Africa, it was recorded that refugee children are not receiving support; there is no uniformity in the manner in which the Children's Court manages foster applications; there is no access to grants and services in rural areas; and officials have poor management in government offices.¹⁷¹

The legal framework in South Africa for addressing UMR is extensive; yet the poor implementation of these laws is an obstacle to the realisation of the rights of UMR. It must be noted that there *are* policies in South Africa which govern the relationship between the UNHCR and the South African government,¹⁷² but this study found no evidence of policies or laws clarifying the status of the UNHCR Guidelines in South African law. At the time the above-mentioned 2000 report was written, there was no formal procedure in place between government departments to take care of unaccompanied children: the report states that 'the lack of communication between the Departments of Home Affairs and Social Services, as well as the lack of awareness on the part of the Children's Court, have led to a situation where unaccompanied children are falling through the cracks'.¹⁷³

¹⁶⁸ Unreported Transvaal Provincial Division case number 9841/2005.

¹⁶⁹ Children's Amendment Bill– public hearings in Gauteng, Braamfontein Recreation Centre, October 2006, submission by Lawyers for Human Rights.

¹⁷⁰ <http://www.queensu.ca/samp/sampresources/migrationdocuments/documents/2001/dha.pdf> (accessed 20 October 2008).

¹⁷¹ Workshop Summary: ACESS KwaZulu-Natal Provincial Review and Strategy Workshop 20-21 April 2006.

¹⁷² (n 166 above).

¹⁷³ (n 170 above).

4.2.2 Ghanaian domestic law

In Ghanaian law there is a notable lack of references to the situation of UMR, or to refugee children in general. There is no specific reference to the rights of refugees in the 1992 Constitution. Article 33(5) does however state that the fundamental human rights specifically mentioned in the Constitution should not be regarded as excluding other human rights which are not specifically mentioned, yet which are considered as inherent in a democracy as intended to secure the freedom and dignity of man. It is therefore possible that the socio-economic rights of refugees are in fact guaranteed by the 1992 Constitution, as they are no doubt recognised in international and regional human rights law as fundamental rights. It is acknowledged that the provision of socio-economic rights in a state has consequences for the state, and therefore must be clearly provided for and defined. As this is not the case in Ghana, it is unclear whether refugees have access to socio-economic rights, in terms of the Constitution. In addition, regardless of whether or not the socio-economic rights of refugees are considered to be included via article 33(5), it is submitted that the rights in the Constitution are not guaranteed to citizens or nationals only, but to all persons in Ghana. This should therefore include refugees and asylum seekers who are in Ghana.

The Refugee Law of 1992 does not specifically mention UMR. It does however note that refugees are entitled to certain rights, including the rights mentioned in the 1951 UN Convention, the 1967 Protocol and the OAU Convention.¹⁷⁴ Yet these Conventions do not make specific reference to UMR, or to their rights. The Refugees Act does not therefore make any special provision for refugee children. The Children's Act, Act 560 of 1998, makes no reference to the situation of refugee children. The only reference to refugees is in section 3, which states that no child shall be discriminated against because he/she is a refugee. It must be noted that Ghana does provide for free primary education, as regulated by the Free Compulsory Universal Basic Education Policy of 1995, which gives effect to s38(2) of the Constitution.¹⁷⁵

In summary, there is no law in Ghana which sets out the rights of UMR or establishes what policy or guidelines will guide involved parties in the protection of, and treatment of, UMR. The refugee legislation in Ghana makes reference to the rights provided by international refugee law, but international refugee law does not make specific provision for the rights of UMR, as shown above in chapter two. This gap in the legal framework governing refugee

¹⁷⁴ s11.

¹⁷⁵ <http://ghanaconsious.ghanathink.org/node/110> (accessed 1 November 2008).

children in Ghana certainly obstructs and inhibits the proper realisation of the rights of UMR living in the country.

4.2.3 International law

Concerning the legal protections of UMR in international law, Goodwin-Gill states that 'neither the 1951 Convention nor the CRC, so far as they address the situation of children as refugees, provide an entirely satisfactory legal basis'.¹⁷⁶ According to Goodwin-Gill, 'refugee law nevertheless remains an incomplete legal regime of protection...incomplete so far as refugees and asylum seekers may still be denied even...temporary protection'.¹⁷⁷ Yet international law must address the protection of refugees, as it is the role of international law to substitute its own protection for that which the country of origin or the host country is unable to provide.¹⁷⁸

There is no instrument in international law which focuses on the plight of refugee children, or UMR specifically. The treatment of these children is 'divined' from various international instruments. International instruments which do focus on refugee children and UMR, such as the UNHCR Guidelines on Protection and Care, constitute 'soft' law and as such are not binding on states. The UNHCR has in fact complained that these Guidelines have often been rendered ineffectual because of a lack of accountability and inadequate implementation.¹⁷⁹ Due to their nature as 'soft' law, no government is held accountable or responsible for not complying with the guidelines.

4.3 Financial obstacles

The lack of financial resources and funding constitute another obstacle to the implementation of the socio-economic rights of UMR. That much was evidenced by interviews conducted with an official at the UNHCR, Accra, and an officer at the Liberian Welfare Council in the Buduburam camp. The UNHCR officer noted that the gaps which still exist in the treatment and protection of UMR in Ghana exist largely because of limitations of funding.¹⁸⁰ The officer at the Liberian Welfare Council in Buduburam Camp, who works directly with issues affecting children, has stated that there are insufficient funds to help the children.¹⁸¹ In addition, according to a newspaper article by a Liberian journalist, 'the

¹⁷⁶ GS Goodwin-Gill *The refugee in international law* (1996) 257.

¹⁷⁷ Goodwin-Gill (n 176 above) v.

¹⁷⁸ Goodwin-Gill (n 176 above) 207.

¹⁷⁹ http://www.savethechildren.org.uk/caris/legal/srandi/sr_04.php (accessed 4 October 2008).

¹⁸⁰ (n 100 above).

¹⁸¹ (n 85 above).

UNHCR...is supposed to ensure the provision of water and sanitation, food and healthcare, electricity and security, sports and entertainment, and all amenities that would enable refugees to live with dignity and safety in the country of asylum...unfortunately, the lack of adequate funding and resources make the current situation of programs of assistance to the refugee population challenging'.¹⁸² It is interesting to note that in discussions with various stakeholders, many concluded that the UNHCR is not spending enough of their money: that they have the necessary funds but do not spend them wisely.

4.4 Capacity of parties involved

4.4.1 Government

Sovereign states have primary jurisdiction over UMR in their territory.¹⁸³ Governments in host countries are therefore under a duty to ensure that UMR in their jurisdiction are protected and treated according to international standards.¹⁸⁴ In many countries, host governments fulfil this obligation by mandating the Department of Social Welfare (or equivalent) to care for UMR.¹⁸⁵ For example, in Ghana there is a branch of the Department of Social Welfare in the Buduburam camp catering for the needs of UMR.¹⁸⁶ This branch has assisted UMR by formalising informal fostering arrangements which existed prior to Social Welfare's involvement, and they have, in conjunction with the UNHCR, set up a Fostering Committee to arrange formal fostering for the remaining UMR.¹⁸⁷ Yet the work of the Department of Welfare alone is not sufficient. Prompt responses to refugee situations from governments are vital yet, in Ghana, a branch of the Department of Social Welfare was only established in Buduburam in 2003, many years after the camp itself was established.

In 2007 a human rights lawyer in South Africa stated that 'despite the small number of refugee children in the country, the South African authorities are struggling to provide them with the necessary protection and assistance'.¹⁸⁸ A problem encountered is that not all parties are aware of the rights of refugees, and of the responsibilities of the South African government. For example, according to a South African journalist,¹⁸⁹

¹⁸² (n 83 above).

¹⁸³ Ressler et al (n 5 above) 207.

¹⁸⁴ Ressler et al (n 5 above) 300: 'the obligations for the care and protection of unaccompanied children fall in the first instance to the authorities of the state where the children are located'.

¹⁸⁵ (n 119 above).

¹⁸⁶ Interview with officer at Liberian Welfare Council, 6 October 2008, Liberian Welfare Council Office, Buduburam Camp.

¹⁸⁷ (n 84 above).

¹⁸⁸ <http://www.mg.co.za/article/2007-07-09-out-of-harms-way> (accessed 27 October 2008).

¹⁸⁹ <http://www.zoutnet.co.za/details.asp?StoNum=6339> (accessed 13 September 2008).

several international agencies now rendering services to Zimbabwean refugees in South Africa are experiencing the same frustration which faces local NGOs and especially local churches, who desperately want to alleviate the suffering of the refugees, but do not want to contravene the express directive of the local [South African Police Services] that no support or aid should be given to any foreigner who is found without the necessary documentation.

It is the role of the government to ensure that departments mandated to protect the rights of child refugees are equipped to do so. Winterstein¹⁹⁰ claims that refugee children's welfare in South Africa is not being seen to properly due to bureaucracy and social obstacles such as too few social workers.¹⁹¹ In her Master's dissertation, Livesey stated that in the 2004 International Refugee Day speech, the Deputy Director of Refugee Affairs of the South African government noted that South Africa needs to look for ways to provide material support to vulnerable groups, including children,¹⁹² and Livesey deduced from this that the South African government acknowledges that not enough is being done to assist vulnerable refugee children.¹⁹³ Governments are responsible for providing social workers, for reducing unnecessary bureaucracy and for finding ways to fulfil their legal obligations to UMR.

It is also the duty of governments to ensure that the rights of refugees, and responsibilities of the government departments, are easily accessible and are disseminated throughout the country. Regarding access to healthcare in South Africa, an obstacle in government is the 'general inability amongst health officials at all government levels to differentiate between different groups of foreigners and their respective rights to healthcare services'.¹⁹⁴ As of 2000, there was no uniform policy from the National Health Department indicating whether identification documents are required for primary healthcare access, and there was also evidence that administrative assistants in hospitals were not aware of a national agreement that a series of documents could be accepted from refugees instead of an identification document. In addition, there is evidence that asylum seekers and refugees are expected to put down a deposit before receiving hospital care, similar to that required of tourists.¹⁹⁵ Regarding access to welfare, it has been reported that despite the fact that there is no national policy requiring government-funded shelters to cater for the needs of South Africans first before foreigners, this has been the practice of some shelters in the country, and

¹⁹⁰ 'South Africa legal system fails refugee children' *Sunday Independent* 26 June 2005.

¹⁹¹ Unpublished: TK Livesey 'A survey on the extent of xenophobia towards refugee children' unpublished Masters dissertation University of South Africa (2006) 27.

¹⁹² Mashele, M (2004) 'Home in exile: rebuilding refugee lives in South Africa' International Refugee Day Speech.

¹⁹³ Livesey (n 191 above) 24.

¹⁹⁴ (n 170 above).

¹⁹⁵ (n 170 above).

although provincial departments have the ability to provide short-term social relief to refugees through the national Social Relief Fund, it is not clear whether this is known practice amongst Social Services officials.¹⁹⁶ Governments need to disseminate information about the rights of refugees to all government departments and officials to ensure that the rights which are provided for UMR are indeed being implemented.

A host government cannot adequately address the needs of UMR alone. According to Ressler et al, 'national authorities may fulfil their duty by inviting an international or voluntary organisation to assume full or partial responsibility for the care, protection and placement of the children'.¹⁹⁷ He also states¹⁹⁸ that

there may be so many other demands on national resources and so few resources to meet those demands that authorities find it impossible to identify and care for children left unaccompanied by the emergency...international or voluntary organisations can help meet all of these needs and many states have used such outside assistance in the years since World War I.

Governments cannot adequately address the plight of UMR alone, and should request assistance; such as inviting the UNHCR to participate, and giving room to NGO's to act. Where governments do not do so, the rights of UMR may be undermined. In South Africa there was confusion recently regarding the role of the UNHCR in the country, as there were allegations that the South African government had not invited the UNHCR to act in the situation.¹⁹⁹ This led to confusion and ultimately hampered the realisation of the rights of refugees in the country.

Finally, another obstacle to the implementation of the rights of UMR is corruption and bribery within government offices. This corruption is evidenced in the Livesey's unpublished Master's dissertation: Harris²⁰⁰ states that corruption and fraud are common in South Africa within the asylum-seeking process, and that foreigners who are entitled to be in South Africa often have to pay extra for the processing of their documents and to secure their status.

¹⁹⁶ (n 170 above).

¹⁹⁷ Ressler et al (n 5 above) 301.

¹⁹⁸ Ressler et al (n 5 above) 207.

¹⁹⁹ <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=90903&sn=Detail> (accessed 22 October 2008).

²⁰⁰ Harris, B 'A foreign experience: violence, crime and xenophobia during South Africa's transition' (2001) 5 *Violence and Transition series* in TK Livesey 'A survey on the extent of xenophobia towards refugee children' unpublished Masters dissertation University of South Africa (2006).

Valji²⁰¹ states that bribery has become so commonplace in South Africa to the extent that there is an unofficial 'price list' depending on what country a refugee is from and what permit the refugee requires.²⁰² This corruption undoubtedly affects UMR in Africa who rely on assistance from government officials for their very livelihood.

4.4.2 UNHCR

According to Goodwin-Gill, 'today, most states clearly want the UN to assume responsibility for a broad category of persons obliged to flee their countries'.²⁰³ The UNHCR is indeed a body that can assume such responsibility: it is 'not only a forum in which the views of states may be represented, it is also, as a subject of international law, an actor in the relevant field whose actions count in the process of law formulation'.²⁰⁴ The UNHCR has legal personality, and as such can be held accountable for this responsibility which it exercises. According to a Liberian journalist, the UNHCR is 'the lead organisation providing material assistance and protection to the refugee community'.²⁰⁵ Material assistance entails food, shelter, medical aid, education and other social services.²⁰⁶ The mandate of the UNHCR involves the material assistance and legal protection of refugees, and the protection of UMR falls within this general mandate.²⁰⁷ Yet the UNHCR's assistance to and protection of UMR is also required more specifically by the UNGA in Resolution 35/187, which highlights the competence of the UNHCR to 'take necessary measures of care' for refugee children.

In Ghana, the UNHCR has a focus on the welfare of UMR in the Buduburam camp. They have held workshops on issues relevant to the physical protection of UMR, and have hosted a Child Protection Officer from Geneva who worked specifically with UMR.²⁰⁸ UNHCR has a Child Panel Committee which works with the Department of Social Welfare.²⁰⁹ There is also a Best Interests Determination Committee which was revised in 2007. It deals with issues concerning children, and involves interviewing UMR and making recommendations. It is possible, however, for this Committee to lose sight of UMR when they are placed in fostering families. In addition, there are no Child Protection Officers who work from the Accra branch

²⁰¹ Unpublished: N Valji 'Creating the nation: the rise of violent xenophobia in the new South Africa' unpublished Master's thesis York University of Toronto (2003) in TK Livesey 'A survey on the extent of xenophobia towards refugee children' unpublished Masters dissertation University of South Africa (2006).

²⁰² Livesey (n 191 above) 22.

²⁰³ Goodwin-Gill (n 176 above) 213.

²⁰⁴ Goodwin-Gill (n 176 above) 216.

²⁰⁵ (n 83 above).

²⁰⁶ <http://www.dfa.gov.za/foreign/Multilateral/inter/unhcr.htm> (accessed 1 October 2008).

²⁰⁷ Ressler et al (n 5 above) 269.

²⁰⁸ (n 119 above).

²⁰⁹ (n 84 above).

of UNHCR. The UNHCR has not established an orphanage on the camp, and has no direct project with unaccompanied children.²¹⁰ A social welfare officer working in the camp has recommended that the UNHCR should be more streamlined with the government of Ghana, as together they could better support UMR and their foster families.

In South Africa, the UNHCR's activities relating to unaccompanied children from Zimbabwe focus on establishing standard operating procedures for children who claim asylum, and supporting the planning for the opening of a shelter for women and children run by a local church.²¹¹ The UNHCR's assistance to displaced refugees within the country has, however, been highly criticised. According to a South African news article,²¹²

besides sending some supplies and some evaluators to the country, the UN has been largely absent during these past three weeks of violence against refugees in our country...the UNHCR is in violation of its own international mandate and obligation to assist and advise people who have been displaced by the violence.

The UNHCR is best placed to respond to the needs of UMR, and in fact the UN has recognised its role in responding.²¹³ Yet despite its mandate and vital role in the support of UMR, the UNHCR faces 'substantial political, financial, and logistical challenges'.²¹⁴ It cannot achieve the full care and protection of UMR on its own. In both South Africa and Ghana, the UNHCR does not sufficiently address the needs of UMR and, as such, it cannot be expected to achieve protection of UMR without assistance.

4.4.3 NGO's

Co-operation between parties in the response to refugee crises is crucial, and this study found that NGO's play a large and important role in such responses. Indeed, 'protection concerns reveal a commonality of interest, effective protection demands a purposeful degree of co-operation, by no means limited to states'.²¹⁵ Although there is little regulation or oversight of their participation in these responses, the research for this study revealed that NGO's provide UMR with tangible assistance and support. Such assistance includes feeding programmes, scholarships to attend schools and temporary places of shelter. In fact, the UNHCR recognises the importance of an NGO presence in refugee crises, and recognises the

²¹⁰ (n 88 above).

²¹¹ (n 57 above).

²¹² (n 53 above).

²¹³ The UNHCR has de facto responsibility for the care and protection of the children, it must follow its Guidelines and implement its principles, as well as principles of international law.

²¹⁴ (n 31 above).

²¹⁵ Goodwin-Gill (n 176 above) 229.

need for it to solicit support from these organisations. In Ghana, NGO's that wish to work in refugee camps inform the UNHCR of their goal, and they are sometimes informally monitored by the UNHCR.²¹⁶ The nature of NGO's which work with UMR range from faith-based organisations, such as the National Catholic Secretariat and various churches; to organisations run by refugees themselves which focus specifically on UMR, such as CBW; as well as organisations run by international philanthropists, such as Point Hope. An NGO presence is not only vital in emergency refugee situations, but also in long-term protection of and assistance to refugee settlements,²¹⁷ and a limited NGO presence reduces the assistance and protection offered to UMR. Thus it can be deduced that, although not the case in South Africa or Ghana, where there is not an active NGO presence in a refugee situation, UMR may suffer.

In addition, NGO's operate with little external oversight or regulation. Apart from informal monitoring from the UNHCR, the work of NGO's seems to be largely independent, particularly in Ghana where personal observations demonstrated that NGO's operate with little oversight. This can create problems where the operations of such organisations are not in the best interests of the UMR. A potential obstacle thus highlighted during this study is the lack of oversight of programmes of NGO's which work with UMR, and the negative affects this can have on UMR when the programmes are disadvantageous to the children.

4.5 Communication obstacles

Issues which arise in the gap between 'policy and practice' are certainly related to failures to communicate. Such failures can be between refugees and government officials, and are as a result of language difficulties or of cultural differences.²¹⁸ Evidence shows that such miscommunication results in obstacles to the implementation of the socio-economic rights of UMR. For example, in South Africa there is little provision at public health facilities for interpreters to address language barriers, and this has the consequence of turning refugees away from seeking care at these facilities.²¹⁹ Yet miscommunication can also occur between government officials themselves and this, too, can impede the realisation of the rights of child refugees. For example, the lack of communication between welfare officials and the Department of Home Affairs in South Africa has contributed to the exclusion of refugees' accessing social security and social assistance programmes.²²⁰

²¹⁶ (n 100 above).

²¹⁷ (n 173 above).

²¹⁸ (n 173 above).

²¹⁹ (n 173 above).

²²⁰ (n 173 above).

4.6 Conclusion

There are certainly problems in the implementation of the socio-economic rights of UMR – legal, financial, communication-related, capacity-related, as well as in the relationship and co-operation between the involved parties. These obstacles prevent the full realisation of the fundamental and guaranteed rights which are available to all children, but particularly to vulnerable children such as UMR. It is necessary, therefore, to suggest possible solutions to these ‘stumbling blocks’.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1 Summary of findings

This study set out to investigate the treatment of UMR in Ghana and South Africa by examining their access to socio-economic rights such as education, shelter, food and water, and healthcare. The results of this investigation show that UMR are among the most vulnerable in any refugee situation, and that their socio-economic rights are not being fully realised in either country, for various reasons. This study also analysed the obstacles to the full implementation of the rights of UMR. Firstly, it was found that existing international conventions do not adequately address the plight of UMR and there is, therefore, a critical need to fill this gap in the protection of the socio-economic rights of UMR. This can be achieved by creating an international convention which focuses on the situation of child refugees, including UMR, and to which state parties must comply in their treatment of UMR within their territories. It was also found that domestic law and policies in Ghana and South Africa do not sufficiently provide for national mechanisms for the regulation of the treatment of UMR. In South Africa, this is due to poor implementation of the existing laws and a lack of policies on the matter. In Ghana, it is due to a lack of legislation or policy framework regarding child refugees in general, and UMR in particular. This can be remedied by the adoption of policies, and amendment of legislation, to allow for proper protection of the rights of UMR. In addition, the study found that the interested parties operating in refugee situations (the UNHCR, governments and NGO's) cannot achieve full protection of UMR when acting alone, as individually they lack the capacity or resources to do so. This can be remedied by co-operation between states and between the interested parties, as co-operation is vital for full and far-reaching protection of UMR. It can also be achieved by initiating changes within the UNHCR in order to resolve the capacity-related inadequacies of the organisation.

5.2 Conclusion

This study focussed on the practical treatment which UMR receive in Ghana and South Africa, and whether this treatment is in accordance with international and regional legal standards set out in human rights instruments, refugee instruments and UNHCR Guidelines and Principles. As a study of the relevant international and domestic law revealed, there is certainly a gap between the rights provided for UMR in South Africa and Ghana, and the

realisation of these socio-economic rights guaranteed in the law. This study has proposed reasons for the lack of implementation of the rights, including financial reasons, and inadequacies in both the law and the implementation of the law. The study also proposes in what follows recommendations on how these obstacles to implementation can be remedied, including a new international instrument and the possibility of a sub-body within the UNHCR which focuses on the plight of refugee children, including UMR. Whether or not these particular recommendations are implemented, it is clear that some action *must* be taken in order to protect the rights of UMR. States and other actors, such as the UNHCR, are required to respect the human rights of all people, including UMR, and they are under a duty to ensure that the human rights of UMR are not violated. This study concludes that the international community, and indeed the African community, must place a larger focus in the future on the situation of UMR, and on the achievement of the human rights of UMR, in order to ensure that they are no longer 'lost in the system'.

5.3 Recommendations

5.3.1 International instrument

A new international instrument needs to be created which focuses on the treatment of, protection of, and assistance to child refugees, including UMR. The principles for such protection and treatment already exist in the international arena, as outlined in Chapter Two above, but they need to be translated into 'hard' law – law which has consequences for non-compliance. It is recommended that this convention should make provision for a regulatory body with the power to conduct on-site visits and investigations into state parties' treatment of its child refugees. Although ratification of this instrument would create additional responsibility for states, this is not a justification against creating the instrument as every international instrument which a state ratifies creates obligations on the state, and yet this has not prevented states from ratifying numerous important treaties and conventions. The proposed international convention should require governments to work with civil society in their protection of child refugees, in order to encourage greater inter-party co-operation.

Although creating such an instrument may not be without challenges, it is submitted that in this case the existing conventions are clearly insufficient. Thus, even if attention were to be given to properly implementing existing instruments, as opposed to creating a new one, the result would still leave gaps in the protection of child refugees. The existing 'soft' law, in the form of the Inter-agency guiding principles and UNHCR Guidelines, offers better prospects of

protection than the existing conventions, but needs to be transformed into legal obligations rather than simply guiding principles.

5.3.2 Domestic laws and policies

This study also examined the gaps in domestic policies and laws in South Africa and Ghana, and recommends that comprehensive policies and laws be created or amended to be brought in line with international guidelines and principles of protection for refugee children. It is recommended that all states need to create policies and domestic laws, possibly drawing on the UNHCR Guidelines and Inter-agency Guiding Principles, which provide for the treatment of UMR within their territories. The European Council on Refugees and Exiles has called on states to develop policies which 'take account of the special needs of unaccompanied children...in the provision of suitable care'.²²¹ This study endorses this position, and recommends that states domesticate international standards of protection, either contained in a new international instrument or in the UNHCR Guidelines and Inter-Agency Guiding Principles, through domestic legislation or policy. In addition, it is recommended that priority be given in budget allocations to the realisation of the socio-economic rights of refugee children, particularly UMR.²²²

In the case of South Africa, it is recommended that the country should formulate clear and detailed policy guidelines, the implementation of which could be monitored by the national Human Rights Commission. A human rights advocate in South Africa has recommended that the country develop a comprehensive policy framework to protect and assist UMR.²²³ This recommendation was made in response to the recent case of the Donkakim family,²²⁴ in which the court found that 'the procedures to determine the asylum applications of unaccompanied children in South Africa were inadequate and fell short of international guidelines'.²²⁵ This study endorses this recommendation. Policies which are implemented should recommend an interdepartmental policy initiative which deals specifically with the access of child refugees to health and welfare services. It is imperative that such policies require the dissemination of the legal status of UMR in a country, for example to the police services, medical officers, and educators in the country.²²⁶ In addition, it is recommended

²²¹ European Council on Refugees and Exiles 'Position on refugee children' (1997) 9 1 *International Journal of Refugee Law* 76.

²²² Concluding observations made by the Committee on the Rights of the Child regarding Ghana's initial report 1997 (para 31).

²²³ (n 188 above).

²²⁴ Unreported case Pretoria High Court (2006).

²²⁵ (n 188 above).

²²⁶ (n 170 above).

that such policies address the activities of NGO's and regulate their assistance of UMR. In the workshop summary of a recent strategy workshop on vulnerable children in South Africa, it was recommended that the role of NGO's working with vulnerable children be acknowledged,²²⁷ and this study proposes that the role of NGO's should not only be acknowledged, but also addressed, in any policy framework.

Although applicable to South Africa, it is recommended that all states should adopt such policy frameworks. Any policy formulated by states should be in the form of an interdepartmental policy initiative, which specifically deals with the access of child refugees to socio-economic services. This is because the provision of social services to UMR generally requires an integrated approach, based on the co-operation of different government departments, and so any policy adopted in this area should be inter-departmental in character.²²⁸ A recent report by the Consortium for Refugees and Migrants in South Africa recommended closer collaboration between government departments to ensure that UMR were better cared for, as child protection requires action from more than one government department.²²⁹ This study endorses this recommendation, as it is evident that any approach to the protection of the rights of UMR requires a multi-party response.

In the case of Ghana, it is recommended that legislation needs to be drafted and passed which directly addresses the needs of child refugees, including UMR. Refugee legislation should be amended to provide explicitly for the protection of UMR.²³⁰ Even in South Africa, where legislation addresses the situation of UMR, it has been suggested that the government should review existing legislation which adversely affects services for children.²³¹

5.3.3 Changes in UNHCR

The UNHCR is responsible for UMR, as such responsibility falls directly under its protective mandate.²³² A possible solution to the inadequacies of the UNHCR in addressing the plight of child refugees is the creation of a sub-committee or body within the UNHCR which focuses solely on the plight of refugee children, including UMR. It is acknowledged that creating such a body may be discriminatory in that such bodies do not exist for other vulnerable groups of refugees, such as women or the disabled. It is, however, recommended that the

²²⁷ (n 171 above).

²²⁸ (n 170 above).

²²⁹ (n 188 above).

²³⁰ http://www.hrw.org/reports98/sareport/#_1_7 (accessed 23 October 2008).

²³¹ (n 171 above).

²³² (n 186 above).

plight of children has for too long gone unnoticed and unattended, and drastic action is required. There may be need in the future to create sub-bodies which focus on other vulnerable groups, but the plight of UMR, and other refugee children, requires immediate and far-reaching action.

5.3.4 International and regional responsibility

In remarks made in reaction to Ghana's 2005 initial report to the African Peer Review Mechanism (APRM), the APRM Panel recommended that the international community should assist Ghana with the necessary support in coping with the demands of the refugee population, especially women and children.²³³ This study agrees with this recommendation. It is vital for the international community, comprising of states and UN bodies, to co-operate in the response to refugee situations, regardless of in which country the crisis exists. Indeed, Goodwin-Gill notes that 'every state is bound by the principle of international co-operation',²³⁴ so not only is it recommended but it is an international principle which binds states. Indeed, such co-operation may help address the financial limitations of individual parties in the response to refugee crises. In Africa particularly it is recommended that all African states should act as partners in responding to refugee situations and, as such, should co-operate in the care and assistance of child refugees, particularly UMR. This co-operation would be in line with the principles of the African Union, to which all but one African state belongs, which promote African unity, brotherhood and co-operation,²³⁵ as well as article 23 of the ACRWC which requires states to co-operate with existing international organisations in their efforts to protect and assist children.

Word Count: 17 892

²³³ APRM Country Review Report of the Republic of Ghana June 2005.

²³⁴ Goodwin-Gill (n 176 above) vii.

²³⁵ Art 3(a) & (e) Constitutive Act.

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Emails

Email from employee at Lawyers for Human Rights, South Africa, on 1 October 2008

Email from employee at Lawyers for Human Rights, South Africa, on 17 October 2008

Questionnaires

Employee at NGO, Buduburam camp

Volunteer at NGO, Buduburam camp

Officer at LWC, Buduburam camp

Volunteer at ARCH orphanage, Buduburam camp

Other

ACCESS KwaZulu-Natal Provincial Review and Strategy Workshop (2006) Workshop Summary

APRM Country Review Report of the Republic of Ghana (2005)

'Children on the move: Protecting unaccompanied migrant children in South Africa and the region' (2007) Report by Save the Children UK

'Child Protection Rapid Assessment' (2008) Musina Municipality Limpopo Province, South Africa

Children's Amendment Bill– public hearings in Gauteng, Braamfontein Recreation Centre (2006) submission by Lawyers for Human Rights

Concluding observations made by the Committee on the Rights of the Child regarding Ghana's initial report (1997)

Dick, S 'Liberians in Ghana: living without humanitarian assistance' (2002) New Issues in Refugee Research Working Paper 57

Dick, S 'A case study of Liberian refugees in Ghana' (2002) UNHCR Evaluation and Policy Analysis Unit: responding to protracted refugee situations

'Inter-agency Guiding Principles on unaccompanied and separated children' (2004)

Kadende, K 'The Plight of the Refugee Child' (2007) World Refugee Day Speech, Cape Town
Unpublished: TK Livesey 'A survey on the extent of xenophobia towards refugee children' unpublished Masters dissertation, University of South Africa, 2006

ANNEXURE 1: INTERVIEW CONSENT FORM

** This form was given to each interviewee before the interview was conducted. As the interviewees remain anonymous, it is not possible to attach the consent forms of the interviewees to this study. However, these forms have been filled out by each interviewee, and they remain with the researcher, in accordance with the rules of the Research Ethics Committee of the University of Pretoria, South Africa. The results of these interviews have been embodied in this study.*

Dear Participant

Title of Project: Unaccompanied minor refugees and the protection of their socio-economic rights under human rights law

You are invited to volunteer for a research study. This information document will help you decide if you would like to participate. Before you agree to take part in this study you should fully understand what is involved. If you have any questions, which are not fully explained in this document, do not hesitate to ask the researcher. You should not agree to take part unless you are completely happy about all the procedures involved. This study is in accordance with the requirements of the LLM in Human Rights and Democratisation in Africa, run through the Centre for Human Rights, University of Pretoria. The purpose of this study is to investigate the treatment of unaccompanied minor refugees in refugee camps in Ghana, and refugee centres in South Africa. The study involves non-participative observance in a refugee camp as well as interviews with officials who work with unaccompanied minor refugees. My research will be over a 3 month period, from August 2008 to October 2008.

This research protocol was submitted to the Faculty of Law Research Ethics Committee, University of Pretoria, and written approval has been granted by the Committee. The study has been structured in accordance with ethical considerations such as the protection of the identity of all participants. Your participation in this research is entirely voluntary and you can refuse to participate or stop at any time without stating reason. The investigator retains the rights to withdraw you from the study if considered to be in your best interest. The study will be conducted by way of interviews or observations by Sarah Swart. Should you have any questions please do not hesitate to contact her. Her telephone number is 027 179 1346. All information obtained during the course of this research is strictly confidential. Data that may be reported in law journals will not include any information which identifies you as a participant in this study. Information will be published anonymously. No information will be disclosed to any third party without your written permission.

I hereby confirm that I have been informed by the researcher _____ about the nature, conduct, benefits and risks of the proposed research. I have also received, read and understood the above written information (informed consent) regarding the study. I am aware that the results of the study, including personal details regarding sex, age, marital status etc of myself will be anonymously processed into the research report. (See in particular the definition of 'personal information' in the Promotion of Access to Information Act 2 of 2000). I may, at any stage, without prejudice, withdraw my consent and participation in the study. I have had sufficient opportunity to ask questions, and of my own free will, declare myself prepared to participate in the study.

Participant's name: _____

Participant's signature: _____

I, _____, herewith confirm that the above participant has been informed fully about the nature and scope of the above study.

Investigator's name: _____

Investigator's signature: _____

Witness's name: _____ Witness's signature: _____

Date:

ANNEXURE TWO: COMPLETED QUESTIONNAIRES

* These questionnaires have been completed to the extent which the individuals wished to complete them. The transcripts below reflect the amount of questions each individual answered.

QUESTIONNAIRE: Employee at NGO	YES/NO
1. Do refugee children have access to adequate potable water?	Y
2. Is water collected from a protected source?	Y
3. Is adequate water available for bathing and washing?	Y
4. Do children play a role in collecting water?	Y
5. Are additional measures required to improve availability of potable water, particularly for young children?	Y
6. Is the sanitation programme accompanied by a health education programme?	Y
7. Is the site safe from flooding?	N
8. Have clinics and schools been provided with sanitary facilities?	Y
9. Is the general cleanliness of the camp satisfactory?	N
10. Is there adequate drainage around water points (particularly around tapstands and/or washbasins)?	N
11. Is soap distribution organized on a regular basis?	N
12. Have appropriate measures for solid waste collection and disposal been established?	Y
13. Have women been consulted and their cultural practices respected in the design and location of latrines?	Y
14. Have latrines been constructed, located and lighted to ensure their safety and usability by children and their mothers?	Y
15. Have children been sensitized to and involved in the maintaining of sanitary facilities?	N
16. Have the children been trained in minimal personal hygiene e.g. washing hands after the use of latrines?	Y
17. Does available shelter provide adequate protection for refugee children & their mothers?	Y
18. Are the standards of space, privacy and freedom of movement adequate for parents to meet the developmental needs of their children and to raise them with dignity?	N
19. Are children receiving adequate quantity and quality of food?	N
20. Is food provided culturally and socially acceptable, palatable and digestible?	N
21. Are cooking fuel and utensils made available?	Y
22. Have nutrition monitoring and surveillance systems been set up?	Y
23. Is there evidence of any deficiency diseases among children, especially girls, or among pregnant or lactating women?	N
24. Is breast-feeding being promoted and the use of bottles discouraged?	Y
25. Is the use of milk products being monitored and adhered to according to UNHCR policy?	N
26. Are appropriate measures being taken to prevent and reduce micro-nutrient deficiencies?	N
27. Is there a need for training of nutrition staff in carrying out necessary interventions?	Y
28. Is an epidemiological health surveillance system in place?	Y
29. Is the appropriate Vitamin A prophylaxis being provided to protect children from Vitamin A deficiency and is a mechanism available for early detection of Vitamin A deficiency?	Y
30. Are the health services meeting the health needs of children and adolescents?	Y
31. Are additional female health professionals/or community health care workers required?	Y
32. Are education and other measures being provided to prevent and control diseases?	Y
33. Are counter-measures in place to address harmful traditional health practices affecting children and adolescents?	Y

QUESTIONNAIRE: Officer at LWC

YES/NO

1. Do refugee children have access to adequate potable water?
2. Is water collected from a protected source?
3. Is adequate water available for bathing and washing?
4. Do children play a role in collecting water?
5. Are additional measures required to improve availability of potable water, particularly for young children?
6. Is the sanitation programme accompanied by a health education programme?
7. Is the site safe from flooding? N
8. Have clinics and schools been provided with sanitary facilities?
9. Is the general cleanliness of the camp satisfactory?
10. Is there adequate drainage around water points (particularly around tapstands and/or washbasins)?
11. Is soap distribution organized on a regular basis? N
12. Have appropriate measures for solid waste collection and disposal been established?
13. Have women been consulted and their cultural practices respected in the design and location of latrines?
14. Have latrines been constructed, located and lighted to ensure their safety and usability by children and their mothers?
15. Have children been sensitized to and involved in the maintaining of sanitary facilities?
16. Have the children been trained in minimal personal hygiene e.g. washing hands after the use of latrines?
17. Does available shelter provide adequate protection for refugee children & their mothers? Y
18. Are the standards of space, privacy and freedom of movement adequate for parents to meet the developmental needs of their children and to raise them with dignity?
19. Are children receiving adequate quantity and quality of food? N
20. Is food provided culturally and socially acceptable, palatable and digestible?
21. Are cooking fuel and utensils made available?
22. Have nutrition monitoring and surveillance systems been set up?
23. Is there evidence of any deficiency diseases among children, especially girls, or among pregnant or lactating women?
24. Is breast-feeding being promoted and the use of bottles discouraged?
25. Is the use of milk products being monitored and adhered to according to UNHCR policy?
26. Are appropriate measures being taken to prevent and reduce micro-nutrient deficiencies?
27. Is there a need for training of nutrition staff in carrying out necessary interventions?
28. Is an epidemiological health surveillance system in place?
29. Is the appropriate Vitamin A prophylaxis being provided to protect children from Vitamin A deficiency and is a mechanism available for early detection of Vitamin A deficiency?
30. Are the health services meeting the health needs of children and adolescents?
31. Are additional female health professionals/or community health care workers required?
32. Are education and other measures being provided to prevent and control diseases?
33. Are counter-measures in place to address harmful traditional health practices affecting children and adolescents?

QUESTIONNAIRE: Volunteer at NGO

YES/NO

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 1. Do refugee children have access to adequate potable water? | Y |
| 2. Is water collected from a protected source? | N |
| 3. Is adequate water available for bathing and washing? | N |
| 4. Do children play a role in collecting water? | Y |
| 5. Are additional measures required to improve availability of potable water, particularly for young children? | Y |
| 6. Is the sanitation programme accompanied by a health education programme? | N |
| 7. Is the site safe from flooding? | N |
| 8. Have clinics and schools been provided with sanitary facilities? | N |
| 9. Is the general cleanliness of the camp satisfactory? | N |
| 10. Is there adequate drainage around water points (particularly around tapstands and/or washbasins)? | N |
| 11. Is soap distribution organized on a regular basis? | N |
| 12. Have appropriate measures for solid waste collection and disposal been established? | N |
| 13. Have women been consulted and their cultural practices respected in the design and location of latrines? | |
| 14. Have latrines been constructed, located and lighted to ensure their safety and usability by children and their mothers? | N |
| 15. Have children been sensitized to and involved in the maintaining of sanitary facilities? | N |
| 16. Have the children been trained in minimal personal hygiene e.g. washing hands after the use of latrines? | N |
| 17. Does available shelter provide adequate protection for refugee children & their mothers? | N |
| 18. Are the standards of space, privacy and freedom of movement adequate for parents to meet the developmental needs of their children and to raise them with dignity? | N |
| 19. Are children receiving adequate quantity and quality of food? | N |
| 20. Is food provided culturally and socially acceptable, palatable and digestible? | Y |
| 21. Are cooking fuel and utensils made available? | N |
| 22. Have nutrition monitoring and surveillance systems been set up? | N |
| 23. Is there evidence of any deficiency diseases among children, especially girls, or among pregnant or lactating women? | N |
| 24. Is breast-feeding being promoted and the use of bottles discouraged? | Y |
| 25. Is the use of milk products being monitored and adhered to according to UNHCR policy? | N |
| 26. Are appropriate measures being taken to prevent and reduce micro-nutrient deficiencies? | N |
| 27. Is there a need for training of nutrition staff in carrying out necessary interventions? | Y |
| 28. Is an epidemiological health surveillance system in place?
in older children, for those up to 12 years of age)? | N
N |
| 29. Is the appropriate Vitamin A prophylaxis being provided to protect children from Vitamin A deficiency and is a mechanism available for early detection of Vitamin A deficiency? | N |
| 30. Are the health services meeting the health needs of children and adolescents? | N |
| 31. Are additional female health professionals/or community health care workers required? | Y |
| 32. Are education and other measures being provided to prevent and control diseases? | N |
| 33. Are counter-measures in place to address harmful traditional health practices affecting children and adolescents? | N |

QUESTIONNAIRE: Volunteer at ARCH

YES/NO

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| 1. Do refugee children have access to adequate potable water? | N |
| 2. Is water collected from a protected source? | |
| 3. Is adequate water available for bathing and washing? | N |
| 4. Do children play a role in collecting water? | |
| 5. Are additional measures required to improve availability of potable water, particularly for young children? | Y |
| 6. Is the sanitation programme accompanied by a health education programme? | |
| 7. Is the site safe from flooding? | |
| 8. Have clinics and schools been provided with sanitary facilities? | |
| 9. Is the general cleanliness of the camp satisfactory? | N |
| 10. Is there adequate drainage around water points (particularly around tapstands and/or washbasins)? | |
| 11. Is soap distribution organized on a regular basis? | N |
| 12. Have appropriate measures for solid waste collection and disposal been established? | |
| 13. Have women been consulted and their cultural practices respected in the design and location of latrines? | |
| 14. Have latrines been constructed, located and lighted to ensure their safety and usability by children and their mothers? | |
| 15. Have children been sensitized to and involved in the maintaining of sanitary facilities? | |
| 16. Have the children been trained in minimal personal hygiene e.g. washing hands after the use of latrines? | |
| 17. Does available shelter provide adequate protection for refugee children & their mothers? | |
| 18. Are the standards of space, privacy and freedom of movement adequate for parents to meet the developmental needs of their children and to raise them with dignity? | |
| 19. Are children receiving adequate quantity and quality of food? | N |
| 20. Is food provided culturally and socially acceptable, palatable and digestible? | |
| 21. Are cooking fuel and utensils made available? | |
| 22. Have nutrition monitoring and surveillance systems been set up? | |
| 23. Is there evidence of any deficiency diseases among children, especially girls, or among pregnant or lactating women? | Y |
| 24. Is breast-feeding being promoted and the use of bottles discouraged? | |
| 25. Is the use of milk products being monitored and adhered to according to UNHCR policy? | |
| 26. Are appropriate measures being taken to prevent and reduce micro-nutrient deficiencies? | |
| 27. Is there a need for training of nutrition staff in carrying out necessary interventions? | |
| 28. Is an epidemiological health surveillance system in place? | |
| 29. Is the appropriate Vitamin A prophylaxis being provided to protect children from Vitamin A deficiency and is a mechanism available for early detection of Vitamin A deficiency? | |
| 30. Are the health services meeting the health needs of children and adolescents? | |
| 31. Are additional female health professionals/or community health care workers required? | |
| 32. Are education and other measures being provided to prevent and control diseases? | |
| 33. Are counter-measures in place to address harmful traditional health practices affecting children and adolescents? | |